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FILED

OCT 30 2007

**SURFACE
TRANSPORTATION BOARD**

October 30, 2007

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
395 E Street, S.W.
Washington, DC 20423-0001

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OCT 30 2007

**SURFACE
TRANSPORTATION BOARD**

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Part of
Public Record

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

Dear Secretary Williams

Enclosed for filing in the above-referenced docket please find an original and 10 copies of the Railroad Control Application of Canadian National Railway Company and Grand Trunk Corporation (designated as CN-2). This application includes related notices of exemption for a corporate family exemption related to the partitioning of the Elgin Joliet & Eastern Railway Company in STB Finance Docket No. 35087 (Sub-No. 1), and for trackage rights in STB Finance Docket No. 35087 (Sub-Nos. 2-7). Along with the Application, I have enclosed a Petition Suggesting Procedural Schedule (designated CN-3).

A check for \$13,800 is enclosed for the filing fees for the primary application (\$6,600), the notice of exemption for a transaction within a corporate family (\$1,200), and six notices of exemption for trackage rights (\$1,000), as required by 49 C.F.R. § 1002.2(f).

I have also enclosed a compact disc containing the text of the Railroad Control Application, as required by 49 C.F.R. § 1104.3(b)(1). The disc contains the texts of the application itself, the verified statements in support of the application, and the Verified Notices of Exemption in Sub-Nos. 1-7, as well as the exhibits and attachments to those documents. Additionally, a scanned copy of the entire filing is included on the disc in PDF format. A second disc is enclosed which contains the text, in Microsoft Word format, of the Petition Suggesting Procedural Schedule.

HARKINS CUNNINGHAM LLP

Attorneys at Law

Mr Vernon A Williams, Secretary

October 30, 2007

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Finally, I have enclosed 20 unbound copies of the maps attached to the application as Exhibit 1, as required by 49 C F R § 1180 6(a)(6). Additionally, I have enclosed 20 unbound copies of the Exhibit 1 maps to each of the seven notices of exemption in Finance Docket No 35087 (Sub-Nos 2-7)

Very truly yours,

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

Paul Cunningham

Enclosures

220598

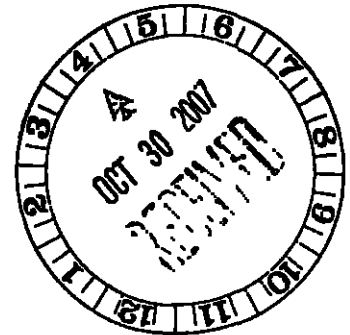
CN-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

RAILROAD CONTROL APPLICATION



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*Counsel for Canadian National Railway Company
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TABLE OF ABBREVIATIONS

AAR	Association of American Railroads
Agreement	Stock Purchase Agreement by and between Grand Trunk Corporation and Elgin Joliet and Eastern Railway Company, executed on September 25, 2007
ALK	ALK Technologies, Inc
ANPR	Advanced Notice of Proposed Rulemaking
Applicants	CNR and GTC
Application	Application by CNR and GTC for Control of EJ&E West Company
BEA	Business Economic Area
B&LE	Bessemer and Lake Erie Railroad Company
Blackstone	The Blackstone Group
BNSF	BNSF Railway Company
BRC	The Belt Railway Company of Chicago
CCP	Chicago, Central & Pacific Railroad Company
CN	CNR and subsidiaries
CNW	Chicago & North Western Railway Company
CNR	Canadian National Railway Company
CN/EJ&EW Transaction	The proposed acquisition by CN and GTC of control of EJ&E West Company
CN/GLT	<i>Canadian Nat'l Ry – Control – Duluth, Missabe & Iron Range Ry Co</i> , STB Finance Docket 34424
CN/IC	<i>Canadian Nat'l Ry. – Control – Ill Cent Corp</i> , STB Finance Docket No 33556

CN/WC	<i>Canadian Nat'l Ry – Control – Wis Cent Trans Co , STB Finance Docket No 34000</i>
CP	Canadian Pacific Railway Company and subsidiaries
CREATE	Chicago Region Environmental and Transportation Efficiency Program
CRRC	Cedar River Railroad Company
CSS	Chicago SouthShore & South Bend Railroad
CSX	CSX Corporation, CSX Transportation, Inc , and subsidiaries
CSXT	CSX Transportation, Inc
DMIR	Duluth, Missabe and Iron Range Railway Company
DWP	Duluth, Winnipeg and Pacific Railway Company
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	Elgin, Joliet & Eastern Railway Company
EJ&EW	EJ&E West Company
Exemption Transaction	The acquisition by EJ&E West Company of certain assets of Elgin, Joliet & Eastern Railway Company, as proposed in the Verified Notice of Exemption filed in STB Finance Docket No 35087 (Sub-No. 1)
FRA	Federal Railroad Administration, U S. Department of Transportation
GLT	Great Lakes Transportation LLC
GTC	Grand Trunk Corporation
GTW	Grand Trunk Western Railroad Inc.
IC	Illinois Central Corporation or Illinois Central Railroad Company, depending on context

ICC	Interstate Commerce Commission
ICE	Iowa, Central & Eastern Railroad Company
IHB	Indiana Harbor Belt Railroad
KCS	The Kansas City Southern Railway Company
KCSM	Kansas City Southern de México, S.A. de C.V.
Metra	Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a Metra
NAFTA	North American Free Trade Agreement
NEC	not elsewhere classified
NEPA	National Environmental Policy Act of 1969
NS	Norfolk Southern Railway Company
P&C Dock	The Pittsburgh & Conneaut Dock Company
SCTC	St. Clair Tunnel Company
SEA	Section of Environmental Analysis, Surface Transportation Board
SIP	Safety Integration Plan
SPLC	Standard Point Location Code
SRS	Service Reliability Strategy
SSMB	Sault Ste. Marie Bridge Company
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
Transaction	The proposed acquisition by CNR and GTC of control of EJ&E West Company
Transtar	Transtar Inc

UP	Union Pacific Railroad Company
USS	United States Steel Corporation
Waterloo	Waterloo Railway Company
WC	Wisconsin Central Transportation Company
WCL	Wisconsin Central Ltd
WCLL	Wisconsin Chicago Link Ltd.

In addition, the United States Postal Service's standard 2-letter abbreviations are used for states in the United States, and the Canadian Post Office's 2-letter abbreviations are used for Canadian provinces

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No 35087

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

RAILROAD CONTROL APPLICATION

INTRODUCTION
(SECTION 1180.6)

Canadian National Railway Company ("CNR") and Grand Trunk Corporation ("GTC")¹ hereby apply under 49 U.S.C. §§ 11323-11325 and the Board's Railroad Consolidation Procedures, 49 C.F.R. Part 1180,² for authorization for CNR (a rail carrier that presently controls several rail carrier subsidiaries) and GTC (a non-carrier holding company through which CNR controls its U.S. rail subsidiaries)³ to acquire control of EJ&E West Company ("EJ&EW")⁴

¹ CNR and GTC are referred to together as "CN" or as "Applicants." These and the other principal abbreviations used in this Application are listed in a Table of Abbreviations following the Table of Contents.

² All section references in this Application are to Title 49 of the Code of Federal Regulations, unless otherwise noted.

³ Through its GTC subsidiary, CN controls the following rail carriers subject to the STB's jurisdiction: Grand Trunk Western Railroad Incorporated ("GTW"), Duluth, Winnipeg and Pacific Railway Company ("DWP"), St. Clair Tunnel Company ("SCTC"), Illinois Central Railroad Company ("IC"), Chicago, Central & Pacific Railroad Company ("CCP"), Cedar River Railroad Company ("CRRC"), Waterloo Railway Company ("Waterloo"), Wisconsin Central Ltd. ("WCL"), Sault Ste. Marie

Applicants request that the Board treat the proposed acquisition by CN and GTC of control of EJ&EW (the “Transaction” or “CN/EJ&EW Transaction”) as a “minor” transaction under the Board’s rules. Under those rules, a transaction not involving the merger or control of two or more Class I railroads is classified as minor if the Board can determine either

- (1) That the transaction clearly will not have any anticompetitive effects, or
- (2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs

49 C.F.R. § 1180.2(b). Applicants submit that the Transaction satisfies both of these tests

First, the Transaction would have no anticompetitive effects. It would connect two transportation systems that do not compete but instead complement each other and would together create a stronger network. There would be no “2-to-1” shippers on the CN/EJ&EW system, and no “3-to-2” shippers.⁵ Moreover, the Transaction would bring

Bridge Company (“SSMB”), Wisconsin Chicago Link Ltd. (“WCLL”), Duluth, Missabe and Iron Range Railway Company (“DMIR”), Bessemer and Lake Erie Railroad Company (“B&LE”), and The Pittsburgh & Conneaut Dock Company (“P&C Dock”).

⁴ EJ&EW is an Illinois corporation formed on August 16, 2007, and is a wholly-owned non-carrier subsidiary of Elgin, Joliet & Eastern Railway Company (“EJ&E”) which is in turn a wholly owned subsidiary of Transtar, Inc. (“Transtar”). Transtar is a wholly owned subsidiary of United States Steel Corporation (“USS”). EJ&EW would become a rail carrier through the acquisition of EJ&E’s land, rail, and related assets located west of the centerline of Buchanan Street in Gary, IN, which is adjacent to and west of the USS steel plant, in the transaction that is the subject of the Verified Notice of Exemption in STB Finance Docket No. 35087 (Sub-No. 1) (filed simultaneously with this Application). EJ&EW and EJ&E intend to consummate that transaction (the “Exemption Transaction”) before Applicants acquire control of EJ&EW.

⁵ A “2-to-1” shipper is one now receiving rail service from CN and EJ&E, for whom the transaction would reduce the number of independent rail options from two to one, thus eliminating horizontal competition for rail service to or from that customer. Similarly, a “3-to-2” shipper is one now receiving rail service from CN, EJ&E, and a

about no vertical foreclosure, no reduction in effective geographic competition, and no increase in market power

Second, even if the CN/EJ&EW Transaction had any adverse impacts on competition, those effects would be clearly outweighed by its transportation benefits. By providing CN with a continuous route around Chicago, currently one of the worst chokepoints for traffic on CN's system, the Transaction would make it possible to route much CN traffic to bypass the congested Chicago terminal. As a result, CN-served customers in the Chicago area, as well as customers served by other Class I railroads, would benefit from reduced demand on the capacity of The Belt Railway Company of Chicago ("BRC"), Indiana Harbor Belt Railroad ("IHB"), and other CN lines through the central Chicago terminal area.

Moreover, the availability of a continuous CN route around Chicago would greatly improve the fluidity of intermodal and other CN traffic that must move to, from, or through Chicago. Traffic from Western or Eastern Canada moving to destinations on CN's IC and CCP lines, traffic moving from IC- and CCP-served origins in the United States to Canadian destinations, and traffic moving between CN's GTW, IC, CCP, and WC subsidiaries would no longer need to move through central Chicago, and if they are required to stop in the Chicago area for such purposes as crew changes, locomotive inspections, and setouts, they would be able to do so at points on the EJ&E arc on the periphery of the Chicago area. Even traffic that CN must interchange in Chicago with other railroads would, in many cases, be able to move between CN and those other

third carrier, for whom the transaction would reduce the number of independent rail options from three to two, thus reducing horizontal rail competition for rail service to or from that customer

carriers more efficiently, using routes that would minimize movements on downtown rail lines. In addition, as discussed in the Verified Statement of David L. Novak, the availability of a continuous CN route around Chicago would advance the congestion-reducing objectives of the CREATE Project and make it possible for CN to more quickly cease operations over the St. Charles Air Line – an elevated track that crosses the southern part of downtown Chicago – and which is jointly owned by CN, BNSF Railway Company (“BNSF”), and Union Pacific Railroad Company (“UP”), and over certain connecting CN lines that make up the Air Line route ⁶

The CN/EJ&EW Transaction would also eliminate interchanges between EJ&E and CN, making possible single-line service for approximately 10,000 carloads that the two railroads now carry in interline service each year. In addition, as discussed in the verified statement of David A. Stuebner, a small additional volume of traffic now moving interline between CN/EJ&E and other carriers is likely to shift to new single-line service that would be available via CN/EJ&EW

⁶ The St. Charles Air Line (the “Air Line”) is owned 50% by CN and 25% each by BNSF and UP.

For nearly 20 years, the City of Chicago has sought to have rail traffic using the Air Line re-routed, in order to permit the abandonment of that track. In fact, in the CN/IC control transaction, the City filed comments arguing that the Air Line was an obstacle to the City’s plans for revitalization of the surrounding area, as it bisected the southern part of the downtown, and that the proposed transaction would bring additional traffic to the line that would exacerbate the City’s existing problems. City of Chicago, IL’s Comments and Request for Conditions at 5-8, 17 (CHI-7), *Canadian Nat’l Ry – Control – Ill Cent Corp*, STB Finance Docket No. 33556 (filed Oct. 27, 1998). (The City subsequently reached an understanding with the applicants which, while not committing CN to end operations on the St. Charles Air Line, addressed the concerns of the City sufficiently that it withdrew its request for conditions and stated its support for the proposed acquisition of IC by CN. City of Chicago’s Notice of Withdrawal of its comments and Request for Conditions (CHI-13), *Canadian Nat’l Ry – Control – Illinois Cent Corp*, STB Finance Docket No. 33556 (served Feb. 17, 1999)). And, as outlined in the Verified Statement of David L. Novak, CN’s eventual re-routing of traffic from the Air Line has been a key City objective with respect to CREATE.

Finally, after consummation of the CN/EJ&EW Transaction, customers of EJ&E would no longer be served by the subsidiary of a major integrated steel producer, whose operations are oriented primarily to the needs of that producer, but would be served by an industry-leading transportation company with a proven track record of customer service, a rail network extending to three coasts in North America, and an extensive equipment pool that would become available for service on EJ&E's lines. CN views the EJ&E lines as a strategic investment, and it would have the interest and resources to make longer-term investments in plant, equipment, and systems as they become needed to maintain the long-term stability and viability of EJ&EW as part of the CN system. The initial investments that CN plans to make in the EJ&E lines are discussed in the Operating Plan (Exhibit 15 to the Application) and in the accompanying Verified Statement of David L Novak

BRIEF SUMMARY OF TRANSACTION
(SECTION 1180.6(a)(1)(i))

The Parties

CNR was incorporated in 1919 as one of Canada's two transcontinental railroads, extending from Halifax on the Atlantic to Vancouver and Prince Rupert on the Pacific DWP, which has been a CN subsidiary since 1919, extends the CN system from the international border at Duluth Junction/Rainier over DWP's own lines to Nopeming Junction, MN. Since 1923, the CN system has also included GTW, which extends CN's system to Chicago from the international border at Port Huron/Sarnia and Detroit/Windsor.

In 1999, recognizing the growing importance of north-south traffic to the North American economy and achieving the goals of the North American Free Trade

Agreement ("NAFTA"),⁷ CN acquired IC in order to position itself to better serve this growing market by extending its system from Chicago to the Gulf Coast. As a result of that transaction and of CN's 1998 marketing alliance with The Kansas City Southern Railway Company ("KCS"), CN has become part of a NAFTA rail network offering shippers access to Kansas City Southern de México, S A de C.V. ("KCSM"), Mexico's largest rail system. In 2001, CN acquired WCL and its affiliates, and in 2004 it acquired the GLT carriers including DMIR, thus providing CN with a connection between Chicago and the CN lines west of the Great Lakes. In the GLT transaction, CN also acquired B&LE and P&C Dock, which, together with CN's ownership of DMIR and Great Lakes Fleet, LLC (a water carrier operating on the Great Lakes), provides CN a continuous supply chain for iron ore moving from the Missabe Iron Range of Minnesota to the Union Railroad Company, which serves the Edgar Thompson Steel Works of United States Steel Corporation ("USS") in Braddock (near Pittsburgh), PA.

EJ&E is a Class II railroad with a history dating back to the 1880's. The initial railroad that would become the present-day EJ&E was incorporated in 1884, and began operations two years later, running between Joliet and Aurora. Through a series of mergers and acquisitions, by 1891 EJ&E was running between Waukegan, IL and McCool, IN, just east of Griffith, IN. Construction in and around Gary continued through the end of the 19th Century, and in 1901 EJ&E was purchased by USS.

EJ&E was owned and operated by USS from 1901 until 1988, when, as part of a financial restructuring, it became, along with a number of other transportation companies owned by USS, a subsidiary of a new holding company, Transtar, Inc., which was in turn

⁷ See *Canadian Nat'l Ry – Control – Ill Cent Corp*, 4 S T B. 122, 131, 142 (1999)

a direct subsidiary of USS. USS then sold a 51% interest in Transtar to the Blackstone Group. In 2001 Transtar spun off its interest in two railroads (B&LE and DMIR), a dock company (P&C Dock), and a water carrier (Great Lakes Fleet) to GLT, which became a holding company controlled by Blackstone. Transtar became a wholly owned subsidiary of U. S. Steel and retained 100% ownership of its other transportation subsidiaries, including EJ&E. In 2004, in a transaction unrelated to USS, CN acquired the GLT subsidiaries

EJ&E currently operates in northeastern Illinois and northwestern Indiana over 198 track miles consisting primarily of an arc around Chicago extending from Waukegan, IL southward to Joliet, IL, then in an easterly direction to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics and chemical producers, steel processors, distribution centers and scrap processors. EJ&EW is an Illinois corporation formed on August 16, 2007, and is a wholly-owned non-carrier subsidiary of EJ&E.

Before Applicants acquire control of EJ&EW, EJ&E will transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary, IN (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to EJ&EW, which at that time would become a rail common carrier.⁸ EJ&E would retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). It is expected that, if Applicants acquire control of EJ&EW, EJ&E would

⁸ As noted above, that transaction (the “Exemption Transaction”) is the subject of the Verified Notice of Exemption being filed in STB Finance Docket No. 35087 (Sub-No 1) simultaneously with this Application

change its name to Gary Railway Company, and EJ&EW would assume the Elgin, Joliet & Eastern Railway Company name

In order to permit trains of its operating subsidiaries GTW, IC, CCP, and WC to operate over EJ&EW's line and provide for maximum operational flexibility, CN intends to cause EJ&EW to grant trackage rights to those subsidiaries over the entire length of EJ&EW from Waukegan to Gary. CN also intends to grant EJ&EW trackage rights over selected portions of its CCP and IC subsidiaries. These proposed trackage rights are the subjects of notices of exemption in sub-dockets to this proceeding (STB Finance Docket No 35087 (Sub-Nos. 2 through 7)), providing for grants of trackage rights by EJ&EW to GTW, IC, CCP, and WC and by IC and CCP to EJ&EW

The GTC/EJ&E Agreement

GTC and EJ&E have entered into a Stock Purchase Agreement (the "Agreement"), dated as of September 25, 2007. The Agreement provides that, subject to STB authorization of the Transaction, and other conditions, GTC will purchase from EJ&E all the issued and outstanding common stock of EJ&EW for an overall purchase price of \$300 million, subject to adjustments as provided for in the Agreement.

Applicants' Names, Addresses, and Telephone Numbers

The names, business addresses and telephone numbers of Applicants are

Canadian National Railway Company
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

Grand Trunk Corporation
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

In addition, the name, business addressee and telephone number of EJ&E and EJ&EW are:

Elgin, Joliet and Eastern Railway Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

The names and address of counsel to whom questions regarding this Application may be addressed are shown on the cover of the Application.

PROPOSED TIME SCHEDULE
(SECTION 1180.6(a)(1)(ii))

Simultaneously with the Application, Applicants are filing a Petition Suggesting a Procedural Schedule. Applicants request that the Board adopt the schedule provided therein. If the Board were to adopt the proposed schedule, it would be able to issue a final decision in this proceeding before the 180-day deadline provided by statute. If the Transaction is approved, CN would consummate control of EJ&EW as soon as possible after the effective date of the final order of the Board approving this Application and authorizing the proposed control transaction. CN expects to have fully implemented the Transaction within three years after consummation of its acquisition of control over EJ&EW.

PURPOSE OF THE TRANSACTION
(SECTION 1180.6(a)(1)(iii))

CN has three primary purposes in pursuing the acquisition of EJ&EW. The first is to improve CN's operations in and beyond the Chicago area by providing CN with a continuous rail route around Chicago, under CN's ownership, that would connect the five CN lines that presently radiate from the City. This would increase CN's operational flexibility for traffic moving from, to, and across the Chicago terminal and reduce CN's dependence on suboptimal infrastructure, such as the St. Charles Air Line, or trackage rights over other carriers, such as the IHB and BRC, for such movements.⁹

In addition, the acquisition of EJ&E's rail assets would make available to CN EJ&E's Kirk Yard – an automated classification facility at Gary, IN, with its 109 tracks and 95 track-miles – as well as its smaller facilities at Joliet and Whiting. This would permit CN to rationalize its yard operations in the Chicago area by consolidating car classification work at Kirk and East Joliet Yards that is now carried out at CN's Glenn, Hawthorne, and Markham Yards, and by reducing use of BRC's Clearing Yard.

Finally, CN's system would benefit from the fact that EJ&E provides an important supply line for the North American steel, chemical, and petrochemical industries, as well as for Chicago area utilities and others. CN expects that the acquisition of EJ&EW would allow it to develop closer and more extensive relationships with companies in and serving those industries.

⁹ Similarly, one of the chief reasons for CN's acquisitions of DMIR in 2004 and of WC in 2001 was to secure ownership of the routes used for CN freight between Nopeming Junction, MN, and South Itasca, WI, and between Superior, WI, and Chicago, IL.

These purposes are discussed in further detail in the Verified Statements of E Hunter Harrison and Gerald P Radloff

**NATURE AND AMOUNT OF ANY NEW
SECURITIES OR OTHER FINANCIAL ARRANGEMENTS**
(SECTION 1180.6(a)(1)(iv))

No new securities have been or would be issued in connection with Applicants' acquisition of control of EJ&EW Under the Agreement, the purchase price would be paid in cash on the closing date. CN anticipates that it would finance the Transaction with debt and cash on hand.

PUBLIC INTEREST JUSTIFICATIONS
(SECTION 1180.6(a)(2))

The EJ&EW Transaction would promote the public interest in a more efficient and reliable rail transportation system, and would have no adverse competitive, safety, or other effects The Transaction would insure more efficient and reliable rail transportation at a lower cost and would, over time, reduce rail traffic congestion, increase rail capacity for carriers operating in Chicago, and reduce traffic density in Chicago's urban core The public would also benefit from CN's plans to spend approximately \$100 million to upgrade EJ&E's infrastructure These and other benefits are more fully described in the Verified Statements of E. Hunter Harrison, Gerald P Radloff, and David L Novak, as well as the Operating Plan (Exhibit 15)

The Transaction would achieve these public benefits without adversely affecting competition, safety, or the environment. Because of the limited scope of the Transaction and the record of CN and its constituent railroads over the past decade in successfully implementing rail consolidations, the good operating condition of both CN's system and the EJ&EW lines being acquired, and the absence of any significant operational changes

for EJ&E's existing traffic, the Transaction would present a low risk of implementation-related service difficulties.

EFFECTS ON COMPETITION
(SECTION 1180.6(a)(2)(i))

There would be no harm to competition from CN's acquisition of EJ&EW. As explained in the attached Verified Statement of Gerald P. Radloff, there are no shippers receiving rail service from both CN and EJ&E today for which the Transaction would reduce the number of independent railroads serving them from two to one ("2-to-1 shippers") or from three to two ("3-to-2" shippers). Thus, the Transaction would not have adverse horizontal effects on competition.

Nor would the Transaction have adverse "vertical" effects on competition.¹⁰ Applicants would keep all gateways affected by the Transaction open on commercially reasonable terms. Applicants would also waive any defenses they might otherwise have as a result of the Transaction, under the Board's general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the Transaction would have been entitled to regulation of a bottleneck rate under the Board's "contract exception" to the general rule.

¹⁰ In theory, adverse vertical effects on competition can arise when a railroad that has market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad's territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad's service area. Such vertical effects, however, are unlikely as a matter of economic theory, *see, e.g., Western Resources, Inc. v. STB*, 109 F.3d 782, 786-90 (D.C. Cir. 1997) (describing Board's "one-lump theory" as "reli[ying] on a broadly accepted economic proposition"), and the Board has received no evidence in recent proceedings sufficient to persuade it that such effects actually do or are likely to occur. In any event, CN would not engage in such foreclosure following consummation of the CN/EJ&EW Transaction, but would keep all gateways affected by the Transaction open on commercially reasonable terms. *See* Verified Statement of Gerald P. Radloff at 16.

Moreover, there would be no harm to shippers from reduction in geographic competition.¹¹ As explained in greater detail in the Verified Statements of Christopher A. Vellturo and Gary L. Kolbe, in every instance where there is the potential for source-based competition issues, the receiver has access to very large volumes from alternative competitive sources for each relevant product. Similarly, for every instance where there is the potential for destination-based competition issues, there is sufficient competition in the form of capacity divertible to those destinations to which shippers at the origin ship that any “across the board” price increase on originating shipments would be defeated by competition at the destinations. The Transaction thus would not adversely affect geographic competition, because to whatever extent CN and EJ&E constrain each other through service to competing destinations or from competing origins, other market forces would continue to constrain CN from taking advantage of its control of EJ&E to raise its rates to those destinations or from those origins.

**FINANCIAL CONSIDERATION; OPERATING ECONOMIES;
INCREASE IN TRAFFIC, REVENUES AND EARNINGS
(SECTION 1180.6(a)(2)(ii))**

Financial Consideration. Under the Agreement, GTC would pay \$300 million in cash (subject to certain adjustments provided for in the Agreement) to EJ&E for all issued and outstanding shares of common stock in EJ&EW. See “Summary of Transaction (Section 1180.6(a)(1)(i)),” above.

¹¹ Geographic competition can take two forms. One is “source competition” or “origin competition,” meaning the competition among sources of a particular commodity that can arise when different rail or motor carriers transport the same product to the same destination but from different geographic origins. The second is “destination competition,” which can arise when different carriers transport the same product to different destinations from the same origin.

Increase in Traffic, Revenues, and Earnings; Economies to be Effectuated in

Operations As explained in more detail in the Verified Statement of David A. Stuebner, Applicants estimate that the combined CN/EJ&EW would increase its participation in 9,737 carloads of traffic annually as a result of the full implementation of the proposed Transaction, resulting in additional annual gross gains of \$14.86 million. These gains are all in the form of extended haul movements, including 296 transloaded carloads. Many of these gains would benefit shippers with new single-line service.

EFFECT OF INCREASE IN TOTAL FIXED CHARGES
(SECTION 1180.6(a)(2)(iii))

As described above (see “Nature and Amount of Any New Securities or Other Financial Arrangements” (Section 1180.6(a)(1)(iv))), CN anticipates that it would finance the Transaction with debt and cash on hand. CN has the financial resources to make the approximately \$100 million worth of capital improvements which the Operating Plan anticipates would be made on the EJ&EW’s lines, within the Transaction’s three-year implementation period, in order to increase the capacity of those lines and make it possible for CN to bypass downtown Chicago to the maximum extent possible.¹²

With the addition of EJ&EW to its system, CN would continue to be a financially strong enterprise with a strong balance sheet. CN’s financial strength would enable it to meet the challenges of maintaining and enhancing its high quality rail service, improving its operations, and enhancing shareholder value.

¹² See Exhibit 15 (Operating Plan) and the accompanying Verified Statement of David L. Novak, which together describe the capital improvements which CN expects to make in implementing the Transaction.

EFFECT ON ADEQUACY OF TRANSPORTATION
(SECTION 1180.6(a)(2)(iv))

The Transaction would not have any adverse impact on the continuation of essential transportation services to the public. The ability of other rail carriers to furnish essential services would not be affected.

The benefits of the Transaction are described further in the Operating Plan (Exhibit 15), and the Verified Statements of E. Hunter Harrison, Gerald P. Radloff, and David L. Novak.

EFFECT ON EMPLOYEES
(SECTION 1180.6(a)(2)(v))

The effect of the Transaction on the Applicants' employees is addressed in the Labor Impact Exhibit set forth as Attachment B to the Operating Plan.

Applicants acknowledge that the Transaction would be subject to the employee protective conditions and other procedures adopted in *New York Dock – Control – Brooklyn Eastern District Terminal*, 360 U.S. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

EFFECT OF INCLUSION OF OTHER RAILROADS
(SECTION 1180.6(a)(2)(vi))

Applicants do not contemplate the inclusion of other railroads in the Transaction. The Transaction would not cause the loss of any essential rail service, and inclusion of other rail carriers would not be in the public interest.

OTHER SUPPORTING STATEMENTS
(SECTION 1180.6(a)(3))

Attached to this Application is the Verified Statement of E. Hunter Harrison, President and Chief Executive Officer of CNR, describing the purpose of the Transaction.

and its benefits to CN and the public. Also attached are Verified Statements by CN employees Gerald P Radloff, discussing the purpose and benefits of the Transaction and its effects on competition, David L. Novak, describing the preparation of the Operating Plan found at Exhibit 15 to this Application, and David A. Stuebner, discussing the rail traffic likely to be gained by the integrated system, as well as the Verified Statements of Christopher A. Vellturo and Gary L. Kolbe, presenting testimony on the competitive impact of the Transaction.

Additionally, support statements from some of the shippers who would be positively impacted from the transaction are attached to this Application.

OPINION OF COUNSEL
(SECTION 1180.6(a)(4))

The opinion of Applicant's counsel that the transaction described in this Application satisfies the requirements of law and would be legally authorized and valid if approved by the Board appears in Appendix A of the Application.

LIST OF STATES
(SECTION 1180.6(a)(5))

Listed below are the states in which each Applicant carrier owns rail property over which it conducts railroad operations

CN-Related Rail Carriers

CNR Michigan, Minnesota, New York, and Vermont

GTW: Illinois, Indiana, Michigan, and Ohio

DWP: Minnesota and Wisconsin

SCTC. Michigan

IC: Alabama, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee

CCP: Illinois, Iowa, and Nebraska

CRRC Iowa and Minnesota

Waterloo: Mississippi¹³

WCL Illinois, Michigan, Minnesota, and Wisconsin

SSMB: Michigan and Wisconsin

WCLL Illinois

DMIR Minnesota, Wisconsin

B&LE Ohio, Pennsylvania

P&C Dock Ohio

Other Rail Carriers Involved in the Transaction

EJ&EW. Illinois, Indiana

MAP – EXHIBIT 1 **(SECTION 1180.6(a)(6))**

Exhibit 1 (set forth at Appendix B) includes three maps. The first (Map A) depicts the entire CN system in the United States and Canada. The second (Map B) shows the Chicago metropolitan area, indicating the lines of CN, EJ&EW, that portion of EJ&E that will not be transferred to EJ&EW and is expected to be renamed the Gary Railway, other rail carriers in the territory, and principal geographic points. The third (Map C) shows that portion of the Chicago area between Gary Works on the east, South Chicago on the north, and Matteson on the south.

NATURE AND TERMS OF TRANSACTION **(SECTION 1180.6(a)(7)(i))**

See “Summary of Transaction (Section 1180.6(a)(1)(i))” above.

¹³ In addition, Waterloo holds a freight operating easement over a line of railroad in Maine, but it does not presently conduct rail operations on that line.

AGREEMENTS – EXHIBIT 2
(SECTION 1180.6(a)(7)(ii))

A copy of the Stock Purchase Agreement, dated as of September 25, 2007,
between GTC and EJ&E is provided as Exhibit 2 of this Application

DESCRIPTION OF RESULTING COMPANY
(SECTION 1180.6(a)(7)(iii))

Pursuant to the Agreement, GTC would acquire all of the outstanding and issued common stock of EJ&EW, which would thus become a wholly owned subsidiary of GTC and, indirectly, of CNR. CN has no present plans to merge EJ&EW into any other entity in the CN system. Since there is no planned merger or consolidation, this section is not applicable

COURT ORDER – EXHIBIT 3
(SECTION 1180.6(a)(7)(iv))

Not applicable No Applicant is a trustee, receiver, assignee, or personal representative of a real party in interest.

PROPERTY INCLUDED IN TRANSACTION
(SECTION 1180.6(a)(7)(v))

The property involved in the proposed Transaction is all the property that would be owned by EJ&EW at the time of the Transaction. This property includes all the land, rail, and related assets presently owned by EJ&E and located west of the centerline of Buchanan Street in Gary, IN, together with those parts of the Dixie and hump leads located east of Buchanan Street.

**DESCRIPTION OF PRINCIPAL ROUTES, TERMINI,
POINTS OF INTERCHANGE, AND MILEAGE OF INVOLVED LINES**
(SECTION 1180.6(a)(7)(vi))

The principal routes of CN and EJ&EW, the termini of the lines involved, and their main line and branch line mileage are generally described below.

CN's Principal Routes. As of December 31, 2006, CN's rail network consisted of 20,264 route miles in 16 states in the U S and eight Canadian provinces. CN does not separate its railroad system on the basis of main line versus branch line mileage

CN is the only railroad in North America to cross the continent from east to west and from north to south, serving major ports on three coasts. Its principal routes run (1) east-west between Vancouver and Prince Rupert, BC, and Halifax, NS, serving every major metropolitan area in Canada; (2) between Buffalo and Chicago, serving the major U.S metropolitan areas of Buffalo, Detroit, and Chicago; (3) between Winnipeg, MB, and Chicago, (4) north-south between Chicago and the Gulf of Mexico, reaching every major metropolitan area on the Mississippi River, including St. Louis, Memphis, and New Orleans, and (5) east-west between Chicago and Nebraska and Iowa, extending from Sioux City and Council Bluffs, IA, in the West to Chicago in the East.¹⁴

EJ&E's Principal Current Routes. At present, EJ&E operates a total of 158 route miles in northeast Illinois and northwest Indiana. Its principal routes are (1) the Western Subdivision, running between Waukegan (MP 74.6) and East Joliet Yard, IL (MP 0.00), (2) the Eastern Subdivision, running between East Joliet Yard and Kirk Yard Junction, IN (MP 45.40, near Gary), (3) the Illinois River Line, running between Walker,

¹⁴ A separate line, physically unconnected with the rest of the CN system, also extends north-south between Conneaut, OH, and North Bessemer, PA, and provides one part of a multi-modal movement of iron ore from Minnesota to USS's Edgar Thompson Works in Braddock (near Pittsburgh), PA

IL (MP 9 8), and Goose Lake, IL (MP 30 00), (4) the Lake Front Line, running parallel to the shore of Lake Michigan between South Chicago, IL (MP 0 00), and Kirk Yard Junction (MP 12 20), and (5) the Whiting Branch, running between Cavanaugh, IN (MP 42.85) and Whiting, IN (MP 48.1), with a one mile branch to Hammond, IN..

EJ&EW's Routes Upon consummation of the transaction that is the subject of the Verified Notice of Exemption in STB Finance Docket No 35087 (Sub-No 1), EJ&EW would acquire all of EJ&E's present routes located west of the center line of Buchanan Street in Gary, IN, together with those portions of the Dixie and hump leads located east of Buchanan Street. EJ&E would retain that portion of the Gary Branch and related track (other than the Dixie and hump leads) located to the east of Buchanan Street

Principal Routes of the Combined System. The principal routes of the combined rail system would be identical to those of CN and EJ&EW. Applicants do not anticipate any Transaction-related line abandonments ¹⁵

GOVERNMENTAL FINANCIAL ASSISTANCE
(SECTION 1180.6(a)(7)(vii))

No governmental financial assistance is expected in connection with the Transaction.

ENVIRONMENTAL DATA – EXHIBIT 4
(SECTION 1180.6(a)(8))

Under the Board's rules implementing the National Environmental Policy Act of 1969 ("NEPA"), applicants seeking approval of an acquisition of control under 49

¹⁵ Although CN expects to be able to cease operations over the Air Line and the portion of the Chicago Line immediately south of the Air Line by the end of the three-year implementation plan, it would not immediately be able to abandon those lines, as CN is only a partial owner of the Air Line, and because the Chicago Line is used by Amtrak for its trains to and from La Salle Street Station.

U S C § 11323 ordinarily must submit an environmental report and a historical report before or simultaneously with their application, if the transaction would result in either (1) operational changes that would exceed any of the thresholds for environmental analysis established in the Board's environmental regulations (49 C.F.R. Part 1105), or (2) an action, such as construction or abandonment of a rail line, that would ordinarily require preparation of an environmental assessment ("EA") or an environmental impact statement ("EIS") 49 C.F.R. §§ 1105.6(b)(4), 1105.7(a) CN does not plan any line abandonment or other related action ordinarily requiring an EA or an EIS under the Board's rules.

Because CN, after acquisition of EJ&EW, would have an efficient, continuous route around Chicago that would not require it to use the lines of any other railroad, CN anticipates shifting some traffic that now moves through downtown Chicago to EJ&E lines that are expected to be transferred to EJ&EW. As a result, certain of these lines 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 CN has obtained the approval of the Board's Section of Environmental Analysis ("SEA") for the retention of HDR Engineering, Inc. ("HDR") as a third-party environmental consultant to prepare any environmental documentation (EA or EIS) that may be required. As provided in the Board's rules, 49 C.F.R. § 1105.10(d), the scope of the third-party consultant's work will be approved by SEA, and the consultant will work under SEA's direction to collect the needed environmental information and will compile it into a draft EA or draft EIS. SEA will then review the draft EA or draft EIS for review and verification, and for publication with such revisions as SEA may choose to make.

MARKET IMPACT ANALYSES – EXHIBIT 12
(SECTION 1180.7)

Although 49 C.F.R. § 1180.7 does not require formal market analyses for a minor transaction such as the one proposed by Applicants, this Application includes various analyses of the market impact of the Transaction, including:

(1) The Verified Statement of Gerald P. Radloff, discussing benefits to shippers resulting from the CN/EJ&EW Transaction and explaining the absence of adverse competitive effects as a result of that Transaction.

(2) The Verified Statement of David A. Stuebner, describing the rail traffic likely to be gained by the integrated system after the full implementation of the proposed Transaction

(3) The Verified Statements of Christopher A. Vellturo and Gary L. Kolbe, explaining how shippers would not suffer any harm from reduction in geographic competition as a result of the proposed Transaction.

(4) The Verified Statement of David L. Novak and the Operating Plan, discussing the benefits that the Transaction would provide shippers through improved services and increased efficiencies, enhancing their competitiveness.

As these analyses show, competition would be enhanced throughout the regions and in all economic sectors that would be served by the CN/EJ&EW network. See also “Effects on Competition (Section 1180.6(a)(2)(i)),” and “Effect on Adequacy of Transportation (Section 1180.6(a)(2)(iv)),” above.

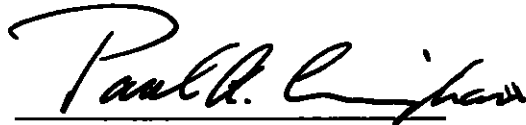
OPERATING PLAN – EXHIBIT 15
(SECTION 1180.8(b))

Applicants' Operating Plan (Exhibit 15 to this Application), describes how CN plans to integrate EJ&EW's properties into its operations. The Verified Statement of David L. Novak provides an overview about the Operating Plan and its development.

PRAYER FOR RELIEF

Wherefore, Applicants pray that the Board enter an order under 49 U.S.C §§
11323 and 11324 granting approval and authority for CNR and GTC to acquire and
exercise control of EJ&EW

Respectfully submitted,



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*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

October 30, 2007

**SIGNATURES, OATHS, AND CERTIFICATIONS
OF APPLICANTS' EXECUTIVE OFFICERS
(SECTION 1180.4(c)(2)(i))**

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION**

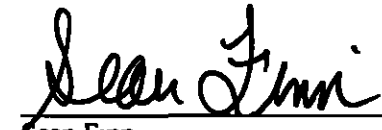
I, E Hunter Harrison, declare under penalty of perjury under the laws of the United States that I am President and Chief Executive Officer of Canadian National Railway Company and Grand Trunk Corporation, applicants herein, that I am one of the executive officers duly authorized to sign, to verify, and to file this Application on behalf of the foregoing, that I have knowledge of the matters contained in this Application to the extent they relate to the foregoing, and that the statements in this Application are true and correct to the best of my knowledge and belief



E Hunter Harrison
President and CEO
Canadian National Railway Company
Grand Trunk Corporation

Executed on October ~~23~~ 2007

I, Sean Finn, hereby certify that I am corporate Secretary of Canadian National Railway Company and Grand Trunk Corporation, applicants herein, and that E Hunter Harrison, President and Chief Executive Officer of Canadian National Railway Company and Grand Trunk Corporation, is duly authorized to sign, to verify, and to file this Application on behalf of Canadian National Railway Company and Grand Trunk Corporation


Sean Finn
Senior Vice-President Public Affairs,
Chief Legal Officer and Corporate
Secretary
Canadian National Railway Company
Grand Trunk Corporation

Dated this 23rd day of October, 2007

CERTIFICATE OF SERVICE

I certify that I have served a conformed copy of the foregoing Application in STB Finance Docket No. 35087, and conformed copies of verified statements, appendices, and exhibits in support of the Application, by first class mail, properly addressed with postage prepaid, or by a more expeditious manner of delivery, upon all persons required to be served as set forth in 49 C.F.R. § 1180.4(c)(5), namely.

(i) The Governor (or Executive Officer), the Public Service Commission, and Department of Transportation of each State in which any part of the real properties of Applicant carriers involved in the Transaction is situated,

(ii) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, SW , Washington, D.C. 20590);

(iii) The Attorney General of the United States,

(iv) The Federal Trade Commission,

(v) All parties of record in Finance Docket No. 35087, and

(vi) All other persons who requested a copy

Dated at Washington, D.C., this 30th day of October, 2007.


Jared H Powell

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**APPENDIX A
OPINION OF COUNSEL FOR APPLICANTS**

**Canadian National Railway Company
and Grand Trunk Corporation**

As Chief Legal Officer for Canadian National Railway Company ("CN") and Grand Trunk Corporation ("GTC") I am generally familiar with the proposed acquisition by CN and GTC of control of EJE West Railroad Company. I have reviewed the foregoing joint Railroad Control Application (the "Application"). It is my opinion that the control transaction proposed in the Application meets the requirements of the law, is within the corporate powers of CNR and GTC, and would be legally authorized and valid, if approved by the Surface Transportation Board.

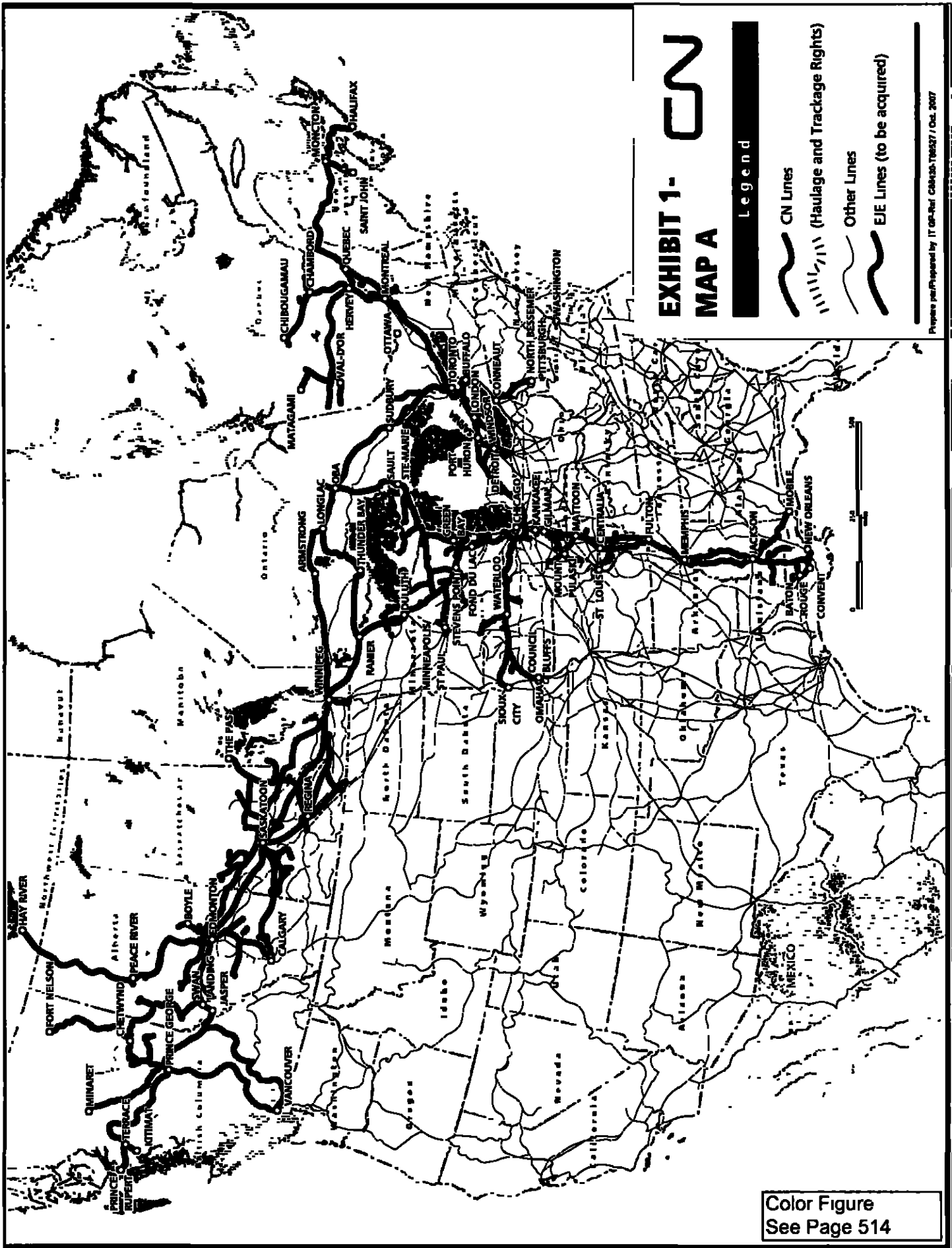


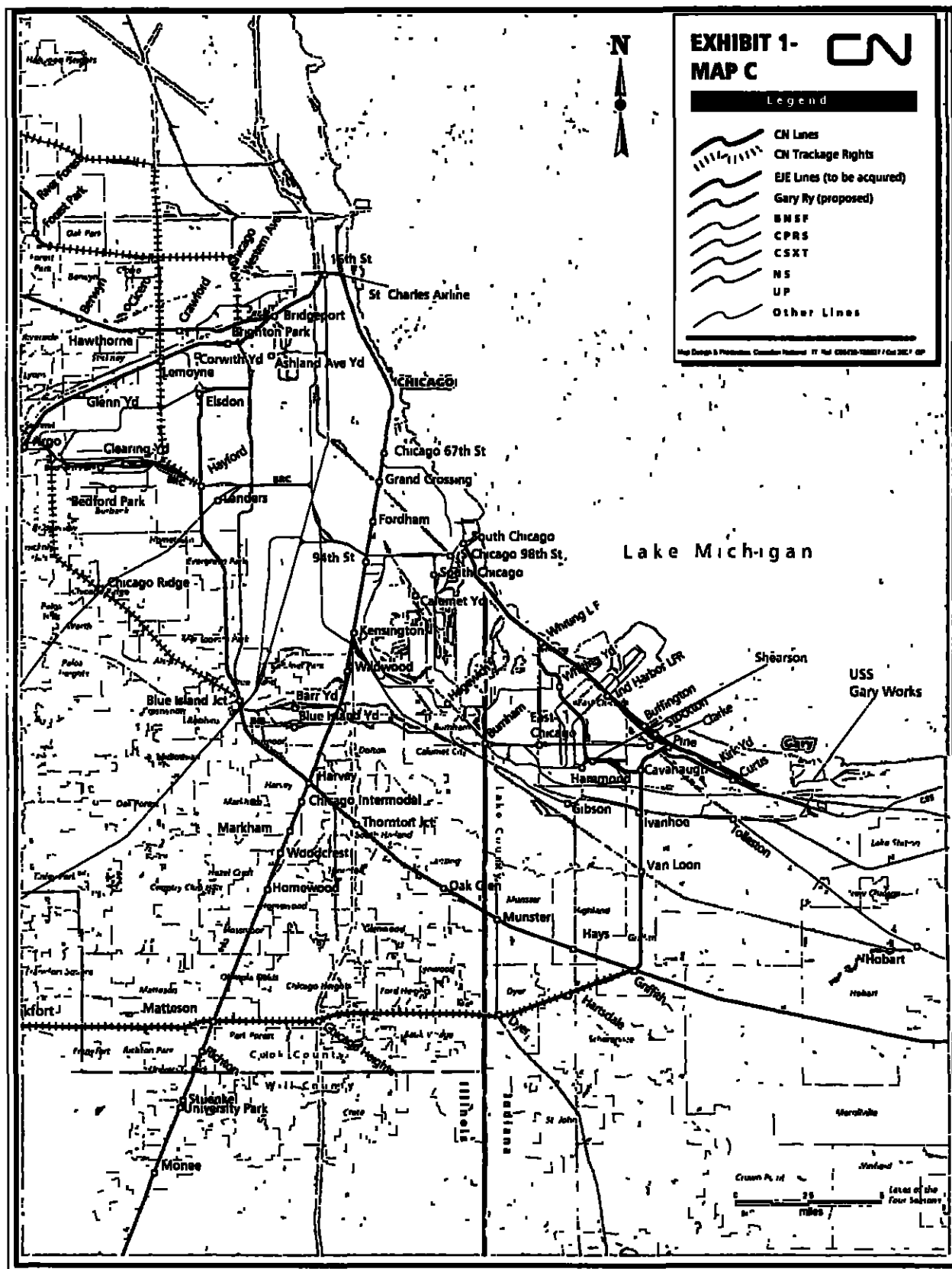
Sean Finn
Senior Vice-President Public Affairs,
Chief Legal Officer and Corporate
Secretary
Canadian National Railway Company
Grand Trunk Corporation

Dated this 23rd day of October, 2007

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APPENDIX B
MAPS
(Exhibit 1)





Color Figure

See Page 516

**VERIFIED STATEMENTS IN
SUPPORT OF THE APPLICATION**

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**VERIFIED STATEMENT
OF
E. HUNTER HARRISON**

I am E. Hunter Harrison, President and Chief Executive Officer of Canadian National Railway Company and its U S affiliates (collectively, "CN") My professional background is outlined in Attachment A to this statement.

SUMMARY OF STATEMENT

In this Application, CN is seeking approval to acquire the EJ&E West Company ("EJ&EW"), which would own what are now the principal lines of the Elgin, Joliet & Eastern Railway Company ("EJ&E"). This acquisition would be another step in CN's ongoing effort to build and improve North America's most efficient railroad As this Board knows well, acquisitions have been a key element in that effort. In the past decade, CN has acquired in the U.S. the Illinois Central, the Wisconsin Central, and the GLT systems. As we expected, each of these transactions has added to our capacity to serve customers, and to our network efficiency. And, as we promised, in each transaction, CN met its commitments to integrate the new systems smoothly, without any reduction in competition, and to enhance the public interest in rail transportation.

As CN's other witnesses explain in much greater detail, we are making the same commitments here The EJ&EW transaction would promote the public interest in a more efficient and reliable rail transportation system, and would have no adverse competitive or safety effects The EJ&E lines CN plans to acquire are a strategically important link in our network, and acquiring them would allow us to dramatically increase the efficiency of both our own operations and those of other carriers in Chicago

The public would benefit from the proposed Transaction because it would insure more efficient and reliable rail transportation at a lower cost. The Transaction would, over time, reduce rail traffic congestion, increase rail capacity for carriers operating in Chicago, and reduce traffic density in Chicago's urban core. The public would also benefit from CN's plans to spend approximately \$100 million to upgrade the EJ&E's infrastructure. Labor impacts would be minimal, and, on balance, regional environmental impacts would be reduced.

There would be no adverse effects on competition as a result of this Transaction. In fact, by increasing efficiency and reducing costs, the Transaction would benefit shippers by shortening transit times through the Chicago Gateway, increasing reliability, and bringing about other service improvements and operating efficiencies.

Implementation of the CN/EJ&EW Transaction would proceed smoothly and would result in meaningful service improvements, not only for CN and EJ&EW, but also for carriers that now utilize EJ&E as a connection or as an intermediate route. Other carriers would also benefit from additional capacity on Indiana Harbor Belt Railroad Company ("IHB") and Belt Railway Company of Chicago ("BRC") lines. CN has a record of safely and efficiently integrating carriers into its existing network, and implementation would not adversely affect service on the EJ&E lines being acquired.

The EJ&E Lines Being Acquired Are a Strategically Important Link in CN's Network

CN is committed to increasing the efficiency and reliability of its system. Chicago, an essential hub for rail operations, has historically been a serious bottleneck in CN's system and has presented major operational challenges. This acquisition would

significantly improve the fluidity of CN's rail service in Chicago, benefiting shippers through decreased transit times and more reliable service.

CN's rail lines converge on Chicago from five different directions: from Canada and points north, from Iowa and points west, from Memphis and points south, from Michigan and points east, and from Joliet, IL. These lines connect either directly, through suboptimal infrastructure such as the St. Charles Air Line in downtown Chicago, or indirectly, through trackage rights over IHB and BRC. Outside Chicago, CN's trains run well. But due to congestion in the central Chicago area, it can be faster for CN trains to get from Winnipeg to Chicago than for them to get from the north side of Chicago to the south side.

The EJ&E lines that CN seeks to acquire are a "missing link" that would connect CN's existing five lines into Chicago. Acquiring these lines would fill a void in our network that has caused us innumerable problems in terms of delays, higher costs, and service that was not at the level that our customers expect or that we demand of ourselves. The acquisition would allow us to expand our operational flexibility, and move through the Chicago gateway more effectively, efficiently, and reliably.

With the addition of EJ&EW to its system, CN would continue to be a financially strong enterprise with a strong balance sheet. CN's financial strength would enable it to meet the challenges of maintaining and enhancing its high quality rail service, improving its operations, and enhancing shareholder value.

The Public Would Benefit From the Transaction

The principal public benefits from the Transaction would be similar to those realized in other recent CN acquisitions: the assurance of more reliable and more

efficient service and lower costs. As CN improves its system, the public benefits from a more competitive and efficient rail transportation system. As all railroads have realized, incremental improvements are the key to maintaining and increasing competitiveness of rail in the transportation marketplace

The Transaction would contribute to the public interest in meeting significant transportation needs by improving rail operations in and beyond the Chicago area by enhancing fluidity and permitting infrastructure investments to accommodate increased capacity demands on a key corridor around Chicago. Over time, it would reduce rail traffic congestion, increase rail capacity for carriers operating in Chicago, and reduce traffic density in Chicago's urban core, with its resulting vehicular/train interference. Additionally, CN plans to invest approximately \$100 million for new connections and other infrastructure improvements to add capacity on the EJ&EW and improve network synergies. This investment would allow rerouting, accommodate CN's re-routed trains, and improve service for the traffic currently carried on the EJ&E.

Streamlined rail operations and reduced congestion would benefit CN and EJ&E customers, the city of Chicago, nearby communities, other carriers, and the overall rail network in the region. The combination of these two rail networks would allow EJ&E's existing traffic to be moved more efficiently and at lower cost, while also reducing traffic from the dense urban core of Chicago.

Competition Would Not Be Harmed

The Transaction would not harm competition. There are no shippers now served only by CN and EJ&E (2-to-1 shippers) that would lose direct rail competition as a result of the acquisition, or any shippers now served by CN, EJ&E, and a third carrier (3-to-2

shippers), nor would there be other adverse impacts on competition. As in past transactions, CN is committed to keeping gateways open and honoring trackage rights and haulage agreements with all connecting carriers.

Labor Impacts Would be Minimal and Regional Environmental Impacts Reduced

A more detailed estimation of the labor impacts from this transaction is included in the labor impact exhibit appended to the Operating Plan. We look forward to welcoming hundreds of experienced EJ&E employees into the CN family, and we would seek to minimize any adverse impacts through normal attrition and retraining.

Acquiring EJ&E's lines would also yield important cost-saving benefits that do not depend on large labor force reductions or on wholesale restructuring of rail facilities. These cost savings, which will be attained incrementally over time, will be achieved mostly through increased asset productivity and improved and reduced interchanges.

The overall environmental effect of the Transaction would be beneficial to the greater Chicago metropolitan area. We do not anticipate any increase in traffic through the greater Chicago metropolitan area as a result of this Transaction. CN's environmental impact on the Chicago area would, on balance, be reduced, because acquiring EJ&E's lines would allow us to move our traffic more efficiently through a major bottleneck. This would lead to reduced idling of trains downtown and fewer interruptions and incidents with vehicular traffic in the urban core of the city. Unfortunately, there is no way to achieve these benefits in the dense urban core of Chicago without introducing new traffic in less populated areas. However, shifting traffic from the congested, densely populated urban core to the outskirts of the city would reduce our total environmental

impact on the area. We are committed to working with the communities affected by the re-routed traffic to address their specific concerns.

Implementation Would Be Straightforward and Smooth

CN has a long history of implementing similar transactions safely and efficiently. Nothing has occurred since our last successful transaction, the acquisition of certain railroad subsidiaries of Great Lakes Transportation LLC, to reduce our implementation capacity. We expect our excellent record of successful integrations to continue with this Transaction.

This Transaction is one that CN should be able to implement readily, because the EJ&E lines CN seeks to acquire are a link for CN's existing lines and operations. The acquisition would result in no significant operational changes for EJ&E's existing traffic, as CN will improve current service levels. We plan on upgrading and improving the Kirk Yard, a major automated classification yard at Gary, IN. Moreover, the re-routing of traffic from the urban core to the outskirts of Chicago should enhance system performance.

As in previous transactions, CN will employ a methodical, step-by-step implementation approach to integrate CN and EJ&E operations without disruptions. Implementation should be straightforward, and we anticipate it proceeding smoothly, deliberately, and, above all, safely. Safety would continue to be our top priority during the process of implementation and beyond. As we did in our previous control transactions, we would assure all of our customers that their rail service will be as good as, or better than, the service they now receive from CN and EJ&E. CN's plan to invest

approximately \$100 million on infrastructure improvements on the EJ&E lines demonstrates our commitment to providing the highest levels of customer service.

Conclusion

CN anticipates completing and successfully implementing this Transaction, and believes the public would benefit from it, by having a more reliable and efficient rail transportation system. The Transaction would promote competition and have no anticompetitive effects. Accordingly CN respectfully requests that the Board classify the Transaction as minor, and review our Application under an expedited schedule. For these same reasons, I urge you to approve it without delay.

VERIFICATION

I, E Hunter Harrison, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement

Executed on October 22, 2007

A handwritten signature in black ink, appearing to read 'E Hunter Harrison', written over a horizontal line.

E Hunter Harrison

ATTACHMENT A

**Personal Background
of
E. Hunter Harrison
President and Chief Executive Officer**

E. Hunter Harrison became President and Chief Executive Officer of CN on January 1, 2003. Before assuming that position, he had served as CN's Executive Vice-President and Chief Operating Officer during the previous five years. He was appointed to the Company's Board of Directors on December 6, 1999.

Prior to joining CN, Mr. Harrison had been President and Chief Executive Officer of the Illinois Central Corporation (IC) and the Illinois Central Railroad Company (ICRR), as well as a director of both IC and ICRR, from 1993 to 1998.

Mr. Harrison's railroad career began in 1963 when he joined the Frisco (St. Louis-San Francisco) Railroad as a carman-oiler in Memphis while still attending school. He advanced through positions of increasing responsibility in the operations function, first with the Frisco, then with Burlington Northern (BN) after BN acquired the Frisco in 1980. Before moving to IC and ICRR in 1989, he served as BN's Vice-President - Transportation and Vice-President - Service Design.

With IC and ICRR, Mr. Harrison first held the position of Vice-President and Chief Operating Officer, becoming Senior Vice-President - Transportation in 1991, Senior Vice-President - Operations in 1992, and President and Chief Executive Officer the following year. During his career with Illinois Central, he initiated the concept of scheduled service for freight shipments, maintaining a sharp focus on operational efficiency and asset utilization. By 1996, he had succeeded in driving the railroad's operating ratio down by some 30 points to the low 60s - the best in the entire North American rail industry.

As CN's Executive Vice-President and Chief Operating Officer, he applied the same philosophy and methods, implementing an aggressive operating plan and refining the railroad's scheduled service to produce industry-leading operating ratio and on-time performance results.

As President and Chief Executive Officer, Mr. Harrison manages the company based on five guiding principles which are the pillars of CN's business philosophy: Service, Cost Control, Asset Utilization, Safety and People. In 2005, Mr. Harrison authored the book, *How We Work and Why*, which chronicles how CN railroaders think and operate and speaks to the real life stories of the people who have made it all possible, implementing the vision of what it takes to run a great railroad by using the five principles.

Mr. Harrison is a member of the North American Competitiveness Council, whose mandate is to provide governments with recommendations on broad issues such as border facilitation and regulation, as well as the competitiveness of key sectors including automotive, transportation, manufacturing and services.

He is also a member of Canadian Council of Chief Executives and was named North America's Railroader of the Year by *Railway Age* magazine in 2002. In 2006, Mr. Harrison received the B'nai Brith Canada Award of Merit, the Jewish community's most prestigious honour in Canada.

**VERIFIED STATEMENT
OF
GERALD P. RADLOFF**

INTRODUCTION AND QUALIFICATIONS

My name is Gerald P. Radloff. I am Assistant Vice-President Sales for CN Worldwide North America, a subsidiary of Canadian National Railway Company ("CNR")¹⁶.

I graduated from California State University San Francisco and Moss Landing Marine Laboratories in 1977 with a bachelor's degree in biology. My career in the railroad industry began that year when I went to work with Southern Pacific Lines as a statistical engineer. Over the next 16 years, I held several positions with Southern Pacific, finally serving as Assistant Vice President - Intermodal Sales. I joined Illinois Central Railroad Company ("IC") in April 1995 and held several positions during the next four years. In July 1999, when IC was acquired by CN, I was serving IC as Assistant Vice President - Marketing and Sales Intermodal/Automotive and Metals and Minerals. Since then, I have been assigned a variety of duties by CN, and have held my present position since April 2007.

The Stock Purchase Agreement between GTC and EJ&E (described in greater detail in the narrative portion of the Application and attached thereto as Exhibit 2), provides that EJ&E will create a new subsidiary, EJ&EW, to which it will transfer all of its rail assets west of Buchanan Street in Gary, IN, together with those portions of the Dixie and hump leads located east of Buchanan Street, retaining only those assets directly

¹⁶ This and all other principal abbreviations used in this Verified Statement are defined in a Table of Abbreviations following the Table of Contents at the beginning of the Railroad Control Application.

serving the steelmaking activities of USS at Gary. The Agreement further provides that EJ&E will sell all of the outstanding shares of EJ&EW to GTC, the holding company for CN's U.S. rail carrier subsidiaries, for an overall purchase price of \$300 million, subject to such adjustments as are provided for in the Agreement. This latter transaction would give CN and GTC control of EJ&EW, and thus requires approval by the STB, as sought in the Application to which this statement is appended. I submit this verified statement to explain (1) the purposes of the CN/EJ&EW Transaction and the benefits it will bring to shippers on both the CN and EJ&E systems, and (2) why that Transaction will have no adverse effects on competition. In Part I, I explain how shippers now served by the EJ&E will benefit from service by CN, a transportation company with a proven track record of efficiency and customer service. I also describe advantages that existing CN shippers will gain from the operating changes that CN plans to make as a result of the CN/EJ&EW Transaction.

In Part II, I explain how analyses of the markets affected by the Transaction show that the Transaction would have no adverse effects on competition. I show that there are no "2-to-1" shippers (that is, shippers for which, as a result of the Transaction, the number of carriers providing rail service would drop from two to one) and no "3-to-2" shippers (that is, shippers for which, as a result of the Transaction, the number of carriers providing rail service would drop from three to two). Indeed, as explained below, there are no shippers directly served by either CN or EJ&E which would suffer the loss of any competitive rail service options as a result of the Transaction. I also discuss the impact of the proposed Transaction on geographic competition, which I

find would not be adversely affected by the Transaction, and explain why the Transaction would have no harmful “vertical” effects on competition.

I. RATIONALE AND BENEFITS OF THE TRANSACTION

CN’s primary purpose in seeking the acquisition of the EJ&E lines is to improve its operations in and beyond the Chicago area by providing a continuous rail route, under CN’s ownership, around Chicago that would connect the five CN lines that presently radiate from that city. Currently, Chicago is a major chokepoint in the CN system. As E. Hunter Harrison, CN’s President and CEO, said in a conference call with investment analysts discussing the transaction the morning it was announced to the public, it sometimes takes CN traffic as much time to move from the north side of Chicago to the south side as it does to move from Winnipeg to Chicago. This is because CN traffic now moving across Chicago must either wind over circuitous routes such as the St. Charles Air Line route¹⁷ or must use trackage rights over lines owned by IHB and BRC, which are also used by other Class I railroads and must therefore accommodate the operational priorities of other users as well as those of CN¹⁸

¹⁷ The Air Line route runs north on CN’s Chicago Subdivision along Lake Michigan to South Wye Junction (near 18th Street just north of McCormick Place), at which point it turns to the northwest, then to the west over the St. Charles Air Line itself (which is jointly owned by CN, BNSF, and UP), and finally to the southwest, before connecting in downtown Chicago with CN’s Freeport Subdivision, which heads west toward Iowa, or its Joliet Subdivision, which heads southwest toward Joliet).

¹⁸ Similarly, one of the chief reasons for CN’s acquisition of WC in 2001 was to secure ownership of the route used for CN freight between Superior, WI, and Chicago, IL. *See* 1 Railroad Control Application (CN/WC-2) at 4 (filed Apr. 9, 2001), *Canadian Nat’l Ry – Control – Wisc. Cent. Transp. Corp.*, STB Finance Docket No. 34000 (“CN/WC Application”); *id.* at 108-09 (Verified Statement of Paul M. Tellier).

In addition, the acquisition of EJ&E's rail assets would make Kirk Yard, EJ&E's automated classification facility at Gary, IN, as well as smaller facilities at Joliet and Whiting, available to CN. This could permit CN to rationalize its yard operations in the Chicago area, consolidating car classification work at Kirk and East Joliet Yards that is now carried out at CN's Glenn, Hawthorne, and Markham Yards, and reducing use of BRC's Clearing Yard.¹⁹

Finally, CN's system would benefit from the fact that EJ&E provides an important supply line for the North American steel, chemical, petrochemical industries, as well as for Chicago area utilities and others. CN expects that the acquisition of EJ&EW would allow it to develop closer and more extensive relationships with companies in and serving those industries.

The CN/EJ&EW Transaction will not only provide these benefits to CN, but will also enable CN to provide significant benefits both to its own customers and to those now served by EJ&E. First of all, the ability to move on a continuous CN route around Chicago will greatly improve the fluidity of intermodal and other CN traffic that must move to, from or through Chicago. Traffic from Western or Eastern Canada moving to destinations on CN's IC and CCP lines, traffic moving between IC- and CCP-served origins in the United States and Canadian destinations, and traffic moving between CN's GTW, IC, CCP, and WC subsidiaries will no longer need to move through central Chicago, and if they are required to stop in the Chicago area for such purposes as crew changes, locomotive inspections, and setouts, they will be able to do so at points on

¹⁹ Such a transfer of car classification work, however, would only take place if CN could ensure the maintenance of present service levels, and if CN first assessed the capabilities of Kirk and East Joliet Yards to ensure that they could accommodate the transferred car handling activities.

the EJ&E arc on the periphery of the Chicago area. In addition, traffic that must be interchanged in Chicago with other railroads will, in many cases, be able to move between CN and those other carriers more efficiently, using routes that minimize movements on downtown rail lines.

Among the benefits of the CN/EJ&EW Transaction for all customers who currently ship on CN and EJ&E and transit the Chicago metropolitan area would be reliability and reduced average transit times. Shipments for CN's customer base, which includes a broad spectrum of bulk, merchandise, and intermodal commodities, would move with increased fluidity to interchanges with most or all carriers that currently have interchanges with CN or EJ&E in Chicago. Business destined for points beyond Chicago on CN would especially benefit from increased transit time reliability. This improvement in reliability would allow both CN's present customers and those now served by EJ&E to extract further value from their transportation dollar. Because customers would be able to schedule their supply chains more precisely, they will be able to reduce their inventory costs greatly for the commodities being shipped, increase asset utilization, and improve overall productivity. The CN/EJ&EW Transaction would also eliminate interchanges between EJ&E and CN, making possible single-line service for approximately 10,000 carloads that the two railroads now carry in interline service each year. In addition, as discussed in the verified statement of David A. Stuebner, a small additional volume of traffic now moving interline between CN/EJ&E and other carriers is likely to shift to new single-line service that would be available via CN/EJ&EW.²⁰

²⁰ Given the limited scope of this transaction, and the fact that CN already offers single-line service through Chicago (albeit less efficiently than it would as a result of this

Further, after consummation of the CN/EJ&EW Transaction, customers of EJ&E would no longer be served by the subsidiary of a major integrated steel producer, whose operations are oriented primarily to the needs of that producer, but would be served by an industry-leading transportation company with a proven track record of customer service, a rail network extending to three coasts in North America, and an extensive equipment pool that will become available to service on EJ&E's lines. CN views the EJ&E lines as a strategic investment in its core business, and it will have the interest and resources to make longer-term investments in plant, equipment, and systems as they become needed to maintain the long-term stability and viability of EJ&EW as part of the CN system. The investments that CN plans to make initially in the EJ&EW lines are discussed in the Operating Plan (Exhibit 15 to the Application) and in the accompanying Verified Statement of David L. Novak.

CN would apply to EJ&EW the same focused management that has enabled CN to provide high-quality service, safely and at reasonable rates, to shippers throughout its system. CN's operating efficiency and transportation expertise would enable it to provide flexible transportation service, drawing on the skills and resources of its diversified transportation enterprise in responding to its customers' transportation needs.

Transaction), I do not anticipate as a result of this Transaction any quantifiable diversions from truck movements.

II. THE CN/EJ&EW TRANSACTION WOULD NOT HAVE ANY HARMFUL EFFECTS ON COMPETITION

A. Horizontal Competition

In recent rail control cases, the STB has acted to preserve competitive rail options that might be lost to “2-to-1” or “3-to-2” customers – *i.e.*, shippers that receive rail service from only the two combining railroads, and thus after the transaction would only be served by a single rail system, or who receive rail service from the two combining railroads and one other carrier, so that after the transaction they would have two rather than three competitive options. I have determined, not only that there will be no 2-to-1 or 3-to-2 customers as a result of the CN/EJ&E Transaction, but that the Transaction presents no risk of reduced horizontal competition at all.

To identify any potential 2-to-1 locations in the EJ&EW service area, I first examined all stations that are presently served by both CN and EJ&E, and I found that there are no shippers jointly served by the two railroads, and who would therefore lose competitive options as a result of the Transaction. I then considered the possibility that the Transaction might eliminate transloading opportunities that provide competition between CN and EJ&E,²¹ and concluded that, to the extent any such options are available today, the Transaction would leave shippers with comparable options to transload their freight to or from BNSF, CP, CSXT, NS or UP. I further considered the possibility that the Transaction might eliminate competition provided by build-in or build-out

²¹ Transloading is the transfer of freight from one mode to another, such as from truck to rail or from rail to truck. If a truck-to-rail transloading facility is exclusively served by one railroad, and a similar facility is exclusively served by a second, nearby railroad, and shippers have the option of transporting the relevant product by truck to either of those facilities, then it might be argued that a merger of the two railroads would reduce competitive options available to shippers.

opportunities,²² and concluded that there are no such instances. Finally, I considered the possibility that the Transaction might make any short line railroads captive to the combined CN/EJ&EW system, and found that it would not.

1. Jointly-Served Stations

In order to identify points common to CN and EJ&E, I reviewed the list of all stations in the Official Railroad Station List.²³ For the purposes of this exercise, I regarded each six-digit Standard Point Location Code ("SPLC")²⁴ as a separate station. I also consulted with operating and marketing personnel familiar with the various locations and consulted such industry resources as the Official Railway Guide, the CN 9000 Switching Tariff, the EJ&E Directory of Industries Circular 100-J,²⁵ and applicable

²² If a shipper that is exclusively served by one railroad could feasibly build its own line out from its facility to a connection with the line of a second railroad ("build-out"), or if a second railroad could feasibly build a new rail line into the shipper's facility ("build-in"), it might be argued that the merger of the two railroads would reduce competition by eliminating a build-in or build-out option that constrains the rates charged that shipper by the exclusively serving railroad.

²³ A freight station is a point identified on a railroad's timetable, or a point to or from which a customer may move or price freight. The fact that a railroad lists a certain point does not necessarily mean that the railroad has access to that point. It may, for example, only use the point for interchanging freight cars with other railroads, or it may have authority, through a voluntary coordination agreement with a railroad directly serving that point, under which the quoting railroad will collect a rate and pay a division of that rate to the serving railroad according to an agreed-upon formula.

²⁴ A SPLC is a code assigned under a system designed to identify each geographic point originating or receiving freight in North America with a unique numerical identifier. The first and second digits of the SPLC identify the state, province, or territory (or defined portion thereof); the third and fourth digits identify the county or equivalent subdivision of the area identified by the first two digits; and the fifth and sixth digits identify city or other specific location. SPLCs are assigned to each railroad station in North America through the Association of American Railroads by the National Motor Traffic Freight Association in the United States and Mexico and by the Canadian Transportation Agency.

²⁵ Available at <http://www.tstarinc.com/cjc/eje2/Circular-NO-100-I-complete.PDF>.

switching tariffs of other railroads serving the northwest Indiana and northeast Illinois area.

Based on these resources, I have determined that there are only five stations that are served by both CN and EJ&E: Griffith, IN, and Matteson, Joliet, Munger, and Leithton, IL.²⁶ Identifying these stations, however, is just the first step in evaluating the impact of this rail combination on horizontal competition. The relevant point of reference for determining whether such a combination may reduce horizontal competition is not how many railroads serve a rail station before and after the combination, but how particular rail customers are affected. Thus, if a 2-to-1 station contains no shipper facilities (as, for example, if it is merely an interchange point), then the combination of the only two railroads serving that station would not reduce competitive options for any shipper. Furthermore, if two shippers are located at the same station and each is served exclusively by a different railroad, then (absent transload or build-out possibilities, discussed below) the combination of those railroads would not harm either shipper, as each would be a “1-to-1” shipper; that is, each would be served by a single railroad after the combination, just as it was before. If, on the other hand, a shipper facility were served by two combining railroads and no other railroad, that facility would be a “2-to-1” facility and could be harmed by the loss of rail competition

²⁶ CN and EJ&E have eight additional SPLCs in common. Five are used by CN solely for reporting train movements pursuant to CN’s overhead trackage rights on EJ&E. One (Lockport) is used by EJ&E to solicit traffic from shippers that are physically located on EJ&E’s Paul Ales Branch (which extends north of Joliet); those shippers are separated from CN’s Lockport station by the Des Plaines River, the Chicago Sanitary and Ship Canal, and BNSF’s Joliet-Chicago line. One (Mundelein) is the business location of a shipper which receives EJ&E freight service at another station (Leithton, discussed in the text). The eighth SPLC is the code for a portion of Chicago where EJ&E is not physically present.

resulting from the combination.

The following examination of the five stations served by both CN and EJ&E demonstrates that there will be no reduction in the vigor of horizontal competition as a result of the CN/ EJ&E Transaction, because the Transaction will not reduce competitive options for any shippers at any of these locations.

Griffith. – CN's Chicago-Port Huron/Detroit main line crosses the EJ&E at Griffith, IN. CN and EJ&E interchange traffic for points beyond Griffith. Additionally, CN has trackage rights on EJ&E between Griffith and Eola, IL. These are overhead trackage rights only, which do not permit CN to serve any shippers on the EJ&E line.

EJ&E serves three shippers at Griffith: American Chemical Service, Inc. (chemicals), Bakker Produce, Inc. (food wholesaler), and Pactiv Corporation (paper products). All three shippers are closed to reciprocal switching by CN or other railroads. There are no CN-served shippers in the vicinity of Griffith.

Matteson. – CN's Chicago-New Orleans main line passes over the EJ&E's line at Matteson, IL. CN and EJ&E primarily interchange traffic for points beyond Matteson. CN has overhead trackage rights on EJ&E between Griffith, IN and Eola, IL with the right to enter and exit the EJ&E at Matteson, but no right to serve shippers on the EJ&E line there.

EJ&E serves one shipper at Matteson, Ace Hardware (a paint manufacturer located about two miles west of IC's crossing of the EJ&E line), whereas CN serves none. Ace Hardware is closed to reciprocal switching, and therefore cannot receive service from CN.

Joliet. – CN's Chicago-Joliet line passes underneath the EJ&E at Joliet, IL. CN has overhead trackage rights on EJ&E from Griffith, IN through Joliet, to Eola, IL. While the Official Railroad Station List shows an interchange between CN and the EJ&E at Joliet, the railroads do not in fact interchange any freight at Joliet.

EJ&E serves many shippers in the Joliet area, whereas CN serves none in the Joliet SPLC. All of the EJ&E-served shippers at Joliet are closed to reciprocal switching for CN.²⁷

²⁷ At Joliet, the former site of United States Steel Corporation's ("USS") Joliet Works once received rail service from both EJ&E and IC (now owned by CN). This site has not received rail service from either railroad for 10 years, however, and has been shut

Munger. – CN’s Chicago-Omaha main line passes underneath the EJ&E line at Munger, IL. CN and EJ&E interchange some traffic at this location for movement to points beyond Munger. CN has overhead trackage rights on EJ&E between Leithton and Munger, but these rights do not permit CN to serve any shippers on the EJ&E line.

EJ&E serves one shipper, Grecco and Sons, Inc (food distribution), at Munger, whereas CN serves none. This shipper is closed to reciprocal switching, and cannot receive service from CN. CN serves no shippers at Munger.

Leithton. – CN’s Chicago-Duluth/Superior main line crosses the EJ&E’s line at Leithton, IL. EJ&E serves one shipper, Medline Industries (hospital supplies), at Leithton. CN serves two shippers at this location: Prairie Material Sales (aggregates) and Scigles Home Building Centers (lumber).

The principal place of business of Medline Industries in the vicinity of Leithton is at Mundelein, at a location that is not served by rail. However, Medline receives freight from EJ&E on a short spur track on Medline property at Leithton. Medline is not open to reciprocal switch, and thus cannot receive service from CN.²⁸

Prairie Material Sales, located in the northeast quadrant of the CN-EJ&E crossing at Leithton, receives aggregates from quarries in Wisconsin

down since 2001. There is now therefore no rail shipper at this site, much less a jointly served shipper that would be harmed by any reduction in rail competition.

The Joliet Generating Plant of Midwest Generation, LLC, at Plaines (south of Joliet), can receive rail service from both CN and UP. At present, UP uses EJ&E as its agent to serve this plant. This simply means that EJ&E crews operate UP trains over UP track to reach the facility. EJ&E has no access of its own to the facility, and there would be no reduction in competition for rail service to the plant after the Transaction, as UP would remain free to contract with another agent to replace EJ&E, or operate the track itself.

²⁸ Mundelein, located on the CN line about 1½ miles north of the CN-EJ&E crossing at Leithton, is listed as both a CN and an EJ&E station. EJ&E, however, does not physically extend to or serve Mundelein. The only shipper at Mundelein listed in EJ&E’s Directory of Industries is Medline Industries, but as noted in the text, EJ&E service to Medline is only provided on the Medline-owned spur off the EJ&E at Leithton. Similarly, CN lists Prairie Material Sales as a shipper at Mundelein, but as explained in the text, the shipper’s facility is physically located at Leithton, where it is served exclusively by CN.

which are exclusively served by CN. Prairie Material Sales is not open to reciprocal switch, and thus cannot be served by EJ&E.

Seigles Home Building Centers is located on the west side of CN's line, south of the CN-EJ&E connecting track. This firm receives lumber, mainly from Western Canada. Seigles is not open to reciprocal switch, and thus cannot receive service from EJ&E.

2. Competition through Transloading

It might be argued that, because CN and EJ&E both serve transloading and transfer facilities in the Chicago area, the proposed transaction will harm shippers by eliminating competition between CN and EJ&E for rail service to these facilities.²⁹

While it is true that shippers may presently have the option of trucking freight to either CN-served or EJ&E-facilities, after the Transaction they would continue to have access to numerous similar bulk transfer and transload facilities in the Chicago area, served by BNSF, CP, CSX, NS, and UP. To the extent that CN and EJ&E may compete by means of transloading, the other railroads in the area could provide similar competition, relying on existing facilities (including warehouses in the Chicago area), or, if necessary, by establishing specialized transloading facilities to handle the relevant commodities, which could be done at a reasonable price that would not disadvantage those railroads in competition with CN.

3. Build-in/Build-out Opportunities

I am familiar with all five of the locations where CN tracks are in the vicinity of EJ&E tracks. I am not aware of any proposal by CN to obtain access to an

²⁹ In the Chicago area, CN serves CargoFlo Terminal (Harvey, IL), National Distribution (Chicago), and Stellar Distribution (Chicago). EJ&E serves A&R Distribution (East Morris, IL), Bulkmatic (Chicago Heights, IL), Intec Polymers LLC (Plainfield, IL), Three Rivers Terminal (Joliet, IL), Warehouse Specialists, Inc. (Sauk Village (Chicago Heights), IL), and Wayne Steel Distribution Center (Sauk Village (Chicago Heights), IL).

EJ&E-served shipper by building a new rail line from its track to the shipper's facility, or by the shipper to obtain CN service from CN by building a line out to CN's track. Nor, to the best of my knowledge, has EJ&E ever proposed extending its tracks to reach a CN-served shipper, or any CN-served shipper threatened to obtain competitive service from EJ&E by building a rail line out to connect with EJ&E's line. It is therefore my judgment that build-in/build-out possibilities are not presently constraining CN's or EJ&E's rate or service offerings at points where their lines approach each other, and that the proposed Transaction would therefore not remove any competitive restraint from such potential competition.

4. Captive Short Lines

There are no short lines that, as a result of the CN/EJ&EW Transaction, would lose an independent outlet to a Class I railroad.

B Geographic Competition

I have also assessed the impact of the proposed Transaction on geographic competition, which can take two forms. One is "source competition" or "origin competition," by which I mean the competition among sources of a particular commodity that can arise when different rail or motor carriers transport the same product to the same destination but from different geographic origins. The second is "destination competition," which can arise when different carriers transport the same product to different destinations from the same origin. (Together, I will refer to both forms of competition as "geographic competition.")

My work in conducting this analysis required two steps. First, based on my direct familiarity with CN's business, my knowledge of EJ&E and its business, and

my expertise as a career-long railroad marketing executive, I examined EJ&E's principal lines of business to determine whether any obvious potential issues of geographic competition arose from the traffic flows that account for the bulk of EJ&E's business.

While my examination of the relevant traffic flows did not identify any potential issues of geographic competition, I cross-checked my conclusions by examining the results of a "50/10 screen" conducted by ALK Technologies, Inc ("ALK"), according to specifications developed by Christopher A. Velturo, Ph.D. *See Verified Statement of Christopher A. Velturo, Ph.D. ("Velturo V S.")*. As Dr. Velturo explains, this screen, which applied the same methodology as was used in the CN/WC and CN/GLT control applications to flag potential issues of source, or origin, competition, used the STB's Carload Waybill Sample to identify product/destination pairs in which CN and EJ&E originate, terminate, or otherwise handle a significant portion of the traffic moving into a relevant geographic region for alternate origins. The BEA Economic Area ("BEA") was chosen as the geographic unit of analysis,³⁰ and products were evaluated at the 7-digit STCC level.³¹ ALK searched the waybill sample for all instances in which each of CN and EJ&E in 2005 (the last year for which waybill data is available) (1) originated,

³⁰ The Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce has divided the continental United States into a BEA Economic Areas, or "BEAs", each of which typically contains a major economic center and the surrounding counties. Before, 2004, the Bureau had divided the continental United States into 172 BEAs. In 2004, it re-divided the continental United States into 179 BEAs. The STB's Carload Waybill Sample for 2005, which was used for Dr. Velturo's analyses of geographic competition between CN and EJ&E, identifies origins and destinations by BEAs as defined before 2004. Accordingly, his analyses refer to those earlier BEA definitions.

³¹ The Standard Transportation Commodity Code ("STCC") system is a seven-digit coding structure designed to classify all commodities moving in surface freight transportation. The first two digits of a code ("STCC-2") refer to one of 38 categories into which all commodities are classified, and the entire seven-digit code ("STCC-7") identifies the specific commodity.

terminated, or interchanged 10% or more of the total carloads of a commodity delivered to a particular BEA, if the combined share calculated on this basis without double-counting the CN or EJ&E volumes would have been 50% or more of total delivered volume, or (2) originated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined originated share of the two railroads would have been 50% or more, or (3) terminated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined terminated share of the two railroads would have been 50% or more.

As explained in the Dr. Velturo's statement, this screen identified 17 traffic flows (defined as product/BEA pairs) that met these criteria and thus warranted further investigation. However, as Dr Velturo explains further, additional quantitative analysis, also based on the Waybill Sample, identified ample divertible capacity now handled by railroads other than CN or EJ&E that could readily be diverted into the destination BEAs at issue for all but one of the flows at issue, and thus render unprofitable any attempt by CN, after acquiring control of EJ&EW, to take advantage of any imagined reduction in geographic competition by raising rates in those markets. CN witness Gary L. Kolbe examined the single exception (for transportation of iron or steel wheels to the Chicago-Gary-Kenosha, IL-IN-WI BEA), and, as he explains in his Verified Statement, determined that there is no actual geographic competition between CN and EJ&E for this traffic flow, and that there would thus be no reduction in geographic competition for that traffic as a result of the Transaction. *See* Verified Statement of Gary L. Kolbe.

Finally, to confirm that I had not overlooked any potential destination competition between CN and EJ&E, ALK conducted a 50/10 screen to identify flows of commodities from a common origin to alternative destinations served by CN and EJ&E, where the originating shipper has access to both CN and EJ&E and has a choice of destinations, which choice is potentially affected by competition between the railroads. This screen searched for all instances in which CN and EJ&E in 2005 (1) originated, terminated, or interchanged 10% or more of the total carloads of a commodity originating in a particular BEA, if the combined originated share of the two rail systems, calculated without double counting, would have been 50% or more of total originated volume, or (2) originated 10% or more of the total carloads of a commodity originating in a BEA, if the combined originated share of the two railroads would have been 50% or more, or (3) terminated 10% or more of the total carloads of a commodity originating in a BEA, if the combined terminated share of the two railroads would have been 50% or more. This screen identified 12 traffic flows (defined as product/BEA pairs) where there might be an issue of reduced destination competition, but as in the case of origin competition, further quantitative analysis, based on the Waybill Sample and described by Dr. Velturo in his statement, identified divertible capacity (*i.e.*, rail movements of the commodity at issue, now handled by railroads other than CN or EJ&E, that could readily be diverted into the destination BEAs) greater than the amounts Dr. Velturo conservatively judged would be ample to constrain any attempt by CN to raise rail rates in all but three of the relevant markets (broken or crushed stone from the Chicago-Gary-Kenosha, IL-IN-WI BEA, ground coke from the New Orleans, LA-MS BEA, and iron or steel wheels from the Canadian Province of Manitoba). Further examination by Mr. Kolbe demonstrated that,

even for these remaining three product/BFA pairs, the Transaction would not in fact harm shippers by reducing geographic competition.

C. Vertical Competitive Effects

It is sometimes alleged that competition may be adversely affected by a rail combination through “vertical effects” that occur when a railroad that has market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad’s territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad’s service area. I understand, however, that vertical effects of this kind are unlikely as a matter of economic theory and that the Board has not been persuaded in recent control transactions that such effects actually do or are likely to occur.

In any event, CN will not engage in such foreclosure following consummation of the CN/EJ&EW Transaction, but will keep all existing gateways affected by the Transaction open on commercially reasonable terms. In addition, CN will waive any defenses it might otherwise have as a result of the Transaction, under the Board’s general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the Transaction would have been entitled to regulation of a bottleneck rate under the Board’s “contract exception” to the general rule. I therefore can assure the Board and the shipping public that the Transaction will have no harmful vertical effects on competition.

III. CONCLUSION

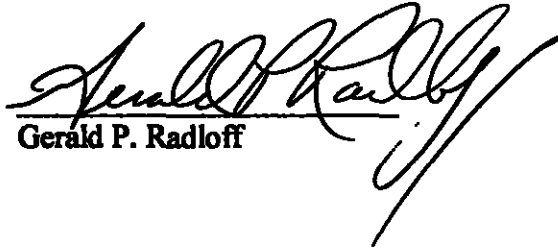
The CN/EJ&EW Transaction would enhance service to CN shippers by improving CN's operations in and beyond the Chicago area, and would ensure the long-run ability of shippers served by EJ&E to receive high-quality service supported by necessary capital investments. It would provide CN with a continuous route around Chicago that, by connecting all five of its lines now radiating from the city, could be used to bypass congested rail lines in downtown Chicago, decreasing transit time for CN freight and freeing up scarce rail capacity on those lines for use by other carriers. It would make it possible for CN to interchange freight more efficiently with other railroads and to consolidate its yard operations in the Chicago area. It would benefit existing EJ&E shippers by giving them single-line access to CN's extensive network extending to all three North American coasts, by making CN's equipment pool available to them, and by providing them rail service by an industry leader with a proven track record of high-quality customer service, which would have the incentive and ability to make future investments needed to maintain the long-term stability of the EJ&E lines as part of CN's system.

None of these benefits would come at the cost of impaired competition. There are no 2-to-1 or 3-to-2 customers anywhere on the two systems – or, indeed, any customers who would experience any loss of direct competitive service. And, there are no instances in which geographic competition would be impaired and no prospect of vertical foreclosure. In short, there would be substantial benefits to shippers, and no adverse effects on competition for rail transportation service, as a result of the Transaction.

VERIFICATION

I, Gerald P. Radloff, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on October 24, 2007


Gerald P. Radloff

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BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

**VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.**

I. QUALIFICATIONS

I am the founder and president of Quantitative Economic Solutions, LLC, a microeconomic consulting firm located in Cambridge, Massachusetts. I received a Bachelor of Science degree (*cum laude*) in applied mathematics and economics from Brown University in Providence, Rhode Island, and a Doctor of Philosophy (Ph.D.) degree in economics from the Massachusetts Institute of Technology (MIT) in Cambridge. While at MIT, I specialized in industrial organization and econometrics. During my tenure at MIT, I was awarded Bradley Fellowships in public economics (which is the study of how public policy decisions affect private sector incentives), and I have completed extensive training in that field. My Ph.D. thesis on the structural changes in the U.S. rail industry fostered by the passage of the Staggers Act, and their economic significance, was prepared under the guidance of Professor Ann Friedlaender, a leading expert in rail regulatory reform. My thesis and its progeny³² have been featured significantly in previous assessments of the competitive effects associated with rail industry consolidation. I am called upon frequently to referee scholarly articles pertaining to the U.S. rail industry that are submitted to a number of the leading applied microeconomics journals.

I have studied structural, regulatory, and competitive issues relating to the rail industry for 25 years. I have published several papers in academic journals relating to regulatory and competitive determinants of rail efficiency and viability. This

³² "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al*) in *Productivity Issues in Services at the Micro Level*, ed. /vi Griliches and Jacques Mairesse (Kluwer Academic Publishers, 1993), "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al.*), *Journal of Productivity Analysis*, 4, 127-144, 1993; "Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender, *et al*), *Journal of Transport Economics and Policy*, 131-152, May 1993; "Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et al*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992

body of research focused significantly (though not exclusively) on rail consolidation and rail regulatory reform. I continue to conduct research on transportation issues generally, and rail issues in particular. I assessed structural and competitive issues relating to the assimilation of Conrail into CSX and Norfolk Southern, and the acquisitions by Canadian National Railway Company ("CN") of the Illinois Central Railroad Company and its affiliates: the Wisconsin Central Ltd. and its affiliates (together, "WC"); and the Duluth, Missabe and Iron Range Railway Company ("DMIR") and its affiliates, all before the Surface Transportation Board ("STB" or "Board").³³ I presented testimony before the Board during the ANPR phase of the Board's rulemaking on Major Rail Consolidation Procedures.³⁴

I have extensive antitrust expertise and experience with respect, in particular, to the competitive ramifications of mergers and acquisitions. In the past ten years, I have conducted competitive analyses for over 100 proposed transactions. This work has spanned a broad array of industries, including: automobile manufacturing, grains and agricultural products, sugar, salt, fertilizers, chemicals, forestry products, machine tools, municipal waste, retail distribution, rail bed service equipment, petroleum and petroleum products, plastics, medical products and services, software, electronic funds transfer networks, lime, cement, computer and electronics manufacturing, and many others. In addition to the STB, I have presented my work before the United States Department of Justice (Antitrust Division), the Federal Trade Commission, the European

³³ See Verified Statement of Dr. Christopher A. Velturo, 1A Applicants' Rebuttal at 403-73, *Canadian Nat'l Ry – Control – Ill Cent Corp*, STB Finance Docket No. 33556 (filed Dec 16, 1998); Verified Statement of Christopher A. Velturo, Ph.D., 1 Railroad Control Application at 233-283E, *Canadian Nat'l Ry – Control – Wisc Cent Transp Corp*, STB Finance Docket No. 34000 (filed Apr. 9, 2001); Verified Statement of Christopher A. Velturo, Ph.D., Railroad Control Application at 65-153, *Canadian Nat'l Ry – Control – Duluth, M & I R Ry*, STB Finance Docket No. 34424 (filed Nov. 5, 2003).

³⁴ Statement of Christopher A. Velturo, Comments of Canadian National Railway at 67-100, *Major Rail Consolidation Procedures – Advanced Notice of Proposed Rulemaking*, STB Ex Parte 582 (Sub-No. 1) (filed May 16, 2000).

Commission, the Canadian Competition Bureau, the Board of Governors of the Federal Reserve System, and various state attorneys general. My curriculum vitae is provided as Attachment 1.

II. ASSIGNMENT AND CONCLUSIONS

I have been asked by CN to address the competitive ramifications of its proposed acquisition of the principal freight railroad assets of Elgin, Joliet and Eastern Railway Company ("EJ&E").³⁵ More specifically, I have been asked to evaluate whether there exists any identifiable set of customers – either traffic originators ("shippers") or recipients of products transported by rail ("receivers") – who would face higher prices or reduced service levels as a result of a reduction in competition in the provision of rail services by CN and the rail assets of EJ&E. I find that there will be no reduction in competition for any rail traffic as a result of the proposed transaction.

I examined the possibility for competitive interactions between CN and the EJ&E rail assets. The first element of my analysis considered whether shippers exist that are currently served by both railroads, and situations where the proposed transaction would reduce the number of rail options for such shippers from 2-to-1 or from 3-to-2. A review of a map of North American rail freight routes and their ownership structure clearly indicates that the proposed acquisition represents a combination that poses no threat to rail competition. I understand that Mr. Gerald Radloff has conducted a study of the Official Railroad Station List and other industry information, and has determined that there is no shipper that will see its rail options reduced from 2-to-1 and no shipper that will see its

³⁵ In this proceeding, CN is seeking regulatory authority to acquire control of EJ&E West Company ("EJ&EW"), which is proposed to be created as a subsidiary of EJ&E and to which EJ&E proposes to transfer all of EJ&E's rail lines and related west of Buchanan Street in Gary, IN (plus the Dixie and hump leads near Kirk Yard in Gary). EJ&E would retain ownership of the remainder of its present rail lines and would be renamed the "Gary Railway." I understand that Gary Railway would continue to be owned by United States Steel Corporation ("USS") and would serve five customers in Gary, including the Gary Works of USS itself.

rail options reduced from 3-to-2 as a result of the proposed transaction. Given the absence of any significant competitive overlap for individual shippers, no economic analysis is necessary to conclude that the proposed transaction has no horizontal competitive effects, and I do not discuss any overlap shipper locations further

Second, I considered the potential for a reduction in geographic competition between CN and the EJ&E rail assets. Applicants asked that I examine geographic competition thoroughly, in order to provide the Board with a complete basis upon which to conclude that this Acquisition is “minor” under the Board’s regulations, and that it should be approved. Geographic competition arises when two railroads provide transportation of a specific good that either is delivered to a common destination from a number of alternate sources served by the two railroads (“source competition” or “origin competition”) or moves from a common point of origin to a number of destinations, where each of the two railroads participates in some segment of the move as originating, bridge, or terminating carrier (“destination competition”).

With respect to source competition, I sought to determine if there exists any product where both the CN and EJ&E railroads originate, terminate, or otherwise handle a significant portion of the product destined for a common terminating BEA. I applied the same “50/10” screen to identify such potential source based issues as I applied when CN acquired WC. I discussed the screen extensively in my Verified Statement in that matter.³⁶ Specifically, I sought to identify product/destination pairs where each of the parties handled at least 10% of the traffic destined for a common BEA prior to the transaction, and the combined share of handled traffic by the combined firm after the transaction would be at least 50%. Based on an analysis of statistics from the STB’s Carload Waybill Sample, undertaken by Mr. Mark Hornung of ALK Technologies, Inc., according to my specifications, I understand that there are seventeen

³⁶ I provide a copy of my Verified Statement in the CN/WC proceeding as Attachment 2.

product/destination pairs that satisfy the 50/10 screen. In every instance, I found that receivers at these destinations have access to very large volumes from alternative competitive sources for each relevant product (or, in one instance – that of STCC 3499904, iron or steel wheels, to Chicago, for which CN itself is the shipper – that CN and EJ&E are clearly not competing, and that in any event the portion of EJ&E not being acquired by CN (and which will be renamed the Gary Railway) will continue to handle the traffic independently, so that there will be no change in the competitive relationships between the railroads participating in the moves). These alternatives will continue to provide significant competitive discipline of the pricing and service level of the combined firm.

With respect to destination competition, I sought to determine if there exists any product for which both the CN and EJ&E railroads originate, terminate, or otherwise handle a significant portion of the product originating from a common BEA. I applied the same “50/10” screen to identify such potential destination based issues. Specifically, I sought to identify product/origin pairs where each of the parties handled at least 10% of the traffic originating from a common BEA prior to the transaction, and the combined share of handled traffic by the combined firm after the transaction would be at least 50%. Based on an analysis of STB Waybill Sample statistics, undertaken by Mr. Mark Hornung of ALK Technologies, Inc., according to my specifications, I understand that there are twelve product/origin pairs that satisfy the 50/10 screen. In every instance I found sufficient competition in the form of capacity divertible to those destinations to which shippers at the origin ship that any “across the board” price increase on originating shipments would be defeated by competition at the destinations (or, as in the case of STCC 3499904, iron or steel wheels, from Manitoba, that CN and EJ&E are clearly not competitors for the traffic at issue).

III. ANALYSIS OF SOURCE COMPETITION

A. Overview

As described in my Verified Statement in the CN/WC control proceeding, I used a “50/10” screen to identify product/destination pairs to in order to consider, more expansively, the potential competitive effects of CN’s proposed acquisition of EJ&EW. I began by identifying specific product/destination pairs (*e.g.*, asphalt delivered to the Chicago BEA³⁷) where CN and EJ&E originate, terminate, or otherwise handle a significant portion (as identified by a “50/10” screen, described below) of the product destined for the relevant geographic area.³⁸ For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic terminating in a BEA for which each of CN and EJ&E in 2005 (the most recent year for which the STB Waybill Sample was

³⁷ “BEA” refers to the Bureau of Economic Analysis (BEA) Economic Areas. Before, 2004, the Bureau of Economic Analysis of the U.S. Department of Commerce had divided the continental United States into 172 BEAs. (In 2004, the Bureau of Economic Analysis re-divided the continental United States into 179 BEAs.) The STB’s Carload Waybill Sample for 2005, which was used for my analyses of geographic competition between CN and EJ&E, identifies origins and destinations by BEAs as defined before 2004; accordingly, the earlier BEA definitions are reflected in my analysis.

³⁸ Because CN is seeking to acquire, not all of EJ&E, but only that portion of EJ&E’s lines being transferred to EJ&EW, the 50/10 screen would ideally have looked, not at all traffic originated, terminated, or handled by EJ&E, but only at traffic being handled to or from points to be served by EJ&EW, or over EJ&EW’s lines. To put it another way, the screen should have excluded traffic to be handled by Gary Railway. This could only be done if it were possible to segregate traffic to and from the five customers to be served by Gary Railway from the rest of EJ&E’s current traffic. The STB Waybill Sample, however, does not identify individual shippers, so traffic to and from those shippers could not be differentiated from traffic to other shippers in Gary, who after the transaction would be served by EJ&EW. This means that in some cases, as will be seen below regarding iron or steel wheels to the Chicago BEA, and regarding coke from the New Orleans BEA, the 50/10 screen flagged a product/BEA pair in which the relevant EJ&E traffic would continue to be handled by the independent Gary Railway, independently of the combined CN/EJ&EW system, so that there could be no reduction in geographic competition for that traffic, even theoretically, after the combination.

available) (1) originated, terminated, or interchanged (henceforward “participated” in) 10% or more of the total carloads of a commodity delivered to the BEA, if the combined share calculated on this basis without double-counting CN or EJ&E participation³⁹ would have been 50% or more of total delivered volume, or (2) originated 10% or more of the total carloads of a commodity delivered to the BEA, if the combined originated share of the two roads would have been 50% or more; or (3) terminated 10% or more of the total carloads of a commodity delivered to the BEA, if the combined terminated share of the two roads would have been 50% or more.^{40, 41}

I am, of course, using this so-called “50/10” analysis not to draw any final conclusions about competitive effects, but as a screen to identify traffic that warrants further analysis. Traffic identified by the 50/10 test may not be traffic for which CN and EJ&E are in fact the effective rail constraints on each other, any more than a number of other railroads moving large volumes of traffic that is competitive with the CN and EJ&E traffic. Moreover, as mentioned above, because the screen looks at all EJ&E traffic, where it would be more accurate to look only at traffic that would be handled by EJ&EW, it flags product/BEA pairs for which Gary Railway will continue to offer as effective geographic competition after the

³⁹ The screen for CN and EJ&E as participating railroad counted interline CN-EJ&E movements into the destination BEA toward both CN’s and EJ&E’s individual shares of movements in the product/destination pair at issue, but such movements were only counted once toward their combined share. In order to avoid double-counting, the sum of the two railroads’ individual shares not only had to be at least 50%, but it had to be at least 10 percentage points higher than the greater of the two railroads’ individual participation shares. (I discuss this point further in footnote 10 and Appendix A of my statement in the CN/WC proceeding.)

⁴⁰ I described my specifications for this screen in Appendix A of my Verified Statement in the CN/WC proceeding (Attachment 2). Among other things, that Appendix explained my definition of the relevant products and locations to be examined as 7-digit Standard Transportation Classification Codes (“STCC”) and BEAs, rather than alternative product or geographic definitions.

⁴¹ I sometimes refer to the destination BEAs involved in these flows as “DBEAs” or “50/10 DBEAs” and to the traffic flows defined by the combination of a commodity and the common DBEA as “product/DBEA pairs” or “50/10 product/DBEA pairs.”

Transaction as EJ&E does now. In any event, the screen does not provide any indication of the extent of source competition after the Transaction from other railroads, modes, and sources, which is the critical point and which I examine extensively in a separate analysis.

B. Results of 50/10 Screen

The results of this screen, which I present generally in Attachment 3, indicate that there are few product/destination pairs where CN and EJ&E participate significantly in movements of the same product from different origins to the same destination.⁴² Attachment 3 provides a list of the product/DBEA pairs that is generated after applying the participating, originating, or terminating 50/10 screen with respect to CN and EJ&E, and the number of relevant carloads shipped by CN and EJ&E for each pair. There are twelve product/DBEA pairs that are identified under the 50/10 screen when any CN/EJ&E participation in traffic moving to a DBEA is counted; an additional two product/DBEA pairs when CN and EJ&E shares as originating railroads of traffic moving to a DBEA are counted; and an additional

⁴² Examples where the parties move products to a significant degree from the same origin BEA to the same destination BEA might be regarded as identifying possible issues of horizontal competition. The more fine-grained “2-to-1” and “3-to-2” assessments described above, however, would not have captured those examples unless it were shown that particular *shippers* in the origin BEA had the option of using CN or EJ&E to move the product to the specific destination. If, on the other hand, that assessment had been made, like the 50/10 screen, at the BEA level rather than the individual shipper level, then it would have concluded that the CN/EJ&E Transaction presents no horizontal competitive issues, as Chicago – the only BEA served by both CN and EJ&E – is also served by BNSF, CP, CSX, NS, and UP, as well as several short line and regional railroads, making it at worst a “5-to-4” BEA. So conducting the horizontal competition assessment at the shipper level was a conservative (*i.e.*, overinclusive) approach.

On the other hand, a shipper-level analysis of geographic competition would have been impossible, because the SIB Waybill Sample, needed to compute the railroads’ percentage shares of total traffic in the flow at issue, does not identify individual shippers. The Waybill Sample would permit a 50/10 screen at the station (SPLC or FSAC) level, but my choice to conduct the screen at the BEA level was a more conservative approach, as each BEA typically contains many stations, and the use of the broader geographic area would be likely to identify more CN and EJ&E flows as warranting further analysis.

three product/DBEA pairs when CN and EJ&E shares as terminating railroads of traffic moving to a DBEA are counted.

As can be seen in Attachment 3, most of the 50/10 product/DBEA pairs involve combined CN/EJ&E traffic that represents relatively limited volumes with respect to the total traffic shipped by the parties. Only ten product/DBEA pairs involve traffic where the combined volumes of the two railroads amount to more than a carload a day (and only four have more than three carloads per day). I understand that the Board has stated that it must approve a transaction of this type “unless there will be adverse competitive impacts that are both ‘likely’ and ‘substantial.’”⁴³ The small CN/EJ&E volumes within the 50/10 product/DBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

C. Critical Loss

Despite the insubstantial nature of these actual/potential interactions, CN asked me to conduct a detailed analysis of the potential for competitive harm. As already indicated, the ultimate question one seeks to answer in assessing the competitive consequences of a proposed merger is whether the merged firm will have the incentive and ability, post-merger, to raise prices (or reduce service). Accordingly, for the product/DBEA pairs identified by the screen, I evaluated the ability (both actual and potential) of other providers of rail transportation services to prevent the combined firm (*i.e.*, CN after its acquisition of EJ&EW) from raising prices (or reducing service) after the proposed combination. Other providers of transportation services provide such competitive discipline if they collectively have the ability and incentives to take sufficient volumes from the

⁴³ *Fortress Inv. Group LLC – Control – Fla. E. Coast Ry.*, STB Finance Docket No. 35031, slip op. at 4 (STB served Sept. 28, 2007); *accord, Kansas City S. – Control – Kansas City S. Ry.*, STB Finance Docket No. 34342, slip op. at 16 (STB served Nov. 29, 2004); *Canadian Nat’l Transp. Co. – Control – Duluth, M. & I.R. Ry.*, STB Finance Docket No. 34424, slip op. at 13 (STB served Apr. 9, 2004).

combined firm in the event of a price increase so as to render such an increase unprofitable.⁴⁴

To find a price increase profitable, the combined firm must believe that the added contribution it will earn due to the higher price it will receive on the traffic it continues to carry after the price increase will be greater than the contribution it will lose as a result of some of the volume it currently serves moving to another provider (or ceasing to be moved) in response to the higher price. If the combined firm believes that its customers will seek to move a sufficient portion of their volumes to other providers and that these other providers have the capacity and incentive to take on this additional volume, then the losses associated with the price increase will be expected to exceed the benefit of the higher price earned on the retained volume. This minimum sufficient volume that renders such a price increase unprofitable is commonly referred to in antitrust as the “critical loss.” If the combined firm perceives that customer movements to others will exceed this “critical loss” then the merged firm will not have an incentive to raise prices after the combination. If the firm attempted an increase, it could not profitably sustain it. Thus, no anticompetitive harm can arise.⁴⁵

Attachment 4 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/DBEA pair. In every pair, I find that the proposed combination will pose no threat to competition. I discuss the specifics of my findings below. I begin with a general discussion of the information provided in Attachment 4, and how these data relate to my findings.

⁴⁴ I did not systematically examine the competitive constraints offered by non-rail transportation modes (such as motor and water carrier), not because competition from those modes was necessarily insignificant, but because in almost every case rail competition alone was demonstrably sufficient to constrain the combined CN/EJ&EW, and it was more convenient to address the remaining cases individually.

⁴⁵ In Appendix B to my Verified Statement in the CN/WC proceeding (Attachment 2), I describe how I computed the critical loss for each product/DBEA pair identified by the 50/10 screen.

Attachment 4 consists of three panels. Each panel relates to flows of a commodity to a BGA. The first panel identifies participation-based 50/10 product/DBEA pairs. The second panel identifies originating-railroad-based 50/10 product/DBEA pairs above and beyond those identified as participating. The third panel identifies terminating-railroad-based 50/10 product/DBEA pairs above and beyond those identified as participating.⁴⁶ (Each panel is organized in descending order by the combined CN/EJ&E volume in the product/DBEA pair.) The first three columns in Attachment 4 identify the 7-digit STCC product code and the DBEA under consideration. The data upon which I relied to determine whether a competitive analysis was warranted for each product/DBEA pair appear next. All 50/10 product/DBEA pairs involve movements where the post-merger share of traffic for the combined firm is at least 50%, and is at least 10 share points higher than either constituent firm's share prior to the combination. As I have already noted, the CN/EJ&E volumes involved in these flows are generally small. I then determine the critical loss required to defeat a 5% price increase on shipments destined for the 50/10 product/DBEA under study. As I explained in Appendix B to my Verified Statement in the CN/WC control proceeding (Attachment 2), I evaluated the critical loss at a 50% marginal contribution and at an 80% marginal contribution, to provide a plausible range of critical loss values.⁴⁷

⁴⁶ In footnote 10 to my Verified Statement in the CN/WC proceeding (Attachment 2), I explain why the screen for originating and terminating shares is not redundant to the screen for participating shares.

⁴⁷ I have presented critical loss/divertible capacity analyses in the context of merger-related antitrust investigations in a wide variety of industries and to many antitrust/regulatory agencies. Industries where I have conducted critical loss/divertible capacity analyses include: paper, sugar, salt, fertilizers, chemicals, chemical derivatives, railroad equipment, textiles, television advertising time, and banking services (just to name a few). I have presented these analyses to the U.S. Department of Justice, the U.S. Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Communications Commission, the Securities and Exchange Commission, and the European Commission, among others.

D. Competitive Alternatives and “Divertible Capacity”

Having identified candidate product/DBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/DBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the traffic demands of a sufficient volume of traffic for each product/DBEA pair to impose the critical loss. To complete this level of the analysis I considered the available “divertible capacity” that could serve each relevant product/DBEA pair

The concept of “divertible capacity” identifies the potential entry/expansion of additional capacity into the location at issue. If the combined firm were to raise prices for a particular product/DBEA pair, it would create additional profit opportunities and incentives for other railroads (and other providers of transportation more generally) to capture additional volume at the destination BEA. To the extent that these railroads (and their customers) have ready access to additional volumes that are currently being transported to other destinations, these incentives will cause these railroads (and their customers) to divert these volumes into the targeted product/DBEA. Where the available divertible capacity significantly exceeds the critical loss, it should deter the combined firm from raising its price, and would make it impossible for the combined firm profitably to sustain a price increase if it tried.⁴⁸

Having determined the critical loss volumes, I computed available divertible capacities and compared them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the DBEA under study will provide sufficient competition, post-merger, to ensure continued competitive pricing by the combined firm. I initially

⁴⁸ I explain the methodology to identify divertible capacity in Appendix C to my Verified Statement in the CN/WC proceeding (Attachment 2).

considered what for convenience I will call direct divertible capacity (“DDC”) and computed the ratio of DDC to the critical loss

Historically, in critical loss-based analyses for mergers in other industries, I have sought to identify available divertible capacity of at least two to three times the critical loss to ensure sufficient post-merger competition. As a highly conservative measure in the present case, I conclude that available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio is at least ten.

E. Competitive Analysis of 50/10 Product/DBEA Pairs

As detailed in Attachment 4, the available DDC/critical loss ratio is at least ten in ten of the seventeen 50/10 product/DBEA pairs at issue. Indeed, in most of these pairs, the available DDC dramatically dwarfs the requisite critical loss. For example, for polystyrene to Chicago (which is the product/DBEA pair with the largest traffic flows), the 8,640 carloads of DDC are thirty times the critical loss (292 carloads), calculated from an assumed marginal contribution of 50% (the most conservative of the contribution assumptions that I employ). Asphalt by-product or liquid petroleum to Chicago is the second largest product/DBEA pair in terms of traffic flows. For that pair, the almost 25,000 carloads of DDC are 96 times the critical loss of 260 carloads, again calculated on the most conservative contribution assumption. For the third largest product/DBEA pair, petroleum naphtha to Houston, the DDC is 30 times the critical loss of 196 carloads. These are by no means the largest ratios. Given the sizeable practical and readily available rail capacity that can be brought to bear on the 50/10 product/DBEA pairs, I conclude that the proposed combination would not enable the combined firm to raise prices anticompetitively.

For one of the 50/10 product/DBEA pairs (slabs, iron or steel, to St. Louis) in which the combined firm participates in less than 100% of the movements of a commodity to a DBEA, the ratio of DDC to critical loss, calculated on the conservative contribution assumption, is less than my conservative benchmark of 10. These are small volumes. In any event, as can be seen on Attachment 4, the ratios of

DDC to critical loss are still more than twice the ratios of two to three that I ordinarily deem sufficient. Available DDC for this traffic is thus significant and more than adequate to discipline pricing.

There is also a small group of low-volume product/DBEA pairs in which CN and EJ&E participate in 100% of movements of the commodity to the 50/10 DBEA and the DBEA is not a bottleneck. The combined CN/EJ&E volumes for each of these pairs involve less than a carload a day. For this small subset of product/DBEA pairs, there was by definition no DDC because in 2005 no other railroad participated in movements of the 7-digit STCC to the DBEA. There was also one product/DBEA pair for which no DDC was available, and in which CN and EJ&E participate in a majority of the movements of the commodity to the 50/10 DBEA (87%), and the DBEA is not a bottleneck. For these sets of traffic, and for the instance discussed above where the critical loss ratio was less than 10, we analyzed what I term supplemental divertible capacity ("SDC"). These SDC volumes are computed according to the criteria set forward in Appendix C to my Verified Statement in the CN/WC proceeding (Attachment 2). Generally, the methodology of the supplemental analysis is similar to that of the primary analysis. The main difference is that an origin can qualify as a source of divertible capacity if a railroad other than CN/EJ&E moved the relevant 4-digit STCC product group to the 50/10 DBEA, although not the same 7-digit product, so long as it is shipping that 7-digit STCC to some other BEAs from the same origins as the 4-digit STCC movements to the 50/10 DBEAs. As with the DDC volumes, I compare the available SDC volumes with the requisite critical loss volumes. These ratios (where applicable) appear in the right-hand most columns of Attachment 4. As the results clearly indicate, except in one case, every remaining 50/10 product/DBEA pair has access to additional volumes that are more than enough to ensure competitive pricing by the combined firm, post-transaction. (As Gary L. Kolbe explains in his verified statement that accompanies the Application in this proceeding, the single exception, iron or steel wheels to Chicago, is one in which Gary Railway would continue to handle the EJ&E traffic at issue; as discussed above, there would therefore be no loss of

geographic competition for this traffic.) Thus, none of these remaining pairs pose any competitive problem.

One of the product/DBEA pairs identified in Attachment 4 involves Green Bay, WI as the DBEA. I understand from CN that Green Bay represents a CN bottleneck – CN is the only railroad with track serving the Green Bay BEA. As a bottleneck railroad, CN – prior to the Transaction – already must participate in all rail flows into and out of Green Bay. As a result, the proposed combination does not enhance the degree of control in rail service that CN has to or from Green Bay. With no change in the degree of control, no diminution in horizontal competition associated with the proposed combination can occur; therefore, I do not perform any divertible capacity analysis on this product/DBEA pair, which I identify with a “Yes” in the bottleneck column of Attachment 4.

The only potential for anticompetitive harm that could theoretically arrive in such bottleneck circumstances is the potential for vertical foreclosure. I discussed the absence of vertical foreclosure issues in rail movements (the “one lump” approach) in Section IV of my Verified Statement in the CN/WC proceeding (Attachment 2).

F. Conclusions

My analysis of those product/DBEA pairs that meet the 50/10 screen concludes that there is sufficient DDC or SDC available to thwart any potential anticompetitive price increases post-Transaction in relation to any shipments where the parties participation in movements into a destination exceed the 50/10 screen.

IV. ANALYSIS OF DESTINATION COMPETITION

A. Overview

In “origin competition,” I assess the potential for competitive issues to arise under the Transaction in instances where the parties both participate in rail traffic arriving at a given DBEA from (potentially) different OBEAs. Under “destination

competition.” I assess the potential for competitive issues to arise where the parties both participate in rail traffic leaving a common OBEA that travels to different DBEAs.⁴⁹

I began by identifying specific product/origin pairs (*e.g.*, broken or crushed natural stone originated from the Chicago BEA) where CN and EJ&E originate, terminate, or otherwise handle a significant portion (as identified by a “50/10” screen, described below) of the product originating from the relevant OBEA. For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic originating from a BEA for which each of CN and EJ&E in 2005: (1) originated, terminated, or interchanged (henceforward “participated” in) 10% or more of the total carloads of a commodity originating from the BEA, if the combined share calculated on this basis without double-counting CN or EJ&E participation would have been 50% or more of total delivered volume; or (2) originated 10% or more of the total carloads of a commodity originating from a BEA, if the combined originated share of the two roads would have been 50% or more; or (3) terminated 10% or more of the total carloads of a commodity originating from a BEA, if the combined terminated share of the two roads would have been 50% or more.

The caveats I outlined in paragraph 10 with respect to source competition apply to destination competition as well.

B. Results of 50/10 Screen

The results of this screen, which I present generally in Attachment 5, indicate that there are few product/origin pairs where CN and EJ&E participate significantly in movements of the same product from the same origin to different destinations. Attachment 5 provides a list of the product/OBEA pairs that is generated after applying the participating, originating, or terminating 50/10 screen with respect

⁴⁹ I sometimes refer to the origin BEAs involved in these flows as “OBEAs” or “50/10 OBEAs” and to the traffic flows defined by the combination of a commodity and the common OBEA as “product/OBEA pairs” or “50/10 product/OBEA pairs.”

to CN and EJ&E, and the number of relevant carloads shipped by CN and EJ&E for each pair. There are five product/OBEA pairs that are identified under the 50/10 screen when any CN or EJ&E participation is counted. There are no product/OBEA pairs identified when CN and EJ&E acting as originating railroads in traffic originating at an OBEA are counted. Seven product/OBEA pairs are identified under the 50/10 screen when CN and EJ&E shares as terminating railroads of traffic moving from an OBEA are counted

As can be seen in Attachment 5, most of the 50/10 product/OBEA pairs involve combined CN/EJ&E traffic that represents relatively limited volumes with respect to the total traffic shipped by the parties. There are only seven product/OBEA pairs where the combined volumes of the two railroads amount to more than one carload a day (and only four have more than three carloads per day). The small CN/EJ&E volumes within the 50/10 product/OBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

C. Critical Loss and Competitive Alternatives

In the “origin competition” assessment, the relevant exercise to consider the competitive issues surrounding a product/OBEA pair was to determine whether sufficient alternatives existed at the OBEA such that any price increase hypothetically considered by the merging parties on all its incoming traffic to the OBEA would be defeated, as alternative sources of product currently moving into other destinations could be shifted into the OBEA at issue, ensuring that the potential volume losses associated with the price increase would exceed the “critical loss.” In other words, recipients of product at the OBEA would have sufficient alternative sources to render such a price increase unprofitable, as the profits lost on diverted volumes would exceed any gains associated with the posited price increase.

In the “destination competition” assessment, the relevant exercise to consider is what competitive constraints exist that would prevent the combined system from raising prices on all traffic originating at the OBEA at issue. Because I am

addressing the risk of post-merger price increases on all of the traffic for the particular commodity originating at the OBEA at issue, I determined the critical loss by applying the critical-loss formula to all of that traffic. Correspondingly, as detailed below, I aggregated the “divertible capacity” for all of the destination BEAs⁵⁰ to determine if it exceeded the critical loss by the requisite ratio. If it does, then any price increase on the traffic moving from that OBEA would likely be defeated.⁵¹ In this context, the competitive alternatives at the DBEAs are still the focus of the divertible capacity analysis.⁵²

I determined the critical loss required to defeat a 5% price increase on shipments originating from the 50/10 product/OBEA under study. I evaluated the critical loss at a 50% marginal contribution and at an 80% marginal contribution, to provide a plausible range of critical loss values.

⁵⁰ As in my discussion of source competition, I sometimes refer to the destination BEAs involved in these flows as “DBEAs.”

⁵¹ When analyzing origin competition, it was only necessary to examine the possibility of diverting traffic into the single DBEA identified by the product/DBEA pair at issue. When analyzing destination competition, in contrast, it is necessary to examine the possibility of diverting traffic into the several DBEAs to which shippers from the OBEA identified in the product/OBEA pair at issue may be transporting the product identified in the product/OBEA pair.

I did not conduct a similar systematic calculation of divertible capacity for destination competition in the CN/WC proceeding, because the 50/10 screen applied in that case only identified four product/OBEA pairs, and CN witness Richard L. Bottorff demonstrated, through a narrative discussion, that rail divertible capacity and/or truck competition would be sufficient to prevent CN from profitably maintaining an anticompetitive price increase for any of the identified traffic flows after consummation of the CN/WC transaction. Because the product/OBEAs flagged by the screen for destination competition in this case were more numerous, I determined that it would be more convenient to calculate divertible capacity than to provide a narrative discussion of each.

⁵² It is also possible that, in the face of the posited price increase, the originators of traffic at the OBEA could turn to alternative BEAs that are not DBEAs at present for that product code from that origin. This possibility is not assessed quantitatively in my analysis, since the competitive alternatives at the relevant destinations are more than adequate to ensure competition. This additional competition at the origin provides further assurance that competitive issues will not arise.

D. “Divertible Capacity”

Having identified candidate product/OBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/OBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the demands of a sufficient volume of traffic destined for the DBEAs served by the OBEA at issue to impose the critical loss. As noted above, to complete this level of the analysis I considered the available “divertible capacity” that could serve the DBEAs to which the combining railroads are currently transporting shipments of the relevant product from the OBEA at issue.

Having determined the critical loss volumes, I computed available divertible capacities and compared them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the destinations that the targeted product/OBEA pairs are currently serving should provide sufficient competition, after the combination, to ensure that the combined firm will be unable to raise rates to a supra-competitive level. I initially considered DDC and computed the ratio of DDC to the critical loss.

As above, as a highly conservative measure in the present case, I conclude that available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio is at least ten ⁵³

⁵³ I took care not to “double count” divertible capacity that could serve more than one of the DBEAs to which the combining railroads are transporting the relevant product from the OBEA at issue. For example, if shipments from OBEA2 of the relevant product could be diverted to either DBEA1 or DBEA2 (which are served in this example by the parties out of the OBEA under consideration), the ability of this DDC to constrain prices across all relevant DBEAs at issue is limited to the total volume available for redirection. See Attachments 6 and 6A for a graphical illustration of this example. Attachment 7 details the algorithm used to derive DDC under destination competition. Attachment 8 details the algorithm used to derive SDC under destination competition.

E. Competitive Analysis of 50/10 Product/OBEA Pairs

As with my analysis of origin competition, I find that the proposed combination will pose no threat to competition from a destination competition standpoint.

Attachment 9 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/OBEA pair.

For five of the relevant product/OBEA pairs, the DDC available to discipline pricing greatly exceeds ten. As a result, there are ample competitive disciplines in place to ensure the merged parties would find a post-transaction price increase for these products from these origins unprofitable.

The remaining product/OBEA pairs also present no issues from a competitive standpoint. While there is no DDC available for iron or steel slabs, in the rough (STCC 3312140), originating at the St. Louis BEA, there is SDC amounting to well over ten times the critical loss that would make a CN/EJ&EW rate increase for this traffic unprofitable. Similarly, there are large volumes of SDC available for polystyrene from the Greenville, MS BEA, railway track rails from the Chicago BEA and hydrogen peroxide from Ontario which would render a CN/EJ&EW rate increase for this traffic unprofitable. While there was apparently insufficient DDC or SDC for three remaining pairs,⁵⁴ CN witness Gary L. Kolbe explains in his verified statement, based on his examination of CN and EJ&E actual waybill data and discussions with CN and EJ&E personnel familiar with the traffic, that there would be no reduction in geographic competition as a result of the CN/EJ&EW Transaction. In the cases of coke from New Orleans and wheels for Manitoba, Mr. Kolbe explains that the 50/10 screen's identification of these product/OBEA pairs were false positives, because they were triggered by current EJ&E traffic that, after the CN/EJ&EW

⁵⁴ Natural stone, not elsewhere classified, broken or crushed, including chips, grouts, or spalls, other than limestone (STCC 1421990) originating in the Chicago-Gary-Kenosha, IL-IN-WI BEA; coke, not elsewhere classified, or coke, ground (STCC 2991490), originating in the New Orleans, LA-MS, BEA; and wheels, not elsewhere classified, iron or steel (STCC 349904) originating in Manitoba.

transaction, would continue to be handled by the independent Gary Railway. Mr. Kolbe also explains that CN's traffic in natural stone from the Chicago BEA all originates either at the Chicago Intermodal Terminal (and is thus subject to extensive competition from all railroads with intermodal facilities in the Chicago area), or from a single quarry near Kankakee. According to Mr. Kolbe, CN does not see EJ&E as a competitive constraint on its rates or service from this quarry at all; the most immediate constraint is offered by NS, which also serves the quarry, or from trucks which carry a substantial percentage, in CN's estimate, of the stone that is originated at Chicago-area quarries and which is commercially substitutable for the stone originating at the single quarry served by CN.

F. Conclusions

My analysis of those product/OBEA pairs that meet the 50/10 screen concludes that there is sufficient DDC or SDC available to thwart any potential anticompetitive price increases post-transaction.

V. SUMMARY

I have examined competitive issues related to the proposed Transaction between CN and EJ&FW. It is clear to me that the Transaction will have no anticompetitive effects.

VERIFICATION

I, Christopher A. Vellturo, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on October 29, 2007


Christopher A. Vellturo



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CHRISTOPHER A. VELLTURO
President

Over the course of his career, Dr. Velturo has performed a wide variety of economic and econometric analyses and provided expert testimony in the context of mergers and acquisitions, antitrust litigation, intellectual property litigation and numerous other matters spanning a broad array of industries. Dr. Velturo has testified on economics-related matters in numerous U.S. District Courts, as well as at the Canadian Competition Bureau, and the American Arbitration Association. He has appeared before the U.S. Department of Justice, the Federal Trade Commission, various states' Attorneys General offices, the Federal Reserve Bank Board of Governors, and numerous other regulatory agencies on merger-related issues and other antitrust matters. Dr. Velturo has also made appearances at hearings before the European Commission, and other antitrust enforcement agencies around the world. To date, he has performed economic analyses in over one hundred merger matters, in excess of seventy antitrust actions and well over one hundred intellectual property actions.

Prior to forming Quantitative Economic Solutions, LLC (QES), Dr. Velturo was a Principal at Analysis Group/Economics (AG/E) and a Senior Vice President and member of the Board of Directors at National Economic Research Associates (NERA).

Dr. Velturo has published on a variety of topics, including merger and acquisition-related efficiencies, price discrimination, differentiated product analysis and market definition. His research has appeared in leading academic journals, including *Antitrust*, the *Antitrust Law Journal*, and the *Journal of Economics and Management Strategy*. Dr. Velturo is a recipient of the Bradley Fellowship in Public Economics and has served as a referee for *American Economic Review* and *Rand Journal of Economics*.

A Ph.D. graduate in Economics from the Massachusetts Institute of Technology, Dr. Velturo also holds a Sc.B. in Applied Mathematics and Economics from Brown University, where he graduated *magna cum laude* and *Phi Beta Kappa*.

EDUCATION

- 1989 Ph.D. in Economics, Massachusetts Institute of Technology
 Primary Fields: Econometrics, Industrial Organization
 Secondary Fields: Public Finance, Game Theory, Law and Economics
- 1983 Sc.B. in Applied Mathematics and Economics (*magna cum laude*), Brown University

PROFESSIONAL EXPERIENCE

- 2002-Present **Quantitative Economic Solutions, LLC**
 President/Manager – Direct research on microeconomic issues in litigation and non-litigation matters. Areas of particular focus include: antitrust, regulation, and damages assessment in intellectual property and contract matters.
- 2000-2002 **Analysis Group/Economics**
 Principal - Direct research and provide expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Expert reports and testimony presented in U.S. District Court. Presented antitrust economic analyses to Federal Trade Commission, U.S. Department of Justice, Federal Reserve Bank Board of Governors and the European Commission.
- 1996-2000 **National Economic Research Associates, Inc.**
 Senior Vice President (1999-00)
 Vice President (1996-99)
- 1991-1996 **Cambridge Economics, Inc.**
 Director - Directed research and provided expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Prior expert testimony provided in U.S. District Court and before the American Arbitration Association. Presented antitrust economic analyses to U.S. Department of Justice, Federal Trade Commission (Antitrust Division), state Attorneys General offices, and the Federal Reserve Bank Board of Governors.
- 1989-1991 **National Economic Research Associates, Inc.**
 Senior Consultant - Directed and performed research relating to issues of antitrust, intellectual property, mergers and regulation.
- 1987 **Department of Economics, M.I.T.**
 Teaching Assistant - Undergraduate econometrics.
- 1985-1989 **Dean Ann F. Friedlaender, M.I.T.**

Research Associate - Participated in research relating to transportation pricing and capital allocation responses to regulatory changes.

1983-1985 **National Economic Research Associates, Inc.**
Research Associate - Conducted research on a wide variety of issues including antitrust, railroad rate setting, optimal landfill pricing, and PCB and asbestos abatement strategies.

AWARDS AND PROFESSIONAL ACTIVITIES

1987-1989 Recipient, Bradley Fellowship in Public Economics
1986 M.I.T. Departmental Fellowship
1983 Phi Beta Kappa, Brown University
1983 Sigma Xi, Brown University
Present Journal Referee for *American Economic Review* and *Rand Journal of Economics*
Present Member, American Economic Association
Present Member, American Bar Association

TESTIFYING HISTORY (PAST FOUR YEARS)

- *Sandata Technologies, Inc. v. Infocrossing, Inc.*
U.S. District Court, Southern District of New York, Civil Action No. 05-CV-9546.
- *DePuy AcroMed, Inc. and Biedermann Motech GMBH v. Medtronic Sofamor Danek, Inc., f/k/a Sofamor Danek Group, Inc. and Medtronic Sofamor Danek, U.S.A. Inc.*
U.S. District Court, District of Massachusetts, Civil Action No. 01-CV-10165 (EFH).
- *TV Guide Online, Inc. and TV Guide Online, LLC v. Tribune Media Services, Inc.*
U.S. District Court, District of Delaware, Civil Action No. 05-CV-725-KAJ.
- *In Re. Polyester Staple*
U.S. District Court, Western District of North Carolina, Charlotte Division, MDL Docket No. 3:03-CV-1516.
- *Merit Industries, Inc. v. JVL Corporation*
U.S. District Court, Eastern District of Pennsylvania, Civil Action No. 03-CV-01618-TJS.
- Testimony before the Texas House of Representatives Committee on Regulated Industries in connection with Senate Bill 896.

- *Rochester Medical Corporation v. C.R. Bard Inc , Tyco International (US) Inc., Tyco Healthcare Group LP, Novation LLC, VHA Inc., Premier Inc., and Premier Purchasing Partners*
U.S. District Court, Eastern District of Texas, Texarkana Division, C.A. No. 504-CV-060.
- *Smith Kline & French Laboratories, Ltd. and SmithKline Beecham Corp. d/b/a GlaxoSmithKline v Teva Pharmaceuticals USA, Inc.*
U.S. District Court, District of Delaware, Civil Action No. 05-197.
- *Massachusetts Institute of Technology v. Harman International Industries, Inc.*
U.S. District Court, District of Massachusetts, Civil Action No. 05-10990-DPW.
- *Tessera, Inc v. Micron Technology, Inc., Micron Semiconductor Products, Inc., Infineon Technologies AG, Infineon Technologies Richmond, LP, Infineon Technologies North America Corp., Qimonda AG*
U.S. District Court, Eastern District of Texas, Marshall Division, Civil Action No. 2-05cv-94.
- *Gary D. Carter and Mary Elaine Carter v. CSX Transportation, Inc.*
U.S. District Court, Western District of Kentucky, Louisville Division, Case No. 3:04-CV-487-S.
- *Anthony Park, Individually on Behalf Of Himself and On Behalf of All Others Similarly Situated v. The Thomson Corporation and Thomson Legal and Regulatory, Inc.*
U.S. District Court, Southern District of New York, Case No. 05 Civ. 2931 (WHP).
- *Merck & Co., Inc. v Teva Pharmaceuticals USA, Inc.*
U.S. District Court, District of Delaware, Civil Action No. 04-939.
- *Wavetronix, LLC v. Electronic Integrated Systems, Inc*
U.S. District Court, District of Utah, Central Division, Civil Action No. 2:05 CV 00073 BJS.
- *Richard Lee Young and Tonya Young v. CSX Corporation, CSX Transportation, Inc., Dick Spatafore, and Bobby Ambrose*
Circuit Court of Kanawha County, West Virginia, Civil Action No 03-C-2837.
- *WeddingChannel.com Inc. v. The Knot, Inc. and The Knot, Inc. v WeddingChannel.com Inc.*
U.S. District Court, Southern District of New York, Civil Action No. 03 CV 7369 (RWS).
- *Advanced Technology Materials, Inc. v. Praxair, Inc. and Praxair, Inc. v. Advanced Technology Materials, Inc. and Praxair, Inc. and Praxair Technology, Inc. v. ATMI, Inc. and Advanced Technology Materials, Inc.*
U.S. District Court, Southern District of New York, Civil Action No. 03 CV 5161 (RO) and U.S. District Court, District of Delaware, Civil Action No.: 03-1158-SLR.
- *In the Matter of the Arbitration Between Celanese LTD., et al., and JO Tankers AS, et al.*
- *Cross Medical Products, Inc v. Medtronic Sofamor Danek, Inc and Medtronic Sofamor Danek U.S.A. and Medtronic Sofamor Danek, Inc., Medtronic Sofamor Danek U.S.A. and SDGI Holdings, Inc v. Cross Medical Products, Inc*
U.S. District Court, Central District of California, Southern Division, Case No. SACV 03-110 GLT (ANx).

- *Robert Bosch GMBH v. TRW Automotive, Inc., TRW Vehicle Safety Systems Inc., and TRW Automotive U.S. LLC*
U.S. District Court, District of Arizona, Case No.: CIV-03-0045 PHX FJM.
- *Honeywell International Inc. against The GetPaid Corporation, a/k/a/ GetPaid Software, a/k/a Software Experts, Inc.*
American Arbitration Association, Case No: 18 133 00073 03.
- *Samsung Electronics Co., Ltd. v. Tessera Technologies, Inc. and Tessera, Inc. and Tessera Technologies, Inc. v. Samsung Electronics Co., Ltd., Samsung Electronics America and Samsung Semiconductor, Inc.*
U.S. District Court, Northern District of California, Oakland Division, Case No. C 02-05837 CW.
- *Merck & Co., Inc. and Merck Frosst Canada & Co. v. The Minister of Health and Novopharm Ltd.*
Canada Federal Court, Federal Court File No. T-1627-03.
- *Verizon California Inc., a California Corporation v. Ronald A. Katz Technology Licensing, L.P., a California limited partnership*
U.S. District Court, Central District of California, Case No. 01 CV-09871 RGK (RCx).
- *Massachusetts Eye and Ear Infirmary v. Novartis Ophthalmics, Inc. and QLT, Inc., QLT, Inc. v. Massachusetts Eye and Ear Infirmary, Evangelos S. Gragoudas, M D and Joan W. Miller, M D., The General Hospital Corporation v. Massachusetts Eye and Ear Infirmary, Evangelos S. Gragoudas, M.D. and Joan W. Miller, M.D.*
U.S. District Court, District of Massachusetts, Civil Action No. 01-10747-EFH.
- *Milliken & Company v. Mohawk Industries, Inc , et al./ Shaw Industries Group, Inc., et al./ Interface, Inc., et al.*
U.S. District Court, District of South Carolina, Spartanburg Division, Civil Action Nos. 7-02-3631-20/7-02-3632-20/7-02-3633-2.
- *Torah Soft, Ltd. v. Michael Drosnin*
U.S. District Court, Southern District of New York, 2000 Civ.: 0676 (JCF).
- *Dresses for Less, Inc., DFL Management Inc , The DFL Apparel Group, an unincorporated association, Allison-Che' Fashions, Inc., Bicci Studio Ltd., Garden City Dresses for Less, Inc , Donald Werner and Barbara Werner, individually and derivatively as shareholder of Stella N. Bishop Fashion Corp., and I.S B. Fashions Corp. v. CIT Group/Commercial Services, Inc. and The Uptown Credit Group, Inc.*
U.S. District Court for the Southern District of New York, C.A. No. 01 CIV. 2669 (WHP).
- *First Citizens Bank and Trust Company of South Carolina, as Conservator for Alex Compton, a minor and Alex Reid Compton and Lisa Compton, in their individual capacity, as the natural parents of Alex Compton, a minor v. CSX Transportation Inc.*
U.S. District Court, District of South Carolina, Anderson Division, Civil Action File No. 8-01-4613-20.
- *Merck & Co., Inc v. Teva Pharmaceuticals USA, Inc.*
U.S. District Court, District of Delaware, Civil Action No. 01-0048 -JJF.

- *The Toro Company v. White Consolidated Industries, Inc. and WCI Outdoor Products, Inc*
U.S. District Court, District of Minnesota, Civil Action No. 4-95-656.

PUBLICATIONS AND PRESENTATIONS

"Differentiated Products" in *Issues in Competition Law and Policy*, ed. D. Wayne Collins, American Bar Association, *forthcoming*

"When Fraud on the Patent Office Violates Section 2: A Mock Trial." Presented at the 52nd Annual Spring Meeting of the ABA Section of Antitrust Law, Washington, DC, April 1, 2004

"What Drives Consolidation?" Presented at the 28th Semiannual Members Meeting MIT/CRE, Cambridge, MA, May 14, 1998.

"Proving Unilateral Effects and Efficiencies in Merger Cases: A Demonstration." Presented at the 46th Annual Spring Meeting of the ABA Section of Antitrust Law, Washington, DC, April 1, 1998.

"Creating An Effective Diversion: Evaluating Mergers With Differentiated Products," *Antitrust*, Spring 1997.

"Economic Battles in the Antitrust Wars: Network Industries and Their Relevance to Antitrust in the Computer Industry." Presented at the Washington State Bar Association's Thirteenth Annual Antitrust, Consumer Protection and Unfair Business Practices Conference, November 8, 1996.

"Differentiated Products: New Tools for New Methods." Presented at NERA's Seventeenth Annual Antitrust & Trade Regulation Seminar, Santa Fe, NM, July 5, 1996.

"Market Definition Under Price Discrimination" (with J. A. Hausman and G. K. Leonard), *Antitrust Law Journal*, Vol. 64, No. 2 (Winter 1996).

"Learning-by-Doing in the Context of Antitrust Analysis" (with J. Hausman), April 1995.

"An Economic Analysis of ATM Surcharging," prepared for Southeast Switch Inc., October 5, 1995.

"Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et al.*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

Attachment 2

**VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.**

**An Analysis of the Competitive Effects of the Proposed Combination of the
Canadian National and Wisconsin Central Railroads**

Before the Surface Transportation Board

April 2001

I. QUALIFICATIONS

I am a Principal of Analysis Group/Economics, Inc. I received a Bachelor of Science degree (*cum laude*) in applied mathematics and economics from Brown University in Providence, Rhode Island, and a Doctor of Philosophy (Ph.D.) degree in economics from the Massachusetts Institute of Technology (MIT) in Cambridge. While at MIT, I specialized in industrial organization and econometrics. During my tenure at MIT, I was awarded Bradley Fellowships in public economics (which is the study of how public policy decisions affect private sector incentives), and I have completed extensive training in that field. My Ph.D. thesis on the structural changes in the U.S. rail industry fostered by the passage of the Staggers Act, and their economic significance, was prepared under the guidance of Professor Ann Friedlaender, a visionary in rail regulatory reform. My thesis and its progeny have featured significantly in previous assessments of the competitive effects associated with rail industry consolidation.¹ I am called upon frequently to referee scholarly articles pertaining to the U.S. rail industry that are submitted to a number of the leading applied microeconomics journals.

I have studied structural, regulatory, and competitive issues relating to the rail industry for more than 15 years. I have published several papers in academic journals relating to regulatory and competitive determinants of rail efficiency and viability. This body of research focused significantly (though not exclusively) on rail consolidation and rail regulatory reform. I continue to conduct research on transportation issues generally, and rail issues in particular. I

¹"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al.*) in *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse, Kluwer Academic Publishers, 1993; "Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt, *et al.*), *Journal of Productivity Analysis*, 4, 127-144, 1993; "Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender, *et al.*), *Journal of Transport Economics and Policy*, 131-152, May 1993; "Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt, *et al.*), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

recently assessed structural and competitive issues relating to the assimilation of Conrail into CSX and Norfolk Southern, and relating to Canadian National's acquisition of the Illinois Central railroad, both before the Surface Transportation Board. I presented testimony before the Board during the ANPR phase of the Board's rulemaking on Major Rail Consolidation Procedures.

I have extensive antitrust expertise and experience with respect, in particular, to the competitive ramifications of mergers and acquisitions. In the past seven years, I have conducted competitive analyses for over 120 proposed transactions. This work has spanned a broad array of industries, including: automobile manufacturing, grains and agricultural products, sugar, salt, fertilizers, chemicals, forestry products, machine tools, municipal waste, retail distribution, rail bed service equipment, petroleum and petroleum products, plastics, medical products and services, software, electronic funds transfer networks, lime, cement, computer and electronics manufacturing, and many others. In addition to the Board, I have presented my work before the United States Department of Justice (Antitrust Division), the Federal Trade Commission, the European Commission, the Canadian Competition Bureau, the Federal Reserve, and various state Attorneys General. My curriculum vitae is attached.

II. ASSIGNMENT AND FINDINGS

I have been asked by the Applicants to assess the competitive ramifications of the proposed combination of CN² and Wisconsin Central Transportation Corporation ("WC").

²Because I am conducting competition analysis based on the 1999 Waybill Sample, my shorthand references to CN and WC are based on that year, and include, unless otherwise indicated, railroads that were within the two corporate families as well as short lines with no outlets except CN or WC. Accordingly, "CN" refers hereafter to Canadian National Ry. Co., Grand Trunk Corp. and Grand Trunk W. R.R. Inc., Illinois Cent. Corp. and Illinois Cent. R.R. Corp., Chicago Cent. & Pac. R.R. Co., Cedar River R.R. Co., Duluth Winnipeg and Pac. Ry., and, in addition, the sole-served short lines: Gloster S. R.R. Co., Mississippi and Skuma Valley R.R. Co., Tennken R.R. Co., and Old Augusta R.R. Co., Inc. Likewise, "WC" refers to Wisconsin Central Ltd., Algoma C. Ry. Inc.,
(continued...)

Specifically, I have been asked to evaluate whether there exists any identifiable set of customers – either traffic originators (“shippers”) or recipients of products transported by rail (“receivers”) – who would face higher prices or reduced service levels as a result of a meaningful reduction in rivalry in the provision of rail service by the two railroads. By “meaningful reduction,” I mean a reduction in competition that would enable the merged railroad to sustain a significant price increase profitably (or, the economic equivalent, to profitably sustain a significant reduction in service). Absent any meaningful reduction in rivalry, the proposed combination cannot produce competitive harm.³ I applied microeconomic and quantitative principles to these issues that I commonly utilize in analyzing the potential competitive harm resulting from mergers and acquisitions more generally.

To this end, I examined the possibilities for competitive interactions between CN and WC. The first element in such examination relates to shippers for whom the proposed Transaction would reduce the number of serving railroads from 2-to-1, or from 3-to-2. Even a cursory review of a North American rail route map clearly demonstrates the lack of commonly served points or parallel trackage between the CN and WC route systems. Mr. Richard Bottorff,⁴ relying on an extensive analysis of the Official Railroad Station List, relevant switching tariffs, the Official Railway Guide, the Official Railway Equipment Register, information published by individual railroads on their Web sites, and consultations with operating and marketing personnel

(...continued)

Fox Valley and W. Ltd., Sault Ste. Marie Bridge Co., and, in addition the sole-served short lines: Escanaba and Lake Superior R.R., Lake Superior and Ishpeming R.R. Co., and Tomahawk Ry. Ltd. Partnership.

³I also evaluated the potential for anticompetitive harm stemming from the end-to-end (or “vertical”) nature of the proposed Transaction. Consistent with the findings in all other rail merger investigations, I found no potential for competitive harm stemming from such vertical issues. See Section IV, *infra*.

⁴The information and analysis provided by Mr. Bottorff and to which I refer is contained in Verified Statement of Richard L. Bottorff.

familiar with the locations, has concluded that there are no points where the number of rail carriers serving customers would, as a result of the CN/WC Transaction, be reduced from two to one (*i.e.*, there are no “2-to-1” shippers),⁵ or from three to two (*i.e.*, there are no “3-to-2” shippers).⁶ In the Superior-Chicago corridor, where WC provides haulage for CN, the number of serving railroads would change from five to four, as Mr. Bottorff discusses. No further economic analysis is necessary, given these conclusions, and I do not discuss them further.

Second, I considered the potential for a reduction in geographic competition between CN and WC to harm customers. Applicants asked me to examine geographic competition thoroughly, in order to provide the Board with an ample basis on which to conclude that this Transaction is “minor” under the Board’s regulations, and must be approved under the statutory standards. I principally discuss source competition, which can arise where two railroads each provide transportation of a specific good that moves to a common destination from different origins. In theory, receivers of a particular good in a particular location might rely on such source competition to obtain competitive prices. Accordingly, I performed a detailed analysis of

⁵One point in Canada – Oba, ON – is served by CN, WC, and no other rail carriers, so it is technically a 2-to-1 point. According to Mr. Bottorff, however, CN and WC do not compete for rail service to customers at Oba. There are no industries at that location, and WC only originates or terminates traffic at team tracks that it maintains there. (CN has no team tracks at Oba, and it neither originates nor terminates rail traffic there.) In 1999, 289 cars originated on WC at Oba, but all but one terminated in Canada on WC itself. The one exception was a single car terminating in Duluth, at a point that is served by a single railroad and is closed to switching for CN or any other railroad. Clearly, therefore, the CN/WC merger would not reduce competition for rail traffic to or from Oba.

⁶Traditionally, rail merger analysis has sought to identify 2-to-1 routes/locations because the STB has identified such service consolidations as problematic and typically in need of remedial action. The STB has historically examined 3-to-2 situations on a case-by-case basis, and generally required no remedial action in 3-to-2 corridor/location instances, due to the intensity of competition that typically remains when two railroads service a common corridor/location. The historical performance of two-rail competitive instances demonstrates that corridors/locations under these conditions continue to exhibit robust rail competition, thus confirming the efficacy of the STB’s policy decision in this regard. Three-to-two structural changes do not even presumptively merit remedial action, but it is reasonable to identify them so that parties with specific concerns may address them through case-by-case analysis.

every instance in which CN and WC participate in movements of the same product to the same destination. In every instance, I found that receivers at these destinations have access to very large volumes from alternative competitive sources for each relevant product. These alternatives will continue to provide significant competitive discipline of the pricing and service level of the combined firm. Thus, the proposed Transaction will not create any opportunities for the combined firm to raise prices or reduce service levels.⁷

Third, I considered the potential for competitive harm at locations where the Transaction results in no reduction in the number of serving railroads. Obviously, such instances afford no potential for reduced rivalry between the two railroads (since no rivalry existed in the first place). The potential for any reduction in competition due to "vertical foreclosure" is also non-existent, as the proposed combination has no impact on how either railroad prices or serves the locations where one of them currently offers the only source of rail transportation.

III. ANALYSIS OF SOURCE COMPETITION

A. Overview

I provide an illustration of source competition in Exhibit 1. Consider customers receiving a particular product that take delivery in a destination BEA⁸ designated DBEA-1. If the two merging roads in the upper panel -- merging railroad 1 ("MRR1") and merging railroad 2

⁷We also examined the alternative form of geographic competition ("destination competition"), which can arise where two railroads each originate traffic of a specific good from a common location, though this traffic may be headed to different destinations. Theoretically, shippers located at a particular origin might rely on their choice of railroads that can move the same product to different destinations to obtain competitive prices and service levels. Our examination identified a very limited set of relevant flows, all from Chicago, that I describe in note 31, *infra*, and that Mr. Bottorff addresses.

⁸"BEA" refers to the Bureau of Economic Analysis (BEA) Economic Areas. The continental United States is divided into 172 BEAs. I discuss the economic basis and implications of a BEA-based analysis in the next section.

(“MRR2”) – were the only providers of service into DBEA-1 as in the top panel of Exhibit 1, the competitive problem would be obvious.

The competitive interaction may be more subtle, however. In the bottom panel of Exhibit 1, the same logistics exist, except that merging railroad 2 hands off its originating traffic of the relevant product to railroad 3 for ultimate delivery into DBEA-1. Here, too, receivers of the relevant product located in DBEA-1 may see them as rivals – merging railroads 1 and 2 both serve as originators of the relevant product, and as such, represent alternative sources of supply. A merger between the two merging railroads may, if there is no bottleneck at the destination, allow the combined firm to internalize this rivalry, and profitably raise the price (or reduce the service levels) for transportation of the relevant product into DBEA-1. By internalizing this rivalry, the combined firm recognizes that customers can no longer “play the rivals off one another,” since the potential lost profits merging railroad 1 might lose to merging railroad 2 by raising its price too high (and losing the business) is no longer “lost” by the combined firm.

In order to assess the prospect that such anticompetitive behavior would be in the profit-maximizing interest of the combined firm as a result of this Transaction, it is constructive to turn to standard techniques and analyses undertaken by federal antitrust enforcement officials in their assessment of the competitive ramifications of mergers and acquisitions. In the U.S. Department of Justice and Federal Trade Commission Merger Guidelines, this analysis includes a consideration of relevant product and geographic markets where the merging firms actually overlap (or can potentially overlap). Once identified, these relevant markets are evaluated with respect to the degree of competitive overlap between the merging firms, the number and size of actual rivals to the merging firms in the relevant markets, and the number and size of potential rivals to the merging firms in the relevant markets. Relevant markets where the merging firms

have a very limited competitive overlap, or where other significant actual or potential rivals exist, are generally considered immune to potential anticompetitive harm resulting from the proposed merger.

In this context I undertook such an analysis of product/destination pairs to consider, more expansively, the potential competitive effects of the proposed combination between CN and WC. I began by identifying specific product/destination pairs (*e.g.*, corn delivered to the Chicago BEA) where CN and WC originate, terminate, or otherwise handle a significant portion (as identified by a "50/10" screen, described below) of the product destined for the relevant geographic area.⁹ For the purposes of this report, I defined as a candidate for a more complete competitive analysis any traffic terminating in a BEA for which each of CN and WC in 1999: 1) originated, terminated, or interchanged (henceforward "participated" in) 10% or more of the total carloads of a commodity delivered to the BEA, if the combined share calculated on this basis without double-counting CN or WC participation would have been 50% or more of total delivered volume;¹⁰ or 2) originated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined originated share of the two roads would have been 50% or more; or 3) terminated 10% or more of the total carloads of a commodity delivered to a BEA, if the combined terminated share of the two roads would have been 50% or more. I describe my

⁹ALK Technologies, Inc. ("ALK") performed the analysis pursuant to my specifications, using the 1999 STB Waybill Sample.

¹⁰To avoid double-counting in the participation screen, the combined share had to be at least 10 percentage points higher than the greater of either railroad's participation share. I illustrate this point in Appendix A. Although the three screens may appear logically redundant, they are not. In product/DBEA pairs where CN and WC jointly participate in some movements (for example, CN originates and WC terminates the same movement), it is possible that the originating- or terminating-railroad screen will identify a flow that the participating-share screen does not. I illustrate this point also in Appendix A. In fact, the second approach noted in the text (originating-railroad screen) identified some flows not identified by the participating-share screen. (These additional flows are shown in the second panel of Exhibit 3.) The third approach (terminating-railroad screen) did not identify any additional flows.

specifications for this screen in Appendix A.¹¹ (I sometimes refer to the destination BEAs involved in these flows as “DBEAs” or “50/10 DBEAs” and to the combination of a traffic flow and a DBEA as “product/DBEA pairs” or “50/10 product/DBEA pairs.”)

I am of course using this so-called “50/10” analysis not to draw any final conclusions about competitive effects, but as a screen to identify traffic that warrants further analysis. Traffic that the 50/10 test identifies may not be traffic for which CN and WC are in fact the effective rail constraints on each other, any more than a number of other railroads moving large volumes of traffic that is source-competitive with the CN and WC traffic. In any event, the screen does not provide any indication of the extent of source competition after the Transaction from other railroads, modes, and sources, which is the critical point and which I examine extensively in a separate analysis.

As the Board is aware, the use of quantitative screens is common in competition analysis. The Herfindahl-Hirschman Index (“HHI”) is commonly used for this purpose by antitrust enforcement agencies although this index is not appropriate for use in the rail industry. I understand that the ICC has explained that the predictive power of “indices such as the HHI are less directly linked to market power in the railroad industry than they are in manufacturing or

¹¹As the Board is aware, the Waybill Sample may in the case of “Rule 11” movements identify locations as destinations or origins that are in fact points of interchange. This limitation means that the Waybill may overstate CN and WC shares of movements to a BEA.

retailing.”¹² The ICC’s conclusions remain correct today.¹³ Moreover, it is not practicable to apply HHIs to the rail industry.¹⁴

At the same time, a screen is a useful starting point in considering competitive effects. I find that the 50/10 screen, although itself an index, provides a reasonable filtering device with which to identify candidate product/DBEA pairs for further analysis. Parties in past merger proceedings have used the 50/10 analysis as a screen, and the ICC and the Board have accepted such evidence for that limited purpose.¹⁵ I have applied the screen to rail traffic only, not taking into account truck competition. A substantial reduction in source competition is unlikely if one

¹²*Union Pac. Corp. – Control – Chicago and N.W. Transp. Co.*, ICC Finance Docket No. 32133, Decision No. 25, slip op. at 86 (ICC served March 7, 1995) (“UP/CNW”). The ICC pointed out that, in manufacturing and retailing, “changes in industry output and changes in the number of firms operating in the industry are highly correlated.” *Id.* Railroads, in contrast, generally have excess capacity, and therefore have “the economic incentive to reduce rates, expand output, and increase profits.” *Id.*

¹³Thus, while mergers have reduced redundant capacity, the route system of an existing rail carrier exhibits relatively high fixed costs, a general if not entirely uniform absence of barriers to expansion (i.e., the general absence of capacity limits along most specific routes), and highly differentiated rail services. These characteristics are present in sufficient degree to provide strong incentives for railroads to fully utilize capacity and to cheat on any attempt to collude, as well as the ability to expand or shift capacity across various routes. In industries with these characteristics, an HHI-based screen of competitive overlaps (and a preliminary assessment of their severity using HHIs) tends to significantly overstate the potential for competitive harm.

¹⁴Market shares measured by the Waybill Sample, which captures output, say little about capacity. It would not be practicable to measure the capacities of all railroads serving a relevant area, as doing so would require analyses of line densities, yard and main line operations and capacities, signaling and other technologies, and so forth.

¹⁵See *Union Pac. Corp. – Control & Merger – Southern Pac. Rail Corp.*, 1 S.T.B. 233, 396 (1996) (“UP/SP”) (relying on evidence relating to source competition presented by applicants’ witnesses Barber and Peterson, which included 50/10 screen as well as additional volume-based screen); Verified Statement of Richard J. Barber, UP/SP-23, at 371, 482-86 (filed Nov. 30, 1995), UP/SP; Verified Statement of Richard B. Peterson, *id.*, at 233-34 (same); *Union Pac. Corp. – Control – Missouri Pac. Corp.*, 366 I.C.C. 462, 528-29, 676-77 (1982) (“UP/MP”) (relying on evidence relating to source competition presented by DOJ witness, which included 50/10 screen; ICC agreed with DOJ that the screen probably overstated potential loss of source competition because product competition would mitigate possible reductions in source competition). The ICC rejected 50/10 analysis as a basis for drawing conclusions about competition, as distinct from using it as a screen. UP/CNW, Decision No. 25, slip op. at 79.

of the Applicants has less than 10% of the relevant rail traffic, or if Applicants together would have less than 50%.¹⁶

The results of this screen, which I present generally in Exhibit 2, indicate that there are few product/destination pairs where CN and WC participate significantly in movements of the same product from different origins to the same destination. Exhibit 2 provides a list of the product/DBEA pairs and number of relevant carloads shipped by CN and WC for each pair that is generated after applying the participating, originating, or terminating 50/10 screen with respect to CN and WC. There are 31 product/DBEA pairs that are identified under the 50/10 screen when any CN/WC participation in traffic moving to a DBEA is counted, and an additional 21 product/DBEA pairs when CN and WC shares as originating railroads of traffic moving to a DBEA are counted.¹⁷ (As I have already noted, our terminating-railroad screen revealed no pairs in addition to those identified by screening the participation shares.)

As can be seen in Exhibit 2, most of the 50/10 product/DBEA pairs involve combined CN/WC traffic volumes that are very small individually. For example, there are only 21 product/DBEA pairs where the combined volumes of the two railroads amount to more than a carload a day. Of those product/DBEA pairs, there are three that would amount to one train a week. Some are less than 100 carloads a year. I understand that the Board has stated that it must approve a transaction of this type "unless there will be adverse competitive impacts that are both

¹⁶A combined share of under 50% implies that there is at least one other railroad (and probably more) originating or terminating significant volumes of the relevant product that move to the candidate DBEA. Given the expansive networks of many North American railroads, the likelihood for substantial additional volumes to be diverted from other destinations into the candidate DBEA (a concept I term "divertible capacity" that is developed, *infra*) is extremely high and obviates the need for any further analysis.

¹⁷In Exhibit 2, "PRR" and "ORR" refer, respectively, to "participating railroad" and "originating railroad."

'likely' and 'substantial.'"¹⁸ The small CN/WC volumes within the 50/10 product/DBEA pairs indicate that this Transaction will not entail any such anticompetitive effects.

Critical Loss. Despite the insubstantial nature of these actual/potential interactions, Applicants asked me to conduct a detailed analysis of the potential for competitive harm. As already indicated, the ultimate question one seeks to answer in assessing the competitive consequences of a proposed merger is whether the merged firm will have the incentive and ability, post-merger, to raise prices (or reduce service). Accordingly, for the product/DBEA pairs identified by the screen, I evaluated the ability (both actual and potential) of other providers of transportation services to prevent the combined firm from raising prices (or reducing service) after the proposed combination. Other providers of transportation services provide such competitive discipline if they collectively have the ability and incentives to take sufficient volumes from the combined firm in the event of price increase so as to render such an increase unprofitable.

To find a price increase profitable, the combined firm must believe that the added contribution it will earn due to the higher price it will receive on the traffic it continues to carry after the price increase will be greater than the contribution it will lose as a result of some of the volume it currently serves moving to another provider (or ceasing to be moved) in response to the higher price. If the combined firm believes that its customers will seek to move a sufficient portion of their volumes to other providers and that these other providers have the capacity and incentive to take on this additional volume, then the losses associated with the price increase will be expected to exceed the benefit of the higher price earned on the retained volume. This

¹⁸*Kansas City S. Industries, Inc. – Control – Gateway W. Ry. Co.*, STB Finance Docket No. 33311, slip op. at 2 (STB served May 1, 1997).

minimum sufficient volume that renders such a price increase unprofitable is commonly referred to in antitrust as the “critical loss.”¹⁹ If the combined firm perceives that customer movements to others will exceed this “critical loss” then the merged firm will not have an incentive to raise prices after the combination. If the firm attempted an increase, it could not profitably sustain it. Thus, no anticompetitive harm can arise.²⁰ In Appendix B, I describe how I computed the critical loss for each product/DBEA pair identified by the 50/10 screen.

Competitive Alternatives and “Divertible Capacity.” Having identified candidate product/DBEA pairs for further analysis, and having identified the critical loss volumes under each relevant product/DBEA pair that would ensure that the merged firm will not have the incentive to raise price and harm customers post-merger, I then sought to determine the extent to which rivals have the ability and capacity to supply the traffic demands of a sufficient volume of traffic for each product/DBEA pair to impose the critical loss. To complete this level of the analysis I considered the available “divertible capacity” that could serve each relevant product/DBEA pair.

The concept of “divertible capacity” identifies the potential entry/expansion of additional capacity into the market at issue. If the combined firm were to raise prices for a particular product/DBEA pair, it would create additional profit opportunities and incentives for other railroads (and other providers of transportation more generally) to capture additional volume at

¹⁹Critical loss analysis has become a central part of many merger investigations at U.S. enforcement agencies and elsewhere. For an early treatise on the concept, see J. Hausman, G. Leonard, and C. Velturo, “Market Definition Under Price Discrimination,” 64 *Antitrust L.J.* 367 (1996).

²⁰Note that reductions in service quality can be treated in the same fashion. In this instance, it is the “service-adjusted price” that may be increased by the combined firm if the loss in volume is sufficiently small. Once again, however, movements to rivals above the critical loss will discipline the combined firm with respect to its service level.

that DBEA. To the extent that these railroads (and their customers) have ready access to additional volumes that are currently serving other destinations, these incentives will cause these railroads (and their customers) to divert these volumes into the targeted product/DBEA. Where the available divertible capacity significantly exceeds the critical loss, it should deter the combined firm from raising its price, and would make it impossible for the combined firm profitably to sustain a price increase if it tried. I explain the methodology to identify divertible capacity in Appendix C.

Truck Divertible Capacity. Finally, as an additional consideration, I evaluated the magnitude of truck-based competition, including truck-based divertible capacity. Reeble Associates performed this analysis, pursuant to my specifications.²¹ I am aware that, in the *Fox Valley* decision, the Board observed that, “[o]n the whole . . . motor carrier competition within Wisconsin is, as WCTC indicates, pervasive and growing.” *Wisconsin Cent. Transp. Corp. – Continuance in Control – Fox Valley & W.*, 9 I.C.C.2d 233, 242 (1992). The more recent data amply confirm this view. In general, truck shares for traffic moving to the DBEAs identified in the 50/10 screen were very high (both inside and outside Wisconsin). Although these high truck shares are suggestive of strong truck competition, I did not draw conclusions simply from modal shares as to the potential of truck competition to constrain any post-merger price increases by a combined CN/WC. Instead, I conducted a truck-divertibility study, the method for which I describe in Appendix D, and the results of which I discuss below at the conclusion of subsection B.2.

²¹The Reeble data were only available on a 4-digit STCC level. As Mr. Bottorff confirms with respect to the products we are considering, a STCC-7 product will generally have similar characteristics regarding truck transportation as other products within the same STCC-4 group.

B. Competitive Analysis of 50/10 Product/DBEA Pairs

Exhibit 3 provides a detailed breakdown of the competitive analyses undertaken for each 50/10 product/DBEA pair. In every pair, I find that the proposed combination will pose no threat to competition. I discuss the specifics of my findings below. I begin with a general discussion of the information provided in Exhibit 3, and how these data relate to my findings.

Exhibit 3 consists of two panels. Each panel relates to flows of a commodity to a BEA. The first panel identifies participating-railroad-based 50/10 product/DBEA pairs and the second panel identifies originating-railroad-based 50/10 product/DBEA pairs above and beyond those identified by the participating-railroad screen. (Each panel is organized in descending order by the combined CN/WC volume in the product/DBEA pair.) As I have already noted, there are no separate terminating-railroad-based 50/10 product/DBEA pairs displayed in Exhibit 3 because each of those was identified by the 50/10 participation-based shares. The initial columns in Exhibit 3 identify the 7-digit product code (or "STCC") and the DBEA under consideration. The data upon which I relied to determine whether a competitive analysis was warranted for each product/DBEA pair appear next. All 50/10 product/DBEA pairs involve movements where the post-merger share of traffic for the combined firm exceeds 50%, and is at least 10 share points higher than either constituent firm's share prior to the combination. As I have already noted, the CN/WC volumes involved in these flows are generally small.

1. Treatment of "Bottleneck" Destinations

Seven of the product/DBEA pairs identified in Exhibit 3 involve Green Bay, WI as the DBEA. Mr. Bottorff has determined that Green Bay represents a WC bottleneck – WC is the only railroad with track serving the Green Bay BEA. As a bottleneck railroad, WC – prior to the Transaction – already must participate in all rail flows into and out of Green Bay. As a result,

the proposed combination does not enhance the degree of control in rail service that the WC has to or from Green Bay. With no change in the degree of control, no diminution in horizontal competition associated with the proposed combination can occur; therefore, I do not perform any divertible capacity analysis on these product/DBEA pairs, which I identify with a "Yes" in the bottleneck column of Exhibit 3.²²

The only potential for anticompetitive harm that could theoretically arrive in such bottleneck circumstances is the potential for vertical foreclosure. I discuss the absence of vertical foreclosure issues in rail movements (the "one lump" approach) in Section IV, *infra*.

There are other 50/10 pairs where, for example, WC terminates 100% of rail shipments of a given product into a DBEA (albeit involving small volumes), *e.g.*, WC terminates all of the 80 carloads of iron bars into Appleton, WI that CN and WC originate, and Iron Bars/Appleton qualifies as a 50/10 product/DBEA pair under the originating traffic screen. I understand that Appleton, is not a bottleneck DBEA as at least one other railroad serves Appleton. Insofar as other railroad(s) offer potentially competitive access into the DBEA under consideration, a divertible capacity analysis is appropriate. If these alternative railroads do not offer an economically reasonable route into the relevant DBEA, then the DBEA represents an effective bottleneck and is subject only to the foreclosure consideration provided in Section IV. I identify with a "P" (possible) in the bottleneck column the product/DBEA pairs for which WC or CN terminated 100% of the traffic but as to which the DBEAs are served by other railroads. As a

²²The product/DBEA pairs involving Green Bay are instances where WC and CN both originated traffic into Green Bay in volumes that pass the 50/10 originating threshold. This "competitive overlap" is illusory, however, since WC already controls CN's access into Green Bay.

conservative measure, I perform divertible capacity analyses for each of these 50/10 product/DBEA pairs.

2. Interactions at Non-Bottleneck Destinations

For each non-bottlenecked 50/10 product/DBEA pair (those with a "No" or a "P" in the bottleneck column of Exhibit 3), I perform an analysis of competition available through entry/expansion of transportation services by rail and, in certain instances, truck. First, I determine the critical loss required to defeat a 5% price increase on shipments destined for the 50/10 product/DBEA under study. As I explain in Appendix B, I evaluate the critical loss at a 50% gross margin (contribution) and at an 80% gross margin, to provide a plausible range of critical loss values.²³

Having determined the critical loss volumes, I compute available divertible capacities and compare them to the critical losses. If the divertible rail capacities significantly exceed the critical loss, then the ability of other railroads to divert traffic into the DBEA under study will provide sufficient competition, post-merger, to prevent anticompetitive pricing by the combined firm. I initially consider what for convenience I will call direct divertible capacity ("DDC") and compute the ratio of DDC to the critical loss.

Historically, in critical loss-based analyses for mergers in other industries, I have sought to identify available divertible capacity of at least 2-3 times the critical loss to ensure sufficient post-merger competition. As a highly conservative measure in this case, I conclude that

²³I have presented critical loss/divertible capacity analyses in the context of merger-related antitrust investigations in a wide variety of industries and to many antitrust/regulatory agencies. Industries where I have conducted critical loss/divertible capacity analyses include: paper, sugar, salt, fertilizers, chemicals, chemical derivatives, railroad equipment, textiles, television advertising time, and banking services (just to name a few). I have presented these analyses to the U.S. Department of Justice, the U.S. Federal Trade Commission, the Federal Reserve Board, the Federal Communications Commission, the Securities and Exchange Commission, and the European Commission, among others.

available DDC is sufficient to obviate any further analysis if the DDC/critical loss ratio exceeds 10.

As detailed in Exhibit 3, the available DDC/critical loss ratio in almost every 50/10 product/DBEA pair exceeds 10. Indeed, in most pairs, the available DDC dramatically dwarfs the requisite critical loss. For example, for corn to Chicago (which is the largest product/DBEA pair), the 127,154 carloads of DDC are over 88 times the critical loss (1,438 carloads), calculated on the most conservative of the contribution assumptions that I employ.²⁴ Woodpulp to Wausau is the second largest product/DBEA pair. For that pair, the 22,000 carloads of DDC are over 39 times the critical loss of 560 carloads, again calculated on the most conservative contribution assumption.²⁵ For the third largest pair, printing paper to Milwaukee-Racine, the DDC is just under 70 times the critical loss of 530 carloads. These are by no means the largest ratios. Given the sizeable practical and readily available rail capacity that can be brought to bear on the 50/10 product/DBEA pairs, I conclude that the proposed combination will not enable the combined firm to raise prices anticompetitively.

For three of the 50/10 product/DBEA pairs in which the combined firm participates in less than 100% of the movements of a commodity to a DBEA, the ratio of DDC to critical loss, calculated on the conservative contribution assumption, is less than my conservative benchmark.

²⁴As discussed by Mr. Bottorff, over 50% of the originations of corn moving to Chicago attributed to WC in the 1999 Waybill Sample were due to an equipment shortage at WSOR. WSOR has since cured the shortage and is moving corn to Chicago in single-line service. WC movements have accordingly decreased. Therefore, the ratio in the future of DDC to critical loss will likely be even higher than 88, if the 50/10 screen identifies this product/DBEA pair at all.

²⁵As I explain in Appendix B, the size of the critical loss is determined in part by the percentage contribution margin on the traffic that the combined firm would lose if it were to increase prices. The larger that margin, the smaller is the amount of lost traffic that would render the price increase unprofitable. Because what we are examining is small volumes of incremental traffic, which do not require additional trains or even locomotives, I used marginal contribution rates of 50% and 80%. At the plausible 80% rate, the ratio of DDC to critical loss for corn/Chicago is 141 and for woodpulp/Wausau is 63.

of 10.²⁶ These are small volumes.²⁷ In any event, as can be seen on Exhibit 3, for two of these three pairs (synthetic rubbers/Duluth-Superior, and paper waste scrap/Columbus, OH) the ratios of DDC to critical loss are still more than twice the ratios of 2-3 that I ordinarily consider sufficient. Available DDC for these pairs is thus significant and more than adequate to discipline pricing.

There is also a small group of low-volume product/DBEA pairs in which CN and WC participate in 100% of movements of the commodity to the 50/10 DBEA and the DBEA is not a bottleneck. The combined CN/WC volumes for each of these pairs involve less than a carload a day. For this small subset of product/DBEA pairs, there was by definition no DDC because in 1999 no other railroad participated in movements of the 7-digit STCC to the DBEA.²⁸ For this subset, and for the three small instances discussed above where the critical loss ratio was less than 10, we analyzed what I term supplemental divertible capacity ("SDC"). These SDC volumes are computed according to the criteria set forward in Appendix C. Generally, the methodology of the supplemental analysis is similar to that of the primary analysis. The main difference is that an origin can qualify as a source of divertible capacity if a railroad other than CN/WC moved the relevant 4-digit STCC product group from that origin to the 50/10 DBEA, although not the same 7-digit product, so long as the railroad is shipping that 7-digit STCC to

²⁶Where the DDC/critical loss ratio calculated on the 50% marginal contribution assumption is less than 10, it is also the case arithmetically that DDC is less than the CN/WC volume for the product/DBEA pair.

²⁷For synthetic rubbers to the Duluth-Superior BEA, the total of CN and WC participation is 520 carloads; for paper waste/scrap to Columbus, OH, 80 carloads; and for specialty transformers to Houston, 120 carloads.

²⁸This is not to say that no other railroads ever participate in these product/DBEA pairs but only that no other railroad participated in these pairs in the 1999 Waybill Sample. Given the small volumes in these product/DBEA pairs, it is possible that other railroads are participating but their movements were not sampled. It may also be possible in some of these 100% cases, however, that either CN or WC represents an effective bottleneck. If and where that is true, these pairs would be more appropriately considered under the one lump analysis of Section IV.

some other BEA from that same origin. As with the DDC volumes, I compare the available SDC volumes with the requisite critical loss volumes. These ratios (where applicable) appear in the right-hand most columns of Exhibit 3. As the results clearly indicate, almost every remaining 50/10 product/DBEA pair has access to additional volumes that are more than enough to ensure competitive pricing by the combined firm, post-Transaction. The three small exceptions pose no competitive problem.²⁹

Finally, I also consider the competitive discipline that truck competition might bring to bear on the 50/10 product/DBEA pairs where the DDC/critical loss ratio is below 10. These instances consist of the 100% cases, and the three less-than-100% cases discussed above. The results of this analysis are provided in Exhibit 4. As previously noted, truck data is available at the 4-digit STCC level. We estimated the available 7-digit STCC level truck divertible capacity by multiplying the available 4-digit STCC truck divertible capacity by the proportion of each rail 4-digit STCC group moving to the DBEA that was comprised of the relevant rail 7-digit STCC product. This analysis revealed very large volumes of divertible capacity moving by truck.³⁰ For example, as I have already described, the DDC available by rail for synthetic rubbers destined for Duluth is five to just under nine times the critical loss amount. Because the rail DDC was less than ten times the critical loss volume, I undertook an analysis of divertible capacity available by using trucks, based on the relevant 4-digit STCC volumes. As shown on Exhibit 4, at the

²⁹The three small exceptions are specialty transformers to Houston (CN/WC combined volume is 120 carloads), wood particle board to Wausau (160 carloads), and iron bars to Appleton (80 carloads). As shown in Exhibit 4, for each of these product/DBEA pairs, the ratio of truck divertible capacity to critical loss is huge. Further, Mr. Bottorff discusses why it is likely that CN and WC are not in fact competing with each other with respect to specialty transformers moving to Houston, and additional reasons why a combined CN/WC could not in any event exercise market power with respect to any of the three pairs.

³⁰These very large ratios provide additional confidence that any imprecision in our estimate of 7-digit STCC truck divertible capacity would not change the conclusion that such capacity is ample.

estimated 7-digit STCC level, the divertible capacity available through truck shipments is almost 501 times the critical loss computed on the conservative assumption of 50% marginal contribution.³¹

IV. COMPETITIVE ISSUES RELATING TO SOLE PROVIDER ("BOTTLENECK") LOCATIONS

There are locations within the CN and WC rail systems where CN or WC, as the case may be, is the only provider of rail service.³² Also, there are small railroads that serve additional locations and that connect only to CN or only to WC.³³ Obviously, no competitive rivalry at these sole-served locations is eliminated as a result of the proposed combination, since, by definition, either CN or WC, as the case may be, cannot serve these locations.³⁴ Thus no "horizontal" antitrust issues can arise at these locations as a result of this combination.

Competitive concerns surrounding sole-provider locations typically involve "vertical" issues. Under a vertical theory of anticompetitive harm, the possessor of market power in one market uses this power as leverage to further its market power position in that market, or to extend its market power into other markets. In the context of the rail industry, concerns (in

³¹An alternative form of geographic competition can arise where different railroads move the same commodity from the same origin to different destinations. The only points that CN and WC have in common in the U.S. are Superior and Chicago. (Oba is the only such point in Canada.) We applied the 50/10 screen to originations, and identified four product flows from Chicago (empty TOFC returns, plastics, carbon dioxide, and paper waste and scrap). For each of these flows, rail divertible capacity, and/or truck competition as discussed by Mr. Bottorff, are ample to ensure that CN/WC would be unable profitably to sustain an anticompetitive price increase.

³²In contrast to my usage in Sections II and III, in this Section IV "CN" and "WC" refer only to railroads within the respective corporate families.

³³All traffic on an exclusively served shortline from or to locations outside its network must travel through the network of the sole-servicing third-party railroad.

³⁴The 50/10 analysis that I have already described would identify traffic flows from these locations for which CN and WC may be in source competition with each other.

theory) arise where a railroad that provides sole access to various locations might use this sole access to disadvantage rivals, or extend its power beyond its current reach.

Economists and policy analysts of the rail industry have recognized that it is highly unlikely that such extensions of localized sole provider power can be extended as a result of a proposed combination where such an extension would not be possible absent a merger. The basic economic concept is referred to as the "one lump" theory. I provide a numeric illustration of the analysis in Appendix E.

Recognition that a bottleneck carrier's incentive and ability to extract all available economic rents associated with the overall traffic move is independent of its ownership position of any originating (or interconnecting) routes represents the long-standing basis upon which the ICC and STB have evaluated the end-to-end components of rail mergers. Shortly after passage of the Staggers Act, the ICC stated:

A carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself . . . [Shippers have asserted] that a neutral destination carrier . . . has an incentive to merge with an origin carrier in order to drive the through rate to the optimum profit-maximizing level. We are not convinced . . . that a carrier with a destination monopoly for steam coal traffic will generally be unable to execute the described rate strategy or, on the other hand, that a neutral destination carrier that is unable to execute the strategy would be significantly more capable of raising the through rate to the level that maximizes its profits after affiliation with an origin carrier.

UP/MP, 366 I.C.C. at 538.

The ICC reiterated the analysis in its *BN/SF* decision:

Our experience has been that where a single rail carrier controls a destination segment, and no transportation alternatives are available, the shipper will be captive and the single rail carrier will be able to capture the preponderance of the economic profits. Conversely, when certain factors are present that limit a carrier's

ability to take full advantage of a bottleneck, those factors will remain in place as effective safeguards after the merger.

Burlington N. Inc. – Control and Merger – Santa Fe Pac. Corp., 10 I.C.C.2d 661, 751 (1995).

The Court of Appeals, in affirming this decision, noted that the “one lump” theory relied on by the ICC is a “broadly accepted economic proposition.” *Western Resources, Inc. v. STB*, 109 F.3d 782, 788 (D.C. Cir. 1997).³⁵

As it had in *BN/SF* (10 I.C.C.2d at 751), the Board recently rejected arguments that “the general applicability of the one-lump theory to mergers requires a set of explicit and rather implausible assumptions” and that “the circumstances in which the pure one-lump theory is likely to hold represent an ‘extreme example.’” *CSX Corp. – Control and Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Decision No. 89, slip op. at 70 (STB served July 23, 1998) (“*CSX/NS/CR*”).³⁶

Leaving aside the economic principles outlined in Appendix E that provide the analysis behind the one lump approach to end-to-end rail merger issues, and the extensive history at the ICC and the STB (in which the one lump approach has served as the cornerstone of the agency’s consideration of vertical foreclosure issues), I understand that CN has offered further insurance that such vertical issues will not arise in the context of the proposed CN/WC combination. CN has committed to keeping all existing active gateways affected by the Transaction open on commercially reasonable terms. I find that this commitment provides safeguards against

³⁵I understand that the STB has left the door open for allegedly aggrieved shippers to demonstrate that any purported vertical foreclosure will lead to competitive injury (typically, higher prices of reduced service quality). See, e.g., *BN/SF*, 10 I.C.C.2d at 748 (quoting *Union Pac. Corp. – Control – MO-KS-TX Co.*, 4 I.C.C.2d 409, 476 (1988)).

³⁶For example, the Board pointed out that the one lump theory “does not predict that bottleneck carriers will always be able to execute a perfect price squeeze; it merely predicts that vertical integration will not increase the bottleneck carrier’s market power over shippers.” *CSX/NS/CR*, slip op. at 69.

potential competitive problems that are extremely unlikely to arise. Be that as it may, with these assurances in place, any shipper concerns (regardless of their economic or business veracity) should be eliminated.

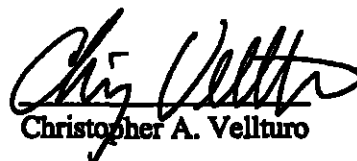
CONCLUSION

I have examined competitive issues related to the proposed Transaction between CN and WC. It is clear to me that the Transaction will have no anticompetitive effects.

VERIFICATION

I, Christopher A. Velturo, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on ~~March~~ ^{April} 6, 2001.


Christopher A. Velturo

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Dr. Vellturo has performed economic analysis and provided expert testimony in the context of mergers and acquisitions, antitrust litigation, intellectual property litigation, and other matters. He has provided economic analysis in over one hundred mergers and acquisitions spanning a broad array of industries. He has appeared before the U.S. Department of Justice, the Federal Trade Commission, various states' Attorneys General offices, the Federal Reserve Bank Board of Governors, and various Federal Reserve Banks on merger-related issues. He has also appeared at hearings before the European Commission. Dr. Vellturo has performed economic analysis relating to litigation matters in more than twenty-five antitrust actions and more than one hundred intellectual property actions. He has testified in U.S. District Court and before the American Arbitration Association.

Prior to joining Analysis Group/Economics, Dr. Vellturo was a Senior Vice President at National Economic Research Associates (NERA) and a Director of Cambridge Economics. He was previously a research associate for Dean Ann F. Friedlaender of the Massachusetts Institute of Technology.

Dr. Vellturo has published on a variety of topics, including merger and acquisition-related efficiencies, price discrimination, differentiated product analysis and market definition. His research has appeared in leading academic journals, including *Antitrust*, the *Antitrust Law Journal*, and the *Journal of Economics and Management Strategy*. Dr. Vellturo is a recipient of the Bradley Fellowship in Public Economics and has served as a referee for *American Economic Review* and *Rand Journal of Economics*.

Dr. Vellturo holds a Ph.D. in Economics from the Massachusetts Institute of Technology and a Sc.B. in Applied Mathematics and Economics from Brown University, where he graduated *magna cum laude* and *Phi Beta Kappa*.

EDUCATION

- 1989 **Ph.D. in Economics, Massachusetts Institute of Technology**
Primary Fields: Econometrics, Industrial Organization
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- 1983 **Sc.B. in Applied Mathematics and Economics (*magna cum laude*), Brown University**

PROFESSIONAL EXPERIENCE

- 2000-Present **Analysis Group/Economics**
Principal - Direct research and provide expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Expert reports and testimony presented in U.S. District Court. Presented antitrust economic analyses to Federal Trade Commission, U.S. Department of Justice, Federal Reserve Bank Board of Governors and the European Commission.
- 1996-2000 **National Economic Research Associates, Inc.**
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- 1991-1996 **Cambridge Economics, Inc.**
Director - Directed research and provided expert testimony on a variety of microeconomic issues with particular emphasis on antitrust, intellectual property, and mergers and acquisitions. Prior expert testimony provided in U.S. District Court and before the American Arbitration Association. Presented antitrust economic analyses to U.S. Department of Justice, Federal Trade Commission (Antitrust Division), state Attorneys General offices, and the Federal Reserve Bank Board of Governors.
- 1989-1991 **National Economic Research Associates, Inc.**
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- 1987 **Department of Economics, M.I.T.**
Teaching Assistant - Undergraduate econometrics.
- 1985-89 **Dean Ann F. Friedlaender, M.I.T.**
Research Associate - Participated in research relating to transportation pricing and capital allocation responses to regulatory changes.
- 1983-85 **National Economic Research Associates, Inc.**
Research Associate - Conducted research on a wide variety of issues including antitrust, railroad rate setting, optimal landfill pricing, and PCB and asbestos abatement strategies.

AWARDS AND PROFESSIONAL ACTIVITIES

Recipient, Bradley Fellowship in Public Economics, 1987 and 1988-89

M.I.T. Departmental Fellowship, 1986

Phi Beta Kappa, Brown University, 1983

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Journal Referee for *American Economic Review* and *Rand Journal of Economics*

Member, American Economic Association

SELECTED TESTIFYING EXPERIENCE (PAST FOUR YEARS)

- *Massachusetts Businessman's Association Inc., v. Blue Cross and Blue Shield of Massachusetts, Inc.*
Superior Court of the Commonwealth of Massachusetts, (C.A. No. 97-02279)
- *Union Carbide Chemicals & Plastics Technology Corporation v. Shell Oil Company, Shell Chemical Company and CRI Catalyst Company.*
U.S. District Court, District of Delaware, C.A. No. 99-274 (SLR)
- *Carl Zeiss Jena GmbH, Carl Zeiss Inc., v. Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc. and Bio-Rad Laboratories, Inc., Cornell Research Foundation Inc., v. Carl Zeiss Jena GmbH, Carl Zeiss Inc*
U.S. District Court, Southern District of New York, C.A. 98 CIV 8012
- *Sulzer Intermedics, Inc. v. Medtronic, Inc., et al.*
U.S. District Court, Southern District of Texas, (C.A. H-97-3526)
- *Joseph E. Seagram & Sons, Inc., The Seagram Company Ltd. and JDC S.A. de C.V. v. St Maarten Spirits, Ltd., and St. Maarten Spirits Limited*
Superior Court of the State of California, for the County of Los Angeles, (No. BC 191 681)
- *General Electric Capital Corporation v. DirecTV, Inc., Hughes Electronics Corporation and General Motors Corporation*
U.S. District Court, District of Connecticut, 3.97 CV 01901 (PCD)
- *Bristol Technology, Inc. v. Microsoft Corporation*
U.S. District Court, District of Connecticut, C.A. No. 398-CV-1657 (JCH)
- *America Online, Inc. v. AT&T Corporation*
U.S. District Court, Eastern District of Virginia, C.A. No. 98-1821-A
- *Forty-Niners Truck Plaza, Inc. v. Unocal Corporation*
Superior Court in and for the County of Sacramento, California, Case No. 531830
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U.S. District Court, Southern District of New York, C.A. No. 97-501 MMS

- ***CBS Broadcasting Inc., et al., v. PrimeTime 24 Joint Venture***
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U.S. District Court, Southern District of New York, C.A. No. 97-CTV-9483 (RPP)
- ***Wang Laboratories, Inc. v. FileNet Corporation***
U.S. District Court, District of Massachusetts, C.A. No. 94-12141
- ***Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company***
U.S. District Court, District of Massachusetts, C.A. No. 94-40200
- ***The Toro Company v. White Consolidated Industries, Inc. and WCI Outdoor Products, Inc.***
U.S. District Court, District of Minnesota, C.A. No. 4-95-656
- ***Polo Ralph Lauren, L.P.. v. The Magnin Company, Inc.***
American Arbitration Association Commercial Arbitration Tribunal, Case No. 74-181-1094-96
- ***Roll Systems, Inc. v. Wallace Computer Services Inc.***
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- ***Century Wrecker Corporation v. Chevron, Inc.***
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- ***Federal Trade Commission v. New Balance Athletic Shoe, Inc.***
Boston, Massachusetts, File No. D9268
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American Arbitration Association, Arbitration No. 13 133 00388 93
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AFFIDAVITS

- Expert Report in connection with *Union Carbide Chemicals & Plastics Technology Corp. and Union Carbide Corp. v. Shell Oil Company, Shell Chemical Company and CRI Catalyst Company* October 2000, U.S. District Court, District of Delaware, C.A. No. 99-274 (SLR).
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- Expert Report in connection with *Omniglow Corporation v. Unique Industries, Inc.*, November 1999 — U.S. District Court, District of Massachusetts, (C.A.No. 99-30052-MAP).
- Expert Report in connection with *Joseph E. Seagram & Sons, Inc., The Seagram Company Ltd. and JDC S.A. de C.V. v. St Maarten Spirits, Ltd., and St. Maarten Spirits Limited*, August 1999 — Superior Court of the State of California, for the County of Los Angeles, (No. BC 191 681).
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- Expert Report in connection with *Ashraf M. Dahod v. Bay Networks, Inc. and LanCity Corporation, Inc.*, September 1998 — U.S. District Court, District of Massachusetts, C.A. (No. 96-11907 REK).
- Expert Report in connection with *Harris Corporation, et. al v. Atmel Corporation*, June 1998 — U.S. District Court, Eastern District of Virginia, C.A. (No. 98-98-A).
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- Supplemental Expert Report in connection with *Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company*, October 1997 — U.S. District Court, District of Massachusetts, C.A. No. 94-40200).

- Expert Report in connection with *Neles-Jamesbury, Inc. v. Fisher Controls International, Inc. and Fisher Service Company*, August 1997 — U.S. District Court, District of Massachusetts, C.A. No. 94-40200.
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- Expert Report in connection with *Century Wrecker Corp. v. Chevron Inc.*, March 1996 — U.S. District Court, Western District of Pennsylvania, C.A. No. 89-1452.
- Expert Report in connection with *Medtronic v. Pacesetter and St. Jude Medical Inc.*, February 1996 — American Arbitration Association.
- Expert Report in connection with *Cedar Ridge Trailer Sales et al. v. National Community Bank of New Jersey et al.*, December 1995 — Superior Court of New Jersey, C.A. No. BER-L-09277-92.
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- Expert Report in connection with *Minnesota Mining and Manufacturing Co. v. Norton v. Bay State Abrasives Co.*, 1994 — U.S. District Court, District of Delaware, C.A. No. 89-533 (JIF).

PUBLICATIONS AND PRESENTATIONS

"What Drives Consolidation?" Presented at the 28th Semiannual Members Meeting MIT/CRE, Cambridge, MA, May 14, 1998.

"Proving Unilateral Effects and Efficiencies in Merger Cases: A Demonstration." Presented at the 46th Annual ABA Antitrust Meeting, Washington, DC, April 1, 1998.

"Creating An Effective Diversion: Evaluating Mergers With Differentiated Products," *Antitrust*, Spring 1997.

"Economic Battles in the Antitrust Wars: Network Industries and Their Relevance to Antitrust in the Computer Industry." Presented at the Washington State Bar Association's Thirteenth Annual Antitrust, Consumer Protection and Unfair Business Practices Conference, November 8, 1996.

"Differentiated Products: New Tools for New Methods." Presented at NERA's Seventeenth Annual Antitrust & Trade Regulation Seminar, Santa Fe, NM, July 5, 1996.

"Market Definition Under Price Discrimination" (with J. A. Hausman and G. K. Leonard), *Antitrust Law Journal*, Vol. 64, No. 2 (Winter 1996).

"Learning-by-Doing in the Context of Antitrust Analysis" (with J. Hausman), April 1995.

"An Economic Analysis of ATM Surcharging," prepared for Southeast Switch Inc., October 5, 1995.

"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt et al.), *Productivity Issues in Services at the Micro Level*, ed. Zvi Griliches and Jacques Mairesse, Kluwer Academic Publishers, 1993.

"Cost Effects of Mergers and Deregulation in the U.S. Rail Industry" (with Berndt et al.), *Journal of Productivity Analysis*, 4, 127-144, 1993.

"Rail Costs and Capital Adjustments in a Quasi-Regulated Environment" (with Friedlaender et al.), *Journal of Transport Economics and Policy*, 131-152, May 1993.

"Deregulation, Mergers and Cost Savings in Class I U.S. Railroads, 1974-1986" (with Berndt et al.), *Journal of Economics and Management Strategy*, Vol. 1, No. 2, 1992.

"Observations on Pre-Trial Bargaining Models," MIT Mimeo, September 1989.

"The Deregulation of the U.S. Rail Industry: Efficiency and Equity in Attaining Rail Viability," Ph.D. Dissertation, Department of Economics, MIT, 1989.

"Achieving Cost Efficiency Through Merger: Evidence from the U.S. Rail Industry," Presented at the American Economic Association Symposium on Mergers and Acquisitions, New York, December 29, 1988.

APPENDIX A

Detailed Specification of the Source Competition Analysis

We analyzed CN/WC participation (as intermediate, originating, or terminating carrier) in flows of a product to a DBEA, and divertible capacity for the product/DBEA pair. ALK Technologies, Inc. applied the 50/10 screen and performed the divertibility study pursuant to my specifications.

Data Utilized: The data utilized to complete the source competition analysis included shipment information from the 1999 STB Waybill Sample. Initially, total rail movements (in tons, carloads, and dollars) were collected by ALK. Product-level data were collected at the 7-digit STCC code level¹ for each destination BEA² (henceforward "DBEA") for traffic in which

¹For the purposes of this analysis, I assumed that 7-digit STCC level product codes represented a logical framework for the competitive analysis. This relatively narrow product grouping does not account for the potential that receivers of some products may have to substitute products classified under one 7-digit code for products classified under another 7-digit code. This product definition therefore may not address specifically some source-based competition where the products delivered by CN and WC are not directly substitutable but interact more indirectly. However, in any such instance, taking into account the other product would likely reduce the CN and WC shares of that more broadly defined product market. In any event, when we move beyond identifying potential problem flows under the 50/10 screen to examining the post-merger constraints on those flows, this specific approach to product definition is highly conservative: I do not consider any movements of any products other than those in the subject 7-digit STCC code to be potentially substitutable in disciplining the combined firm's conduct in each relevant product/DBEA pair.

²I selected a BEA-based regional classification over a station-based classification (multiple stations are typically found within each BEA). First, it is highly likely that products delivered into a common BEA (but to different stations) compete with one another on a downstream basis. For example, Oriented Strand Board ("OSB") (a wood-fiber based building product) delivered to warehouses located at different stations will ultimately face reshipment to final customers. To the extent that these warehouses compete for significant business against one another, the delivered prices of OSB across these stations will be tightly linked (though not necessarily identical). Given that BEAs are defined to identify units of common economic activity, the BEA-based approach is appropriate in this regard. Also, given the general proximity of stations within a BEA, and the low incremental cost of transporting products on rail once they are loaded and moving, rail traffic will travel significant incremental distances to obtain relatively small incremental delivered prices. Again, this implies that delivered prices across regionally-clustered stations will be very closely linked. Further, a narrower geographic focus would have identified fewer CN and WC flows as warranting further analysis. For purposes of screening, therefore, the BEA approach is conservative.

CN or WC participated.³ For each product/DBEA pair for which at least one of CN or WC participated in delivering volume, the total rail volumes terminating⁴ at that DBEA were also collected, to determine the total share of delivered volumes in which CN and WC participated.⁵

Identifying Candidates For Further Analysis: I sought to capture product/DBEA pairs where CN and WC each currently participate in the shipments of a non-trivial portion of total deliveries into the DBEA and where the combined firm will possess a significant share of this traffic. These shares were determined using three techniques: participating share, originating share and terminating share.

For the purposes of this report, I defined a product/DBEA pair to be a candidate for a more complete competitive analysis with respect to traffic terminating in a BEA for which each of CN and WC: 1) originated, terminated, or interchanged (henceforward “participated” in) 10% or more of all delivered volume, and if the combined participating share calculated on this

³In this context “participation” includes all traffic where CN or WC is the initial rail carrier on the move, handles the traffic in an intermediate role, or terminates the traffic at the DBEA. Specific analyses with respect to originated and terminated traffic are also considered. As the Waybill Sample identifies only railroads receiving revenues as a long haul carrier, “originating,” “terminating,” and “participating” do not include carriers participating in a movement that receive revenue only from switching or haulage charges.

⁴Multi-carrier rail movements where participating railroads bill separately for their services (so-called “Rule 11” traffic) result in at least two waybills, one with an apparent termination and one with an apparent origin, at the point of interchange. Neither, either or both of these waybills may be captured in the Waybill Sample. Some origins and terminations in our analysis are therefore not true origins and terminations of rail movements, but rather interchanges of Rule 11 traffic.

⁵For purposes of the analysis, I assume that in every instance where CN and WC provide transportation services for the same product destined for a DBEA, the products being delivered by the two railroads are perceived as substitutable by some identifiable set of customers. Although I believe it to be generally accurate for most of the products under consideration, it bears mention that, for purposes of the present analysis, this is a conservative assumption. It is possible (and indeed likely) that in some instances, the products delivered by the two railroads – while being classified in the same 7-digit STCC – are not reasonable substitutes for one another. Where that is the case, any concern for a reduction in competitive rivalry between CN and WC evaporates, because no rivalry existed in the first place.

basis without double-counting would have been 50% or more of total delivered volume:⁶ or 2) originated 10% or more of the total delivered carloads of a product/DBEA pair in 1999, and if the combined originating share of the two railroads was 50% or more; or 3) terminated 10% or more of the total delivered carloads of a product/DBEA pair in 1999, and if the combined terminating share of the two railroads was 50% or more. For example, for STCC code 0113215 (corn and maize products excluding popcorn) delivered into the Chicago-Gary-Kenosha BEA (#64), CN originated 29% of all carloads (7,092 delivered cars relative to DBEA total of 25,252 cars), while WC originated 28%. This product/DBEA pair is a candidate for further analysis under the origination screen, since CN and WC each accounted for 10% or more of originations into the DBEA of product 0113215, and the combined share of the two railroads exceeds 50% (57%).

A generic illustration of the participation screen would be as follows: where 100 carloads of a 7-digit STCC commodity terminate in a BEA, and (a) CN originated 35 of them and interchanged 15 of those carloads with WC (and 20 carloads with another carrier for termination at the same BEA), while (b) WC originated no volume, but terminated the 15 carloads of the CN, and (c) an additional 30 carloads is handed to WC by another carrier. In this instance, CN's participating share would be 35%, WC's participating share would be 45%,

⁶As I have already noted in the main body of my Verified Statement, in order to avoid double-counting under the participating-railroad screen, the combined share had to be at least 10 percentage points higher than the greater of either railroad's participation share.

and the combined participation share (with no double-counting of the 15 carloads that CN/WC interchange with each other) would be 65%, and therefore subject to further analysis.⁷

⁷Note that this example would not be captured as a candidate for further analysis if only the originating and terminating screens were used, since WC originates no traffic and CN delivers no traffic to the final DBEA. Conversely, the originating screen would identify a flow not identified in the participating screen in the following example involving interchange between CN and WC: a product/DBEA pair with 100 carloads, where CN originates 40 carloads that it also terminates; WC originates 10 carloads that it interchanges to CN for termination, and other railroads solely handle the remaining 50 carloads. The originating screen would identify this flow, because CN has a 40% share of originations, WC has a 10% share, and their combined share is 50%. The participating screen, however, would not identify this flow. As participating railroads, CN has a 50% share, WC has a 10% share, and their combined share avoiding double-counting of WC's 10 carloads is 50%. The participation screen does not identify this flow because the combined CN/WC share is not 10 percentage points greater than the larger of their individual participation shares.

APPENDIX B

Computing Critical Loss

The critical loss depends on the marginal contribution that the combined firm loses on the volumes that it no longer sells as the result of some customers taking their business elsewhere (or simply curtailing their demand) when the combined firm attempts a price increase. As an illustrative example, consider a merger in which the combined firm would earn \$100 in revenue for each car delivered and incur \$30 in marginal costs per car, for a per-car contribution of \$70 per car. The combined firm will move 1,000 cars if it keeps its per-car price at \$100. Total revenue will equal \$100,000, and total contribution will equal \$70,000 $((\$100/\text{car} - \$30/\text{car}) \times 1,000 \text{ car})$. Assume the combined firm considers whether to raise its price by \$5 per car. If the combined firm loses 100 cars as a result of the price increase, then its total contribution under the price increase is $((\$105 - \$30) \times 900 \text{ cars}) = \$67,500$. Thus the posited anticompetitive (*i.e.*, non-cost based) price increase will not be in the profit-maximizing interest of the firm, since it will lose more than the critical loss in volumes as a result of the price increase. If the volume loss were only 50 cars as a result of the price increase, then contribution under the price increase would be $((\$105 - \$30) \times 950 \text{ cars}) = \$71,250$. In this instance, the volume loss resulting from the price increase is below the critical loss, and the combined firm would have the incentive to raise prices. The following formula determines the critical loss for a 5% price increase as a function of the percentage profit level (denoted by π):

$$\text{Critical Loss (expressed as a \% of total volume)} = .05 / \pi$$

In the example provided above, the critical loss volume is $.05/0.7$ or 7.14% of total cars sold, in other words $.0714 \times 1,000 \text{ cars} = 71.4 \text{ cars}$. If the combined firm in the above example believes it will lose more than 71.4 cars of business (7.14% of its present volume) in response to a 5%

price increase, then the combined firm will not increase price anticompetitively as a result of the merger.

In my analysis, I use a range of plausible marginal contribution rates per car for rail services to determine a range of critical loss values for the combined CN/WC, post-transaction. As discussed in my detailed findings concerning each product/DBEA combination, the volumes that a combined CN/WC would have to lose in order to make a significant price increase unprofitable are very small. I therefore use marginal contribution rates of 50% and 80%. These are the assumed contribution margins on small incremental volumes, which generally do not require a new train or, ordinarily, an additional locomotive.⁸ Given that these volumes represent additional carloads appended onto existing mixed-manifest trains, the avoided costs associated with not carrying these additional cars are very low, probably below 10% of revenue (implying a marginal contribution rate in excess of 90%). Avoided costs are indeed limited to direct fuel savings and, in some instances, car leasing/rental (or equivalent opportunity cost) savings.⁹ These percentages are different from ordinary revenue-to-variable cost ratios, which identify margins on larger aggregations of traffic, and therefore reflect more of the overall costs

⁸ The only exception to the *de minimis* nature of the critical loss volumes relates to corn. The critical loss volumes in corn are approximately 1,400 carloads, which, due to the nature of corn transportation and handling, could result in a reduction of about 14 unit trains per year. Thus the avoided costs of not delivering these tons might be somewhat higher. Nonetheless, I expect that the incremental profit foregone on lost corn transportation would be quite high, well in excess of 50%. Also, given the massive availability of divertible capacity in corn, my finding that there can be no anticompetitive price increase in corn transportation is essentially independent of the assumed marginal profitability rate (and its associated critical loss volume).

⁹ In this context, it bears noting that *total* train operating expenses were 24% of rail freight revenue for Class I railroads in 1999 (Form R-1, Schedule 410, lines 419 and 13). Most of these operating expenses would not be incremental in the event a few cars were removed from a mixed-manifest train. Thus, the avoided costs associated with the carloads comprising the critical loss volume would likely be considerably lower than 24%, implying a marginal contribution rate well in excess of 76%.

of railroad operations and correspondingly smaller contribution margins.¹⁰ I then determine whether sufficient alternative sources of the relevant product are available to customers at the DBEA so that the combined firm would find an anticompetitive price increase unprofitable. For example, for STCC code 2499110 (OSB), the combined firm, if it retains all of its current volumes, will handle approximately 4,200 cars into the Chicago BEA at current prices. Assuming a profit rate of 70%, the combined CN/WC would not undertake a 5% price increase if it expected that it would lose $(0.05 / 0.7) \times 4,200 = 300$ cars of traffic, and the increase would be unprofitable if it tried to do so.

¹⁰ I also spoke with ALK about the nature of the "avoided" cost exercise associated with a critical loss analysis. ALK indicated that a 20-50% (measured as a percent of net revenue) avoidable cost rate – implying a 50-80% marginal contribution rate – was highly conservative in that the likely avoidable cost would be considerably lower (thereby implying a higher lost marginal contribution rate and correspondingly lower critical loss volume), even for considerably larger incremental volumes than those under consideration in this analysis.

Rail Divertible Capacity

Exhibit 5 provides the framework under which I derive divertible capacity and its various forms. Here (for simplicity), three railroads (merging railroad 1, merging railroad 2, and railroad 3) are delivering the relevant product into destination DBEA1, each from a distinct origin (OBEA1, OBEA2, and OBEA3, respectively). My focus, at present, is on railroad 3 (not involved in the hypothetical merger between railroads 1 and 2). Under current market conditions, railroad 3 is transporting the relevant product to both DBEA1 and another destination, denoted DBEA2. Note that both the railroad and its originating customer at OBEA3 find it in their profit maximizing interest to ship volumes to two locations (DBEA1 and DBEA2).

The fact that the customer at OBEA3 and railroad 3 are willing to ship to both locations provides important information. At the margin (that is for the last shipment to both destinations), railroad 3 and the customer must earn the same profits on both deliveries. To see why this is so, consider a situation where the profits at DBEA1 for the railroad and its originating customer were higher than at DBEA2. In this situation, railroad 3 and the customer would agree to shift some of the volume currently destined to DBEA2 over to DBEA1, where they could agree to divide up the additional profits earned so that railroad 3 and its customer both earned additional profits. This diversion of volumes from one destination to the other would continue until the marginal profitability of traffic was equal across the two destinations.¹¹

¹¹Note that it is possible that railroad 3 and the customer would find that it was always more profitable (at current prices) to ship to DBEA1. In this instance, one should observe no volume destined for DBEA2 in the first place, thus violating the construct of the example.

Now consider the rest of the schematic provided in Exhibit 5. Say the combined railroad (the amalgamation of merging railroads 1 and 2) was to unilaterally raise the delivered price of the relevant product into DBEA1 by 5%. Receivers at DBEA1 would seek alternative sources of supply at some lower delivered price. Railroad 3 is already serving customers in DBEA1. Customers at DBEA1 would seek to acquire additional volumes from railroad 3 (and its originating customer at OBEA3) for some price below the new, higher price offered by the combined railroad. Would railroad 3 and its customer at OBEA3 have an incentive to provide additional volume at DBEA1? The answer is yes. Railroad 3 and its customer at OBEA3 would be able to provide additional volume at DBEA1 at a price that is higher than it currently earns at OBEA1. They would need only to undercut the merged firm a small amount to secure additional business (say by offering a price 2% below the new higher price being charged by the merged firm).

Where would railroad 3 source this volume? The shipper at OBEA3 may have some unused capacity, so that it could increase production and sell the increase profitably at the new higher prices available at DBEA1. This is plausible, because much of the time industries operate at least slightly below capacity. For example, a significant portion of the relevant products at issue in the candidate 50/10 DBEAs is forest products (such as lumber, wood particle board, and OSB). Production can be expanded relatively readily in the short-medium run by accelerating forest harvesting, and/or more fully utilizing board-forming equipment.

I chose to study a different potential shift in sources by examining rail movements of the same product (the same 7-digit STCC) or rail movements of products with similar transportation characteristics (the same 4-digit STCC) from origins with competitive rail routes to the BEA. In Exhibit 5, railroad 3 is already moving the 7-digit STCC commodity to

DBEA1. If a combined CN/WC instituted a significant price increase, railroad 3 and the shipper at OBEA3 would divert volume of the 7-digit STCC now serving DBEA2 into the more profitable opportunities afforded to them at DBEA1. This was our "direct" divertibility analysis. It is direct not in the sense that it is a stronger competitive constraint than the "supplemental" analysis, discussed below. Rather, where a railroad is already shipping the same STCC-7 product to the same DBEA, that simply was a logical place to begin the analysis.¹²

It is also possible that the incentives created by the higher prices instituted by the combined firm may create an incentive for railroad 3 to begin shipping additional volumes into DBEA1 even where it had not done so historically. The price flexibility provided by a price increase instituted by the combined firm may render shipments to DBEA1 profitable for railroad 3 and its customer at OBEA3 where such shipments had not been profitable otherwise. The additional volume that originates from locations that currently do not serve a specific DBEA may well represent "supplemental divertible capacity" if the posited higher prices create profitable opportunities at DBEA1 where none existed previously.

¹²One might question whether such a redirection might harm customers at these other destinations as volumes are shifted away from them in response to the purported price increase at the destination under study. First, given that the volumes would be redirected to defeat the price increase if the price increase were undertaken, the railroad serving the destination under study will have no incentive to actually increase prices. In applied economic strategic interaction analyses such as the one under consideration here, it is the *credible threat* of such a movement that disciplines prices; in equilibrium, no such price change (and no such shifting of volumes) takes place and no customer at some other destination is required to seek alternative sources. Second, if the redirection to the 50/10 DBEA were to occur, the customers at these other destinations would seek to bid volumes away from still other destinations, including (quite likely) destinations other than those that are candidates to discipline the original destination under study. If so, then a "domino-effect" would ensue, thereby tightly linking the prices of all delivered products across all destinations. Thus would imply a national (or at the very least a super regional) market. In this context, the proposed combination of CN and WC would not involve any significant accumulation of rail traffic under common control, and therefore could not adversely affect competition. Finally, these concerns are further mitigated where the available divertible volumes are drastically higher than the critical loss and come from multiple DBEAs (thus the impact of diverted critical loss volumes from any single DBEA has a *de minimis* impact on competition at those DBEAs).

For the purposes of this analysis, I considered various sources of divertible capacity for a candidate 50/10 product/DBEA. These sources are depicted schematically in Exhibits 5 and 7 and algorithmically in Exhibits 6 and 8. Initially, I had analysts at ALK identify all railroads that originated relevant STCC code traffic destined for the 50/10 DBEA and the various OBEAs of that traffic (OBEA3 in Exhibit 5). ALK then identified all shipments of the relevant 7-digit STCC originated by the same railroad (railroad 3) out of this set of identified OBEAs that was destined for DBEAs other than the 50/10 DBEA under analysis (these other DBEAs are depicted schematically as DBEA2 in Exhibit 5). These volumes were treated as "direct divertible capacity" ("DDC") in evaluating the potential for the combined CN/WC to raise the price of delivered products into the relevant 50/10 DBEA. If railroad 3 used CN/WC to originate/terminate/interchange the shipment of the 7-digit STCC between OBEA 3 and DBEA1 but there is an alternative route between OBEA3 and DBEA1 that is less than 1.35 times the weighted average of railroad 3's route over CN/WC, then the shipment is also considered DDC.¹³ The specifications for how ALK determined DDC volumes are provided in Exhibit 6.

I also evaluated the potential for supplemental divertible capacity ("SDC") to arise from OBEAs not currently providing the particular 7-digit STCC product into the 50/10 DBEA. This analysis was necessary in those cases where CN and WC originated 100% of the volume

¹³Thus, I excluded any such divertible capacities if they required access to the CN or WC system for any part of their route into the 50/10 DBEA, *unless* the divertible capacity could find its way into the DBEA through some alternative, non-circuitous route. In this context, circuitry is defined as a total haul distance greater than 135% of the observed weighted average distance of movements of that commodity to that DBEA on routes on which CN or WC is the originating carrier, a terminating carrier, or an intermediate carrier. See Exhibit 6 for more detail. Mr. Bottorff confirmed this approach, as he discusses in his verified statement. Of total divertible capacity (DDC and SDC), 68% would travel less distance on a route not involving CN or WC than on the CN or WC route; 93% would travel no more than 10% further; and 95% would travel no more than 25% further.

of a product into a DBEA, and I also had it performed where the ratio of available DDC to the critical loss did not meet my conservative requirement of 10. I applied two screens to identify SDC volumes. First, I included all volumes of the 7-digit product originating from an OBEA and destined to BEAs other than the 50/10 DBEA under consideration, if a railroad was originating products in the same 4-digit STCC from the OBEA into the 50/10 DBEA without using CN/WC to originate/terminate/interchange the shipment. If the 4-digit STCC shipment used CN/WC to terminate/interchange the shipment, I determined whether that railroad had an alternative route to the 50/10 DBEA whose distance was not more than 1.35 times the weighted average of that railroad's 4-digit STCC routes over CN or WC, as in the algorithm for DDC. The schematics of this method are depicted in Exhibit 7. I reasoned that products in the same 4-digit STCC exhibit similar transportation characteristics (in terms of handling requirements and value/weight considerations). These OBEAs offered economically attractive sources from which a railroad could divert volumes of the 7-digit STCC product to the 50/10 DBEA, since other products with similar transportation characteristics were already being shipped by the railroad into the 50/10 DBEA. The specifications for this algorithm are provided in Exhibit 8.

Second, I included additional volumes under this supplemental divertible capacity category if the other railroad was originating the 7-digit STCC from an OBEA to DBEAs other than the 50/10 DBEA, and had a route from the OBEA to the 50/10 DBEA that is less than the observed distances of the routes in which CN or WC participated in moving the same 7-digit product into the 50/10 DBEA.¹⁴ This analysis (in effect) draws a rail-distance-based radius

¹⁴I sought to disqualify long-distance shipments of very small volumes in determining the practical shipping distance of the relevant commodity. To this end, ALK determined the shipping distance of the 90th percentile carload of the movements in which CN or WC participated and used this distance as the relevant screen. For example, if 200 carloads of a given commodity were shipped by WC and/or CN into the DBEA in a given year, ALK captured the distance traveled by the 180th most-distant carload.

around the DBEA and classifies any volume originating in this area as divertible volume, subject to the ability of other railroads to access the DBEA on a route that is no longer than the routes in which CN or WC participated.¹⁵ The algorithm for this 90th percentile screen is described in Exhibit 8.

If these available "divertible capacities" (either direct, supplemental, or both) into a 50/10 DBEA for the relevant product significantly exceeded the "critical loss" volume required to discipline pricing by the combined railroad, I determined that no competitive concerns would arise as a result of the proposed combination of CN and WC from a reduction in source-based competition on the relevant product into the 50/10 DBEA. I display our findings in Exhibit 3 and discuss them in the text of my verified statement.

¹⁵Again, I excluded all volumes that would require access to the CN and WC system in order to qualify as supplemental divertible capacity, unless the volumes could reach the 50/10 DBEA in a non-circuitous fashion without accessing CN or WC.

APPENDIX D

Truck Divertible Capacity—Method

We identified truck divertible capacity using a methodology analogous to the methodology that we used for rail. Reebe Associates performed the truck divertible capacity analysis pursuant to my specifications. We identified the volumes of the relevant 4-digit STCC commodity that are moving by truck to destinations other than the 50/10 DBEA from truck origins with competitive truck routes to the 50/10 DBEA. To determine that a truck route from an origin to a 50/10 DBEA was competitive, we simply limited our search for truck origins to those that are no further by highway from the 50/10 DBEA than the weighted average distance of 1999 truck movements of the relevant 4-digit STCC to the 50/10 DBEA. Because the Reebe data is at a 4-digit STCC level, we then estimated truck divertible capacity at the 7-digit STCC level as follows: we determined the relevant 7-digit rail movement to the 50/10 DBEA as a percentage of rail movements of the 4-digit STCC and multiplied this percentage by the 4-digit STCC truck divertible capacity.

Illustration of One-Lump Analysis

Consider a highly simplified example where a single railroad (railroad 1) acts as the sole provider of rail access between producer A located at origin OBEA A, and customer C located at destination DBEA C. (See top panel of Exhibit 9.) It costs producer A \$30 to produce its product that is demanded by customer C. Customer C has another source of the relevant product (from a location other than OBEA A), but its delivered cost to customer C is \$100. In this instance, railroad 1 is in a position to charge \$70 for transportation (subject to regulatory constraints), thereby capturing the entire economic surplus represented as the gains to trade between product A and customer C.

I extend the analysis to involve two origins (OBEA A and OBEA B) in the bottom panel of Exhibit 9. At both origins the producers produce product at \$30 per unit. Railroad A serves only OBEA A and railroad B serves only OBEA B. Neither road owns tracks that run to destination DBEA C (I also assume for clarity that railroads A and B serve no other destinations where there is any significant demand for the product at issue). I also assume that the incremental cost of transportation for railroad A and railroad B from their origins to the point at which they interchange with railroad 1 is \$10. In this instance, railroad 1 will price its transportation services at \$60, once again capturing the entire surplus available. The total cost of transportation for movements of product from OBEA A to DBEA C is \$70 and OBEA B to DBEA C is \$70, as source competition will drive railroad A's and railroad B's price for its segment of the movement to its incremental cost of \$10. The total delivered price paid by customer C will remain \$100, and producers at A and B will earn \$30 in revenue.

Now assume that railroad 1 acquires railroad A. Regardless of the policy the newly merged road takes with respect to railroad B, the price paid by customer C will remain \$100, and the revenue earned by producers will remain at \$30. Even if the merged railroad were to deny railroad B access to customer C, there would be no change in the price paid by customer C or the revenues earned by the producer at Origin A. Importantly, in this scenario the merged railroad has no incremental incentive to deny producer B/railroad B access to customer C as a result of its merger with railroad A.¹⁶ The merged railroad would still have an incentive to use railroad B if its marginal cost for this product/DBEA pair is less than that of the merged railroad A.

¹⁶Note that it might be argued that the merged railroad might seek to shut producer B out of the marketplace at C entirely, thus curtailing supply into C and driving prices up. However, railroad 1 already had the same ability (and, critically, the same incentives) to foreclose producer B from C prior to the merger. Thus, the merger changes nothing.

Exhibit 1
Illustrative Examples of Source-Based Rail Competition

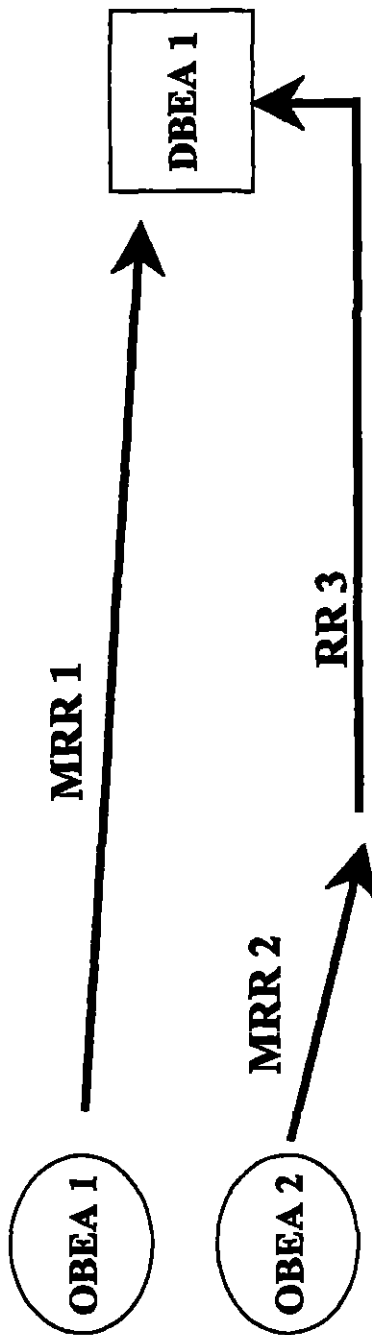
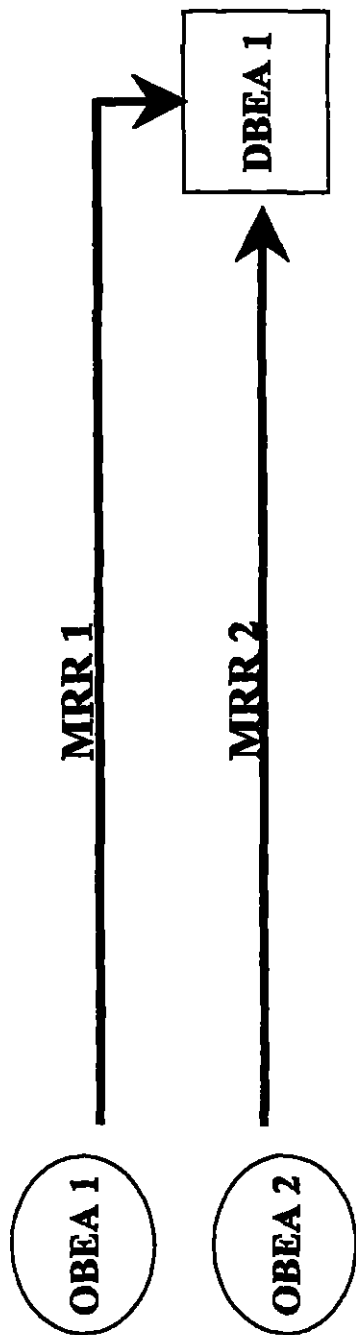


Exhibit 2

Product/BEA Pairs for 50/10 Analysis

PRR 50/10 Analysis of DBEAs

DBEA	Destination BEA Name	STCC7	Commodity Code Name	Carloads by CN/WC
64	Chicago-Gary-Kenosha, Il-In-Wi	0113215	Corn Eac Popcorn	14,384
64	Chicago-Gary-Kenosha, Il-In-Wi	2499110	Oriented Strand Board, Nec	4,200
63	Milwaukee-Racine, Wi	2621115	Newsprint	1,320
100	Des Moines, Ia	2631117	Pulpboard/Fiberboard	1,240
71	Nashville, Tn	2621216	Groundwood Paper,Uncoated	1,200
63	Milwaukee-Racine, Wi	2421184	Lumber Rough/Dressed	1,180
11	Harrisburg-Lebanon-Carlisle, Pa	2621345	Printing Paper Assorted Varieties	1,160
49	Cincinnati-Hamilton, Oh-Ky-Ia	2611135	Woodpulp	1,040
151	Reno, Nv	2621216	Groundwood Paper,Uncoated	880
57	Detroit-Ann Arbor-Flint, Mi	2621345	Printing Paper Assorted Varieties	876
15	Richmond-Petersburg, Va	2621216	Groundwood Paper,Uncoated	600
109	Duluth-Superior, Mn-Wi	2821245	Synthetic Rubbers	520
27	Augusta-Aiken, Ga-Sc	2621345	Printing Paper Assorted Varieties	520
70	Louisville, Ky-In	2621345	Printing Paper Assorted Varieties	440
170	Seattle-Tacoma-Bremerton, Wa	3295980	Roofing Granules	320
102	Davenport-Moline-Rock Island, Ia-Il	2819450	Muriatic Acid	280
67	Indianapolis, In	2621345	Printing Paper Assorted Varieties	280
41	Greenville-Spartanburg-Anderson, Sc	2621216	Groundwood Paper,Uncoated	240
2	Portland, Me	2821245	Synthetic Rubbers	200
3	Boston-Worcester-Lawrence-Lowell-Brockton, Ma-Nh	2631119	Pulpboard/Fiberboard	200
104	Madison, Wi	2621345	Printing Paper Assorted Varieties	200
51	Columbus, Oh	3312253	Iron Or Steel Plates	120
75	Tupelo, Ms	2621216	Groundwood Paper,Uncoated	120
6	Syracuse, Ny	3331115	Primary Copper,Alloy,Pig/Slab/Ingot	120
11	Harrisburg-Lebanon-Carlisle, Pa	2621216	Groundwood Paper,Uncoated	120
131	Houston-Galveston-Brazoria, Tx	3612911	Specialty Transformers Nec	120
109	Duluth-Superior, Mn-Wi	2812220	Caustic Soda	80
72	Paducah, Ky	2812410	Caustic Potassium	80
101	Peoria-Pekin, Il	2499110	Oriented Strand Board, Nec	80
51	Columbus, Oh	4024115	Paper Waste/Scrap	80
63	Milwaukee-Racine, Wi	2421195	Lumber Rough/Dressed	80

ORR 50/10 Analysis of DBEAs

DBEA	Destination BEA Name	STCC7	Commodity Code Name	Carloads by CN/WC
108	Wausau, Wi	2611135	Woodpulp	5,600
63	Milwaukee-Racine, Wi	2621345	Printing Paper Assorted Varieties	5,300
68	Champaign-Urbana, Il	2621345	Printing Paper Assorted Varieties	2,280
59	Green Bay, Wi	2821245	Synthetic Rubbers	960
59	Green Bay, Wi	2421184	Lumber Rough/Dressed	640
108	Wausau, Wi	2421184	Lumber Rough/Dressed	520
105	La Crosse, Wi-Mn	2499610	Wood Particle Board	440
59	Green Bay, Wi	2432158	Veneer/Plywood/Built Up Wood	320
63	Milwaukee-Racine, Wi	2621216	Groundwood Paper,Uncoated	320
59	Green Bay, Wi	2499610	Wood Particle Board	280
60	Appleton-Oshkosh-Neenah, Wi	2621990	Paper Nec	240
59	Green Bay, Wi	2499110	Oriented Strand Board, Nec	200
108	Wausau, Wi	4611110	Misc Mixed, Toft	200
59	Green Bay, Wi	2411115	Sawlogs	180
59	Green Bay, Wi	2813320	Carbon Dioxide	160
108	Wausau, Wi	2499610	Wood Particle Board	160
2	Portland, Me	4611110	Misc Mixed, Toft	120
108	Wausau, Wi	2819315	Sulphuric Acid	120
60	Appleton-Oshkosh-Neenah, Wi	3312468	Iron Bars	80
108	Wausau, Wi	1471620	Sulphur Crude	80
72	Paducah, Ky	4021125	Iron/Steel Scrap/Waste	80

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PANEL 1: Participating Railroad 50/10 Products/DUEA Pairs

Analysis Group/Comments

Exhibit 3
50/10 Product/DBEA Pairs

PANEL 2: Originating Railroad 50/10 Product/DBEA Pairs

Product	Product Description	Destination	Originating Carloads						Combined Railroad	Ratio to Critical Line 50% Marginal Profit	Critical Line Required to Deficit 5% Price Increase				Direct Divertible Capacity ("DDC")				Supplemental Divertible Capacity ("SDC")																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
			Canadian National		Whitcomb Control		Combined Railroad				Ratio to Critical Line 50% Marginal Profit	At 50% Marginal Profit (Carloads)	At 50% Marginal Profit	Ratio to Critical Line 50% Marginal Profit	Carloads	Ratio to Critical Line 50% Marginal Profit	Carloads	Ratio to Critical Line 50% Marginal Profit	Carloads	Ratio to Critical Line 50% Marginal Profit																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																										
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7-400 STCC	Product Description	Destination DBEA ("DBEA")																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												

Exhibit 4

PANEL 1: Participating Retailer 6810 Products/DHLA Pairs[illegible]

PANEL 2: Orientation Reduced 50/10 Products/DUEA Fabric

Product		Product Description	Customer Refused		Rejection Distribution ¹	Critical Loss Required to Reduce 9% Price Increase (4-gpc ETCC)	1989 Fuel 4-4gpc ETCC into DREA (gallons)	1989 Fuel 7-4gpc ETCC into DREA (gallons)	Truck Fleet of 4-4gpc ETCC into DREA	1989 Truck 4-4gpc ETCC into DREA				4-4gpc ETCC (Carloads)	Estimated 1- 4gpc ETCC (Carloads)	Estimated 1- 4gpc ETCC (Carloads)	Ratio of Estimated 1- 4gpc ETCC Trucks to 7-4gpc ETCC into DREA
7-4gpc ETCC	4-4gpc ETCC		Originating Carloads	% of Traffic into DREA						Truck Y-Carloads Only	Time	Carloads Truck Miles	Weighted Avg Inbound Truck Miles				
261090	260	2601 Paper News	240	100%	P	24	240,799	1,540	53,376	4,481	433	6,679,008	99,340	1,394	22	94	
269910	180	2699 West Pacific Island	180	100%	P	16	283,792	11,520	80,596	2,679	374	5,833,159	51,118	11,004	698	1,102	
4011110	120	4011 Johns, Michels, Tels	120	100%	P	12	1,396	1,396	180,096	705,481	259	34,351,289	4,924,448	4,924,448	418,370	654,592	
4011110	120	4011 Johns, Michels, Tels	120	100%	P	8	7,406	7,406	88,996	34,208	371	4,390,781	46,783	46,783	6,323	9,597	
321240	80	3212 Iron Bars	80	100%	P	8	27,105	2,706	8,996	212	1,544	395,172	3,973	1,179	141	226	
321240	140	3212 Machine Cuts	140	100%	P	8	27,105	2,706	8,996	212	1,544	395,172	3,973	1,179	141	226	

Estimated 7.4-qt LTC Truck (Certainty) - 11000 7.4-qt LTC (and) 1000 4.4-qt LTC Truck (Certainty)

Exhibit 5 **Schematic Representation of Direct Divertible Rail Capacity**

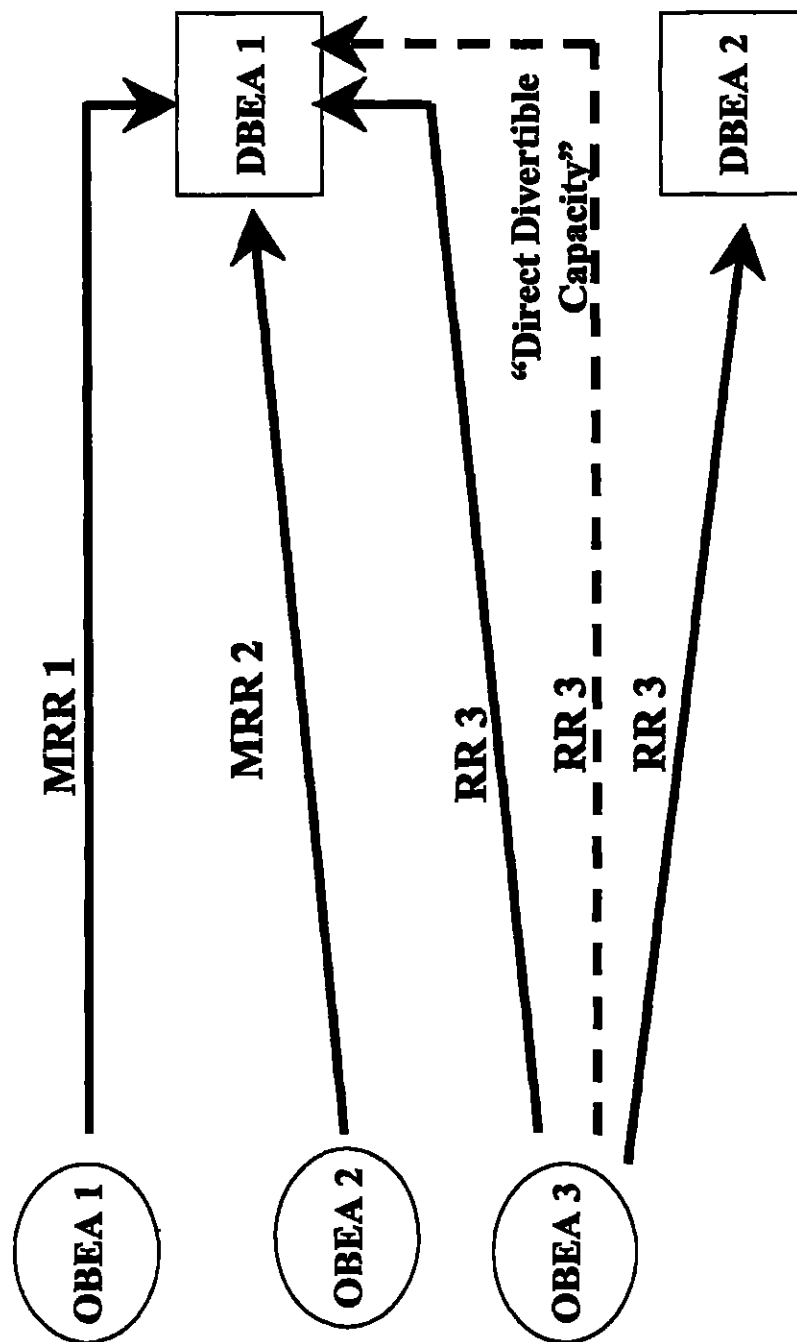


Exhibit 6

Algorithm for Direct Divertible Capacity

For those products where CN-WC originates less than 100% of shipments into DBEA 1, if RR3 ships the product (7-digit STCC) from OBEA 3 to DBEA 1, movements of that product by RR3 to other DBEAs (e.g., DBEA2) are considered Direct Divertible Capacity (DDC) if

- RR3 ships the product between OBEA 3 and DBEA 1 without using CN-WC to originate/terminate/interchange the shipment.

or

- If RR3 uses CN-WC to originate/terminate/interchange the shipment between OBEA 3 and DBEA 1 and RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than 1.35 times the weighted average of RR3's route over CN-WC between OBEA 3 and DBEA 1, then the shipment is considered DDC.

Exhibit 7 **Schematic Representation of Supplemental Divertible Rail Capacity**

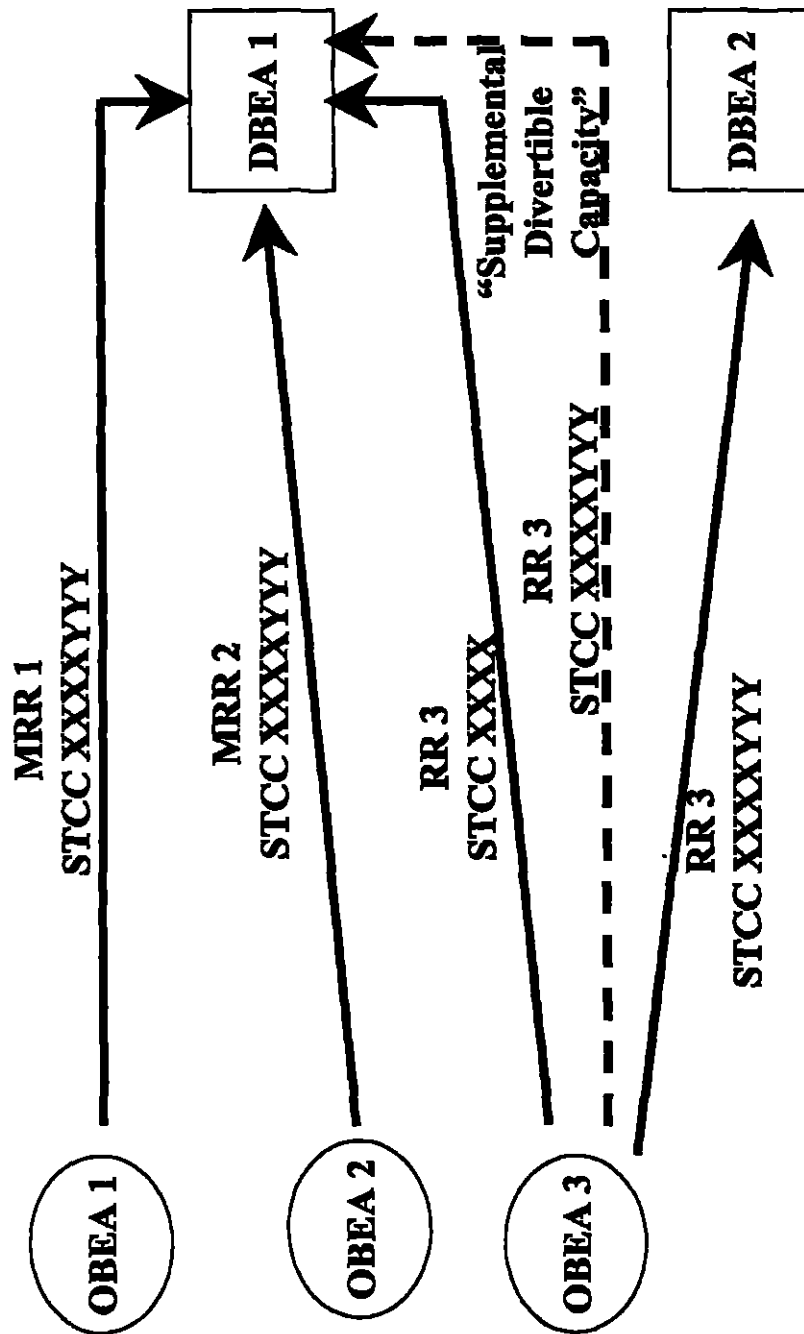


Exhibit 8

Algorithm for Supplemental Divertible Capacity

Movements of a product (7 digit STCC) from OBEA 3 to DBEA 2 in Exhibit 7 are considered Supplemental Divertible Capacity (SDC) for DBEA 1 if

- RR3 ships products in the same 4 digit STCC from OBEA 3 to DBEA 1 on a non-CN-WC route, then the shipment of the product from OBEA 3 to DBEA 2 is considered SDC.

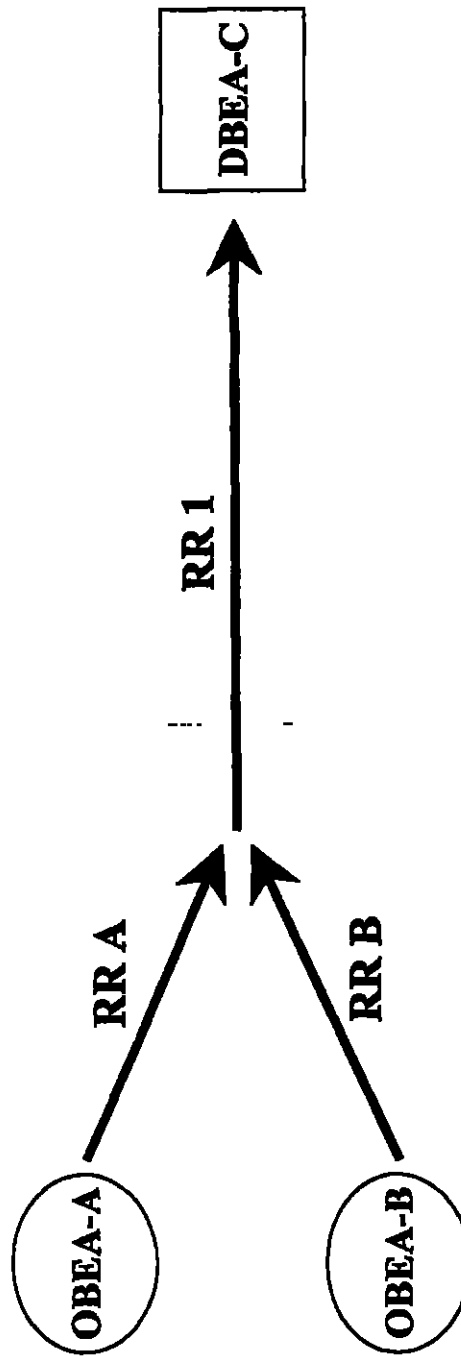
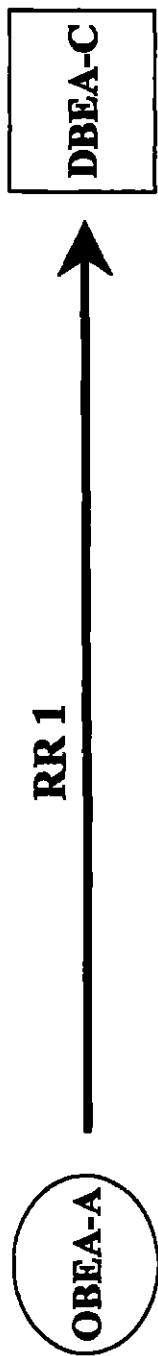
or

- If RR3 uses CN-WC to originate/terminate/interchange the 4 digit STCC shipment between OBEA 3 and DBEA 1 and RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than 1.35 times the weighted average of RR3's route over CN-WC between OBEA 3 and DBEA 1, then the shipment is considered SDC.

or

- If RR3 has an alternative route between OBEA 3 and DBEA 1 that is less than the distance traveled by the 90th percentile-distant carload (e.g., the distance traveled by the 180th most-distant carload of a total of 200 carloads) of CN/WC shipments of the 7 digit STCC to DBEA 1, then the shipment is considered SDC.

Exhibit 9
Example of One-Lump Theory



Attachment 3 Product/DBEA Pairs for 50/10 Analysis

Participating Railroad 50/10 Product/DBEA Pairs

DBEA	Destination BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
64	Chicago-Gary-Kenosha, IL-IN-WI	2911610	Asphalt (Asphaltum), By-Product Or Petroleum, Liquid, Other Than Paint,Stain	2,600
131	Houston-Galveston-Brazoria, TX	2911982	Petroleum Naphtha, Naphtha Distillate Or Naphtha Solvents	1,960
11	Harrisburg-Lebanon-Carlisle, PA	2912190	Liquefied Petroleum Gas, Nec, Compressed	1,520
131	Houston-Galveston-Brazoria, TX	2912181	Petroleum By-Product, Neconsisting Of Impure Bu- Tane, Butylene Or Butadi-Enes	1,040
64	Chicago-Gary-Kenosha, IL-IN-WI	2812220	Sodium (Soda), Caustic (Sodium Hydroxide), Liquid	800
96	St. Louis, MO-IL	3312140	Slabs, Iron Or Steel, In The Rough	620
64	Chicago-Gary-Kenosha, IL-IN-WI	2912122	Butene (Butylene) Gas, Liquefied, Or Isobutene (Isobutylene), Liquefied	400
14	Salisbury, MD-DE-VA	2912190	Liquefied Petroleum Gas, Nec, Compressed	200
64	Chicago-Gary-Kenosha, IL-IN-WI	2912128	Propylene	160
68	Champaign-Urbana, IL	2912190	Liquefied Petroleum Gas, Nec, Compressed	160
99	Kansas City, MO-KS	3312711	Terne Or Tin Plate, Plain, Lacquered Or Painted	160
178	Ontario	3312150	Breakdowns, Slab Or Sheetbars, Iron Or Steel, Viz Unfinished Material Heavin	80

Originating Railroad 50/10 Product/DBEA Pairs

DBEA	Destination BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
117	Sioux City, IA-NE-SD	3312332	Sheet, Steel, (Sheet Steel), In Coils, Plain Or Galvanized	600
59	Green Bay, WI-MI	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	320

Terminating Railroad 50/10 Product/DBEA Pairs

DBEA	Destination BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
64	Chicago-Gary-Kenosha, IL-IN-WI	2821140	Polystyrene, Other Than Liquid	2,920
64	Chicago-Gary-Kenosha, IL-IN-WI	3334110	Aluminum Billets, Blooms,Ingots, Pigs Or Slabs	1,080
64	Chicago-Gary-Kenosha, IL-IN-WI	3499904	Wheels, Nec, Iron Or Steel	80

Attachment 4
50/10 Product/DBEA Analysis

Panel 1: Participating Railroad 50/10 Product/DBEA Pairs

Product	Product Description	Destination	Participating Carloads						Critical Loss Required to Deficit 5% Price Increase	Direct Divertible Capacity ("DBC")			Supplemental Divertible Capacity ("SDC")		
			CN	% Traffic	% Traffic	Combined BE	Combined BE	Destination		DBL	50% Margin	80% Margin	DBL	50% Margin	80% Margin
1-4 digit STCC			Carloads	DBEA	Carloads	DBEA	Carloads	DBEA		Carloads	Profit	Profit	Carloads	Profit	Profit
1 291101	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	DBEA Destination BEA Name	4,231	19%	1,840	43%	2,480	1,114,444	60%	163	123	153	34,332	153	104
2 291102	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	64 Chicago-Gary-Kenosha, IL-IN-WI	1,480	49%	480	13%	1,960	4,587,440	57%	196	123	153	34,332	153	104
3 291103	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	131 Houston-Galveston-Bremer, TX	2,480	49%	480	13%	1,960	4,587,440	57%	196	123	153	34,332	153	104
4 291104	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	111 Northridge-Los Angeles-Long Beach, CA	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
5 291105	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	131 Houston-Galveston-Bremer, TX	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
6 291106	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	64 Chicago-Gary-Kenosha, IL-IN-WI	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
7 291107	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	96 St. Louis, MO-IL	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
8 291108	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	64 Chicago-Gary-Kenosha, IL-IN-WI	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
9 291109	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	14 Salisbury, MD-DE-VA	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
10 291110	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	64 Chicago-Gary-Kenosha, IL-IN-WI	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
11 291111	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	99 Kansas City, MO-KS	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104
12 291112	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	178 Ontario	1,200	49%	480	13%	1,680	2,477,772	67%	196	123	153	34,332	153	104

Panel 2: Originating Railroad 50/10 Product/DBEA Pairs

Product	Product Description	Destination	Originating Carloads						Critical Loss Required to Deficit 5% Price Increase	Direct Divertible Capacity ("DBC")			Supplemental Divertible Capacity ("SDC")		
			CN	% Traffic	% Traffic	Combined BE	Combined BE	Destination		DBL	50% Margin	80% Margin	DBL	50% Margin	80% Margin
1-4 digit STCC			Carloads	DBEA	Carloads	DBEA	Carloads	DBEA		Carloads	Profit	Profit	Carloads	Profit	Profit
1 491112	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	DBEA Destination BEA Name	1,184	17%	480	13%	1,664	4,134,440	57%	196	123	153	34,332	153	104
2 491113	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	117 Sioux City, IA-NE-SD	1,184	17%	480	13%	1,664	4,134,440	57%	196	123	153	34,332	153	104
3 491114	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	99 Kansas City, MO-KS	1,184	17%	480	13%	1,664	4,134,440	57%	196	123	153	34,332	153	104

Panel 3: Terminating Railroad 50/10 Product/DBEA Pairs

Product	Product Description	Destination	Terminating Carloads						Critical Loss Required to Deficit 5% Price Increase	Direct Divertible Capacity ("DBC")			Supplemental Divertible Capacity ("SDC")		
			CN	% Traffic	% Traffic	Combined BE	Combined BE	Destination		DBL	50% Margin	80% Margin	DBL	50% Margin	80% Margin
1-4 digit STCC			Carloads	DBEA	Carloads	DBEA	Carloads	DBEA		Carloads	Profit	Profit	Carloads	Profit	Profit
1 291101	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	DBEA Destination BEA Name	4,231	19%	1,840	43%	2,480	1,114,444	60%	163	123	153	34,332	153	104
2 291102	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	64 Chicago-Gary-Kenosha, IL-IN-WI	1,480	49%	480	13%	1,960	4,587,440	57%	196	123	153	34,332	153	104
3 291103	Aluminum (Aluminum), By Product Of Production, Liquid, Other Than Pure, Steam	131 Houston-Galveston-Bremer, TX	2,480	49%	480	13%	1,960	4,587,440	57%	196	123	153	34,332	153	104

Attachment 5
Product/OBEA Pairs for 50/10 Analysis

Participating Railroad 50/10 Product/DBEA Pairs

OBEA	Origin BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
64	Chicago-Gary-Kenosha, IL-IN-WI	1421990	Natural Stone, Nec, Broken Or Crushed, Including Chips, Grouits Or Sp	8,936
64	Chicago-Gary-Kenosha, IL-IN-WI	2911982	Petroleum Naphtha, Naphtha Distillate Or Naphtha Solvents	1,160
96	St. Louis, MO-IL	3312140	Slabs, Iron Or Steel, In The Rough	560
181	Alberta	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	480
110	Grand Forks, ND-MN	4021125	Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Value For Remel	148

Terminating Railroad 50/10 Product/DBEA Pairs

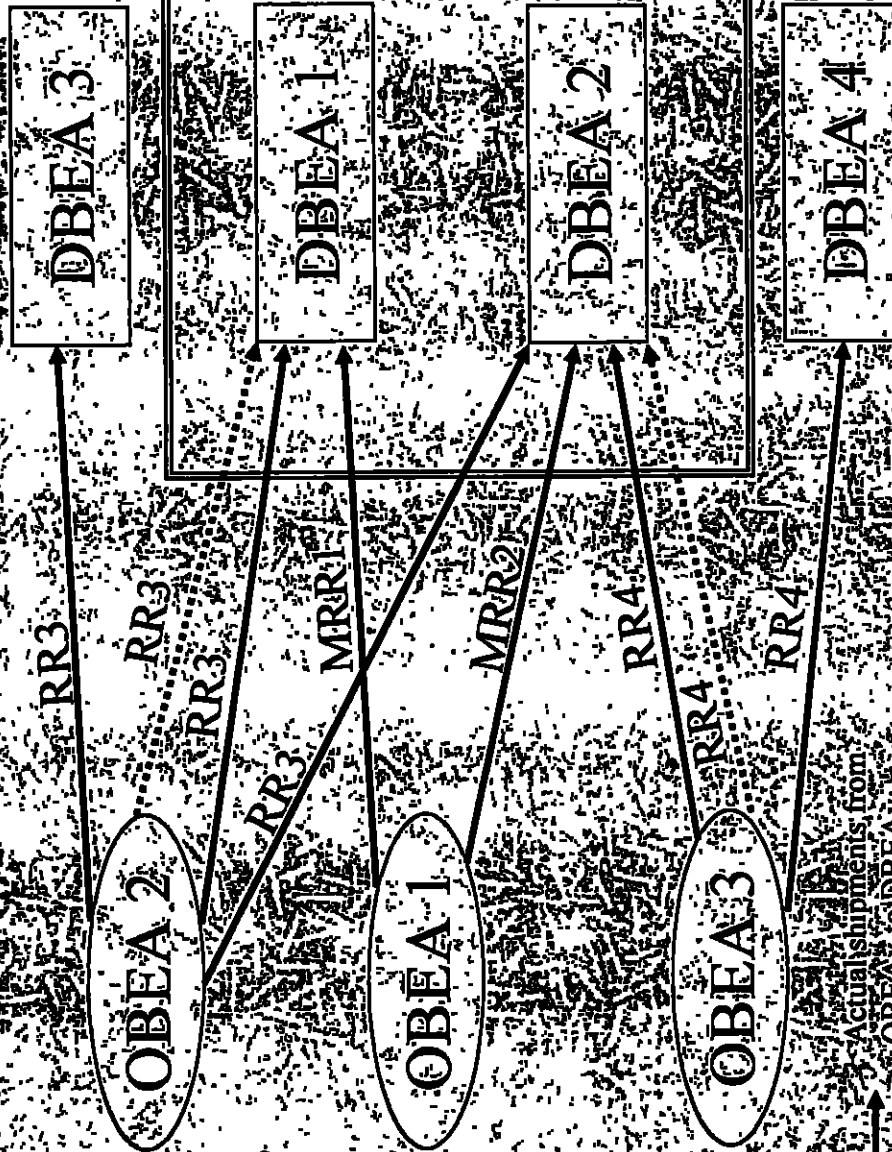
OBEA	Origin BEA Name	7-digit STCC	Product Description	Carloads by CN/EJE
83	New Orleans, LA-MS	2991490	Coke, Nec, Or Coke, Ground	3,901
84	Baton Rouge, LA-MS	2819454	Phosphoric Acid	1,640
72	Paducah, KY-IL	2621345	Printing Paper, Less Than 60 Percent Ground Wood Fibre, Other Than News- Print	560
76	Greenville, MS	2821140	Polystyrene, Other Than Liquid	320
64	Chicago-Gary-Kenosha, IL-IN-WI	3312839	Railway Track Rails, Iron Or Steel, Nec	300
179	Manitoba	3499904	Wheels, Nec, Iron Or Steel	160
178	Ontario	2819931	Hydrogen Peroxide (Hydrogen Dioxide)	120

Attachment 6

Destination Competition

Assessment of Divertible Capacity for Common Shipments

Originated from DBEA1



The destination competition at issue is for movements into DBEA1 and DBEA2. Critical loss is therefore calculated based on total movements by MRR1 and MRR2 into those DBEAs.

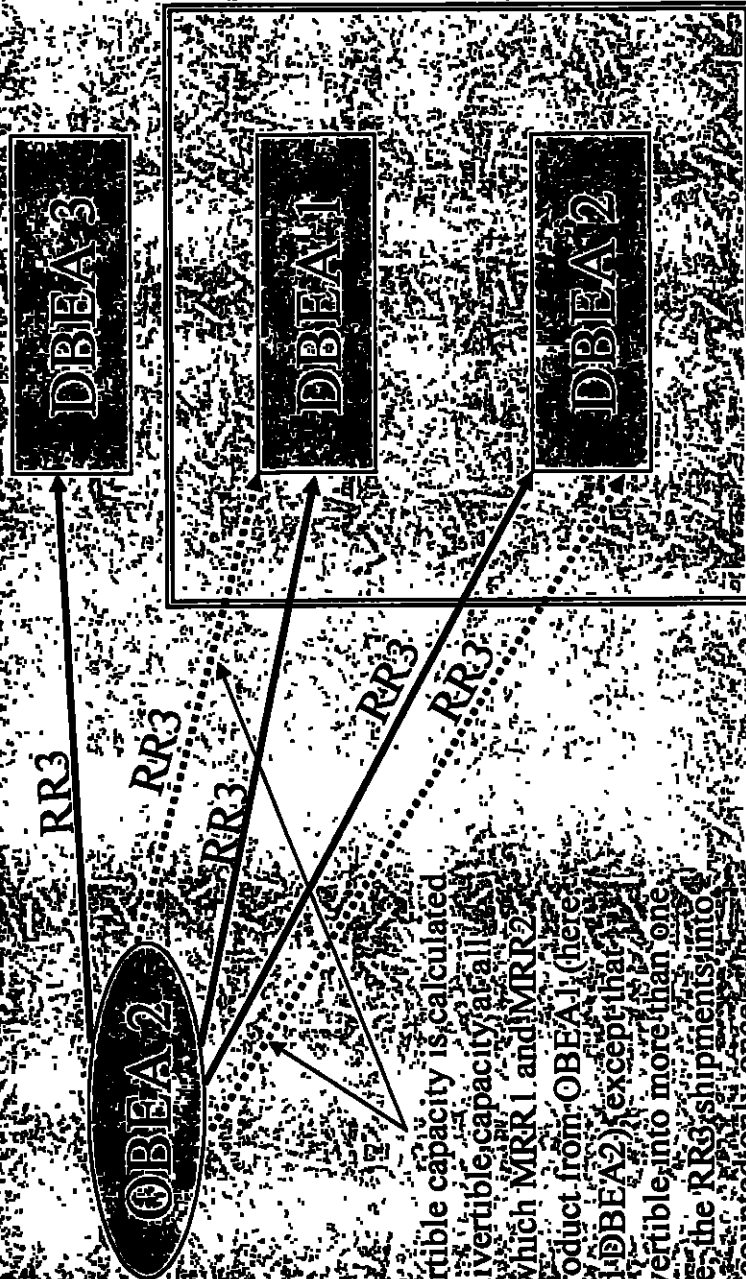
Q

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Attachment 6-A

Diverible Capacity Under Destination Competition (Continued)

Elimination of Double Counting of Diverible Capacity Common to Multiple DBEAs



Note: Diverible capacity is calculated by adding diverible capacity at all DBEAs for which MRR1 and MRR2 move the product from OBEA 1 (here DBEA 1 and DBEA 2) except that all capacity diverible into more than one DBEA (here the RR3 shipments into DBEA 3) is counted only once.

Actual shipments from

OBEA x to DBEA y

Diverible capacity available

from OBEA x to DBEA z



Qualitative Economic Solutions LLC
Microeconomic Consultants

Attachment 7

Destination Competition

Algorithm for Direct Divertible Capacity

For those products where CN-EJE terminates less than 100% of shipments from OBEA1 to DBEA1, if RR3 ships the product (7-digit STCC) from OBEA2 to DBEA1, movements of that product by RR3 from OBEAs (e.g., OBEA2, but not OBEA1) to other DBEAs (e.g., DBEA3) are considered Direct Divertible Capacity (DDC) if:

RR3 ships the product between OBEA2 and DBEA1 without using CN-EJE to originate/terminate/interchange the shipment

or

RR3 used CN-EJE to originate/terminate/interchange the shipment between OBEA2 and DBEA1 and RR3 has an alternative route between OBEA2 and DBEA1 that is less than 1.35 times the weighted average of RR3's route over CN-EJE between OBEA2 and DBEA1.



Quantitative Economic Solutions, LLC
Microeconomic Consultants

Attachment 8

Destination Competition

Algorithm for Supplemental Divertible Capacity

Movements of a product (7-digit STCC) by RR3 from OBEA2 to DBEA3 are considered Supplemental Divertible Capacity (SDC) for OBEA1 to DBEA1 (currently served by CN-EJE) if:

- RR3 ships product in the same 4-digit STCC from OBEA2 to DBEA1 on a non-CN-EJE route;
- RR3 uses CN-EJE to originate/terminate/interchange the 4-digit STCC shipment between OBEA2 and DBEA1, but RR3 has an alternative route between OBEA2 and DBEA1 that is less than 1.35 times the weighted average of RR3's route over CN-EJE between OBEA2 and DBEA1;
- RR3 has an alternative route between OBEA2 and DBEA1 that is less than the distance traveled by the 90th percentile distant carload (e.g. the distance traveled by the 180th most-distant carload of a total of 200 carloads) of CN-EJE shipments of the 7-digit STCC from OBEA1 to DBEA1.



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Attachment 9
50/10 Product/OBEA Analysis

Panel 1: Participating Railroad 50/10 Product/OBEA Pairs

Product 7-digit STTY	Product Description	Origin	Terminating Carloads					Direct Shrinkable Capacity ["SDC"]			Supplemental Shrinkable Capacity ["SDC"]		
			CN		EABE		Combined BE	DOC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
			Carloads	% Traffic from OBEA	Carloads	% Traffic from OBEA							
1	1421998 Natural Sawn, Nec, Barkless Or Chipped, Including Chips, Or Sawdust Or Sp	OBEA Origin BEA Name	Total Cars	% Traffic from OBEA	Carloads	% Traffic from OBEA	Combined Carloads						
2	2911982 Petroleum Naphtha, Naphtha Distillates Or Naphtha Solvents	64 Chicago-Gary-Kenosha, IL-IN-WI	10,094	63%	6,329	30%	1,014	792,022	89%	No	216	0	0
3	3121468 Sides, Iron Or Steel, In The Rough	64 Chicago-Gary-Kenosha, IL-IN-WI	1,340	48%	640	31%	1,140	1,197,964	89%	No	44,996	804	1,206
4	4021125 Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Values For Reuse	94 St. Louis, MO-IL	540	47%	250	37%	540	299,440	100%	No			
5	4021123 Scrap, Iron Or Steel, Nec, Not Copper Clad, Having Values For Reuse	181 Atlanta	740	12%	100	10%	480	807,532	63%	No			
		110 Grand Forks, ND-MN	265	15%	100	40%	145	116,715	59%	No			

Panel 2: Terminating Railroad 50/10 Product/OBEA Pairs

Product 7-digit STTY	Product Description	Origin	Terminating Carloads					Direct Shrinkable Capacity ["SDC"]			Supplemental Shrinkable Capacity ["SDC"]		
			CN		EABE		Combined BE	DOC Carloads Available	50% Marginal Profit	80% Marginal Profit	SDC Carloads Available	50% Marginal Profit	80% Marginal Profit
			Carloads	% Traffic from OBEA	Carloads	% Traffic from OBEA							
1	2991498 Coal, Nec, Or Coke, General	OBEA Origin BEA Name	Total Cars	% Traffic from OBEA	Carloads	% Traffic from OBEA	Combined Carloads						
2	2819454 Phosphate Acid	83 New Orleans, LA-ME	3,981	58%	2,311	43%	3,181	4,139,342	189%	No	1,574	4	0
3	2621345 Printing Paper Less Than 60 Percent Ground Wood Pulp, Other Than News-Paper	84 Baton Rouge, LA-ME	2,380	31%	760	49%	1,640	1,717,456	75%	No	2,720	17	27
4	2621146 Polypropylene, Other Than Liquid	71 Portland, ME-IL	740	63%	460	11%	540	219,856	79%	No	19,568	149	559
5	3312379 Railway Track Blocks, Iron Or Steel, Nec	76 Greenville, ME	320	88%	280	87%	40	320	181,236	100%	No		
6	5499994 Whisks, Nec, Iron Or Steel	64 Chicago-Gary-Kenosha, IL-IN-WI	440	41%	112	24%	300	106,192	65%	No			
7	2819911 Hydrogen Peroxide (Hydrogen Peroxide)	179 Minneapolis	240	26%	120	17%	140	114,464	67%	No			
		171 Omaha	160	30%	80	40	170	82,980	75%	No			

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**VERIFIED STATEMENT
OF
GARY L. KOLBE**

My name is Gary L. Kolbe. Since my retirement from Canadian National Railway Company (together with its affiliates, "CN") in December 2005, I have been a consultant in railroad marketing, sales, and transportation management. In my consulting business, I apply the expertise I developed over a 40-year career in the railroad industry, spent primarily in the marketing and sales area. My career began in 1965 when I went to work as a switchman for the Chicago and North Western Railway Company ("CNW"). I later served CNW in various positions in its marketing and sales department, including Assistant Vice President-Sales, and eventually as Assistant Vice President-Forest Products and Assistant Vice President-Wisconsin Group. When CNW was acquired by and merged into Union Pacific Railroad Company ("UP"), I continued working for UP in various capacities, culminating in my service as Director, Forest Products. I joined CN in 2000 and shortly thereafter was appointed Assistant Vice President/Director Sales for CN's Wisconsin Central Division. At the time of my retirement I was Assistant Vice President-U.S. Sales, where I directed all commercial activities of 15 account managers responsible for over 500 direct customers. I attended the Transportation School of Northwestern University, and have had extensive formal training at CNW, UP, and CN in marketing and sales, negotiations, leadership, and management.

During my years of service to the rail industry, I have worked on several rail control transactions, including UP's acquisitions of CNW and of Southern Pacific, and most recently CN's acquisition of WC. My responsibilities in these transactions were, as head of a business or sales unit, to understand the affected traffic flows, to

identify the synergies created by the transactions, to assess the competitiveness of the new combined systems, and to integrate the customer and product bases of the acquired company into those of the acquirer. In all these cases, I was responsible for assessing both the risk of business erosion from, and opportunities for business growth to, the combined systems.

I have been asked by CN to provide this Verified Statement regarding certain issues of potential geographic competition in connection with the proposed acquisition of EJ&EW by CN, as described in the Application. In particular, I have been asked to supplement the testimony of Dr. Christopher A. Vellturo, regarding potential geographic competition between CN and EJ&E, as discussed in his verified statement in support of the Application.

In his statement Dr. Vellturo examines the question of geographic competition by applying the same analytic methodology that he applied in support of CN's applications for authority to control the rail carrier subsidiaries of Wisconsin Central Transportation Corporation and those of Great Lakes Transportation, LLC in previous STB control proceedings.⁵⁵ Following Dr. Vellturo's methodology, ALK Technologies, Inc. ("ALK") applied a "50/10" screen, as described in his statement, to data in the STB's Carload Waybill Sample for 2005 in order to identify product/geographic pairs for which the proposed Transaction might arguably lead to a reduction in geographic competition. For reasons explained in Dr. Vellturo's statement,

⁵⁵ See Verified Statement of Christopher A. Vellturo, Ph.D., 1 Railroad Control Application at 233-283E, *Canadian Nat'l Ry. – Control – Wisc. Cent. Transp. Corp.*, STB Finance Docket No. 34000 (filed Apr. 9, 2001); Verified Statement of Christopher A. Vellturo, Ph.D., Railroad Control Application at 65-153, *Canadian Nat'l Ry. – Control – Duluth, M. & I R. Ry.*, STB Finance Docket No. 34424 (filed Nov. 5, 2003).

and in his previous testimony cited in footnote 2, the relevant products have been identified by 7-digit Standard Commodity Classification Code ("STCC"), and the relevant geographic units have been identified as the Business Economic Area ("BEA"). Dr. Velturo looked both at "source competition" (*i.e.*, potential competition between CN and EJ&E for transportation of commodities from multiple origins to a single destination; sometimes referred to as "origin competition") and "destination competition" (*i.e.*, potential competition between CN and EJ&E for transportation of commodities from a single origin to multiple destinations).⁵⁶

It should be noted the 50/10 screen, by treating all of EJ&E as a "merging railroad," was based on an unavoidable oversimplification. In fact, CN is not acquiring EJ&E as a whole, but only EJ&EW, which is that portion of the current EJ&E located to the west of Buchanan Street in Gary, IN (plus the Dixie and hump leads near Kirk Yard in Gary). The remainder of EJ&E, to be renamed the "Gary Railway," will continue to be owned by United States Steel Corporation ("USS") and will serve five customers, including USS itself, located on USS property at Gary Works. Ideally, the 50/10 screen would have treated, not all EJ&E traffic, but only traffic that would be handled by EJ&EW as belonging to the "merging railroad." The STB Waybill Sample, however,

⁵⁶ As explained in Dr. Velturo's statement, the 50/10 screen for source competition identifies all flows of commodities for which, according to the STB Carload Waybill Sample, the merging railroads (CN and EJ&E) each participates in transportation of at least 10% of the carloads of that commodity terminating in a particular BEA, and for which the two railroads together participate in transportation of at least 50% of the carloads terminating in that BEA. (A railroad is said to "participate" in transportation of a carload if it is listed in the waybill as originating, terminating, or interchanging that movement as a line-haul carrier.) Conversely, the 50/10 screen for destination competition identifies all flows of commodities for which CN and EJ&E each participate in transportation of at least 10% of the carloads of that commodity originating in a particular BEA, and for which the two railroads together participate in transportation of at least 50% of the carloads originating in that BEA.

does not identify individual shippers or consignees, so it was not possible to segregate traffic to and from industries in Gary that would be served by EJ&EW from traffic to and from those that would be served by Gary Railway. This means that in some cases (as will be seen below in the cases of iron or steel wheels to the Chicago BEA and coke from the New Orleans BEA), the 50/10 screen flagged a potential geographic competition issue where the relevant traffic would continue to be handled by the independent Gary Railway, so that there would not in fact be even a potential reduction in geographic competition.

The 50/10 screen for source competition identified a total of 17 traffic flows (product/BEA pairs) raising possible competitive issues, while the screen for destination competition identified a total of 12 such flows. Dr. Velturo explains that the identification of a product/BEA pair by either of the 50/10 screens does not mean that there is in fact effective geographic competition between CN and EJ&E for the identified flow, much less that the Transaction would injure shippers through the elimination of such competition. Rather, that identification is simply a first step, which must be followed by closer examination to determine whether geographic competition is in fact constraining the rates of the two railroads in the identified markets, and whether other market forces would prevent CN, after acquiring control of EJ&EW, from profitably taking advantage of any supposed reduction in such geographic competition by raising rates now charged by the two railroads.

Following Dr. Velturo's methodology, and as explained in his testimony, ALK then used the 2005 Waybill Sample to calculate "divertible capacity," which is rail traffic of the commodity at issue that could, in response to an attempted post-Transaction

rate increase by CN, be diverted by competing railroads into relevant destinations. Dr. Vellturio assumed that if the divertible capacity amounted to ten times the “critical loss” needed to make a post-Transaction rate increase by CN unprofitable in the market at issue, then the divertible capacity would be more than sufficient to impose that critical loss on CN, and the Transaction therefore could not cause harm to shippers by reducing geographic competition in that market. For all but a handful of product/DBEA pairs identified by the 50/10 screens, amounting to relatively little total volume, ALK calculated divertible rail capacity at least equal to 10 times the relevant critical loss. The only four exceptions were: 80 carloads of wheels (not elsewhere classified, iron or steel, STCC 3499904) to Chicago-Gary-Kenosha, IL-IN-WI (BEA 64); 8,936 carloads of broken or crushed stone (not elsewhere classified, including chips, grouts, or spalls, other than limestone, STCC 1421990) originating in Chicago-Gary-Kenosha, IL-IN-WI (BEA 64); 3,091 carloads of coke (ground or not elsewhere classified, STCC 2991490) originating in New Orleans, LA-MS (BEA 83); and 160 carloads of wheels (not elsewhere classified, iron or steel, STCC 3499904) originating in Manitoba.⁵⁷

I have examined each of these four flows and, with the help of information obtained from CN and EJ&E personnel who are familiar with the relevant markets, determined for each that there is in fact no geographic competition between CN and EJ&E that is now constraining CN’s or EJ&E’s pricing, and that would be impaired by CN’s proposed control of EJ&EW. In the remainder of my statement I discuss my

⁵⁷ Locations in Canada, such as the province of Manitoba, are not included in any BEA. ALK’s analysis, however, treats each Canadian province as if it were a separate BEA.

As will be noted in my discussion below of the flows of wheels from Manitoba and wheels from Chicago, all 80 carloads terminating in Chicago are a subset of the 160 carloads originating in Manitoba (of which 120 were originated by CN).

conclusions regarding each of the four product/BEA pairs remaining after application of ALK's calculation of rail divertible capacity.

SOURCE (ORIGIN) COMPETITION

IRON OR STEEL WHEELS TO CHICAGO-GARY-KENOSHA (80 carloads)⁵⁸

The STB Waybill Sample reports a total of 120 carloads of STCC 3499904 (wheels, not elsewhere classified, iron or steel) moving from multiple origins in North America to the Chicago-Gary-Kenosha, IL-IN-WI BEA. When the 50/10 screen for CN and EJ&E as terminating railroads was run, it showed that, of these 120 carloads, 40 (or 33%) were terminated by CN, and 40 (or 33%) were terminated by EJ&E, for a combined share of 80 (or 67%). The Waybill Sample indicates, however, that all 40 carloads terminated by EJ&E were originated by CN in Manitoba.

Initially, it may be questioned whether geographic competition between EJ&E and CN is constraining the two railroads' rates at all, if EJ&E is not participating in the product/BEA pair at issue at least in part by using a route that is independent of CN into the relevant DBEA. A traffic flow in which all of the commodity at issue is originated by a single railroad at a single origin BEA is certainly far from the paradigm of source competition, in which the product moves to the destination BEA from alternate origins, served by the competing railroads, directly or indirectly, over independent routes. (That paradigm is illustrated by the schematic diagram in Exhibit 5 in Dr. Vellturo's verified statement in the CN/WC proceeding, which is attached as an Exhibit to his statement in this proceeding.)

⁵⁸ In the heading for each product/BEA pair, I state the total CN and EJ&E carloads based on the 2005 Waybill Sample.

But even if geographic competition were theoretically possible in a situation where EJ&E's participation in the relevant flow is by interchange with CN, my examination of the actual traffic demonstrates that there would be no reduction in geographic competition for this traffic. Through my discussions with CN personnel, and by examining CN's actual waybill data, I learned that all of CN's traffic in STCC 3499904 was for used wheels, originating at CN's car shop at Transcona, MB, and sold for scrap by CN itself either to Mittal Steel (and delivered through a switching movement over IHB, which would show CN as the terminating carrier) or to USS at Gary Works (and delivered through interchange with EJ&E).⁵⁹ This indicates, first of all, that the wheels were probably incorrectly classified to the 3499904 STCC code, and should more properly have been classified as iron or steel scrap. Iron and steel scrap was not flagged by the 50/10 screen, and it would be surprising if it had been, because the Chicago-area steel mills that melt down scrap iron and steel for remanufacturing can take that product from numerous locations around the U.S. and Canada. If CN's rail rates for this traffic are being constrained by geographic competition, then that competition is more likely to come from railroads serving alternate origins of scrap iron and steel, not competition from CN's interchange partner, EJ&E, which terminates those shipments headed for Gary Works.

Moreover, I have determined from CN's actual waybill data, and my discussions with CN personnel, that the identification of this product/DBEA pair by the

⁵⁹ I also learned that, although CN sold scrap wheels which it moved on its own lines in 2005, and which therefore appeared on the 2005 STB Waybill Sample, CN does not regularly transport this product. This means that CN is unlikely to provide any regular constraint, through geographic competition, on rates for rail transportation of iron or steel wheels into the Chicago BEA.

50/10 screen was a false positive, for reasons explained more fully above. All the EJ&E traffic in the product/DBEA flow carloads in the traffic flow at issue were delivered to USS at Gary Works, and after the Transaction would be delivered by Gary Railway rather than EJ&EW. So even if CN and EJ&E were currently providing any geographic competition at all for this market (which, as explained above, is unlikely), CN and Gary Railway would provide exactly the same competition, and to the same extent, after CN's acquisition of EJ&EW.

DESTINATION COMPETITION

BROKEN OR CRUSHED NATURAL STONE FROM CHICAGO-GARY-KENOSHA (8,936 carloads)

The STB Waybill Sample indicates that CN handled a total of 6,320 carloads of natural stone classified to STCC 1421990⁶⁰ and originating in the Chicago-Gary-Kenosha BEA in 2005 (or 63% of the total), and that EJ&E handled a total of 2,616 carloads of this product originating in that BEA (or 26% of the total), for a combined share of 8,936 carloads (or 89% of the total). While this might appear to be a large percentage, I have learned from CN marketing personnel that rail transportation of this kind of aggregate material from origins in the Chicago area is only a small portion of the total market. There are numerous stone quarries in the Chicago area, most of which are not served by rail at all; CN's personnel estimate that trucks carry a significant percentage of movements of aggregates in that area and thus provide pervasive

⁶⁰ The full description for STCC 1421990 is "natural stone, NEC (*i.e.*, not elsewhere classified), broken or crushed, including chips, grouts, or spalls, other than limestone."

competition with railroad, so that CN and EJ&E participation in the market is small by comparison.

I have learned further, from examination of CN's actual waybill data and discussions with CN personnel, that CN only originates this product from two locations in the Chicago BEA: one is the Chicago Intermodal Terminal at Harvey, from which CN transports a relatively small number of carloads to Vancouver Intermodal Terminal in British Columbia (25 in 2005; 8 in 2006), and the second is Lehigh Quarry, about 8 miles west of Kankakee, from which CN transports several thousand carloads a year to several distribution centers in central and southern Illinois, primarily for use in highway construction.

CN personnel believe that the small amount of STCC 1421990 being transported from the Chicago to the Vancouver Intermodal Terminal is probably destined for the international market and probably has product characteristics which differentiate it from the product being transported to destinations in and near the Chicago BEA. This traffic would therefore not compete with STCC 1421990 traffic originated by EJ&E, all of which is shown by the Waybill Sample and by EJ&E's own waybill data as terminating in the Chicago BEA, and almost all of which, according to EJ&E, is used in local construction projects.

In any event, to the extent that there is any question of competition for the intermodal transportation of broken stone from Chicago to Vancouver, BNSF and CP are equally capable of participating in this market. To the extent that the question is one of intermodal transportation of this product to multiple destinations, and that competition between these destinations is constraining CN's rates, then BNSF, CP, CSX, NS, and UP

all operate intermodal terminals in the Chicago BEA and thus are all capable of providing such competition. EJ&E, on the other hand, operates no intermodal terminals of its own and is thus unlikely to provide any destination competition to CN for intermodal transportation of broken or crushed stone, or any other aggregates, from Chicago.

The vast majority of the carloads of STCC 1421990 originated by CN in the Chicago BEA are shipped from the Lehigh Quarry, which is also directly served by NS. To the extent that CN faces any destination competition for its transportation of this product from Lehigh, it is provided by NS, which generally transports the product northward, to destinations such as Elkhart, IN, and White Pigeon, MI, in routes in which neither CN nor EJ&E participates.⁶¹ On the other hand, CN does not regard EJ&E as a realistic constraint on CN's pricing for transportation from Lehigh. EJ&E does not directly serve the quarry, and if someone proposed to truck aggregate from Lehigh to a point where it could be transloaded to EJ&E,⁶² the resulting transportation cost would make such a movement unprofitable; it would be much more commercially reasonable to move the product entirely by truck.

⁶¹ It appears that NS did not transport significant quantities of broken or crushed stone from Lehigh to Elkhart or White Pigeon in 2005. If it had, that traffic would have shown up in the 2005 Waybill Sample and been identified by Dr. Velturo as divertible capacity into the Chicago BEA. CN's marketing personnel, however, believe that the low number of NS origins from Lehigh in 2005 represents a temporary downturn in construction activity at the NS-served destinations, that NS traffic originating at Lehigh should resume in subsequent years, and that NS will remain capable of constraining CN's rates, should CN attempt to raise them above current levels.

⁶² The nearest potential transloading facilities on EJ&E are Bulkmatic at Chicago Heights (38 miles by highway from Lehigh) and Three Rivers Terminal (Seeler) at Joliet (43 miles by highway from Lehigh).

In 2005, all of EJ&E's traffic in STCC 1421990 originating in the Chicago BEA came from a single facility near Joliet.⁶³ As noted above, all but 223 carloads of STCC 1421990 originated at this location in 2005 was delivered to a single consignee in Rondout, primarily for use in highway construction. According to EJ&E, the effective constraint on its rates to this shipper is not competition from CN (or, indeed, from any other railroad), but the possibility of service by truck from quarries in southern Wisconsin. This is consistent with CN's view that a substantial percentage of the aggregate traffic in the Chicago area is carried by truck from the various quarries in the region, and my own experience as a marketing manager for CNW, in which I found that railroads seeking to transport aggregates from the Chicago area faced pervasive competition from motor carriers serving the numerous quarries in the vicinity. I therefore conclude that CN and EJ&E do not presently offer destination competition to each other's rates for crushed or broken stone originating in Chicago, nor would CN's acquisition of EJ&EW reduce any such competition.

COKE FROM NEW ORLEANS (3,901 carloads)

The STB Waybill Sample identifies 3,901 total carloads of STCC 2991490 (defined as "coke, [not elsewhere classified], or coke, ground"), originating in the New Orleans BEA and moving to multiple destinations. The Waybill Sample further reports that all 3,901 of these carloads were handled by CN, of which 1,620 were handled by EJ&E in joint-line movements with CN, with the remaining 2,281 carloads carried by

⁶³ In 2006, all but one carload of STCC 142990 originating in Chicago and handled by EJ&E originated at the same facility. (The single exception was a car of decorative stone that was interchanged with CN and delivered to a consignee in Wisconsin.)

CN in single-line movements to the Chicago and Detroit BEAs. This flow was flagged by the 50/10 screen for destination competition because CN and EJ&E handled 100% and 13%, respectively, of the total carloads in this flow (i.e., each handled at least 10%), and the two railroads together handled 100% (i.e., at least 50%) of the total carloads.

First of all, it is doubtful whether EJ&E can be regarded as offering geographic competition to CN for flows moving from New Orleans if its only participation in the product/BEA pair at issue consists of movements interchanged from CN. But even assuming that it is appropriate to regard product/OBEA pairs as raising possible destination competition issues in cases where one of the allegedly competing railroads participates in the flow only by interchanging with the other railroad, I have determined, by consulting CN's and EJ&E's actual waybill data for 2005 and 2006, that the 50/10 screen's identification of this product/BEA pair screen was a false positive. As mentioned above, the 50/10 screen is based on the oversimplified assumption that traffic identified in the Waybill Sample as handled by EJ&E in 2005 would be handled after the Transaction by EJ&EW. But all of the coke handled by EJ&E in 2005 from rail origins in the New Orleans BEA was delivered to Gary Works, which will be served by Gary Railway, to EJ&EW, after the Transaction. If the Waybill Sample had identified the consignee for this traffic, the 50/10 screen would have been run in such a way as to disregard this and other traffic to be handled by Gary Railway. In that case, EJ&EW's participation share for this traffic would have been zero, and coke from New Orleans would not have been flagged as a product/BEA pair raising a potential destination competition issue.

But even if CN were acquiring all of EJ&E, including the portion serving Gary Works, the Transaction would still cause no reduction in geographic competition for transportation of coke from New Orleans. All of the coke in STCC 2991490 which originates on CN in the New Orleans BEA is imported coke which is transloaded from ship to rail at the IC RailMarine Terminal at Convent, LA. CN's actual waybill data indicates that in 2005, CN interchanged 1,433 carloads of this coke with EJ&E for delivery to USS at Gary Works, and transported another 564 carloads in single-line service to USS's Granite City Works at Sauget, IL. Ordinarily, coke used by USS in its steelmaking operations at Gary Works is manufactured at its Clairton Works, south of Pittsburgh, and transported to Gary by railroads other than CN. USS also acquires coke from offshore sources for use at its Fairfield Works (near Birmingham, AL) and Granite City Works, and this coke is usually transferred from ocean vessel to barge for delivery to the steel mills.

In 2005, however, USS decided to bring offshore coke through terminals at Baltimore, Mobile, or Convent, and to have the coke transferred from ocean vessel to railcars for delivery by rail to Granite City and Gary Works. CN competed for and won this traffic in 2005, and the rail movements to those destinations originated on CN at Convent, as shown in the Waybill Sample. If CN's rail rate from Convent had been too high, however, USS could readily have chosen to bring its coke through Baltimore or Mobile, using a competing railroad. CN's rate offerings were thus constrained, not by destination competition from EJ&E, but by competition offered by the railroads serving those other terminals. Since 2005, USS has not, to CN's knowledge, moved imported

coke to its steel mills by rail, but if it should decide to do so at any point after the Transaction, competition from those other railroads will continue to be available.

IRON OR STEEL WHEELS FROM MANITOBA (160 carloads)

According to the STB Waybill Sample, a total of 240 cars in STCC 3499904 originated in the Canadian Province of Manitoba in 2005, of which 120 (or 50%) were handled by CN, and 40 (or 17%) were handled by EJ&E, for a combined share of 160 (or 67%). I have already discussed this market in part above, in connection with potential source competition for transportation of iron or steel wheels to Chicago. As in that case, all the carloads of wheels reported by the Waybill Sample as handled by EJ&E in the product/BEA pair at issue are received in interchange from CN, and represent scrap wheels sold to USS to be melted down for remanufacture. As I explained above, this means that the identification of this product/BEA pair by the 50/10 screen was a false positive, as any geographic competition now provided by EJ&E for transportation of this product from Manitoba would continue to be offered by Gary Railway after CN's acquisition of the EJ&EW.

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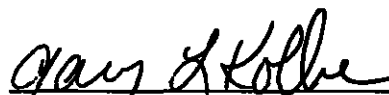
Dr. Velturo has shown, using data derived from the STB's Carload Waybill Sample according to Dr. Velturo's methodology, that for almost every market (defined by product/BEA pair) where there is a possible question of geographic competition between CN and EJ&E, there is an overwhelming quantity of divertible rail capacity that would discipline any efforts by CN, after acquiring control of EJ&EW, to raise rates in those markets. I have examined the four product/BEA pairs that remain at

issue after application of Dr. Velluro's quantitative analysis, and I have concluded that, even for those four pairs, CN and EJ&E do not in fact offer effective geographic competition to each other, or that any competition that they might offer today would be offered by CN and Gary Railway after the Transaction, and that in either case the Transaction would cause no competitive injury to shippers.

VERIFICATION

I, Gary L. Kolbe, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on October 29, 2007


Gary L. Kolbe

**VERIFIED STATEMENT
OF
DAVID A. STUEBNER**

I. INTRODUCTION

My name is David A. Stuebner. I have worked in various aspects of the freight railroad industry for over 35 years. My career began with the Chicago, Milwaukee, St. Paul and Pacific Railroad (also known as the Milwaukee Road) in 1969. Over the course of sixteen years with that railroad I worked in a broad variety of areas including, among others, operations management, routing issues, asset and equipment allocation and use, and the integration of the Milwaukee Road into the Minneapolis, St. Paul & Sault Ste. Marie Railway (commonly known as the SOO Line). After the Milwaukee Road integration, I worked briefly for H&S Foods in Chicago, before joining Wisconsin Central Ltd. ("WC") in 1987 as Director, Marketing Administration. As part of my duties at WC I helped to conduct analyses of potential traffic gains from actual and potential acquisitions of other rail carriers by WC and other carriers. In 2001, following CN's acquisition of WC, I joined CN, initially working on marketing implementation, before assuming my present position as Manager, Network Strategies. One of the primary duties in my current position is to work with other Class I carriers to develop and implement protocols for the efficient routing and interchange of interline traffic throughout the CN system.

I was asked by CN to estimate the volume of rail traffic likely to be gained by the integrated system after the full implementation of the proposed CN acquisition of EJ&EW (the "Transaction"). I understand that this information is required for purposes

of CN's operating plan as well as for the Board's assessment of the potential environmental impacts of the Transaction. I estimate that CN/EJ&EW would gain extended hauls for 9,737 carloads of traffic and annual gross revenues of \$14.86 million as a result of the full implementation of the proposed Transaction.

II. SCOPE OF THE ANALYSIS

The scope of my assessment included potential traffic gains based on the proposed operation of CN and EJ&EW as a single commercially integrated system from customers that might otherwise use other rail carriers.

I considered two broad categories of traffic. First, I considered so-called "extended haul" opportunities, that is, opportunities for the combined CN/EJ&EW to increase its participation in traffic carried by CN, EJ&E, or both of these carriers in connection with another carrier (or carriers) during 2006. This includes gains to CN/EJ&EW from all or part of the non-CN/EJ&E portion of a movement. Second, I considered potential gains of entirely new business in which neither CN nor EJ&E participated in 2006.

My assessment did not address potential changes in rail traffic origin and/or destination patterns (source alternatives) or any growth or decline in traffic due to general economic conditions. I did consider potential gains of traffic originating on EJ&E that might result in the use of a rail-truck transloading facility at the destination.

III. GENERAL ASSUMPTIONS

My assessment was based on the following general assumptions:

- 1. The CN/EJ&EW system will operate as a single-line system designed to promote the best interests of the integrated system.**
- 2. 2006 traffic data are the best general source of available information about likely traffic gains as a result of the Transaction.**
- 3. The environment of the railroad industry is that which existed on December 31, 2006, except for the direct effect of the Transaction on traffic, which I estimate as if the Transaction were fully implemented.**
- 4. The 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.**
- 5. CN and EJ&EW will have sufficient equipment to handle all potential traffic gains.**
- 6. CN will add the additional rail facilities specified in the operating plan accompanying this Application.**
- 7. Transportation contracts that will remain in effect through December 31, 2011 (the time by which the transaction is expected to be fully implemented) preclude CN/EJ&EW gains of traffic committed to other carriers under such contracts.⁶⁴**

IV. DATA AND METHODOLOGY

The primary traffic data that I used for my assessment were 100% CN 2006 waybill traffic data and 100% EJ&E waybill traffic data. In addition, I relied upon the general knowledge and information of the marketing and sales staffs of the two railroads.

The waybill data that I used for my extended haul assessment were prepared by ALK Technologies, Inc. ("ALK"), which worked under my direction. ALK

⁶⁴ In practice, it turned out that this assumption did not preclude any traffic gains to CN/EJ&EW.

excluded from this data traffic that appeared to present no reasonable opportunities for gains to CN/EJ&EW. This included the elimination, for example, of traffic that moves locally on CN or EJ&E (i.e., traffic that never leaves the CN or EJ&E system), and traffic handled by CN to, from, or within territories where there was no possible additional involvement by EJ&E (e.g., movements from western Canada to the western United States). In addition, in order to avoid double counting traffic, ALK also removed from the CN data duplicates of joint CN/EJ&E movements that also appear in the EJ&E data.

The remaining traffic data were presented to me by ALK in the form of seven spreadsheets with relevant fields for my analysis. These fields included consignor and consignee, origin, destination, full routing information and carrier participation, mileage, commodity (to the 7-digit STCC level), car type, and volume in carloads. In addition, using its rail network model, ALK determined for each movement a post-Transaction candidate route. The full routing, carrier participation, and mileage information for that candidate route was added for my consideration along with the existing route.

Three spreadsheets were created from CN's waybill data and three from EJ&E's waybill data. The first and primary spreadsheet for each data set included movements for which ALK was able to identify a post-Transaction candidate route that would result in greater participation in the movement by CN/EJ&EW. The remaining two spreadsheets for each data set included movements for which there would appear to be no likelihood of a CN/EJ&E traffic gain. The second spreadsheet for each data set was for movements for which ALK identified a post-Transaction candidate route that

would result in a decrease in the participation of the combined CN/EJ&EW, and the third spreadsheet for each data set was for movements for which ALK identified a post-Transaction candidate route that turned out to be identical to the existing 2006 route.

In addition, a seventh spreadsheet was created by ALK covering potential traffic gains through rail-to-truck transloading centers. This included as candidates for traffic gains all movements originating on EJ&E that terminate on other railroads at stations not directly served by CN but within 150 miles of a transload facility used by CN.⁶⁵ For purposes of competing with an existing all rail movement, it is generally uneconomic to transload goods for distances in excess of 150 miles. Further, as transloading tends to be uneconomic for relatively short movements, I asked ALK to screen from further transload analysis most movements that were less than 750 miles.⁶⁶ My transload analysis included only commodities that could practicably be transloaded, including forest products, grain and fertilizer, plastics and many other chemicals, minerals, metals, finished vehicles and auto parts.⁶⁷

Working with marketing personnel of EJ&E and CN in separate meetings, I reviewed each of the seven spreadsheets and made determinations concerning potential

⁶⁵ Given the nature of potential extended hauls between the CN and EJ&E systems, and the present wide-spread availability of transload facilities to both CN and EJ&E in the Chicago area, I concluded that it was unnecessary and would add nothing substantial to extend the analysis to potential transloads from CN origins or to EJ&E destinations.

⁶⁶ I made one exception to this 750-mile rule in order to permit consideration of potential transloading to customers in Minneapolis, which could be particularly attractive to the combined CN/EJ&EW system. EJ&E has customers that transload in Minneapolis, and CN has service to points proximate to Minneapolis, but CN's direct service to Minneapolis is limited by trackage rights restrictions.

⁶⁷ In accordance with CN policy, the most dangerous hazardous materials were excluded as potential transloadable commodities. In any event, my analysis found no potential transloads of hazardous materials of any kind.

traffic gains. I reviewed individual movements where any alternative candidate route had been identified and, to assure myself that I had not missed any potential traffic gains, I also reviewed the spreadsheets of traffic for which ALK had not identified a post-Transaction candidate route that would result in greater participation in the movement by CN/EJ&EW. I completed the assessment by determining, with the assistance of marketing personnel and ALK, the gross revenue gains for CN/EJ&EW.

In addition to this extended haul assessment, I also considered whether as a result of the Transaction there would be quantifiable gains of entirely new business in which neither CN nor EJ&E had any participation in 2006. Given the limited scope of the Transaction, I did not expect that there would be any such traffic gains. Nonetheless, as a further check, I asked the marketing and sales personnel within the railroads to consider and identify any likely gains of such traffic. They agreed with my assessment and could identify no gains.

After I completed my assessment of extended haul and new market opportunities, my traffic gain information was processed by ALK, and I understand it was then used for the operating plan and will be used for assessing the potential for environmental impacts due to the Transaction.

V. CONCLUSIONS

In 2006, CN and EJ&E carried over 5 million total carloads. Based on the assessment described above, I estimate that CN/EJ&EW would gain extended hauls for 9,737 carloads of traffic due to the Transaction within approximately three years of consummation, including 296 transloaded carloads. Many of these gains would benefit shippers with new single-line service. I estimate the additional gross revenues attributable to these gains to be \$14.86 million. I do not anticipate any gains to CN/EJ&EW of entirely new business in which neither CN nor EJ&E had any participation in 2006. In my judgment, this is a reasonable assessment of the changes in CN/EJ&EW traffic likely to result from the Transaction.

VERIFICATION

I, David A. Stuebner, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 23 2007

A handwritten signature in black ink, appearing to read "David A. Stuebner", written over a horizontal line.

David A. Stuebner

VERIFIED STATEMENT

OF

DAVID L. NOVAK

My name is David L. Novak. I am Director Network Strategies for CN¹ in the United States. As such, I handle strategy and operations projects for CN's senior vice president for the Southern Region and CN's executive committee. I was responsible for developing the Operating Plan (Minor) attached to this statement (and designated as Exhibit 15 to the Application). The Operating Plan describes the operational changes that CN plans to make as a result of its acquisition of EJ&EW, which, when CN acquires it, will have acquired all of the rail assets presently owned by EJ&E, other than those directly serving the steelmaking operations of USS and other customers at the Gary Works site in Gary, IN.

I began my railroad career as a third-generation EJ&E operations employee and spent a decade in EJ&E's operating department – four years as a locomotive fireman/locomotive engineer and another six years as an operations manager. During my time on the EJ&E, I covered the entire railroad from end to end many times and served as an EJ&E operations manager inside USS's Gary Works; at EJ&E's Joliet, Whiting, and Kirk Yard terminals; and on the line of road. I then moved to CSXT, serving in operations assignments in Pittsburgh, Cincinnati, Baltimore, and Jacksonville, where I rose to the position of general superintendent. I was also a managing director in the marketing-and-sales department and a managing director in the finance department. In 2001, I was recruited to join the new management team assembled to run Great Lakes Transportation LLC ("GLT"), a holding company, controlled by affiliates of The Blackstone Group, for three rail carriers (DMIR, BLE, and P&C Dock) and one water carrier (Great Lakes Fleet, Inc.) serving the domestic steel industry. I was vice president at GLT

¹ This and all other principal abbreviations used in this Verified Statement and the appended Operating Plan are defined in a Table of Abbreviations following the Table of Contents at the beginning of the Railroad Control Application.

in Monroeville, PA. After CN's 2004 acquisition of GLT's carrier subsidiaries, I stayed with CN in Monroeville to work on the integration of GLT's and CN's operations. In 2005, I relocated to CN's Southern Region headquarters in Homewood, IL, where I undertook my current assignment. I earned bachelor's and master's degrees in business from Indiana University and, in addition, I attended the University of Chicago, Syracuse University, and the Wharton School of the University of Pennsylvania.

Chicago is presently one of the least satisfactory links in the CN system. CN rail lines converge in Chicago coming into the city from five different directions: from Wisconsin and points north, from Iowa and points west, from Memphis and points south, from Michigan and points east, and from Joliet, IL, which is located southwest of Chicago. Outside Chicago CN's trains run well, but inside the Chicago metropolitan area it's a different story. CN trains within the city connect either via suboptimal infrastructure (such as the St. Charles Air Line, which is close to the McCormick Place convention center near downtown Chicago) or indirectly, via the Chicago terminal network – by trackage rights over the BRC and the IHB. What CN has needed since undertaking its North American growth strategy – expansion that started with acquisition of IC, was augmented by acquisition of WC, and continued with acquisition of GLT – is a way to link its five Chicago rail lines more efficiently. The lines being transferred from EJ&E to EJ&EW can achieve that purpose, connecting the Chicago routes and providing a way around, rather than through, Chicago. At the same time, addition of EJ&EW to CN's railroad family brings Kirk Yard, EJ&E's automated classification facility at Gary, IN, into the fold. With its base-level capabilities and the potential capacity and efficiencies that would become available from capital to be invested in Kirk Yard, CN would have in the Chicago metropolitan area an ideal complement to the premier railcar classification terminal CN is constructing in Memphis, TN.

The purpose of the CN/EJ&EW Operating Plan appended to this statement is to describe any significant changes in patterns or types of service anticipated as a result of the proposed CN/EJ&EW Transaction. The most notable changes that would result from the Transaction would be those that are needed to accommodate CN's present traffic. CN owns rail corridors that intersect EJ&E's lines at Leithton, IL; Munger, IL; Joliet, IL; Matteson, IL; and Griffith, IN. By joining the EJ&EW arc to CN's intersecting rail lines, CN would be able to use that arc to route its trains between CN corridors. This would improve fluidity on the CN system and the rest of the Chicago rail network by moving CN trains off of crowded lines in center-city Chicago and dispersing them along the EJ&EW arc on the periphery of the Chicago metropolitan area. CN would use EJ&EW as a cross-connecting corridor so that, for example, a CN train headed from Western Canada to the Southern United States could move from CN's Waukesha Subdivision (north of Chicago) to its Chicago Subdivision (south of Chicago) via the EJ&EW route instead of travelling through downtown Chicago.²

CN expects that the Transaction would make it possible for the combined system to extend certain hauls now handled by either CN or EJ&E (*see* Verified Statement of David A. Stuebner ("Stuebner V.S.")). This traffic has been incorporated into and accounted for by the Operating Plan. CN does not anticipate any gains of entirely new traffic from trucks or other rail carriers (*i.e.*, traffic not currently handled in part by CN, EJ&E, or both carriers) (*id.*).

The Operating Plan was developed with the assistance of knowledgeable CN employees. CN operating, mechanical, and engineering personnel made site visits to EJ&E to inspect facilities and observe operations. To the extent that Operating Plan team members were not already familiar with the locations likely to be affected by the Transaction, they either visited those locations or consulted with knowledgeable EJ&E personnel for information about the

² This movement would require the construction of an improved connection at Matteson, IL, as described in the Operating Plan.

territory. The team also identified capital investments required to provide improved connections and capacity upgrades. CN's labor experts worked with the Operating Plan team to develop the best approach to efficient implementation of the Operating Plan, while members of the Operating Plan team and others at CN provided information that is reflected in the Labor Impact Exhibit (Attachment B to the Operating Plan) regarding effects of the CN/EJ&EW Transaction on CN and EJ&E employees.

The Operating Plan describes the present operations of both the CN and EJ&E railroads and the future operations of CN and EJ&EW, including their principal routes, yards and terminals, train operations, line density, and passenger/commuter impacts, and explains the changes that CN plans to make to operations of the two systems as a result of the Transaction. Those changes should facilitate even more reliable rail service for CN traffic moving between points in North America that route through Chicago.

The service and other benefits expected from the CN/EJ&EW Transaction can best be realized by acquisition and control of EJ&EW by CN. Only an acquisition of EJ&E's lines would give CN full control of rail lines that can connect its Canadian and United States operations without moving trains through the City of Chicago. Simply extending the trackage rights that CN has over much of EJ&E would fall far short of the benefits of common ownership and control, because an independently owned EJ&E would have no incentive to invest the significant capital required for capacity and connection improvements needed to glue together the CN corridors most efficiently. Under separate ownership, EJ&E would not be utilized to its fullest potential, nor would separate ownership permit maximum flexibility in the EJ&E's use. Only common control would put the two systems in the hands of a single entity that could assure coordinated operations over those lines and sufficient investment to maximize overall efficiency in the interest of customers using both railroads.

To realize the significant public benefits promised by the CN/EJ&EW Transaction, it would be necessary for CN to make changes in operations of each of the two existing systems. For the most part, the modifications that are contemplated target CN trains that today move through Chicago between the CN rail corridors that converge on the City. After the CN/EJ&EW Transaction is fully implemented, these trains would be re-routed around Chicago onto EJ&EW, which would provide a less restricted corridor, and which CN would have improved with added capacity and enhanced connections to facilitate the flow of CN traffic. The changes that are anticipated would deliver benefits to three constituent groups:

1. Customers. The changes would result in improved reliability and service to both CN and EJ&E customers. Customers using CN today would see improved reliability once CN trains are redirected onto EJ&EW from the crowded routes they travel today. Customers now served by EJ&E would benefit in two ways: from the assurance that stewardship of EJ&E's lines would rest in the hands of an experienced, successful operator whose core competence is freight rail transportation; and from a richer menu of service options and increased set of train connections as CN's train plans are overlaid over those of the EJ&E and the entire CN network becomes available to EJ&E customers on a single line basis. Also, customers using other railroads that move trains inside Chicago would indirectly benefit, as conflicting CN trains would be transferred to alternate routes, thereby easing congestion in the Chicago terminal network. And while CN's through trains would be re-routed away from Chicago, CN would maintain its rail service to customers located on its lines in Chicago.

2. Communities. In addition to benefiting customers, CN's proposed operational changes would help many communities in Chicago and other communities within the EJ&E arc by significantly reducing congestion on CN, IHB, and BRC rail lines that bisect densely populated neighborhoods in and around Chicago. The proposed changes would also

advance the similar objectives of CREATE³ and make it possible for the City of Chicago to realize its goals with respect to the St. Charles Air Line more quickly than under CREATE's uncertain Central Corridor scenario, as CN could re-route its operations off of the Air Line route once critical connections are constructed and operational. CN's use of private investment to produce congestion-reducing routing benefits that may have been available from the CREATE Central Corridor, at best, many years later would save taxpayer dollars. Further, by eliminating the need to construct the Central Corridor, it would lessen community disruption and dislocation in Chicago's core.

3. Railroads. Class I rail carriers comprise a third group of beneficiaries of the proposed changes. Carriers that use the Chicago terminal network (BRC and IHB) would benefit significantly. Like CN, the Class I railroads today make liberal use of BRC and IHB in order to connect their own lines as well as to connect with each other. The more efficient use of EJ&E's lines, including the re-routing of portions of CN's traffic to the EJ&E lines, would reduce CN's reliance on BRC and IHB. This in turn would reduce congestion on BRC and IHB, so that traffic remaining on those lines would flow more freely, creating additional capacity and

³ The Chicago Region Environmental and Transportation Efficiency Program ("CREATE") is a partnership between the State of Illinois, the City of Chicago, and the freight railroads operating in Chicago to increase the efficiency of the region's rail infrastructure and improve the quality of life of its residents. The program's goals are: reduction in rail and highway congestion, improvement of passenger rail service, enhancement of public safety, promotion of economic development, job creation, improvement of air quality, and reduction in noise from idling or slow-moving trains.

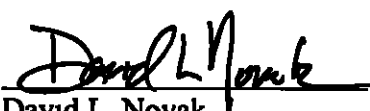
CREATE was originally envisioned as an approximately \$1.5 billion public/private infrastructure initiative, with funding coming from the federal government, the State of Illinois, the City of Chicago, and the railroads. Congress provided significantly lower funding in 2005 in the SAFETEA-LU legislation than advocated by CREATE's proponents. The funding provided will enable only a partial implementation of CREATE in upcoming years, and, with continued funding uncertainties, leaves realization of the remainder of the Project in question – including the construction of a new CN Central Corridor route through Chicago. As envisioned in CREATE, the Central Corridor route (running from the connection between NS and CN near 75th Street through downtown Chicago to a connection with CN's Waukesha Subdivision near Schiller Park) would permit CN to discontinue use of the St. Charles Air Line and eventually allow for the City's acquisition and development of the properties.

car-classification capabilities for the remaining users. In particular, 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.

VERIFICATION

I, David L. Novak, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 29, 2007


David L. Novak

OPERATING PLAN

(Exhibit 15)

OPERATING PLAN

1.0 INTRODUCTION

Under 49 C.F.R § 1180.8(b), Applicants must discuss any significant changes in patterns of traffic or types of service expected to result from the proposed Transaction. As described herein, CN anticipates only limited changes in EJ&E's core services after CN acquires control of the majority of EJ&E's present lines, but significant improvements in CN's present operations in and through Chicago. This Operating Plan describes those changes; how CN and EJ&E activities, personnel, and facilities would be integrated; and the effects of the Transaction on service, equipment utilization, facilities, traffic density, and labor.

Under the Stock Purchase Agreement (set forth in Exhibit 2 of the Application), the company known today as EJ&E would spin off the railroad operations and assets of EJ&E that do not directly support steelmaking at U. S. Steel's Gary Works. As a result, the current EJ&E would be split at Buchanan Street in Gary, IN, which is the physical divider between U. S. Steel's Gary Works and EJ&E's Kirk Yard. The railroad operations west of Buchanan Street along with the Hump and Dixie leads would become EJ&E West Company ("EJ&EW"). EJ&EW would, upon STB authorization, become an indirect wholly owned subsidiary of CNR and an affiliate of GTW, IC, WC, and CCP, whose lines all converge on Chicago and cross EJ&E's existing lines. Pursuant to the Stock Purchase Agreement, the remainder of EJ&E, which would continue to own the track and related assets needed to serve USS and the other customers at Gary Works, would change its name to Gary Railway, at which time EJ&EW would assume the EJ&E name and reporting marks.

EJ&EW, with lines in Northwest Indiana and Northeast Illinois, would be operated as part of CN's Chicago Division, which is part of CN's Southern Region.

CN expects to make targeted, strategic physical changes to EJ&E rail lines to improve the way CN flows trains through the Chicago metropolitan area. To understand how the

contemplated physical changes would benefit customers, motorists, and communities, it is helpful to know how EJ&E touches CN today.

Proceeding along EJ&E from north to south in a counter-clockwise direction (Figure 1),⁴ EJ&E intersects different CN rail lines at five places outside the City of Chicago. At Leithton, IL (EJ&E MP 60.3), EJ&E crosses CN's Waukesha Subdivision at grade. At Munger, IL (EJ&E MP 35.15), EJ&E crosses CN's Freeport Subdivision overhead. At Joliet, IL (EJ&E MP 1.47), EJ&E crosses CN's Joliet Subdivision overhead. At Matteson, IL (EJ&E MP 21.57), EJ&E passes underneath CN's Chicago Subdivision and the Metra Electric Line. At Griffith, IN (EJ&E MP 36.2), EJ&E crosses CN's Elsdon Subdivision at grade. Trains on each of the five CN subdivisions, after crossing EJ&E, can head into the City of Chicago and move between CN subdivisions using a tangle of slow-speed interlockings with their attendant diamonds, crossovers, wyes, and conflicting train movements.

With the acquisition of EJ&E's lines, CN would be able to connect its five Chicago rail corridors, enabling it to move much of its train traffic out of the City of Chicago and onto EJ&EW, effectively shifting operations from a meandering urban maze with numerous disconnects to a continuous corridor upgraded for capacity and fluidity.

The changes that CN plans would improve operations. The implementation of the CN/EJ&EW Transaction would be made in a measured, step-by-step way, ensuring that the changes that are made do not compromise safety or service.

Key elements of the Operating Plan include the following:

- Changes in train traffic patterns and net new carloads from traffic gains due to extended hauls as a result of the Transaction
 - No quantifiable traffic gains from trucks or from rail traffic not presently handled in part by CN, EJ&E, or both carriers

⁴ Figures illustrating this Operating Plan are found following the text.

- Train re-routes from CN lines inside the City of Chicago to the EJ&E corridor
- Some extended hauls for traffic now carried by CN or EJ&E
- Utilization of capacity available on lines and in terminals and supplemented to accommodate redirected traffic flows
 - Improved connections at six locations
 - Siding extensions and reinstallation of double track along nineteen miles of the EJ&E arc
 - Upgrades and expansion at Kirk Yard
- Re-routing of CN traffic off the St. Charles Air Line facility located near downtown Chicago between CN's Freeport and Chicago subdivisions
- Basic continuity of current operations, with minor changes
 - Essential continuity of major functions – dispatching, crew calling, operating systems
 - Initially, no planned changes in local trains
 - Increased use of Kirk Yard and East Joliet Yard for railcar classification and train assembly and disassembly
 - Continuation of trackage rights arrangements with connecting carriers
- Improvement in equipment utilization
- Maintenance of high safety standards

From CN's perspective the CN/EJ&EW Transaction would allow CN to own and control EJ&E lines that would greatly enhance CN's existing Chicago network by providing significantly improved fluidity on important CN routes that touch Chicago from all directions. That ownership and control would make it possible for CN to provide the most efficient, integrated operations over those lines. Also, it would ensure that the necessary investments

would be made to improve track connections linking intersecting CN and EJ&E lines and to add track capacity to accommodate added CN trains, while protecting existing train service.

The operating changes CN proposes to make are simple and would bring significant benefits. The Transaction would bolster CN's overall operations, first, by streamlining its routing through Chicago and thus improving service reliability, and second, by adding EJ&E's major railcar classification facility at Gary, IN (Kirk Yard) to CN's system, creating new options and more flexibility for CN to respond quickly to changing customer needs and demand levels.

The CN/EJ&EW Transaction would benefit both CN and EJ&E customers. CN customers moving freight through Chicago would experience improved service reliability when trains move from one of CN's existing lines to another via EJ&EW instead of routing through central Chicago, and customers now served by EJ&E would benefit from single-line access to the extensive CN system as well as from a wider range of service options as CN train plans are overlaid over those of the EJ&E. These customers would also benefit from CN's strong dedication to safety, high-quality service, customer focus, increased availability of train movement choices, and operational efficiency. In addition, Chicago-area customers of CN and other Class I carriers would benefit from reduced demand on the capacity of BRC, IHB, and CN's lines through the central Chicago terminal area.

2.0 DEVELOPMENT OF THE OPERATING PLAN

A team of knowledgeable operating department employees developed the integrated Operating Plan. In addition, CN operating, mechanical, and engineering personnel made on-site visits to EJ&E in order to become more familiar with current EJ&E facilities and operations. The Operating Plan team focused on scheduling, network capability, physical

operations, and existing plant. They used CN standards for train operations, maintenance, and equipment utilization in developing the plan.

3.0 PATTERNS OF SERVICE

The CN/EJ&EW Transaction would impact how CN operates trains on its existing five lines running between the EJ&E belt and Chicago. Where connections are in place today between CN lines and those of EJ&E, CN would operate cross-corridor trains on the outskirts of Chicago via EJ&EW instead of moving into and out of inner-city Chicago. Once improved connections are built and mainline capacity is added on EJ&E's lines, CN would shift additional cross-corridor trains to those lines from City of Chicago routes.

The Transaction would not impair CN's ability to handle commuter trains, passenger trains, or trackage/haulage trains operated on its lines today. Instead, re-routing of CN trains as proposed in the operating plan would free up capacity on these lines – particularly on the Waukesha Subdivision – so that remaining trains could operate in a more unencumbered fashion. As for commuter operations in particular, CN works with Metra⁵ – the regional commuter-rail operator – in two corridors today and can build on that foundation. Nor would service on EJ&E's existing lines be impaired. CN plans to make approximately \$100 million in capital improvements to those lines 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.

⁵ The Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a Metra ("Metra").

3.1 CN Existing Operations

CN owns and operates five rail lines that converge in the City of Chicago. The Waukesha Subdivision (operated by CN's WC subsidiary) approaches the City from the north, crosses EJ&E's line at grade at Leithton, IL, then continues south through Schiller Park to Forest Park. CN trains proceeding into Chicago south of Forest Park operate using trackage rights over either IHB or BOCT. The Freeport Subdivision (operated by CN's CCP subsidiary) approaches the City from the west, passes under EJ&E's line at Munger, IL, and proceeds eastward through Bridgeport, joining the St. Charles Air Line at 16th Street. CN's Joliet Subdivision (operated by CN's IC subsidiary) approaches Chicago from the southwest, passes under EJ&E's line at Joliet, IL, and proceeds northeast toward downtown Chicago, joining the Freeport Subdivision at Bridgeport. The St. Charles Air Line, which is jointly owned by CN, BNSF, and UP, runs between CN's Freeport and Chicago Subdivisions.

The Chicago Subdivision (also operated by IC) approaches Chicago from the south, crosses over EJ&E's line at Matteson, IL, proceeds toward Lake Michigan, then parallels the lake to 18th Street. Finally, the South Bend Subdivision (operated by CN's GTW subsidiary) approaches Illinois from the east; CN's line crosses EJ&E's line at grade at Griffith, IN, at which point the South Bend Subdivision ends and the Elsdon Subdivision (also operated by GTW) continues westward before heading north into Chicago, crossing many streets at grade. CN trains moving from the Elsdon Subdivision to other CN lines must use trackage rights over IHB, BRC, or BOCT.

Attachment A.1 shows existing train counts and gross tonnage per day on CN line segments within the EJ&E arc that would be affected by the Transaction.

3.2 EJ&E Existing Operations

EJ&E owns and operates 158 route miles of railroad in Northwest Indiana and Northeast Illinois, running in a broad arc around (but well outside) the City of Chicago. The railroad stretches from Waukegan, IL, located north of Chicago; reaches Illinois cities as far west as West Chicago and Joliet; heads east to Gary, IN, on the southern tip of Lake Michigan; and ends at South Chicago, IL.

EJ&E's Eastern Subdivision runs 47 miles from Gary, IN, through Cavanaugh, IN, to Joliet, IL. At Cavanaugh, the Whiting Line branches off and runs six miles to Whiting, IN. The EJ&E's 12-mile Lake Front Line stretches along Lake Michigan from Gary, IN, to South Chicago, IL. From Joliet, IL, EJ&E's Western Subdivision runs 73 miles through Walker, IL, to Waukegan, IL. At Walker, the Illinois River Line branches off and runs to Goose Lake, IL, 20 miles from Walker. Attachment A.2 shows existing train counts and gross tonnage per day on EJ&E line segments that would be affected by the Transaction.

EJ&E operates three terminals: Kirk Yard, a major automated classification yard at Gary, IN; a large flat-switch yard at Joliet, IL; and a small industrial support yard at Whiting, IN. EJ&E locomotive shops and car-repair facilities are located at Joliet and Gary.

CN plans to develop Kirk Yard, and after identifying specific needs during its first months there after consummation of the Transaction, would perform work to upgrade the yard in the second and third years after closing. CN would also evaluate operational requirements at East Joliet Yard and make necessary modifications to handle workload changes expected to take place there.

3.3 Proposed Operations

CN intends to pursue a three-step integration of EJ&EW that would bring specific trains onto EJ&EW in successive phases.⁶ The average number of trains per day re-routed onto EJ&EW would depend for the most part on where a train enters and exits EJ&EW's line.

The integration phases can be described in general terms as follows:

1) Phase 1 (effective day one):

- No change to EJ&E Lake Front Line, Whiting Line, Illinois River Line, Western Subdivision between Leithton and Waukegan, or local service
- On the Eastern and Western subdivisions, re-routing of trains between CN corridors where connections already exist
- Some CN switch traffic handled at Kirk Yard – four of the trains to be re-routed would be handled at Kirk Yard (two in, two out).

2) Phase 2 (effective after the first full construction season):

- No change to EJ&E Whiting Line, Illinois River Line, Western Subdivision between Leithton and Waukegan, or local service
- Improved connections ready at Griffith, Ivanhoe, and Kirk
- Additional track available at Leithton, East Siding, and Frankfort
- On the Eastern and Western subdivisions, re-routing of trains where improved connections and new capacity have been added

⁶ In order to permit trains of its operating subsidiaries GTW, IC, CCP, and WC to operate over EJ&EW's line and provide for maximum operational flexibility, CN intends to cause EJ&EW to grant trackage rights to those subsidiaries over the entire length of EJ&EW from Waukegan to Gary. CN also intends to grant EJ&EW trackage rights over selected portions of its CCP and IC subsidiaries. These proposed trackage rights are the subjects of notices of exemption in sub-dockets to this proceeding (STB Finance Docket No. 35087 (Sub-Nos. 2 through 7)), providing for grants of trackage rights by EJ&EW to GTW, IC, CCP, and WC and by IC and CCP to EJ&EW.

- Direct service to be made available between CN and both CSXT and NS
- On the Lake Front Line, additional interchange traffic
- Among the re-routed trains: four additional CN switch trains for EJ&EW terminals
 - Two for Kirk Yard (one in, one out)
 - Two for East Joliet (one in, one out).

3) Phase 3 (effective after the second full construction season):

- No change to EJ&E Whiting Line, Illinois River Line, or Western Subdivision between Leithton and Waukegan
- Improved connections ready at Matteson, Munger, and Joliet
- All double track in place at Leithton, East Siding, and Frankfort
- On the Eastern and Western subdivisions, full integration of CN and EJ&E train plans with re-route of remaining CN trains
- CN trains no longer use St. Charles Air Line
- Additional interchange traffic handled on the Lake Front Line
- Integrated local service plan in place.

3.4 Local Train Service

The purpose of a local train is to gather traffic from and distribute it to locally based customers at various outlying points. On the EJ&E, local trains carry freight for customers other than those engaged in integrated steel-making and coal-fired electricity generation. Local trains on the EJ&E reach EJ&E customers on a regular basis and connect customers on the EJ&E with the North American railroad network through the EJ&E's full array of interchange points. In the near term CN plans to continue this method of service for local trains on the EJ&EW

system. Eventually, after gaining experience operating EJ&EW, CN would develop and put in place an integrated EJ&EW local service plan.

3.5 Terminal Operations

CN operates three major terminals in Chicago: Markham, Glenn, and Hawthorne. In addition, CN has a smaller terminal at Schiller Park and uses a fourth terminal – BRC's Clearing Yard – for railcar switching.

EJ&E operates three terminals: Kirk Yard, a major automated classification yard at Gary, IN; East Joliet Yard, a large flat-switching terminal in Joliet, IL, used today primarily for railcar storage; and Whiting Yard, a small industrial-support facility in Whiting, IN. EJ&E locomotive shops and car-repair facilities are located at Joliet and Gary.

The integrated CN/EJ&EW operating plan would add four train pairs to EJ&E terminals:

- Three inbound and three outbound switch trains at Kirk Yard (two pairs in Phase 1, one pair in Phase 2)
- One inbound and one outbound switch train at East Joliet Yard (Phase 2).

The addition of CN switch trains would add railcar-classification work to both Kirk Yard and East Joliet Yard. CN's preliminary studies, which use 2006 data, indicate that as many as 1,355 car handlings could be added to Kirk Yard, bringing the daily hump count to 2,039 from 685 today. To achieve the projected workload levels, CN and its Class I partners must negotiate changes to existing Chicago-area interchange arrangements.

At East Joliet, which is now used primarily for railcar storage, CN would re-establish the terminal as a switching and block-swap facility, eventually adding 709 daily car handlings to the 500 railcars that are switched there today. East Joliet, which has 75 tracks and space for 2,360 railcars, would handle railcars to and from CCP, BRC, Hawthorne Yard, Glenn

Yard, and the ICE. In addition, it would handle BNSF and CP blocks where downstream classification is not otherwise feasible; and Salem, IL, traffic from the former WC, the Joliet Subdivision, and points south as far as Memphis and north as far as Winnipeg.

The relocation of railcar classification to Kirk and East Joliet Yards would make it possible to reduce CN's switching activity that now takes place at CN's Glenn, Hawthorne, Schiller Park, and Markham Yards and at BRC's Clearing Yard, leaving the handling of local industry cars at those locations and intermodal cars at Markham. If CN is able to move this car handling to EJ&EW locations, then railcar switching at CN's Glenn, Hawthorne, Schiller Park, and Markham Yards and at BRC's Clearing Yard would be reduced after re-routes and revised Class I interchange arrangements are in place.

Before this transfer of car activity could be made, two major prerequisites would have to be satisfied. First, CN would take steps to insure that service levels would be maintained. Accordingly, car classification work would not shift unless capacity is available to handle the work at the new locations without harming customers. Second, CN would fully assess the capabilities of both Kirk Yard and East Joliet Yard and ensure that they could accommodate the transferred car handling activities. Thirty years ago, Kirk Yard classified 2,000 cars per day, while 4,000 cars per day moved in and out of the terminal. To meet CN's projected car handling needs, Kirk Yard would have to be able to reliably classify more cars per day than it handled at its peak. So, upon acquisition of control of EJ&EW, CN would assess both the capabilities of Kirk Yard and CN's requirements for its use, and would then change operating processes at Kirk Yard and upgrade and expand the facility to meet those requirements. CN would also assess the capabilities of East Joliet Yard and make changes there as appropriate to accommodate increased yard activity, but it would not be able to expand the yard, which is land-locked. Once supplemental capacity is identified CN would take steps to

utilize the car handling capacity that would be made available by its capital investments and changes in operating processes.

3.6 Abandonments

No abandonments are anticipated as a direct result of the Transaction. Although CN intends to re-route all its trains currently operating over the St. Charles Air Line, a formal abandonment of that Line would require coordination with BNSF and UP, which own the Line jointly with CN, and with existing users such as Amtrak.

4.0 IMPACTS ON TRAFFIC DENSITIES

4.1 General Concept

With the coordinated use of intersecting CN and EJ&E lines, and improved track connections at Munger, Joliet, Matteson, and Griffith, CN trains that today move between CN corridors on CN's downtown Chicago lines would instead flow between those corridors over EJ&EW's lines, thereby avoiding the congestion and delay those trains experience today as they navigate City of Chicago bottlenecks. CN does not anticipate that the CN/EJ&EW Transaction would result in any traffic diversions from highway (*see* Verified Statement of Gerald P. Radloff at 5). It does anticipate that some of the tonnage now carried by either CN or EJ&E would be carried a longer distance on the combined system (*see* Stuebner V.S.), and that additional tonnage is taken into account by this operating plan.

4.2 Trains on CN Lines

CN handles more trains on its lines inside the EJ&E arc today than it expects to handle after all the planned CN train re-routes have taken place. It expects to reduce the number of trains operating on most of the affected CN line segments inside the EJ&E arc. Attachment

A.1 shows both present numbers of trains operating on CN lines affected by the Transaction, and CN's projections of numbers of trains operating on those lines after full implementation of the Transaction.

4.3 Trains on EJ&E Lines

The anticipated decrease in the number of trains operated on CN lines inside the EJ&E arc would be offset by increases in the number of trains operated on the lines of the EJ&EW itself. The exact number of additional trains on any particular portion of the arc would vary depending on where re-routed trains would enter and exit EJ&EW's line. Attachment A.2 shows numbers of trains presently operating on affected EJ&E line segments and the number CN expects would operate on those segments after CN's acquisition of control.

5.0 LINE INFRASTRUCTURE, NEW CONSTRUCTION, AND OTHER CAPITAL INVESTMENTS

CN expects to invest \$100 million for infrastructure enhancements and new capacity on EJ&EW lines and on connections of those lines with CN's existing lines and other Class I carriers. Improved connecting tracks at six locations on EJ&EW (Munger, Joliet, Matteson, Griffith, Ivanhoe, and Kirk Yard) would provide CN with the ability to route its trains most efficiently over the EJ&EW arc instead of through the City of Chicago and the St. Charles Air Line and to use that arc to interchange more efficiently with other carriers. To ensure that adequate mainline capacity exists on the EJ&EW to handle CN train flows diverted from City of Chicago routes and to protect both existing EJ&E and trackage/haulage train movements and the needs of rail customers, CN plans to extend sidings and reinstall main track along 19 miles of EJ&EW line. The proposed combination of improved connections and additional capacity would allow CN to flow its trains between:

- CN corridors

- CN corridors and the rail systems of BNSF, CSXT, NS, and UP
- CN corridors and Kirk Yard.

CN plans to install improved connecting tracks at the following EJ&EW

locations:

- 1) Munger (Figure 2), in the southwest quadrant of the present crossing between CN and EJ&E, to connect inbound Freeport Subdivision to the southbound EJ&EW.
- 2) Joliet (Figure 3), in the northeast quadrant of the present crossing between CN and EJ&E, to connect westbound EJ&EW to northbound Joliet Subdivision.
- 3) Matteson (Figure 4), in the northeast quadrant of the present crossing between CN and EJ&E, to connect eastbound and westbound EJ&EW to southbound and northbound Chicago Subdivision.
- 4) Griffith (Figure 5), in the northeast quadrant of the present crossing between CN and EJ&E, to connect inbound South Bend Subdivision to northbound EJ&EW.
- 5) Ivanhoe (Figure 6), in the southeast quadrant of the present crossing between CN and EJ&E, so that northbound trains from EJ&EW can move eastbound onto CSXT's Porter Branch, which is also used by NS. This connection would enable the CSXT Porter Branch to connect CN lines with CSXT at Willow Creek in Portage, IN, and with NS further east at Porter, IN.
- 6) Kirk Yard (Figure 7), west of Buchanan Street, to connect the east end of Kirk Yard to NS's Chicago Line. With this simple crossover, NS trains would be able to arrive at and depart from Kirk Yard and interchange with

EJ&EW in a more efficient manner than it does today with EJ&E at Pine Yard, located 2.25 miles west of Buchanan Street.

Siding extensions and reinstallation of double track are planned as follows:

- (A) At Leighton, double track the northwest quadrant of the existing wye connecting CN's Waukesha Subdivision with EJ&E, and extend the existing siding 2.3 miles.
- (B) Between East Siding and Walker on EJ&EW, connect the existing 0.4-mile siding at East Siding, the existing 1.4-mile siding at Normantown, and the existing 1.5-mile siding at Walker with new track, thereby creating a 10.1-mile-long segment of double track between the west end of East Siding and the east end of Walker siding.
- (C) Between East Joliet and Frankfort on EJ&EW, reinstall the second main track between MP 1.75 near Marble Falls and MP 11.6 at Frankfort, thereby double tracking EJ&EW between Joliet and Frankfort.

Figure 8 shows the end result of CN's investment in improved connections and new tracks.

6.0 IMPACT ON COMMUTER AND PASSENGER OPERATIONS

The Transaction would not affect passenger rail service operating on CN rail lines today. In fact, reduced freight train traffic on CN's lines inside the EJ&E arc should benefit passenger operations over those lines (in particular, the Waukesha Subdivision, used by Metra for commuter trains). Once CN ceases operations on the St. Charles Air Line Route, Amtrak would be the only remaining regular user of that route. Before the line can be formally abandoned, Amtrak trains would need to be re-routed to NS's line, as has long been planned in connection with the CREATE project.

EJ&E's lines are not used for intercity or commuter passenger rail service, though EJ&E does cross several Metra corridors at grade. CN would work with Metra and the host freight operators to coordinate operations and adjust operating windows so that the needs of all users can be met. CN is aware of the fact that Metra is studying the feasibility of using a portion of the EJ&E corridor – approximately between MP7.5 and MP42.5 on the Western Subdivision – for future light-rail commuter service. CN has a longstanding working relationship with Metra, as noted earlier, and if it acquires control of EJ&EW it would be willing to build on that relationship to explore options in the interest of reaching a win-win solution that would further Metra's goal of extended commuter train service while accommodating CN's need to move its freight traffic more efficiently through and around Chicago.

7.0 EQUIPMENT UTILIZATION

Under the SPA between CN and EJ&E, CN would acquire 228 EJ&E flatcars through the Transaction, and none of EJ&E's other railcars. To meet the needs of EJ&EW customers, however, CN would also be able to draw on its existing equipment pool, which is much larger than is now available to EJ&E to serve its customers, and consists of equipment that, on average, is newer than that now serving EJ&E customers.

CN would acquire 38 locomotives from EJ&E. As in the case of railcars, although CN would not be acquiring EJ&E's entire locomotive fleet, it would be able to draw on its own larger and more efficient fleet of bigger locomotives, which would provide greater flexibility and make possible more efficient service to EJ&E's present customers. As the older and lower-horsepower locomotives being acquired from EJ&E are retired or cascaded to less-demanding service, the locomotive fleet in use on EJ&EW would become smaller, newer, more productive, and more fuel-efficient.

8.0 ORGANIZATIONAL STRUCTURE AND CENTRALIZED FUNCTIONS

8.1 Divisional Structure

EJ&EW would become part of CN's Chicago Division, which is part of CN's Southern Region. The headquarters for the Southern Region is located in Homewood, IL, mid-way between East Joliet Yard and Kirk Yard, and within a 30-minute drive to either.

CN's divisional and regional structure relies upon dispersed autonomy within the context of a fully integrated system. The resulting continuity and responsibility for operations should permit the combined CN/EJ&EW railroad system to maintain the high standards of safety and customer service already established on the separate systems.

8.2 Crew Management and Train Dispatching

CN expects to relocate EJ&E's crew management and train dispatching capabilities into CN's Homewood, IL, facility as soon as possible after consummation of the CN/EJ&EW Transaction. When those functions have been moved, trains and crews would be managed from CN's Region Operations Center in Homewood, IL.

9.0 EQUIPMENT MAINTENANCE AND MAINTENANCE-OF-WAY FACILITIES

CN has extensive locomotive-and-car maintenance, repair, and servicing facilities. In the U.S., heavy locomotive-repair work is done primarily at Woodcrest Shops in Markham Yard at Homewood, IL, while heavy car-repair work is done primarily at Centralia, IL, and Fond du Lac, WI.

EJ&E has locomotive maintenance, repair, and servicing facilities at East Joliet, IL, at Kirk Yard, and inside Gary Works in Gary, IN. After the Transaction, the EJ&E locomotive shop and servicing facility inside Gary Works that now maintains EJ&E locomotives would become a Gary Railway facility, to be used for repair, maintenance, and servicing of Gary Railway locomotives.

CN anticipates that it would make only minor changes in the operation of the locomotive repair and maintenance facilities at Kirk Yard. For instance, occasional heavy maintenance of EJ&EW locomotives would be performed at facilities on CN's existing system. In turn, light repair and servicing of CN locomotives that may move in and out of Kirk Yard could be performed there.

Based on its assessment of shop capacity available at Kirk Yard and shop capacity elsewhere on CN's system, CN believes it unlikely that it would continue using the roundhouse at East Joliet Yard for locomotive maintenance or repair work, especially in view of its deteriorated condition (with only five roundhouse stalls remaining available).

EJ&E has car maintenance and repair facilities at East Joliet, IL, and at Kirk Yard in Gary, IN. After the Transaction, Kirk Yard's car operation would not change. With heavy car-repair work already being done at nearby CN facilities in Centralia, IL, and Fond du Lac, WI, CN does not expect to need to use the facilities of EJ&EW's East Joliet car shop.

CN's plans to re-route through trains that currently operate on the Chicago Subdivision inside the EJ&E arc could eventually lead to relocation of the heavy locomotive repair work now done at Woodcrest Shop in Homewood. Today, locomotives are transported to and from Woodcrest Shop using through trains that pass Markham Yard or other trains that originate or terminate there. CN's planned re-routing of trains onto the EJ&E arc would reduce options that are available to transport these locomotives. At that point, CN might find it most efficient to relocate its heavy locomotive repair work to a more convenient facility or facilities, whose location has not yet been determined.

CN would bring its engineering processes to the EJ&EW and would increase use of mechanization in maintenance of way and signal work on the EJ&EW lines.

10.0 TRANSPORTATION SYSTEMS

CN currently uses its Service Reliability Strategy (“SRS”) operating system to support network planning and operations, including the development of trip plans, performance reporting, and day-to-day management of traffic (including assembly and routing of car blocks and trains) throughout the system. SRS also supports the establishment, implementation, and monitoring of service commitments with customers, as well as car and container tracking, and the capture of waybill data.

CN plans to extend SRS to EJ&EW as soon as possible within the first twelve months after the Transaction’s closing date.

11.0 LABOR IMPACT

There would be two principal labor impacts from the Transaction: the elimination of redundant positions and the organization/integration of forces to realize the efficiencies of the Transaction. The details of CN’s projected changes in seniority, agreements, and territory are set forth in Appendix A to this Operating Plan. The labor impacts of the Transaction are quantified in Attachment B to the Operating Plan.

CN estimates that the CN/EJ&EW Transaction would result in the elimination of 114 positions. CN anticipates that, to the extent the Transaction leads to the elimination of positions, most of these impacts could be accommodated through normal attrition during the implementation period. CN’s continuing need for experienced, skilled railroaders at its neighboring Chicago operations makes it highly likely that most of the affected employees would have the opportunity to fill other positions opening up elsewhere in CN’s Chicago operation. CN would work with the respective collective bargaining units to attempt to secure labor implementing agreements that would provide for the flexibility to fully employ any potentially adversely impacted employee.

The Transaction would generate efficiency gains that would likely affect employment levels in three primary areas.

First, as shown in the Labor Impact Exhibit set forth as Attachment B, the largest anticipated impact would be to general and administrative (“G&A”) positions. CN intends to streamline duplicative administrative activities. This would primarily affect EJ&E’s management and clerical ranks in Joliet, IL, and Gary, IN. CN support departments would instead provide these administrative services. With appropriate labor implementing agreements, and with CN’s ongoing need for experienced employees in the Chicago area, employees would have the opportunity to follow this work.

Second, the CN/EJ&EW Transaction would permit significant improvement in equipment utilization, work processes, and maintenance activities. As newer railcars and locomotives are integrated into the fleet of the combined system, maintenance workloads should drop. In addition, CN has specialized facilities that could handle some of the tasks that today are necessarily handled on the EJ&E because it is a stand-alone operation that is isolated from its affiliates and therefore must be fully self-reliant. New engineering processes and increased mechanization would boost the productivity of EJ&EW’s track and signal forces.

Finally, in the transportation area, dispatching and crew-calling offices serving the EJ&EW lines would be relocated to CN’s offices performing those functions in Homewood, IL, but only after systems had been put in place to ensure proper coordination of train movements across CN (including EJ&EW) lines. As in the case of general and administrative employees, given CN’s continuing need for experienced employees in Chicago, appropriate labor implementing agreements would provide employees with the opportunity to follow this work.

In all cases, CN would first attempt to make any necessary reductions through attrition. Where work opportunities require relocation of employees represented by labor organizations, CN would seek implementing agreements with those organizations to allow the

efficient use of experienced employees where job opportunities exist. In previous control transactions, CN has established a strong track record of reaching voluntary implementing agreements with labor organizations, with due regard to seniority interests, and it sees no reason to expect any different outcome from the CN/EJ&EW Transaction. Moreover, if any further Transaction-related reductions should be required, eligible employees would be covered by employee-protective conditions established in *New York Dock Ry – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F. 2d 83 (2d Cir. 1979), or, in the case of trackage rights, *Norfolk & Western Ry. – Trackage Rights – Burlington Northern Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry. – Lease & Operation – California Western R.R.*, 360 I.C.C. 653 (1980).

CN also has an ongoing need for knowledgeable railroad managers, and the EJ&E has a rich talent base. EJ&EW management employees whose local EJ&EW positions are eliminated as a result of the Transaction would be offered job opportunities elsewhere in the CN system with compensation and benefits packages comparable to those available to CN's U.S.-based managers. If a new CN assignment should require relocation of a new management person, CN would move the employee in accordance with the then-current CN management relocation plan.

In addition to reductions in positions, CN anticipates that, in order to realize the efficiencies that would be made possible by the Transaction, CN would generally require an integrated work force, with crafts working under single agreements, to operate and support the operation of trains within or via the greater Chicago area. This level of integration, which would include the ability of train and engine crews from any of CN's various railroads to operate over CN's other railroads, would permit traffic from IC, CCP, WC, and GTW to move seamlessly to, from, and via the EJ&EW.

The projected labor impacts presented in Attachment B and in Appendix A represent CN's best estimate, based on information presently available, of the changes that would be necessary to effect the public-transportation benefits and the efficiencies of the Transaction. However, additional changes could be required to carry out the approved Transaction as circumstances change, opportunities open elsewhere on the CN system, traffic and shipping patterns evolve, and CN acquires experience in operating the combined system.

12.0 SAFETY INTEGRATION PLAN

Pursuant to 49 C.F.R. §§ 244.17(a) and 1106.4(a), CN will submit a Safety Integration Plan ("SIP") to the STB and the Federal Railroad Administration ("FRA") within 60 days after the filing of the Application. As required by STB and FRA rules, this document will address corporate culture, employee training, operating practices, motive power and equipment, track-safety standards and bridge structures, hazardous materials, dispatching operations, highway-rail grade crossing systems, personnel staffing, capital investment, and information systems on the CN and EJ&E systems, and will explain how the CN/EJ&EW Transaction would have no adverse effects on safety related to any of those subjects.

APPENDIX A

Projected Seniority, Agreement and Territory Changes Required for the Operating Plan

This Appendix describes anticipated changes in seniority districts, agreements, and territories in the United States that CN now foresees as necessary to implement the Transaction that is the subject of this Application.

CN and its U.S. rail subsidiaries have generally been able to negotiate voluntary implementing agreements with Rail Labor to achieve the objectives of previous transactions. CN would again enter into discussions to achieve voluntary implementing agreements to implement this Transaction. As in the past, CN would seek, as practicable, to accommodate seniority interests as part of the implementation process.

Overall, this Transaction is expected to result in few, if any, adverse effects upon employees, and CN believes that most job reductions would be addressed through normal attrition. Otherwise, CN's continuing need for experienced railroad employees at other locations, at or near Chicago, would likely afford most of the affected employees the opportunity to fill other positions within CN. CN recognizes that eligible employees who are adversely affected as a result of changes made possible by the Transaction would be covered by the employee protective conditions established by the ICC in *New York Dock Ry. – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F. 2d 83 (2d Cir. 1979), or, in the case of trackage rights, *Norfolk & Western Ry. – Trackage Rights – Burlington Northern Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry. – Lease & Operation – California Western R.R.*, 360 I.C.C. 653 (1980).

The specific changes that CN now anticipates would be necessary to effectuate the Transaction are described below.

The heart of this Transaction is CN's ability to use the EJ&EW lines to bypass – indeed, alleviate – traffic congestion in Chicago and to achieve seamless connections between

CN's U.S. rail properties. To this end, the Operating plan provides for improved connections between the lines of CN's U.S. rail properties and the EJ&EW to permit traffic to and from IC, CCP, WC and GTW to move seamlessly via the EJ&EW, rather than through downtown Chicago. The resulting Transaction efficiencies can best be achieved if the train and engine service personnel needed to assure these seamless operations are covered by a single collective bargaining agreement, with expanded and consolidated seniority rosters. CN anticipates placing the required train and engine service personnel who work under the WC, EJ&EW, and GTW agreements under a single carrier's agreements in order to facilitate the flow of traffic in and through Chicago, and would seek to apply the IC agreements for these purposes. In addition, to achieve the efficiencies of the Transaction, it would be necessary for train and engine service crews from IC, CCP, WC and GTW to operate over the EJ&EW and the other CN properties. Based upon evolving operational needs, the phased integration of EJ&EW into the CN system may result in changes to train and engine crew reporting points.

In order to accomplish the goals of the Transaction, it would also be necessary to integrate other employees under single agreements, as described below.

Tower Operators/Telegraphers. – Tower Operators are employed in the greater Chicago area by IC. EJ&E employs telegraphers, who perform similar functions, at West Chicago and Whiting Ship Canal. CN expects to continue to require the services of EJ&EW's telegraphers to perform interlocking and bridge-tender work. CN anticipates that it would consolidate EJ&EW's telegraphers with IC's tower operators, and would seek to do so under IC's existing collective bargaining agreement with the TCU.

Crew Callers. – CN performs crew calling functions at Homewood, IL; Troy, MI; Proctor, MN; Superior, WI; Stevens Point, WI; and Greenville, PA. EJ&E's crew calling function is located at Kirk Yard. CN intends to consolidate crew calling, and would seek to do so under the existing IC collective bargaining agreement in Homewood.

Locomotive Repair. – The Transaction would make it possible to achieve efficiencies through consolidation of locomotive repair functions. To achieve such efficiencies, CN intends to consolidate all locomotive repair forces on the EJ&EW, and would seek to do so under the existing IC collective bargaining agreements.

CN maintains a modern and efficient locomotive repair facility at Woodcrest, IL, and is in the process of building a state-of-the-art facility at Memphis, TN. EJ&E performs locomotive maintenance, repairs and servicing at Kirk Yard and East Joliet, IL. CN anticipates that a limited amount of the heavy locomotive repair work now performed at Kirk Yard would be performed initially at facilities on CN's existing system. In turn, Kirk Yard would be used for inspections and running repairs for both EJ&EW locomotives and other CN locomotives, as determined by efficiency. CN does not foresee continued use of the repair facility in East Joliet.

As CN gradually moves traffic from downtown Chicago to the EJ&EW lines, locomotives may no longer pass the Woodcrest shop en route through downtown Chicago. At that point, CN may find it more efficient to relocate its heavy locomotive repair work to another facility or facilities with the location(s) yet to be determined.

Car Repair. – CN currently handles major car repairs at Fond du Lac, WI, and Centralia, IL. EJ&E performs car repair at Joliet, IL, and Kirk Yard. As part of the Transaction, Gary Railway would retain most of the EJ&E car fleet. With respect to cars allocated to the Gary Railway, CN, through its subsidiaries, would perform only running repairs required under AAR Rules and such other car repair work as Gary Railway may require pursuant to commercial agreements between CN and the Gary Railway. If Gary Railway requires CN to perform major car repair work, CN intends to perform these functions at Fond du Lac and Centralia, and would seek to do so under the collective bargaining agreements in force at those locations.

CN foresees that Kirk Yard would be used to perform running repair work, train yard repair work and car inspections on both CN and Gary Railway cars. Car repair forces on

the EJ&EW would be consolidated, and CN would seek to do so under existing IC collective bargaining agreements. As traffic patterns change, car repair personnel would be required to perform inspection and train yard repair work at locations where the level of work increases.

Engineering (Maintenance of Way and Signals). – Maintenance of way and signals personnel are employed at various locations in the greater Chicago area. At present, maintenance of way and signals personnel are employed by IC, WC, GTW, CCP and EJ&E. The successful implementation of this Transaction would require an integration of these engineering department personnel as maintenance and signals work shifts in accordance with changes in traffic flow and construction. Applicants intend to integrate and consolidate maintenance of way and signals activities within Illinois and Indiana, in order to improve safety, consistency, and efficient utilization of maintenance of way and signal forces. In order to achieve these benefits, it would be necessary to consolidate IC, WC, and EJ&EW maintenance of way employees and signal employees, respectively, and CN would seek to do so under the existing IC collective bargaining agreements and to expand the territories covered by the IC agreements to include additional mileage within Illinois and Indiana.

Clerical Forces. – At present, IC employs clerks at various locations in the greater Chicago area, with a large concentration at CN's Division and Region headquarters at Homewood, IL. EJ&E employs clerks at Kirk Yard and Joliet.

CN anticipates that it would consolidate all EJ&EW clerical forces and work with IC's clerical forces and work, and would seek to do so under IC's existing collective bargaining agreement with the TCU. Kirk Yard and Joliet would become part of the Chicago Terminal under the IC collective bargaining agreement. CN anticipates that it would continue to employ clerks at Kirk Yard and Joliet.

Police. – CN employs police officers on the GTW. EJ&E employs its own police personnel. Following the Transaction, CN expects to retain all of these existing police personnel.

CN intends to integrate these personnel under a single agreement. CN would need the operational flexibility to utilize police personnel at any point on the combined CN/EJ&EW system where police protection is needed.

Yardmasters. – Yardmasters are employed at various locations in the greater Chicago area by IC. EJ&E employs yardmasters at Kirk Yard and Joliet, which would be transferred to EJ&EW and thus acquired by CN. (EJ&E also employs yardmasters at Gary Mill today, and after the Transaction, its Gary Railway successor would continue to do so.) CN continues to study the consolidation of yardmasters, and may do so at a later date.

Train Dispatching. – CN presently operates three separate train dispatching centers in the United States. IC and CCP trains are dispatched from the Region Operations Center in Homewood, Illinois. Trains on DWP, WC and DM&IR lines are dispatched from a dispatching center in Stevens Point, Wisconsin. GTW and B&LE trains are dispatched from Troy, MI. All of CN's existing dispatching centers in the U.S. utilize similar equipment.

On EJ&E, trains are dispatched from an office at Joliet, using different equipment. CN intends to centralize the train dispatching function to Homewood in a phased approach.

Conclusion.

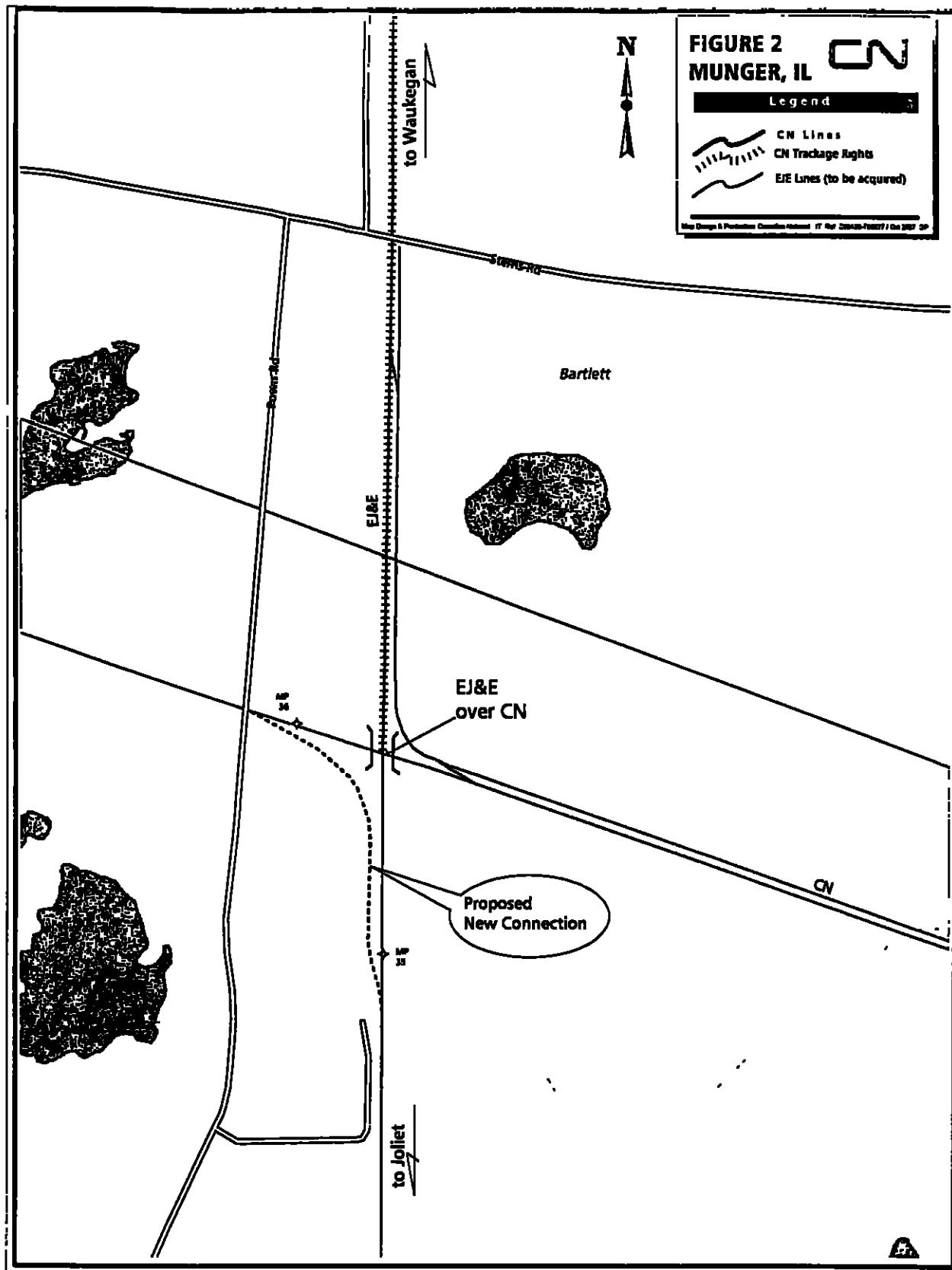
The preceding are the foreseeable changes that are necessary to achieve the goals of the Operating Plan and to achieve the increases in efficiency and enhanced transportation benefits to the public made possible by the Transaction. It is likely that other additional coordinations that would provide improved service and efficiencies and which are directly related to and grow out of or flow from the Board's approval may become apparent and would be implemented by the combined CN/EJ&EW system. These additional coordinations may result in additional changes that might affect collective bargaining agreements or Railway Labor

Act rights. The necessity for these additional changes may only become clear after CN gains experience with the acquired properties following implementation of the Transaction.

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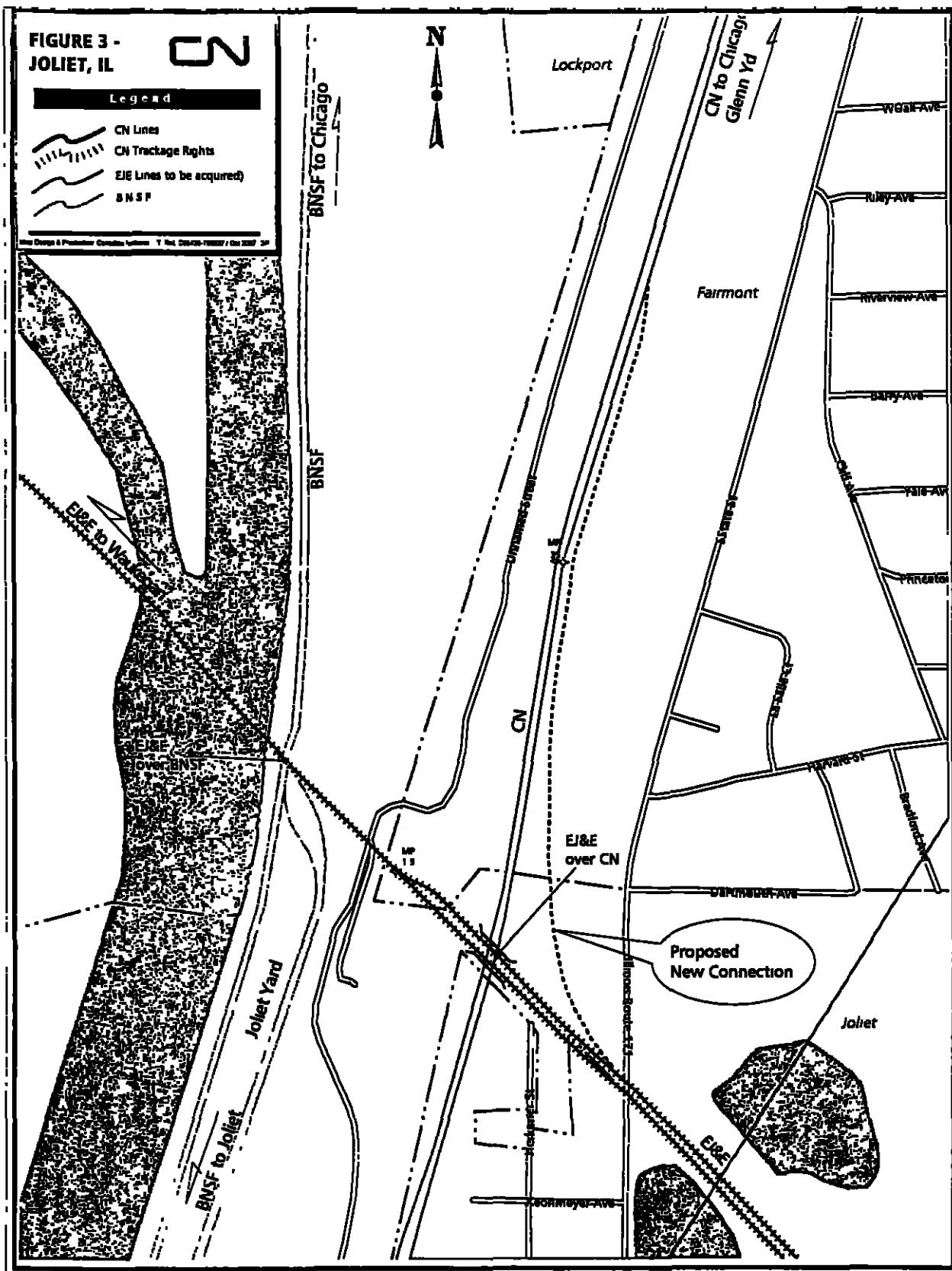
Elgin, Joliet and Eastern Railway Company

Map showing the Elgin, Joliet and Eastern Railway Company territory, including locations such as Elgin, Joliet, and various connecting lines and interchanges.



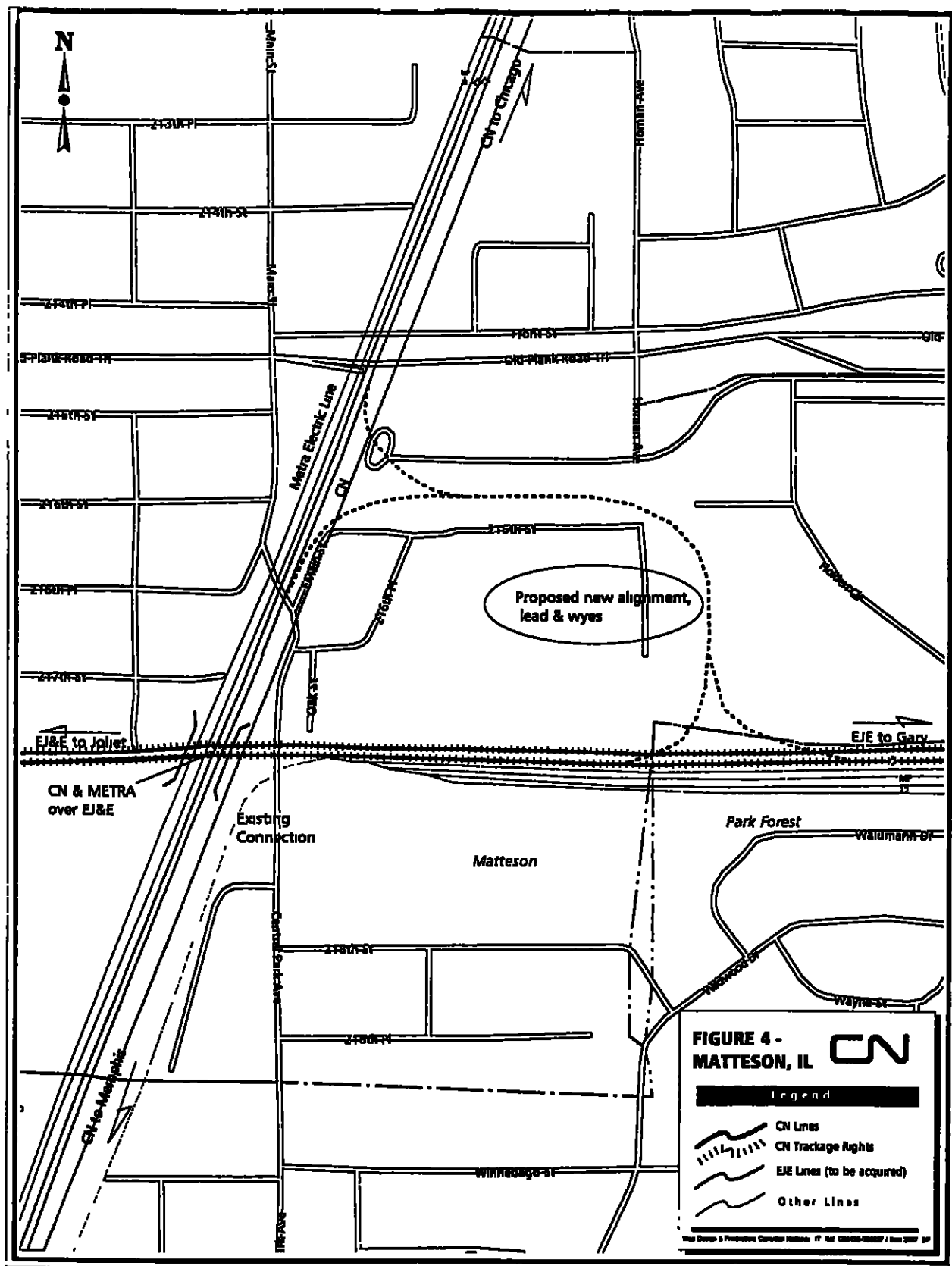
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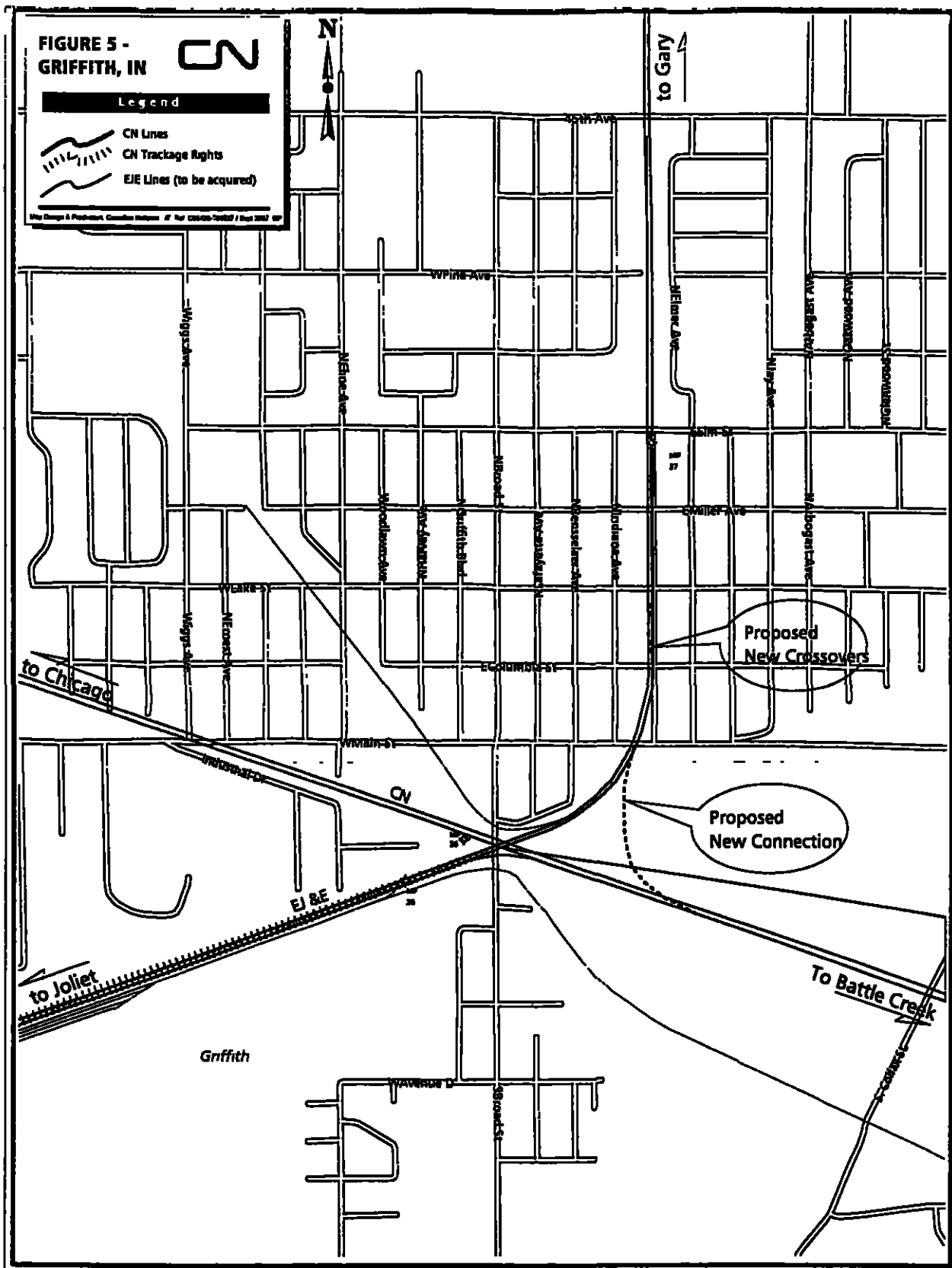
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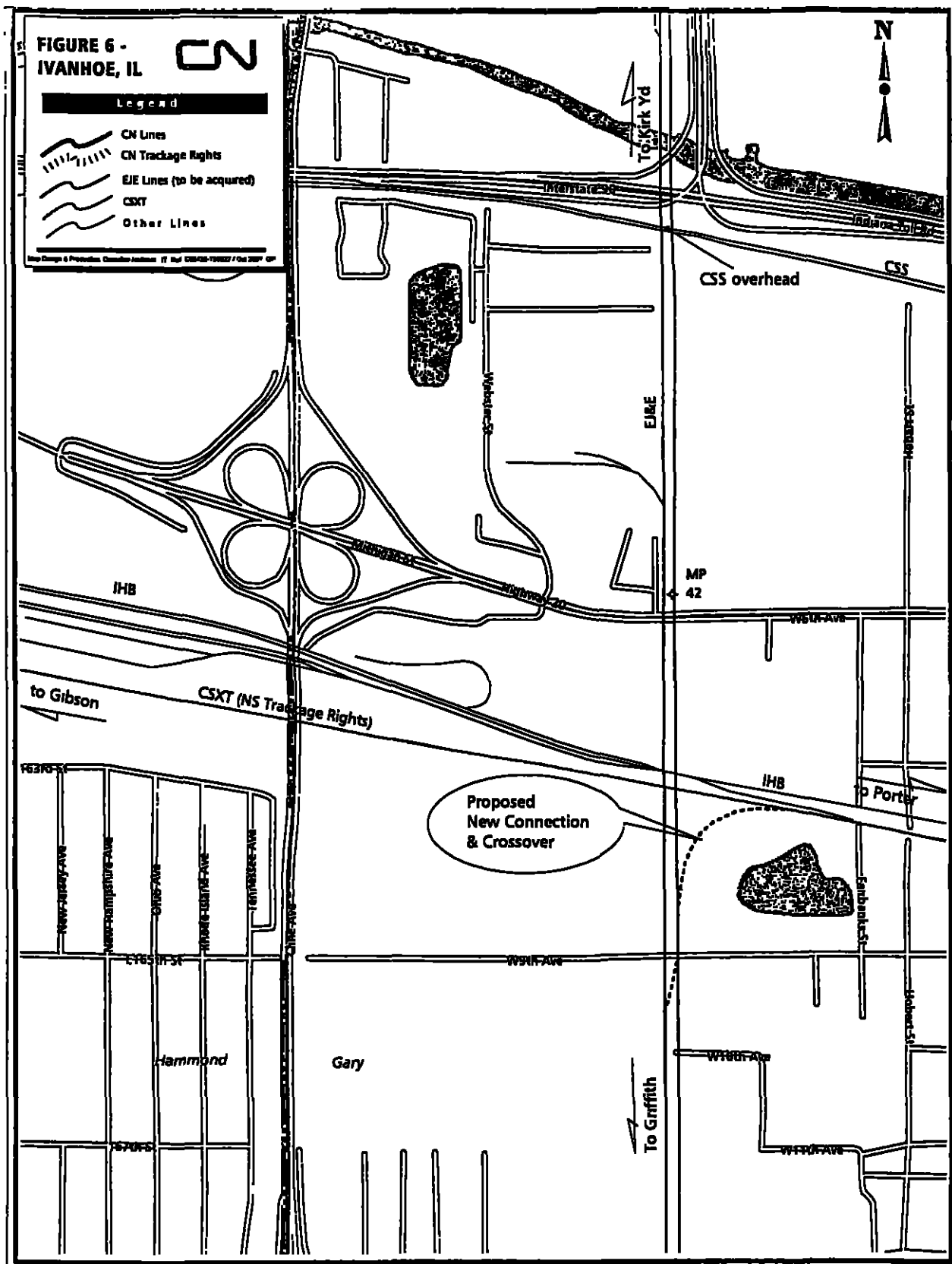
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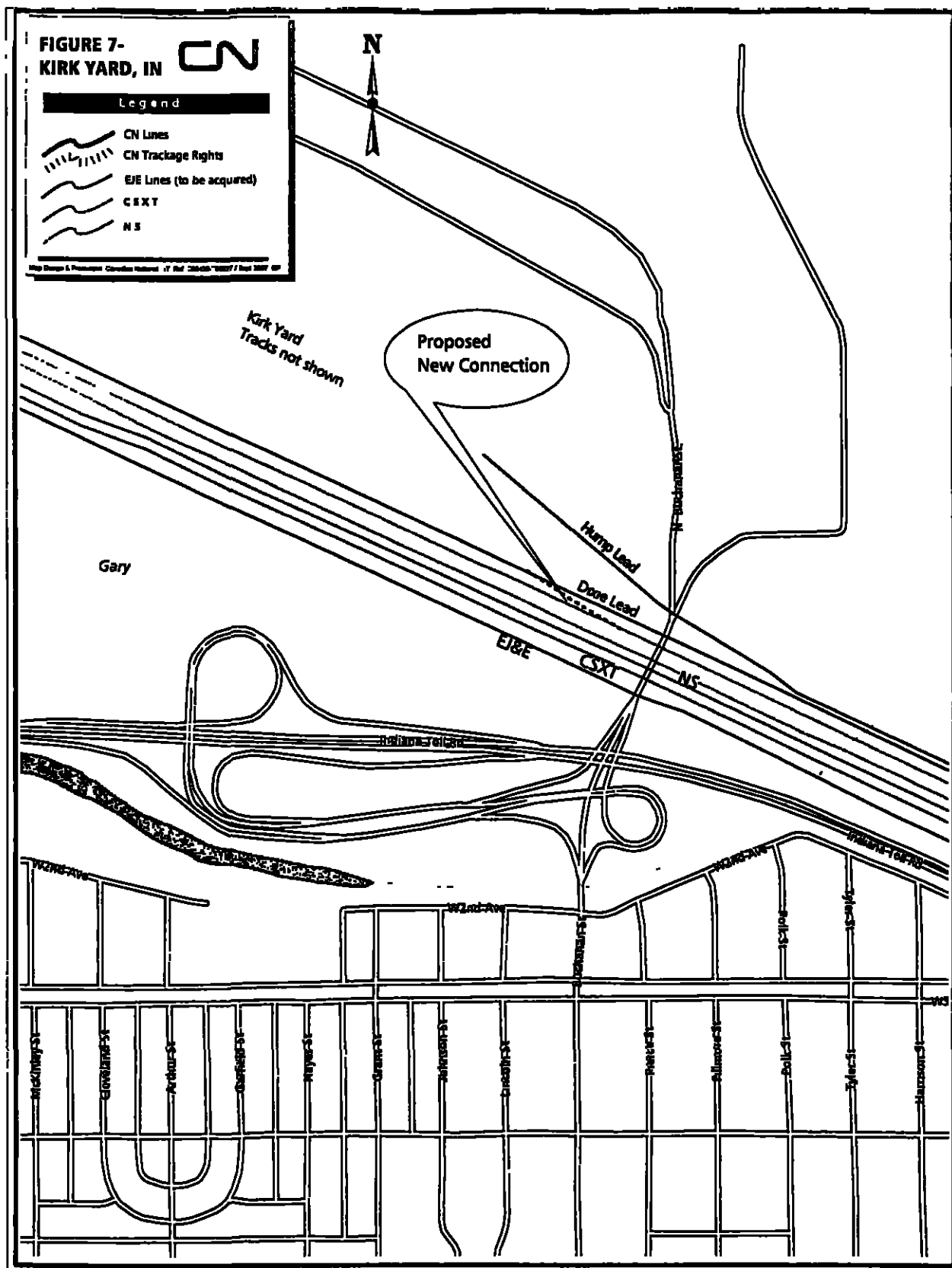
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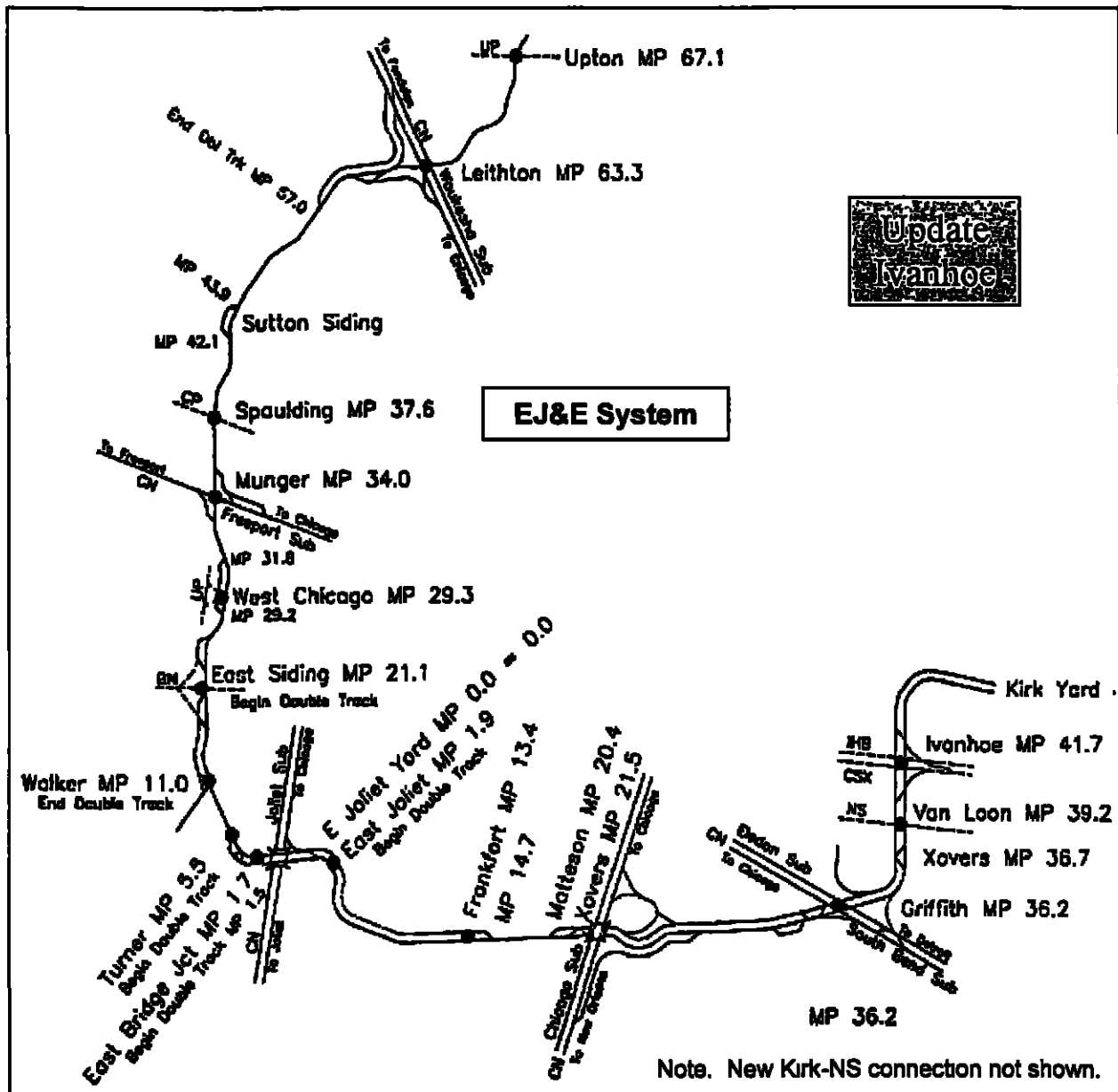
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FIGURE 8: Summary of EJ&E Changes

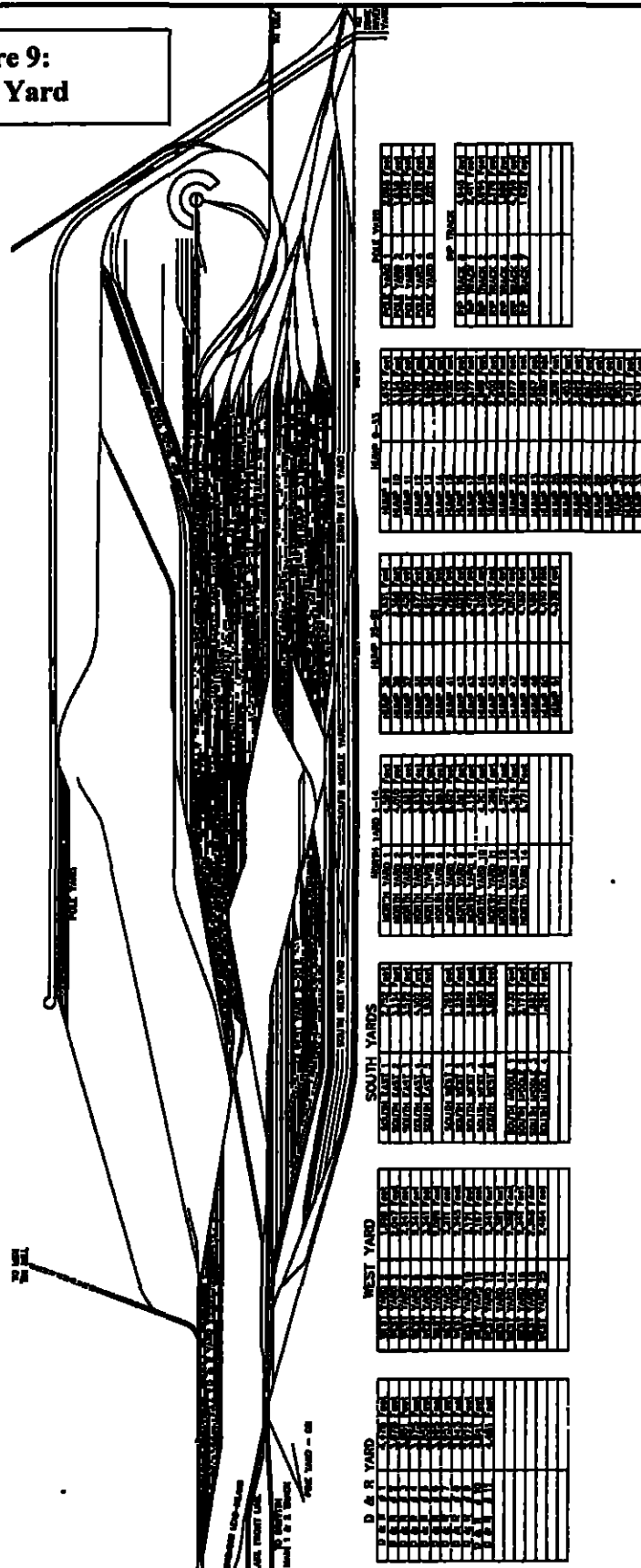


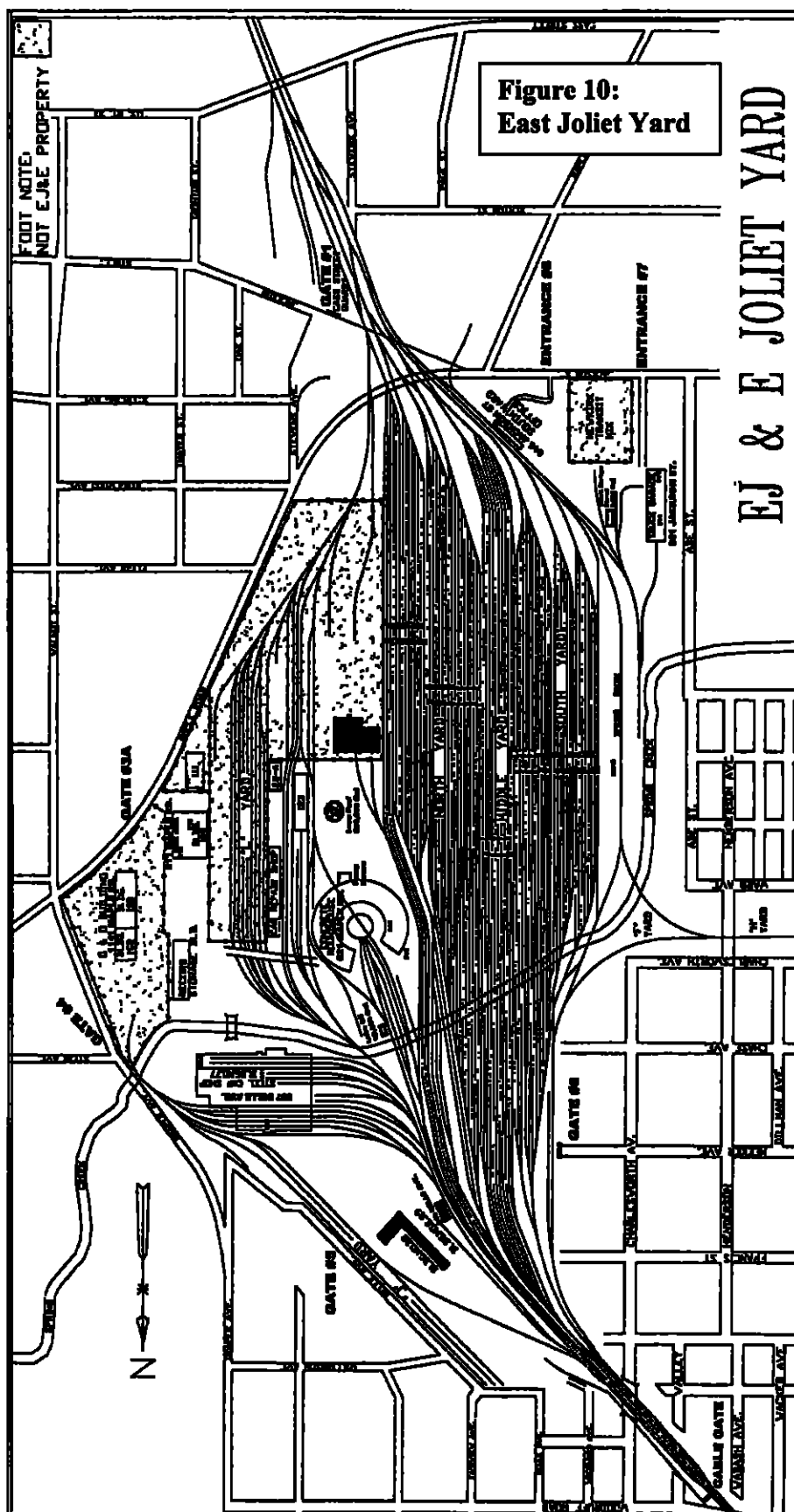
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**Figure 9:
Kirk Yard**

EJ&E - Kirk Yard Gary In.





Attachment A.1

Potential Changes in Train Counts on Affected CN Rail Line Segments

**Traffic Changes on CN Rail Line Segments in United States Affected
by Canadian National/EJ&E West Company Transaction**

Rail Line Segment Descriptions			Freight - Train/Day					Freight - Great Train/Day					Percent Change		Percent Change		Percent Change	
Segment Number	From Station	To Station	Base	Change	Total	Base	Change	Total	Base	Change	Total	Base	Change	Total	Base	Change	Total	
1	Madison	Marathon	CN	13.5	(6.5)	8.0	77.667	35.258	(42.831)	-45%	140.7	12.8	-87%	127.9	12.8	-87%	115.1	
2	Marathon	Harvey	CN	16.4	(14.4)	2.0	120.028	11.581	(108.447)	-90%	229.8	8.7	-90%	221.1	8.7	-90%	212.4	
3	Harvey	Riverside	CN	6.5	(6.5)	0.0	41.843	-	(41.843)	-100%	117.9	-	-100%	117.9	-	-100%	117.9	
4	Riverside	Kennelton	CN	8.4	(8.4)	0.0	31.980	-	(31.980)	-100%	101.2	-	-100%	101.2	-	-100%	101.2	
5	Kennelton	Wildwood	CN	6.5	(6.5)	0.0	26.983	-	(26.983)	-100%	68.3	-	-100%	68.3	-	-100%	68.3	
6	Wildwood	94th St	CN	6.5	(6.5)	0.0	26.388	-	(26.388)	-100%	67.3	-	-100%	67.3	-	-100%	67.3	
7	94th St	18th St	CN	8.4	(8.4)	0.0	26.388	-	(26.388)	-100%	67.3	-	-100%	67.3	-	-100%	67.3	
8	18th St	Bridgeport	CN	6.5	(6.5)	0.0	26.388	-	(26.388)	-100%	67.3	-	-100%	67.3	-	-100%	67.3	
9	Bridgeport	Beal Crossing	CN	2.6	(0.9)	1.7	17.062	8.600	(16.221)	-85%	62.3	6.1	-85%	56.2	6.1	-85%	50.1	
10	Beal Crossing	Headbume	CN	4.8	(2.9)	1.9	27.785	8.600	(26.065)	-87%	61.5	9.1	-87%	52.4	9.1	-87%	43.3	
11	Headbume	Brookview	CN	4.8	(1.2)	3.4	35.713	2.068	(33.645)	-91%	68.3	0.8	-91%	67.5	0.8	-91%	66.7	
12	Brookview	Marquette	CN	3.0	(1.3)	1.7	24.899	1.478	(23.421)	-94%	60.5	0.5	-94%	60.0	0.5	-94%	59.5	
13	Marquette	Lemoyne	CN	2.2	(0.9)	1.3	15.182	8.600	(14.351)	-84%	57.4	6.1	-84%	51.3	6.1	-84%	45.2	
14	Lemoyne	Green Yard	CN	2.2	1.5	3.7	28.732	2.123	(24.609)	-82%	90.4	18.8	-82%	71.6	18.8	-82%	52.8	
15	Green Yard	Arpa	CN	3.8	(1.9)	1.9	23.855	8.071	(15.784)	-89%	88.1	50.3	-89%	37.8	50.3	-89%	17.5	
16	Arpa	Midvale	CN	0.0	2.0	2.0	14.312	8.071	(6.241)	-46%	71.9	50.3	-46%	21.6	50.3	-46%	11.3	
17	Midvale	Joliet	CN	0.0	2.0	2.0	10.888	8.071	(2.817)	-26%	39.0	50.3	-26%	11.3	50.3	-26%	11.3	
18	Joliet	Forest Park	CN	7.8	(7.8)	0.0	53.188	-	(53.188)	-100%	77.3	-	-100%	77.3	-	-100%	77.3	
19	Forest Park	B12	CN	8.4	(8.4)	0.0	53.188	-	(53.188)	-100%	77.3	-	-100%	77.3	-	-100%	77.3	
20	B12	Schiller Park	CN	19.4	(19.4)	0.0	135.809	8.009	(127.800)	-94%	161.7	7.2	-94%	154.5	7.2	-94%	147.3	
21	Schiller Park	Ladison	CN	19.4	(19.4)	0.0	135.809	8.286	(127.523)	-93%	167.8	6.3	-93%	161.5	6.3	-93%	155.2	
22	Ladison	Thomson Jct	CN	18.7	(18.7)	0.0	127.071	32.481	(94.590)	-74%	229.5	24.3	-74%	205.2	24.3	-74%	180.9	
23	Thomson Jct	CN Jct	CN	26.1	(21.1)	5.0	112.627	22.280	(90.347)	-89%	221.9	24.2	-89%	197.7	24.2	-89%	173.5	
24	CN Jct	Blue Island	CN	14.3	(12.3)	2.0	111.894	10.719	(101.175)	-87%	190.7	17.5	-87%	173.2	17.5	-87%	155.7	
25	Blue Island	Hayford	CN	4.2	(4.2)	0.0	18.351	-	(18.351)	-100%	38.0	-	-100%	38.0	-	-100%	38.0	

Diversions Tons

It is expected that as a result of the CN/EJ&E transaction traffic could be diverted to CN lines that CN does not currently handle (see table below).
This traffic can be absorbed into current trains without the requirement for additional trains

Station	Midwest Daily Diverted Tons	% Increase
Madison and Memphis	2,248	2.9%
Memphis and New Orleans	223	0.3%
Griffin and Ft. Huron	181	0.1%
Ladison and Racine	1,488	1.1%
Marquette and Omaha	19	0.1%

NOTE: Base data reflects estimates of future intermodal traffic from and to Pinos Report, BC.

Attachment A.2

Potential Changes in Train Counts on Affected EJ&E Rail Line Segments

Traffic Changes on EJ&E Rail Line Segments in United States Affected by Canadian National/EJ&E West Company Transaction

Rail Line Segment Description			Freight - Trains/Day			Freight - Gross Tons/Day				Hazardous Carloads/Year		
Segment Number	From Station	To Station	Reed	Base	Change	Total	Base	Merged	Difference	Percent Change	Base	Merged
15	Rondout	Lelithon	EJE	3.2	0.0	3.2	3,222	2,038	(1,184)	-37%	9.4	9.4
14	Lelithon	Spaulding	EJE	5.3	15.0	20.3	20,457	158,701	138,244	676%	10.1	174.4
13	Spaulding	Munger	EJE	5.5	18.0	23.5	23,285	173,935	150,650	847%	21.0	200.6
12	Munger	West Chicago	EJE	4.4	20.0	24.4	14,397	184,969	170,572	1185%	21.1	285.5
11	West Chicago	East Siding	EJE	10.7	23.8	34.5	62,233	245,049	182,816	294%	30.7	301.4
10	East Siding	Walker	EJE	15.7	28.6	42.3	87,182	301,359	214,197	246%	43.4	379.3
9	Walker	Bridge Junction	EJE	18.5	26.6	45.0	89,329	304,113	214,784	240%	48.9	384.7
8	Bridge Junction	Rock Island Jct	EJE	18.5	26.6	45.0	78,157	281,439	213,282	273%	49.0	384.8
7	Rock Island Jct	Matteson	EJE	6.4	22.0	28.3	35,375	226,994	191,619	542%	51.4	353.2
6	Matteson	Chicago Hts	EJE	8.8	22.7	31.4	44,601	231,173	186,572	416%	44.3	428.3
5	Chicago Hts	Griffith	EJE	10.2	23.7	34.0	47,842	239,310	191,468	400%	44.7	438.3
4	Griffith	Van Loon	EJE	7.6	20.0	27.6	29,536	218,124	188,588	639%	45.5	447.0
3	Van Loon	Ivanhoe	EJE	9.7	19.0	28.7	42,024	213,554	171,531	408%	45.5	423.3
2	Ivanhoe	Cavanaugh	EJE	9.8	20.0	29.8	41,879	240,913	199,034	475%	52.5	488.8
1	Cavanaugh	Gary	EJE	11.8	20.0	31.8	44,098	243,124	199,026	451%	0.0	434.0
0	Gary	Indiana Harbor	EJE	3.5	0.0	3.5	13,340	21,860	8,520	64%	0.0	10.0
-1	Indiana Harbor	Hammond	EJE	1.8	0.0	1.8	6,594	9,050	2,456	37%	0.0	1.4
-2	Hammond	South Chicago	EJE	0.9	0.0	0.9	925	3,391	2,466	266%	9.4	10.8

NOTE: The traffic change numbers in Attachments A.1 and A.2 reflect changes that will result after track and connections have been added and the Transaction completely implemented. The numbers reflect train counts and gross tons on each segment, with the same train potentially crossing multiple segments. Thus, the numbers for each segment are not additive to determine the total number of trains or tonnage to be added on the entire length of EJ&EW, or to be subtracted from the CN lines.

ATTACHMENT B
CN-EJ&E Labor Impact Exhibit

EJ & E Labor Impact Summary

EJ&E Positions Relocated to EJ 2/2009 (Base Case) 2009						Positions Transferred to CN 2/2009							
	Joliet	System	Kirk/Gary/Whiting	Total		Joliet	System	Kirk Whiting	Woodcrest	Markham	Homewood	Total	Timing Year
Police	4	0	1	5		4	0	1	0	0	0	5	1
MoW	19	45	57	121		19	25	22	0	0	0	66	1
Carmen	25	0	34	59		23	0	21	0	4	0	48	1
Signalmen	2	11	7	20		0	8	5	0	0	0	13	1
Electricians - Loco	0	0	17	17		0	0	3	3	0	0	6	1
Electricians - Engineering	0	1	0	1		0	0	0	0	0	0	0	1
Mechanists	0	0	32	32		0	0	15	12	0	0	27	1
Sheetmetal Workers	0	0	5	5		0	0	0	4	0	0	4	1
Hostlers	0	0	10	10		0	0	0	4	0	0	4	1
Clerks	19	0	52	71		9	0	12	0	0	4	25	1
Telegrapher/Tower Opr	0	6	3	9		0	6	3	0	0	0	9	1
Train and Engine Service	32	64	131	227		22	45	53	0	0	0	120	1
Yardmasters	1	0	10	11		1	0	5	0	0	0	6	1
Dispatchers	0	14	0	14		0	0	0	0	0	14	14	1
total	102	141	359	602		78	84	140	23	4	18	347	

Positions Transferred to Gary Railway 2/2009					Positions Abolished 2/2009				
	Joliet	System	Gary	Total	Joliet	System	Kirk/Gary/Whiting	Total	Timing Year
Police	0	0	0	0	0	0	0	0	1
MoW	0	0	19	19	0	20	16	36	1
Carmen	0	0	13	13	0	0	(2)	(2)	1
Signalmen	0	0	0	0	2	3	2	7	1
Electricians - Loco	0	0	5	5	0	0	6	6	1
Electricians - Engineering	0	0	1	1	0	0	0	0	1
Mechanists	0	0	8	8	0	0	(3)	(3)	1
Sheetmetal Workers	0	0	0	0	0	0	1	1	1
Hostlers	0	0	2	2	0	0	4	4	1
Clerks	0	0	17	17	10	0	19	29	1
Telegrapher/Tower Opr	0	0	0	0	0	0	0	0	1
Train and Engine Service	0	0	69	69	10	19	9	38	1
Yardmasters	0	0	7	7	0	0	(2)	(2)	1
Dispatchers	0	0	0	0	0	0	0	0	1
Total	0	0	141	141	22	41	50	114	

Notes:
Data based on EJ&E December 2006 figures
Parentheses indicate potential new hires
While this table shows Positions Abolished, the Applicants believe that most reductions will be accomplished through attrition.

AGREEMENT
(Exhibit 2)

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STOCK PURCHASE AGREEMENT

Dated as of September 25, 2007

By and Between

**GRAND TRUNK CORPORATION,
as the Purchaser**

and

**ELGIN JOLIET AND EASTERN RAILWAY COMPANY,
as the Seller**

STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of September 25, 2007 (as amended, modified or supplemented from time to time, this "Agreement"), by and between Grand Trunk Corporation, a Delaware corporation (the "Purchaser"), and Elgin Joliet and Eastern Railway Company, a Delaware corporation (the "Seller").

WITNESSETH:

WHEREAS, the Seller currently owns the assets and equipment necessary to engage in common carrier railroad operations along a rail corridor located between the integrated steel production facility owned by United States Steel Corporation ("U. S. Steel") located in Gary, Indiana and known as Gary Works ("Gary Works") and the City of Waukegan, Illinois, as shown on the route map attached hereto as Exhibit A (the "Existing Business");

WHEREAS, prior to the Closing Date (as defined below), Seller will form a wholly-owned subsidiary, EJ&E West Company, an Illinois corporation (the "Company");

WHEREAS, after the formation of the Company and prior to the Closing Date, Seller will contribute or cause to be contributed to the Company all of the land, rail and related assets located west of the centerline of Buchanan Street in Gary, Indiana, plus the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street, all as shown on the drawing attached hereto as Exhibit B, and substantially all of the assets of Seller, including those assets set forth on Schedule 1 of the Disclosure Letter, but excluding those assets set forth on Schedule 2 of the Disclosure Letter, and at Closing the Company will assume certain rights and obligations of Seller pertaining to the use of Schedule 1 assets (the "Spin-Off");

WHEREAS, all assets of the Seller not listed on Schedule 1 will remain with Seller after the Spin-Off and the employees of the Seller shall be allocated between the Seller and the Company as provided herein;

WHEREAS, at Closing, the Seller will own 1,000 shares of common stock, no par value per share, of the Company, being all of the issued and outstanding shares of such common stock (the "Shares");

WHEREAS, the Seller desires to sell, and the Purchaser desires to purchase, the Shares pursuant to this Agreement; and

WHEREAS, it is the intention of the parties hereto that, upon consummation of the purchase and sale of the Shares pursuant to this Agreement, the Purchaser shall own all of the issued and outstanding shares of capital stock of the Company;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

DEFINITIONS

§1. Definitions.

§1.1 Defined Terms. When used in this Agreement, the following terms shall have the respective meanings specified therefor below:

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities (including common stock, partnership interests, membership interests or other ownership interests), by contract or otherwise.

"Business" shall mean the Existing Business, but excluding the assets, equipment and operations located east of Buchanan Street in Gary, Indiana, which will be retained by Seller.

"Business Day" shall mean any day, other than a Saturday, Sunday or a day on which commercial banks located in Chicago, Illinois shall be authorized or required by law to close.

"CN" shall mean the Canadian National Railway Company.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and the rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement.

"Contract" shall mean any note, loan, bond, mortgage, indenture, license, written agreement, contract or lease, including all amendments thereto.

"Control Transaction" shall mean the sale of the Shares to Purchaser by Seller which transaction shall require the prior approval of the Surface Transportation Board ("**STB**") pursuant to 49 U.S.C. §11323(a)(3).

"Disclosure Letter" shall mean the disclosure letter delivered by the Seller to the Purchaser upon the execution of this Agreement.

"EJ&E Property" shall mean any real property and improvements currently owned or leased by Seller.

"Environmental Condition" shall mean the presence of any regulated substances or Hazardous Material (defined below) in the soil, surface water, groundwater, or any other environmental media on the property, or the Release or threatened Release of any regulated

substance or Hazardous Material into the environment on or from the property; provided, however, only asbestos-containing material that is friable shall be considered a regulated substance for the purpose of this definition. The mere presence of asbestos or asbestos containing material on the property shall not constitute an Environmental Condition, unless and except to the extent that it is friable.

“Environmental Law(s)” shall mean all applicable foreign, federal, state, regional, county or local, statutes, laws, regulations, ordinances, codes, rules, judgments, Orders, decrees, permits, concessions, grants, agreements, licenses or other requirements or restrictions of law pertaining to protection of the indoor or outdoor environment, health, safety of persons, management or use of natural resources, protection or use of surface water and groundwater, conservation, wildlife, waste management, Hazardous Materials or pollution (including regulation of releases and disposal to air, land, water and groundwater) now or hereafter in effect, and includes the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 et seq., Hazardous Materials Transportation Act 49 U.S.C. App. §§ 1801 et seq., Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651 et seq., Federal Railroad Safety Act, 49 U.S.C. §§ 20101 et. seq., Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) et seq., any similar state law, and all successor statutes, amendments, rules, Orders, directives and regulations promulgated thereunder.

“GAAP” shall mean United States generally accepted accounting principles, consistently applied, as in effect on the date hereof.

“Gary Railway Company” or “GRR” shall mean the Seller after the Closing.

“Governmental or Regulatory Authority” shall mean any instrumentality, subdivision, court, executive department, administrative agency, commission, official or other authority of the United States or any other country or any state, province, prefect, municipality, locality or other government or political subdivision thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority.

“Hazardous Material” shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, condition, object or material which is or may be hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, explosiveness, toxicity, carcinogenicity, infectiousness, radioactivity or other harmful or potentially harmful properties or effects, including all of those substances, chemicals, compounds, products, solids, gases, liquids, wastes, byproducts, pollutants,

contaminants, conditions, objects and materials and combination thereof which are now or hereafter listed or defined as hazardous or toxic, or are regulated, pursuant to Environmental Laws and includes asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof).

"ICC Termination Act" shall mean the ICC Termination Act of 1995, as amended, and the rules and regulations promulgated thereunder.

"Indebtedness" of any Person shall mean and include indebtedness for borrowed money and shall include, without duplication, the outstanding principal amount of, accrued and unpaid interest on, discounts and fees on, and any prepayment fees and penalties of such Person and/or such Person's Subsidiaries. Indebtedness shall not, however, include accounts payable to trade creditors and accrued expenses arising in the ordinary course of business and shall not include the endorsement of negotiable instruments for collection in the ordinary course of business.

"Kirk Yard" shall mean Kirk Yard and all sub-yards within Kirk Yard.

"Law" shall mean any statute, law (including common law), ordinance, rule, regulation of, or other requirement enacted, promulgated, issued or entered by, any Governmental or Regulatory Authority.

"Lien" shall mean any lien, pledge, security interest, easement, mortgage, charge, indenture, deed of trust, right of way, restriction on the use of real property, encroachment, encumbrance, license to third parties, right of first refusal, lease to third parties or security agreement.

"Material Adverse Change" or **"Material Adverse Effect"** shall mean (A) when used with respect to the Business, any materially adverse change in or effect on the properties, operations, business prospects, assets, results of operations or financial condition of Seller and its Subsidiaries, taken as a whole, other than any such change or effect directly resulting from or directly arising out of (i) any general change in global economic conditions or the economic conditions of the United States of America or the financing or capital markets in general; (ii) any changes in the condition of any industry or market in which Seller or the Company operates or participates (provided that the Business is not disproportionately affected thereby); (iii) the announcement or pendency of this Agreement or the transactions contemplated hereby or the consummation of the transactions contemplated hereby; (iv) the announcement by the Purchaser of its plans or intentions with respect to the conduct of the Business (including in respect of employees); (v) any action taken by a party hereto in accordance with this Agreement; (vi) any action required to be taken under Law or any existing Contract by which Seller or the Company is bound; (vii) any change in GAAP; (viii) any change arising in connection with acts of war, sabotage or terrorism, military actions or the escalation thereof; or (B) when used with respect to the Seller or the Purchaser, as the case may be, any materially adverse change in or effect on the ability of the Seller or the Purchaser, as the case may be, to perform their respective obligations hereunder.

“Non-Represented Employees” are current employees of Seller whose terms and conditions of employment are not governed by a collective bargaining agreement between Seller and a labor organization.

“Order” shall mean any judgment, order, injunction, decree or writ of any Governmental or Regulatory Authority or any arbitrator.

“Parent” shall mean Transtar, Inc., a Delaware corporation.

“Permitted Liens” shall mean, with respect to the properties, assets and operations of the Business and except with respect to Liens set forth on Schedule 3 attached hereto (which Liens shall in all respects be released prior to or concurrent with the Closing), (i) Liens reflected on the Balance Sheet, (ii) provided such Liens do not render title to the subject property unmarketable or otherwise unusable for the conduct of the Business, zoning or planning restrictions or regulations, public or recorded private easements, Permits, restrictive covenants, encroachments and other restrictions or limitations on the use of real property or irregularities in, or exceptions to, title thereto, (iii) Liens for current taxes, assessments or governmental charges or levies not yet due and payable or, to the extent set forth on Schedule 3 attached hereto, which are being contested in good faith in accordance with applicable laws, rules and regulations governing any such contest, (iv) to the extent set forth on Schedule 3 attached hereto, Liens of landlords, carriers, warehousemen, mechanics, suppliers, material men or repairmen arising in the ordinary course of business, (v) other Liens arising in the ordinary course by operation of Law and which are not yet due and payable, and (vi) Liens set forth on Schedule 3 8 of the Disclosure Letter.

“Person” shall mean and include an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an unincorporated organization and a Governmental or Regulatory Authority.

“Pittsburgh Support Personnel” are current represented and non-represented employees of the Parent located in Pittsburgh, PA who provide clerical and administrative support for Seller’s operations.

“Release” shall have the meaning ascribed to this term in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5.

“Represented Employees” are current employees of Seller whose terms and conditions of employment are governed by a collective bargaining agreement between Seller and a labor organization.

“Securities Act” shall mean the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

“Subsidiary” shall mean, with respect to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at

the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is owned by such Person directly or indirectly through one or more Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person directly or indirectly through one or more Subsidiaries of such Person has more than a 50% equity interest.

“Surface Transportation Board” or “STB” shall mean the Surface Transportation Board of the United States Department of Transportation, and any successor board, agency or other Governmental or Regulatory Authority.

“Taxes” shall mean all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all U.S. and non-U.S. federal, state, local and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

“U. S. Steel” shall mean United States Steel Corporation, a Delaware corporation.

§1.2 Additional Defined Terms. In addition to the terms defined in Section 1.1, the following terms shall have the respective meanings assigned thereto in the sections indicated below:

Actual Working Capital	§2.5(b)	Final Working Capital Shortfall	§2.5(c)
Agreement	Preamble	Firm	§2.5(b)
Asset Sale Election	§5.13(a)	Gary Works	Recitals
Balance Sheet	§3.6(a)	Indemnifiable Damages	§8.1
Balance Sheet Date	§3.6(a)	Indemnified Party	§8.2(a)
Breach of Warranty Claim	§8.1	Indemnifying Party	§8.2(a)
Business	Recitals	Intellectual Property	§3.13(a)
Claim Notice	§8.2(a)	Interchange and Side Track	
Closing	§2.3	Agreements	§6.13
Closing Date	§2.3	Leased Property	§3.9
Closing Review	§2.5(b)	Material Contract	§3.10(a)
Company	Recitals	New York Dock	§3.20(h)
Company Covered Person	§5.8	Non-Represented Employee	§5.12(b)
Confidentiality Agreement	§5.3(c)	Objection Notice	§2.5(b)
Contract Switching Agreement	§6.9	Owned Real Property	§3.8
Draft Balance Sheet	§2.5(b)	Permit	§3.19
EBR	§5.2	Purchase Price	§2.2(a)
EJ&E Property	§3.18	Purchaser	Preamble
Employee Benefit Plans	§3.17	Purchaser Guaranty	§7.10
ERISA	§3.17	Purchaser Parties	§8.1(a)
Estimated Purchase Price		Purchaser Retiree Welfare Plan	§5.12(d)
Adjustment	§2.5(a)	Railway Services Agreement	§6.11
Estimated Working Capital	§2.5(a)	Retained Liabilities	§5.2
Final Purchase Price Adjustment	§2.5(d)	Seller	Preamble
Final Working Capital Excess	§2.5(c)	Seller Guaranty	§6.12

Seller Parties	§8.1(b)	Unreduced USS Pension	§5.12(d)
Shares	Recitals	USS Pension Plan	§5.12(c)
Spin-Off	Recitals	Working Capital	§2.5(b)
Straddle Periods	§5.11(b)		
Tax Return	§3.12(c)		
Transfer Taxes	§10.13		
Transportation Services Agreement	§6.10		
Unaudited Balance Sheet	§3.6(a)		
Unaudited Balance Sheet Date	§3.6(a)		

§1.3 Construction. In this Agreement, unless the context otherwise requires:

(a) any reference in this Agreement to “writing” or comparable expressions includes a reference to electronic mail, facsimile transmission or comparable means of communication;

(b) words expressed in the singular number shall include the plural and vice versa, words expressed in the masculine shall include the feminine and neuter gender and vice versa;

(c) references to Articles, Sections, Exhibits, Schedules and Recitals are references to articles, sections, exhibits, schedules and recitals of this Agreement;

(d) reference to “day” or “days” are to calendar days unless otherwise indicated;

(e) this “Agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented; and

(f) “include”, “includes” and “including” are deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of similar import.

§1.4 Schedules and Exhibits. The Schedules and Exhibits to this Agreement are incorporated into and form an integral part of this Agreement. If an Exhibit is a form of agreement, such agreement, when executed and delivered by the parties thereto, shall constitute a document independent of this Agreement. Disclosure in any section or subsection of the Disclosure Letter and in any Schedule or Exhibit to this Agreement, if sufficient to reasonably inform the Purchaser of information required to be disclosed in another Schedule or Section of this Agreement, shall constitute disclosure for purposes of such other Schedule or Section of this Agreement.

ARTICLE II

PURCHASE AND SALE OF SHARES

§2.1 Purchase and Sale of Shares. On the terms, and subject to the conditions, set forth in this Agreement, the Seller agrees to sell, assign, transfer and deliver to the Purchaser on the Closing Date, and the Purchaser agrees to purchase from the Seller on the Closing Date, the Shares, free and clear of all Liens. The certificates representing the Shares shall be duly endorsed in blank, or accompanied by powers duly executed in blank by the Seller in each case, with all necessary transfer tax and other revenue stamps, acquired at the Purchaser's expense, in accordance with Section 10.13, affixed and canceled.

§2.2 Payment of Purchase Price. In full consideration for the purchase of the Shares, on the Closing Date, the Purchaser shall pay to the Seller the sum of Three Hundred Million Dollars (US\$300,000,000) in cash (the "Purchase Price") by wire transfer of immediately available funds to the account or accounts identified by the Seller in writing at least two (2) Business Days prior to the Closing Date.

§2.3 Closing. The purchase and sale referred to in Section 2.1 and the deliveries and transactions referred to in Section 2.4 (the "Closing") shall take place at 10:00 A.M. (Chicago time) at the offices of Freeborn & Peters LLP as soon as practicable after the last of the conditions set forth in Articles VI and VII (other than those which by their nature will be satisfied at the Closing) is satisfied or waived, but in no event later than the second (2nd) Business Day thereafter or at such other time and date as the parties hereto shall agree, but not later than September 1, 2008, unless Closing shall have failed to occur for one or more of the reasons set forth in Section 9.1(b)(ii) of this Agreement, in which case Closing may be extended to no later than December 31, 2008, after which date this Agreement may terminate at the option of either party. Such date is herein referred to as the "Closing Date."

§2.4 Closing Deliveries. Subject to the conditions set forth in this Agreement, the parties shall make the following deliveries and transactions on the Closing Date:

(a) Simultaneously with the Closing, the Seller shall repay all Indebtedness, if any, of the Company by wire transfer of immediately available funds or as otherwise acceptable to the holders of such Indebtedness, and Seller shall deliver to Purchaser all appropriate payoff letters and shall make arrangements reasonably satisfactory to Purchaser for such holders to deliver lien releases and cancelled notes at the Closing.

(b) The Seller shall deliver to Purchaser all of the following:

(i) certificates of the Secretary of State of the applicable jurisdictions of organization providing that each of the Seller and the Company is in good standing;

(ii) copies of all third party (including landlords) and governmental consents, approvals, filings, releases and terminations required in connection with the

consummation of the transactions contemplated herein, in form and substance reasonably acceptable to the Purchaser;

(iii) an opinion, dated the Closing Date, of counsel to the Seller, in form and substance reasonably satisfactory to Seller and Purchaser;

(iv) a certificate of an executive officer of the Seller certifying that the conditions to Closing set forth in Sections 6.2 and 6.3 have been satisfied;

(v) a certificate of incumbency and certified copies of the written action of the Seller's Board of Directors authorizing the execution, delivery and performance of this Agreement and authorizing the acts of its directors and officers in carrying out the terms and provisions hereof;

(vi) releases of all Liens, if any, on all assets of the Business, other than Permitted Liens;

(vii) a copy of the Contract Switching Agreement, Transportation Services Agreement, Railway Services Agreement and the Interchange and Side Track Agreements, all in a form and substance reasonably satisfactory to the parties thereto, and each duly executed by Seller or the appropriate Affiliate of Seller;

(viii) IRS Form 8023, Election Under Section 338 for Corporations Making Qualified Stock Purchase, executed by the Seller with such Form being completed and filed in conformity with Section 5.14;

(ix) Parent shall deliver to Purchaser the Seller Guaranty, duly executed, in form and substance reasonably satisfactory to Parent and Purchaser; and

(x) such other documents or instruments as Purchaser may reasonably request to effect the transactions contemplated hereby, provided such other documents or instruments are not inconsistent with the intent of the parties as evidenced by the memorandum of understanding dated July 25, 2007 and this Agreement.

(c) The Purchaser shall deliver to the Seller all of the following, in form and substance reasonably acceptable to the Seller:

(i) a certificate of the Secretary of State of the State of Delaware providing that the Purchaser is in good standing;

(ii) a certificate of an executive officer of the Purchaser certifying that the conditions to Closing set forth in Sections 7.1 and 7.2 have been satisfied;

(iii) an opinion, dated the Closing Date, of counsel to the Purchaser, in form and substance reasonably satisfactory to Purchaser and Seller;

(iv) a certificate of incumbency and certified copies of the written action of the Purchaser's Board of Directors authorizing the execution, delivery and performance of this Agreement and authorizing the acts of its directors and officers in carrying out the terms and provisions hereof;

(v) a copy of the Contract Switching Agreement, Transportation Services Agreement, Railway Services Agreement and the Interchange and Side Track Agreements, all in a form and substance reasonably satisfactory to the parties thereto, and each duly executed by Purchaser, the Company or the appropriate Affiliate of Purchaser;

(vi) CN shall deliver to Seller the Purchaser Guaranty, duly executed by it, in form and substance reasonably satisfactory to CN and Seller;

(vii) an Assignment and Assumption Agreement, in form and substance reasonably satisfactory to the parties thereto, and duly executed by the Company; and

(viii) such other documents or instruments as the Seller may reasonably request to effect the transactions contemplated hereby, provided such other documents or instruments are not inconsistent with the intent of the parties as evidenced by the memorandum of understanding dated July 25, 2007 and this Agreement.

§2.5 Purchase Price Adjustment.

(a) On or prior to the Closing Date, the Purchaser and the Seller shall jointly estimate the Business's Working Capital (as defined below) as of the Closing Date (such estimate being hereinafter referred to as the "**Estimated Working Capital**"). If the Estimated Working Capital is less than \$0, the amount paid at Closing pursuant to Section 2.2(a) will be reduced by an amount equal to such shortfall. If the Estimated Working Capital is greater than \$0, the amount paid at Closing pursuant to Section 2.2(a) will be increased by an amount equal to such excess.

(b) Within 45 days after the Closing Date, the Purchaser will conduct a review (the "**Closing Review**") of the Business's Working Capital as of the Closing Date (effective immediately following completion of the Closing) and will prepare and deliver to the Seller a computation of the amount of the Working Capital as of such date (the "**Draft Balance Sheet**"). For purposes of this Section 2.5, "**Working Capital**" shall mean all of the Business's current assets less all of its current liabilities as determined in accordance with generally accepted accounting principles consistently applied; provided that (x) current assets shall exclude any pension assets, (y) current liabilities shall exclude any pension liabilities, and (z) current assets shall include operating parts and supplies. The Purchaser will make available to the Seller all records and work papers used in preparing the Draft Balance Sheet. If the Seller disagrees with the computation of the Working Capital reflected on the Draft Balance Sheet, the Seller may, within twenty (20) days after receipt of the Draft Balance Sheet, deliver a written notice (an "**Objection Notice**") to the Purchaser setting forth the Seller's calculation of the amount of the Working Capital as of the Closing Date. The Purchaser and the Seller will use commercially reasonable efforts to resolve any disagreements as to the computation of the Working Capital,

but if they do not obtain a final resolution within twenty (20) days after the Purchaser has received the Objection Notice, the Purchaser and the Seller will jointly retain Deloitte & Touche USA, LLP (the "**Firm**") to resolve any remaining disagreements. The Purchaser and the Seller will direct the Firm to render a determination within 30 days of its retention and the Purchaser and the Seller and their respective agents will cooperate with the Firm during its engagement. The Firm will consider only those items and amounts in the Draft Balance Sheet set forth in the Objection Notice that the Purchaser and the Seller are unable to resolve. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Firm's determination will be based solely on presentations by the Purchaser and the Seller (*i.e.*, not on an independent review), and on the definition of the Working Capital included herein. The determination of the Firm will be conclusive and binding upon the Purchaser and the Seller. The Purchaser and the Seller shall bear the costs and expenses of the Firm based on the percentage which the portion of the net contested amount not awarded to each party bears to the amount actually contested by such party. The amount of the Working Capital, as finally determined pursuant to this Section 2.5(b), is referred to herein as the "**Actual Working Capital**."

(c) If the Actual Working Capital is less than the Estimated Working Capital (the shortfall being hereinafter referred to as the "**Final Working Capital Shortfall**"), Seller will, within five (5) Business Days after the determination thereof, pay to the Purchaser an amount equal to the balance of the Final Working Capital Shortfall. If Actual Working Capital is greater than the Estimated Working Capital (the excess being hereinafter referred to as the "**Final Working Capital Excess**"), the Purchaser will, within five (5) Business Days after the determination thereof, pay to the Seller an amount equal to the Final Working Capital Excess.

(d) Adjustments to the amount of cash paid on the Closing Date as a result of this Section 2.5, including the payments of the Final Working Capital Shortfall or Final Working Capital Excess, shall be deemed adjustments to the Purchase Price. The aggregate amount of such adjustments and payments is referred to herein as the "**Final Purchase Price Adjustment**."

ARTICLE III

REPRESENTATIONS OF THE SELLER

The Seller represents and warrants to the Purchaser as follows:

§3.1 **Existence and Good Standing of the Seller; Ownership of Shares.** The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. At the Closing, the Seller will be the lawful owner, beneficially and of record, of the Shares, free and clear of all Liens (other than (i) Liens pursuant to this Agreement, and (ii) Liens created by the Purchaser). At the Closing, the delivery to the Purchaser of the Shares pursuant to this Agreement will transfer to the Purchaser good and valid title to the Shares, free and clear of all Liens (other than Liens created by the Purchaser).

§3.2 Authority and Enforceability. The Seller has the organizational power and authority to execute, and deliver this Agreement and to consummate the transactions contemplated by this Agreement and the other instruments and agreements to be executed and delivered by it as contemplated hereby. The execution, delivery and performance of this Agreement, and all other instruments and agreements to be executed and delivered by it as contemplated hereby, and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Seller's Board of Directors and no other organizational or membership action on the part of the Seller is necessary to authorize the execution, delivery and performance of this Agreement and such other instruments and agreements by Seller and the consummation of the transactions contemplated hereby and thereby. This Agreement and all other instruments and agreements to be executed and delivered by the Seller as contemplated hereby, when delivered in accordance with the terms hereof, assuming the due execution and delivery of this Agreement and each such other document by the other parties hereto and thereto, shall have been duly executed and delivered by the Seller and shall be valid and binding obligations of the Seller, enforceable against the Seller in accordance with their terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights generally, to general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law) or to applicable principles of public policy.

§3.3 Consents and Approvals; No Violations. (a) Other than as set forth on Schedule 3.3(a) of the Disclosure Letter, the execution and delivery of this Agreement by the Seller and the consummation by the Seller of the transactions contemplated hereby will not result in a violation or breach of, conflict with, require a consent under, constitute (with or without due notice or lapse of time or both) a default under, or result in the creation of any Lien on any of the properties or assets of the Seller or the Company under: (1) any provision of the certificate of incorporation or by-laws of the Seller or the Company; (2) subject to obtaining and making any of the approvals, consents, notices and filings referred to in paragraph (b) below, any Law or Order applicable to the Seller or the Company or by which any of their respective properties or assets may be bound; or (3) any of the terms, conditions or provisions of any Contract or any Material Contract to which Seller or Company is a party or by which any of their respective properties or assets may be bound.

(b) Except for such filings and approvals (i) as may be required pursuant to the ICC Termination Act, and (ii) as set forth on Schedule 3.3(b) of the Disclosure Letter, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority is necessary or required under any of the terms, conditions or provisions of any Law or Order applicable to the Seller or the Company, or by which any of their respective properties or assets may be bound, for the execution and delivery of this Agreement by the Seller, the performance by the Seller of its obligations hereunder or the consummation of the transactions contemplated hereby.

§3.4 Existence and Good Standing of Seller and the Company. Seller has all requisite corporate power and authority to own its property and to carry on its business as now being conducted. Seller is duly qualified to do business and is in good standing in each jurisdiction in which the character or location of the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary. As of the Closing

Date, the Company will be a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and have all requisite corporate power and authority to own its property and to carry on its business as then being conducted. As of the Closing Date, the Company will be duly qualified to do business and will be in good standing in each jurisdiction in which the character or location of the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary.

§3.5 Capital Stock. As of the Closing Date, the Company will have an authorized capitalization consisting of 1,000 shares of common stock, no par value per share, all of which will be issued and outstanding. As of the Closing Date, all of the Shares will be duly authorized and validly issued, fully paid and nonassessable. As of the Closing Date, no additional shares of capital stock of the Company will be authorized, issued, outstanding or reserved for issuance. As of the Closing Date, there will not be any outstanding or authorized options, warrants, rights, subscriptions, convertible or exchangeable securities, or other commitments, contingent or otherwise, relating to the capital stock of, or other equity or voting interest in, the Company pursuant to which the Company will be or may become obligated to issue, deliver or sell or cause to be issued, delivered or sold, shares of its capital stock or other equity or voting interest in the Company or any securities convertible into, exchangeable for, or evidencing the right to subscribe for or acquire, any shares of the capital stock of or other equity or voting interest in the Company.

§3.6 Financial Statements. (a) Attached on Schedule 3.6 of the Disclosure Letter are the unaudited combined balance sheet of Seller as at December 31, 2005 and December 31, 2006, and the related unaudited combined statements of operations, shareholders' equity and cash flows for the years then ended, and the unaudited combined balance sheet of Seller as at June 30, 2007 and the related unaudited combined statements of operations, shareholders' equity and cash flows for the three months then ended (the unaudited combined balance sheet of Seller as at December 31, 2006 (the "Balance Sheet Date") is hereinafter referred to as the "Balance Sheet" and the unaudited combined balance sheet of Seller as at June 30, 2007 (the "Unaudited Balance Sheet Date") is hereinafter referred to as the "Unaudited Balance Sheet"). The financial statements referred to above, including the footnotes thereto, except as described therein, have been prepared in accordance with GAAP consistently followed throughout the periods indicated.

(b) The Balance Sheet fairly presents and is a true, correct and complete statement of the combined financial position of the Existing Business; and the related statements of operations, shareholders' equity and cash flows fairly present and are true, correct and complete statements of the results of the operations and cash flows of the Existing Business and the changes in its financial position for the periods indicated, except as described therein.

(c) The Unaudited Balance Sheet (and any balance sheet delivered pursuant to Section 5.3 hereof) fairly presents and is a true, correct and complete statement of (subject to normal year-end adjustments, consistent with prior year-end adjustments, and as otherwise described therein) the combined financial position of the Existing Business at the respective dates thereof; and the related consolidated statement of operations, shareholders' equity and cash flows (and any such statements delivered pursuant to Section 5.3 hereof) fairly present and are true, correct and complete statements of the combined results of operations and cash flows of the

Existing Business and the changes in its financial position for the period indicated (except for the absence of notes thereto and subject to normal year-end adjustments, consistent with prior year-end adjustments, and as otherwise described therein).

(d) Seller has no, and as of the Closing Date, the Company will not have any, liabilities or obligations, either accrued, absolute, contingent or otherwise, whether due or to become due, except (i) liabilities set forth on the Unaudited Balance Sheet and not heretofore paid or discharged; (ii) to the extent specifically set forth in or incorporated by express reference in any of the schedules hereto; and (iii) normal liabilities incurred in the ordinary course of business since the date of the Unaudited Balance Sheet.

§3.7 Personal Properties. (a) Except as set forth on Schedule 3.7 of the Disclosure Letter, Seller has, and as of the Closing Date, the Company will have, good title to or, in the case of leased assets, a valid leasehold interest in, free and clear of all Liens, except for Permitted Liens, all of the tangible and intangible personal property and assets set forth on Schedule 1 of the Disclosure Letter. Seller owns or has the right to use, and as of the Closing Date, the Company will own or have a valid right to use, under valid and enforceable leases, all of the tangible personal properties and assets identified on Schedule 1.

(b) The accounts receivable of the Business have arisen in the ordinary course of business and represent valid obligations owed to Seller.

§3.8 Owned Real Property. Schedule 3.8 of the Disclosure Letter contains a list of all real property which, as of the date hereof, (i) is owned in whole or in part by Seller and located west of the centerline of Buchanan Street in Gary, Indiana, (ii) comprises the hump lead and Dixie lead located east of Buchanan Street (whether owned by Seller or a predecessor of Seller) and (iii) is located in Illinois or Indiana and is owned by Seller or a predecessor of Seller and is used in the Business (all such property together with all improvements thereon and appurtenances thereto, are herein collectively referred to as the "**Owned Real Property**"). The Owned Real Property will be transferred from Seller or the appropriate predecessor of Seller, as the case may be, to the Company prior to the Closing as described in Section 5.2 hereof.

§3.9 Leased Real Property. Schedule 3.9 of the Disclosure Letter contains a list of all real property leases (each a "Lease" and the property leased thereunder being the "**Leased Property**") to which Seller is a party (as lessee or lessor) relating to the Business. Each Lease set forth on Schedule 3.9 of the Disclosure Letter is in full force and effect and all rents and additional rents due to date on each such Lease have been paid.

§3.10 Material Contracts. (a) Except as set forth on Schedule 3.10(a) of the Disclosure Letter, neither Seller nor Parent is a party to, nor is Seller or any of its assets bound by, any Contract or group of related Contracts with respect to the Business (each, a "**Material Contract**"):

(i) relating to (A) the employment (as an employee or consultant) or termination of employment of any Person by Seller which may not be terminated without

penalty or other obligation in excess of \$50,000 (other than any severance payments required by Law) by Seller; or (B) the payment to any Person by Seller of any bonus award which is contingent on a sale of the Business, of the Seller's stock or any of its assets;

(ii) which contains restrictions with respect to payment of dividends or any other distribution in respect of its capital stock;

(iii) relating to Indebtedness of Seller;

(iv) limiting the ability of Seller to manufacture, sell or distribute any product, to engage in any line of business or to compete with any Person;

(v) with any labor union or any employee organization;

(vi) pursuant to which Seller is entitled or obligated to acquire any assets from a third party with a value in excess of \$250,000 in the aggregate during any twelve-month period other than the purchase of inventory and supplies in the ordinary course of business;

(vii) pursuant to which Seller is obligated to provide goods or services to another Person with a total Contract value in excess of \$250,000 in the aggregate in any twelve-month period, unless terminable, without penalty, by Seller on not more than thirty (30) days notice;

(viii) that provides for any bonus, pension, profit sharing, retirement or any other form of deferred compensation plan or any stock purchase, stock option, hospitalization insurance or similar plan or practice, whether formal or informal;

(ix) relating to the mortgaging, pledging or otherwise placing a lien on any of its assets, including documents related to any equipment financing;

(x) under which Seller has advanced or loaned any other person amounts in the aggregate exceeding \$25,000;

(xi) with respect to the investing of funds;

(xii) in the form of a license or royalty agreement (excluding licenses or agreements pertaining to "off-the-shelf" software);

(xiii) that provides for a guaranty of any obligation, other than endorsements made for collection;

(xiv) providing outstanding powers of attorney;

(xv) under which Seller is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by it;

(xvi) any confidentiality agreement or similar arrangement;

(xvii) other agreement material to it whether or not entered into in the ordinary course of business, except for this Agreement or the agreements contemplated hereby, which is not terminable by it on 30 days or less notice without penalties; or

(xviii) pursuant to which Seller is obligated to provide or entitled to receive access or services, including trackage, haulage and run-through power rights, to or from another rail or other transportation services or access provider.

(b) Except as disclosed on Schedule 3.10(b), (i) no Material Contract has been breached or canceled by the other party and the Seller has no knowledge of any anticipated breach by any other party to any Material Contract; (ii) the Seller and the Company, as applicable, have performed all the obligations required to be performed by them in connection with the Material Contracts and are not in default under or in breach of any Material Contract, and to the Seller's knowledge no event has occurred which with the passage of time or the giving of notice or both would result in a default or breach thereunder; and (iii) each Material Contract is legal, valid, binding, enforceable and in full force and effect. All Contracts and Material Contracts relating to the Business as presently conducted will be transferred from Seller to the Company prior to the Closing, or assumed by the Company at the Closing, to the extent permitted by such Contracts. To the extent that the assignment or transfer of any of the Contracts to be assigned or transferred to the Company hereunder shall require the consent of another party thereto, the Seller shall use commercially reasonable efforts (and the Purchaser shall reasonably cooperate with Seller) to obtain the written consent of such parties. If such consent cannot be obtained, the Seller and the Purchaser shall cooperate in any arrangement reasonably acceptable to them designed to provide the Company with the benefits of such Contract during the current term of such Contract, subject to the assumption by the Company of the obligations and liabilities of Seller under such Contracts arising on or after the Closing Date.

(c) Seller has provided Purchaser with a true and correct copy of all written contracts required to be disclosed on Schedule 3.10(a), in each case together with all amendments, waivers or other changes thereto (all of which are disclosed on Schedule 3.10(a)). Schedule 3.10(a) contains an accurate and complete description of all material terms of all oral contracts referred to therein.

§3.11 Litigation. Except as set forth on Schedule 3.11 of the Disclosure Letter, there is no action, suit, proceeding at Law or in equity, arbitration or administrative or other proceeding by or any investigation by any Governmental or Regulatory Authority or any other Person pending, or, to the knowledge of the Seller, threatened against Seller, the Business, the Company or any of their respective properties, assets or rights, or which question the validity or enforceability of the Spin-Off, this Agreement or any action contemplated herein. There are no outstanding unsatisfied Orders, decrees or stipulations issued by any federal, state, local or

foreign judicial or administrative authority in any proceeding to which Seller is or was a party or which apply to any of the assets of Seller.

§3.12 Taxes. Except as set forth in Schedule 3.12 of the Disclosure Letter:

(a) All Taxes required to be paid or withheld by the Seller, have been timely paid or have been accrued and fully provided for in accordance with GAAP on the books and records of the Seller.

(b) Each federal, state, local and foreign Tax Return filed by or with respect to the Seller accurately reflects the amount of Seller's liability for Taxes thereunder and sets forth all disclosures required by applicable law or regulation.

(c) All returns and reports required to be filed by or with respect to the Seller, the Company or the Business with respect to Taxes (each a "Tax Return") have been timely filed (taking into account all applicable extensions). Schedule 3.12(c) sets forth all state and local tax returns required to be filed for the year ending December 31, 2007, based on the Seller's respective operations prior to the Closing Date

(d) Neither the Company nor Seller are liable for any Taxes attributable to any other members of any group of affiliated corporations that filed consolidated returns for federal income tax purposes of which the Company or Seller was a member before the Closing Date by reason of Treasury Regulation 1.1502-6, any comparable provision of state, local or foreign law that provides joint or several liability, in whole or in part, or pursuant to any tax sharing agreement to which the Company or Seller is a party.

(e) With respect to all Tax Returns of the Seller: (i) no audit is in progress and no waiver or agreement is in force for the extension of time for the assessment or payment of any Taxes; and (ii) there is no unassessed deficiency proposed in writing against the Seller.

(f) The Seller has not made, revoked or changed any material Tax election or material method of Tax accounting or procedure, filed any amended Tax Return (unless required by Law), entered into any closing agreement relating to a material amount of Taxes, settled or compromised any material liability with respect to Taxes or consented to any extension or waiver of the statute of limitations for any such claim or assessment.

(g) Schedule 3.12(g) sets forth the status of federal, state, local and foreign Tax audits of the Tax Returns of the Seller for each fiscal year for which the statute of limitations has not expired, including amounts of any deficiencies and additions to Tax, interest and penalties indicated on any notices of proposed deficiency or statutory notices of deficiency, and other amounts of any payments made by the Seller. Any adjustments made on any federal Tax Return of the Seller as a result of any Tax audit, amended federal Tax Return or otherwise have been timely and duly reported to each applicable state, local and foreign taxing authority to the extent required by law or regulations.

(h) Neither the Company nor Seller will be required to include any item of

income in, or exclude any item of deduction from, a taxable period (or portion thereof) beginning on or after the Closing Date as a result of (i) operation of Section 481 of the Internal Revenue Code of 1986, as amended (or any corresponding or similar provision of state, local or foreign tax law) due to a change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) any installment sale or open transaction disposition made on or prior to the Closing Date or (iii) any prepaid amount received on or prior to the Closing Date.

(i) Neither the Company nor Seller has engaged in any "listed transaction" (as defined in Treasury Regulation Section 1.6011-4) or made any disclosure under Treasury Regulation Section 1.6011-4.

(j) Schedule 3.12(j) of the Disclosure Letter sets forth all deferred intercompany transactions or excess loss accounts of Seller or the Company, and except as set forth on Schedule 3.12(j) of the Disclosure Letter, no intercompany gain or excess loss accounts will be triggered by the transactions contemplated hereby.

(k) The Company will not have any liability on or after the Closing Date under any Tax sharing agreement to which it has been a party, and all such Tax sharing agreements in effect before the Closing Date shall terminate and be of no further force and effect as of the Closing Date.

§3.13 Intellectual Property.

(a) For purposes of this Agreement, "**Intellectual Property**" shall mean, with respect to the Business, registered and unregistered trademarks, service marks, trade names and other indicia of origin and pending applications for registration for the foregoing, and the Proyard and Alstom software programs, including all related documentation and materials, used in the Business.

(b) Schedule 3.13(b) of the Disclosure Letter sets forth all Intellectual Property to be transferred by Seller to the Company. Except as set forth on Schedule 3.13(b) of the Disclosure Letter, Seller owns all right, title and interest in and to, or has the perpetual, royalty-free right to use, free and clear of all Liens other than Permitted Liens, all Intellectual Property necessary to conduct the Business as currently conducted and all such Intellectual Property will be transferred from Seller to the Company prior to the Closing.

(c) Except as set forth on Schedule 3.13(c) of the Disclosure Letter, to the knowledge of the Seller, (i) the conduct of the Business does not infringe, dilute or misappropriate any Intellectual Property rights of any Person; and (ii) no Person is infringing, diluting or misappropriating any of the Intellectual Property rights owned or used by Seller.

(d) Except as set forth on Schedule 3.13(d) of the Disclosure Letter, each item of Intellectual Property owned by Seller, which is registered with or issued by a Governmental or Regulatory Authority, has been duly registered with, filed in or issued by the appropriate Governmental or Regulatory Authority and each such registration or issuance is valid and remains in full force and effect, and all applications therefor are pending, in good standing, and

all without challenge of any kind. The Company (with respect to the operation of the Business after the Spin-Off) and Seller (with respect to the operation of the Business prior to the Spin-Off) have taken all actions reasonably necessary to protect, and where necessary register, each item of Intellectual Property owned by Seller.

§3.14 Compliance with Laws. Seller is in material compliance with all applicable Laws, and as of the Closing Date, the Company will be in material compliance with all applicable Laws. Except as set forth on Schedule 3.14 of the Disclosure Letter, within the past three years, Seller has not been cited, fined or otherwise notified of any asserted past or present failure to comply with any Laws and no proceeding with respect to any such violation is pending.

§3.15 Employees. Schedule 3.15 of the Disclosure Letter contains the Alt ID, title, hire date, pay grade and 2006 earnings of all employees of Seller. The employees of the Seller shall not suffer a "mass layoff" as defined in 29 U.S.C. §2101 (a)(3) as a result of the transactions contemplated by this Agreement.

§3.16 Employment Relations. Seller is, and as of the Closing Date the Company will be, in material compliance with all Laws and collective bargaining agreements applicable to it respecting employment and employment practices, terms and conditions of employment and wages and hours and is not engaging in any unfair labor practice with respect to employees of Seller. Except as set forth on Schedule 3.16 of the Disclosure Letter, (i) no complaint against the Company or Seller is pending before the National Labor Relations Board or the National Railroad Adjustment Board or any Public Law Board or Special Board of Adjustment, (ii) there is no labor strike, dispute, slowdown or stoppage pending against or involving the Company or Seller, (iii) no grievance or arbitration proceeding arising out of or under any collective bargaining agreement with respect to employees of Seller is pending, and no claim therefor has been asserted in writing, and (iv) there are no labor or employment claims or proceedings pending between Seller and any of its employees.

§3.17 Employee Benefit Plans. Each employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), maintained by Seller or to which Seller contributes (or has an obligation to contribute) or is a party and which is applicable to Represented Employees (collectively, the "Employee Benefit Plans") is listed on Schedule 3.17 of the Disclosure Letter.

§3.18 Environmental Laws and Regulations. Except as set forth in Schedule 3.18 of the Disclosure Letter, Seller represents and warrants, to the best of Seller's knowledge and belief, as of the Closing Date that: (i) the operations, processes, practices, equipment, and activities of Seller, the Company and the Business, and the EJ&E Property, are in material compliance with applicable Environmental Laws; (ii) Seller, the Company and the Business have timely obtained and are in material compliance with all permits, licenses, registrations and other governmental approvals and authorizations required by Environmental Laws and have timely filed all reports and other documents required by applicable Environmental Laws; (iii) Seller, the Company and the Business have not, and have no knowledge of any person who has, caused any Release or threatened Release at or in excess of the reportable quantity or disposal of any Hazardous Material at the EJ&E Property that has not been reported, contained, remediated or

otherwise responded to in accordance with applicable Environmental Laws that could in the aggregate reasonably be expected to have a Material Adverse Effect on the Company or the Business; (iv) Seller, the Company and the Business have received no notice and are not aware of any violation (whether alleged or proven), claim, demand, litigation, proceeding or governmental investigation (whether pending or threatened) arising from any failure to comply with applicable Environmental Laws relating to Seller, the Company, the Business or the EJ&E Property; (v) there are no events, conditions, circumstances, activities, practices, incidents, actions, or plans relating to the Company or the Business that are reasonably expected to interfere with or prevent compliance or continued compliance with applicable Environmental Laws or which may reasonably be expected to give rise to any material legal liability (whether statutory or common law) or which may otherwise form the basis of any material claim, action, demand, suit, proceeding, hearing, notice of violation, study or investigation for failure to comply with applicable Environmental Laws, based on or related to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling or the Release or threatened Release into the environment of any Hazardous Material; (vi) neither Seller, the Company nor the Business have, in the past five years, either expressly in writing or by operation of law, assumed or undertaken any liability, including any obligation for corrective or response action, of any Person other than Seller or Company relating to Environmental Laws; and (vii) no pending or current lien relating to any Environmental Law or Hazardous Materials has attached to the EJ&E Property or any asset of Seller, the Company or the Business.

§3.19 Permits. Seller has obtained and possesses all necessary permits, certificates, licenses, consents or authorizations of any Governmental or Regulatory Authority (each, a "**Permit**") and has made all registrations or filings with or notices to any Governmental or Regulatory Authority for the lawful ownership of the properties, assets and operations of the Business as presently conducted and all such Permits will be transferred from Seller to the Company prior to or at the Closing, to the extent allowed by applicable law or regulation. All such Permits are valid and in full force and effect, the holder of each Permit is in substantial compliance with their requirements, and no proceeding is pending or, to the best of Seller's knowledge, threatened to revoke or amend any of them. Except as indicated on Schedule 3.19, no Permits will be impaired or in any way affected by the execution and delivery of this Agreement or the consummation of the transactions contemplated herein.

§3.20 No Changes Since Unaudited Balance Sheet Date. Except as set forth on Schedule 3.20 of the Disclosure Letter or as contemplated by this Agreement, since the Unaudited Balance Sheet Date, (i) there has not occurred any event, change or development that has had, or would reasonably be expected to have, a Material Adverse Effect on the Business and (ii) Seller has not:

(a) suffered any theft, damage, destruction or casualty to any material assets, whether or not covered by insurance or suffered any substantial destruction of its books and records;

(b) amended or restated its charter or by-laws (or comparable organizational or governing documents);

(c) permitted any of the assets related to the Business to be subjected to any Lien other than a Permitted Lien;

(d) sold, leased, assigned, transferred or otherwise disposed of any tangible assets in excess of \$50,000, individually and \$150,000 in the aggregate, except for sales, transfers or other dispositions of inventory or obsolete assets in the ordinary course of business, or canceled without fair consideration any material debts or claims owing to or held by it;

(e) failed to make any capital expenditure included in the capital expenditures budget with respect to the Business;

(f) made or granted any bonus or any compensation increase, or made or granted any pension, retirement or profit sharing distribution or payment of any kind, or made or granted any increase in any employee benefit plan or arrangement, or amended or terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement, except in the ordinary course of business or in accordance with a pre-existing Contract listed in the Schedules hereto;

(g) made any other change in employment terms for any of its directors, officers, and employees outside the ordinary course of business consistent with past practice;

(h) entered into any implementing agreement with any labor union representing employees of Seller which provides for labor protection provisions for such employees in excess of those required pursuant to the United States Interstate Commerce Commission decision in New York Dock Railway – Control – Brooklyn Eastern District, 360 I.C.C. 60 (1979) (“New York Dock”);

(i) made any change in any method of accounting or auditing practice other than those changes required or permitted by GAAP or applicable Law;

(j) made any distributions to Parent or any parties or redeemed, purchased or otherwise acquired any shares of the Company’s capital stock;

(k) issued, sold or transferred any interest in Seller or any rights to acquire any interest in Seller, other than pursuant to this Agreement;

(l) incurred or become subject to any material liabilities, except liabilities incurred in the ordinary course of business consistent with past practice;

(m) sold, assigned, licensed or transferred any proprietary rights owned by, issued to or licensed to it or disclosed any confidential information (other than pursuant to agreements requiring the recipient to maintain the confidentiality of and preserving all its rights in such confidential information or as required by law);

(n) suffered any extraordinary losses or waived any rights of material value;

(o) entered into, amended or terminated any Material Contract or taken any other action or entered into any other transaction other than in the ordinary course of business consistent with past practice;

(p) entered into any agreements pursuant to which Seller or the Company is obligated to provide or entitled to receive access or services, including trackage, haulage and run-through power rights or agreements, to or from another rail or other transportation services or access provider;

(q) conducted its cash management customs and practices other than in the ordinary course of business consistent with past practice (including with respect to collection of accounts receivable, purchases of inventory and supplies, repairs and maintenance, payment of accounts payable and accrued expenses, levels of capital expenditures and operation of cash management practices generally);

(r) made any loans or salary advances to, or guarantees for the benefit of, any Person;

(s) made charitable contributions, pledges, association fees or dues in excess of \$50,000 in the aggregate; or

(t) committed to do any of the foregoing.

§3.21 Insurance. Schedule 3.21 of the Disclosure Letter lists an insurance claims history for the Existing Business for the past five years.

§3.22 Brokers' or Finders' Fees. No agent, broker, person or firm acting on behalf of either the Seller or the Company is, or will be, entitled to any commission or brokers' or finders' fees from the Seller or the Company in connection with any of the transactions contemplated by this Agreement.

§3.23 No Other Representations or Warranties. No officer, director, employee, investor, agent or representative of the Seller or the Company shall have any liability or responsibility for any representations or warranties contained in this Agreement. The disclosure of any matter or item in the Disclosure Letter shall not be deemed to constitute an acknowledgment that such matter or item is required to be disclosed or is material to the representations and warranties set forth in this Agreement or that such matter would, or would be reasonably likely to, result in a Material Adverse Effect. No representation or warranty of the Seller contained herein shall be deemed to be untrue or incorrect, and the Seller shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event (x) which is disclosed in response to another representation or warranty of the Seller in this Agreement in a manner that is sufficient to reasonably inform the Purchaser of information required to be disclosed in the Schedule or Section of this Agreement related to such representation or warranty or (y) of which the Purchaser has actual knowledge.

§3.24 Disclosure. No representation or warranty of the Seller in this Agreement or any other document delivered pursuant hereto or any statement, document, certificate or exhibit furnished or to be furnished by Seller pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein not misleading.

§3.25 Affiliate Transactions. Except as set forth on Schedule 3.25, no Affiliate of the Seller is a party to any agreement, contract, commitment or transaction with Seller or that pertains to the Business or has any interest in any property, real or personal or mixed, tangible or intangible, that is used in or pertains to the Business.

§3.26 Customers and Suppliers. The Seller has not received any written or oral communication that:

(a) any current customer of the Business that accounted for over 5% of the total consolidated revenue of the Business for the year ended December 31, 2006 will terminate its business relationship with the Business; or

(b) any current supplier to the Business will terminate its business relationship with the Business, the loss of which would have a Material Adverse Effect on the Business.

§3.27 Closing Date. All of the representations and warranties of the Seller in this Agreement and all information delivered in any schedule, attachment or exhibit hereto or in any certificate delivered to the Purchaser are true and correct on and as of the Closing Date as though made at that time, except to the extent that such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

ARTICLE IV

REPRESENTATIONS OF THE PURCHASER

The Purchaser represents and warrants to the Seller as follows:

§4.1 Existence and Good Standing of the Purchaser; Power and Authority. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Purchaser has the corporate power and authority to execute and deliver this Agreement and the other instruments and agreements to be executed and delivered by the Purchaser as contemplated hereby. The Purchaser has the corporate power and authority to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement, and all other instruments and agreements to be executed and delivered by the Purchaser as contemplated hereby, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by the Purchaser's Board of Directors and no other corporate or shareholder action on the part of the Purchaser is necessary to authorize the execution, delivery and performance of this Agreement and such other instruments and agreements by the Purchaser and the consummation of the transactions

contemplated hereby and thereby. This Agreement and all other instruments and agreements to be executed and delivered by the Purchaser as contemplated hereby, when delivered in accordance with the terms hereof, assuming the due execution and delivery of this Agreement and each such other document by the other parties hereto and thereto, shall have been duly executed and delivered by the Purchaser and shall be valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the enforcement of creditors' rights generally, to general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law) or to applicable principles of public policy.

§4.2 Consents and Approvals; No Violations. (a) The execution and delivery of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby will not result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default under, or result in the creation of any Lien upon any of the properties or assets of the Purchaser under: (1) any provision of the certificate of incorporation or by-laws of the Purchaser; (2) subject to obtaining and making any of the approvals, consents, notices and filings referred to in paragraph (b) below, any Law or Order applicable to the Purchaser or by which any of its properties or assets may be bound; or (3) any of the terms, conditions or provisions of any Contract to which the Purchaser is a party, or by which any of its properties or assets may be bound, except in the case of clauses (2) and (3) above for such violations, filings, permits, consents, approvals, notices, breaches or conflicts which would not reasonably be expected to have a Material Adverse Effect on the Purchaser.

(b) Except for such filings and approvals as may be required pursuant to the ICC Termination Act, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority is necessary or required under any of the terms, conditions or provisions of any Law or Order applicable to the Purchaser, or by which any of its properties or assets may be bound, for the execution and delivery of this Agreement by the Purchaser, the performance by the Purchaser of its obligations hereunder or the consummation of the transactions contemplated hereby, other than those which the failure to obtain or make would not reasonably be expected to have a Material Adverse Effect on the Purchaser.

§4.3 Purchase for Investment. The Purchaser will acquire the Shares for its own account for investment and not with a view toward, or for the purpose of, any resale or distribution thereof. The Purchaser acknowledges that the sale of the Shares hereunder has not been registered under the Securities Act and that the Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act, pursuant to an exemption therefrom or in a transaction not subject thereto.

§4.4 Brokers' or Finders' Fees. No agent, broker, person or firm acting on behalf of the Purchaser is, or will be, entitled to any commission or brokers' or finders' fees from the Purchaser, the Company or the Seller or from any Affiliate of the Purchaser, the Company or the Seller, in connection with any of the transactions contemplated by this Agreement.

§4.5 Financial Capability. The Purchaser (i) has, and at the Closing will have, sufficient internal funds available to pay the Purchase Price, the Final Purchase Price Adjustment, if any, and any expenses incurred by the Purchaser in connection with the transactions contemplated by this Agreement; (ii) has, and at the Closing will have, the resources and capabilities (financial and otherwise) to perform its obligations hereunder; and (iii) has not incurred any obligation, commitment, restriction or liability of any kind, absolute or contingent, present or future, which would impair or adversely affect such resources and capabilities.

§4.6 Employee Matters. The compensation packages Purchaser and its Affiliates provide to their U.S.-based Non-Represented Employees ("Compensation Packages") immediately prior to the Closing Date are fairly comparable with the compensation packages received by U.S.-based Non-Represented Employees in comparable positions at other Class 1 railroads immediately prior to the Closing Date. The employees of the Company shall not suffer a "mass layoff" as defined in 29 U.S.C. §2101 (a)(3) as a result of the transactions contemplated by this Agreement.

§4.7 Closing Date. All of the representations and warranties of Purchaser in this Agreement and all information delivered in any schedule, attachment or exhibit hereto or in any certificate delivered to Seller are true and correct on and as of the Closing Date as though made at that time, except to the extent that such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

ARTICLE V COVENANTS

§5.1 Conduct of Business. (a) Except as set forth on Schedule 5.1(a) of the Disclosure Letter and as contemplated by the Spin-Off, during the period from the date of this Agreement until the earlier of the Closing Date or the date this Agreement is terminated, (i) the Seller shall, and shall cause the Company to, conduct its operations according to its ordinary and usual course of business, and (ii) except as is required by applicable Law, as may be approved by the Purchaser (which approval shall not be unreasonably withheld, delayed or conditioned) or as is otherwise contemplated by this Agreement, the Seller shall cause the Company to refrain from taking any action that would cause a breach of the representations and warranties set forth in Section 3.20 or would require disclosure on Schedule 3.20.

(b) Notwithstanding anything contained in this Agreement to the contrary, (i) the Company and the Seller shall be permitted to maintain the Business's cash management system and procedures (as currently conducted) through the Closing Date, (ii) Seller and the Company shall be permitted to borrow funds from Parent, U. S. Steel and their Affiliates as is necessary to operate the Business in the ordinary course of business and repay such borrowings in the ordinary course of business, and (iii) Seller and the Company shall be permitted to enter into one or more hedging agreements in respect of fuel and/or other commodities used by it in the ordinary course of business.

§5.2 Spin-Off. Following the signing of this Agreement but prior to the Closing Date, Seller shall form a wholly-owned subsidiary, EJ&E West Company, an Illinois

corporation. The assets described on Schedule 1 and Schedule 2 attached hereto represent the parties' best estimate, as of the date hereof, of the proposed division of the assets in connection with the Spin-Off, it being the intention of the parties that Seller shall retain those assets and related personnel necessary for the continued operation of Seller as a common carrier railroad serving U. S. Steel and other customers at Gary Works, and that all other assets and personnel of Seller shall be transferred to the Company in connection with the Spin-Off. Within thirty (30) days following the execution of this Agreement, Seller shall provide to Purchaser a more detailed list of the assets and a list of the Non-Represented Employees to be transferred in connection with the Spin-Off, for Purchaser's review and approval. Within thirty days' thereafter, Purchaser and Seller shall agree upon a revised Schedule 1 and a final allocation of Non-Represented Employees between Seller and the Company. Prior to, but as close as reasonably practicable to, the Closing Date, if the transaction has not been terminated, Seller shall complete the Spin-Off, and transfer to the Company all of the assets described on Schedule 1, as revised. All Owned Real Property will be transferred by quitclaim deed, all Leased Property will be transferred by novation or assignment, personalty will be transferred by bill of sale, all Contracts, Material Contracts and Permits shall be transferred by assignment, to the extent assignable, and Intellectual Property will be transferred by assignment, bill of sale or licensed to the Company, and all of the books and records pertaining to the foregoing shall be transferred by bill of sale. During the ninety day period following the execution of this Agreement, the Seller and Purchaser shall work together to develop mutually acceptable legal descriptions for the Owned Real Property to be conveyed. During the thirty day period preceding Closing, the Seller and Purchaser shall work together to develop accurate lists of the Contracts, Material Contracts and Permits to be assigned. The assets of Seller listed on Schedule 2, and all legal, environmental and other liabilities incurred or arising from events taking place or conditions existing prior to the Closing Date, including, (i) Taxes; (ii) Employee Benefit Plans; (iii) collective bargaining agreements; (iv) any claim, cause of action, proceeding or litigation pending or threatened against Seller or the Company as of the Closing Date, or which is initiated at any time thereafter and is based, in whole or in part, on acts, facts, circumstances, events or conditions occurring or existing prior to the Closing Date, but only to the extent that the liability relating to any such claim arises out of acts, facts, circumstances, events or conditions occurring or existing prior to the Closing Date; or (v) any grievance proceeding, arbitration, administrative proceeding, or proceedings in any court, based upon any employment actions, inactions or omissions by Seller or the Company, involving any employees or former employees of Seller or the Company, or individuals who applied for employment with Seller or the Company, which relate in any way to decisions to hire or not hire such individuals, decisions to terminate, discharge or lay off such individuals, and decisions regarding payment of compensation and/or benefits to such individuals (collectively, "Retained Liabilities"), will remain with Seller and will not be transferred to or assumed by Company; provided, however, (a) at the Closing, Company will assume any and all contractual performance obligations and commitments relating exclusively to the Business that exist as of the Closing Date, are to be performed on or after the Closing Date and that were incurred in the ordinary course of business consistent with prior practice and in accordance with the terms of this Agreement, and (b) any such Retained Liabilities that arise from Environmental Laws or Environmental Conditions are caused by or result from Environmental Conditions occurring or existing prior to the Closing Date. Purchaser and Seller shall jointly fund and cause to be completed an Environmental Baseline Report ("EBR"). The EBR shall be performed in accordance with a scope of work approved by Purchaser and Seller.

The EBR shall be performed by an environmental consulting firm that is mutually acceptable to Purchaser and Seller and engaged by counsel for the Purchaser. The environmental consultant's findings, observations and conclusions shall be reported to Purchaser and Seller in a written report prepared by the consultant. Purchaser and Seller shall each be responsible for 50% of the costs and expenses of the EBR. The EBR shall consist of an evaluation of Environmental Conditions that exist at the Owned Real Property and Leased Property in order to reasonably define the existing conditions and circumstances on the property so that, in the event of a subsequent Release, there is a means of distinguishing the new Release from existing contamination. Prior to commencement of the EBR, Seller shall provide Purchaser and the EBR consultant with copies of all final reports in the possession of Seller (including, without limitation, reports containing the results of all assessments, audits, studies and investigations) related to Environmental Conditions at the Owned Real Property and/or the Leased Property. The EBR may be utilized by Purchaser and/or Seller as evidence of the Environmental Condition of the Owned Real Property or Leased Property on the date that the EBR is performed, and Seller and Purchaser agree that for purposes of this Section 5.2 any Environmental Condition existing after the Closing on Owned Real Property and Leased Property that is not disclosed in the EBR shall be considered a condition caused by or arising from the acts or omissions of Purchaser, unless and except to the extent that Purchaser demonstrates in accordance with best professional judgment that such condition existed before the Closing. Seller and Purchaser shall maintain the EBR as strictly confidential and not provide the EBR to any third parties, except: (1) as reasonably necessary in connection with this transaction; (2) as is reasonably necessary to enforce the terms of this Agreement; or (3) as required by law or court Order.

§5.3 Review of the Business; Confidentiality. (a) The Seller shall, and shall cause the Company to, permit the Purchaser and its representatives to have, after the date of execution of this Agreement, reasonable access during regular business hours to the premises and to the books and records of the Business, Seller and the Company and the Seller shall cause the officers, employees and other representatives of Seller and the Company to furnish the Purchaser with such financial and operating data and other information with respect to the Business as the Purchaser shall from time to time reasonably request; provided that such investigation and assistance shall not unreasonably disrupt the operations of the Seller or the Company. Notwithstanding the foregoing, nothing in this Section 5.3 shall require the Seller or the Company to violate the terms of any agreement to which such Person is party (or by which such Person is bound) or any applicable Law, or disclose any information to the Purchaser if such disclosure would cause competitive harm to such disclosing party or its Affiliates if the transactions contemplated by this Agreement are not consummated or would constitute a violation of 49 U.S.C. § 11904.

(b) Within 30 days following the end of each fiscal quarter, the Seller shall deliver to the Purchaser an unaudited combined balance sheet of Seller and the Company, to the extent the Company has been in existence during such fiscal quarter, as at the end of such fiscal quarter and the related unaudited combined statements of operations, shareholders' equity and cash flows for the three months then ended. Such financial statements will be prepared in accordance with GAAP consistently followed throughout the periods indicated. Seller shall also periodically deliver to Purchaser copies of all financial and operational data reports which Seller currently prepares and distributes to the senior management of Parent at the time such data is

delivered to senior management, to the extent such disclosure is not inconsistent with §5.3(a) hereof.

(c) Any information obtained by the Purchaser pursuant to paragraph (a) and (b) above or with respect to the Seller and/or any of its Affiliates shall be subject to the terms and conditions set forth in that certain Confidentiality Agreement, dated April 25, 2005, as amended and supplemented, by and between U. S. Steel and CN, the terms of which are incorporated herein by reference (the "**Confidentiality Agreement**"). Effective upon, and only upon the Closing, the Purchaser's obligations under the Confidentiality Agreement shall terminate with respect to information relating to the Business; provided that the Purchaser acknowledges that any and all other information provided to it by the Seller or its representatives (as defined in the Confidentiality Agreement) concerning the Seller and/or any of its Affiliates (other than the Company) shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date.

(d) Until the Closing, the Seller shall promptly inform the Purchaser in writing of any material variances discovered by the Seller or its representatives in the representations and warranties of the Seller contained in this Agreement.

§5.4 Commercially Reasonable Efforts. Subject to the terms and conditions contained herein, the Seller and the Purchaser shall, and the Seller shall cause the Company to, cooperate and use their respective commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to make, or cause to be made, as soon as practicable after the date of this Agreement, all filings necessary, proper or advisable under applicable Laws, in each case to consummate and make effective the transactions contemplated by this Agreement in the most expeditious manner practicable (including their respective commercially reasonable efforts to obtain, prior to the Closing Date, all Permits, consents, approvals, authorizations, qualifications and Orders as are necessary for consummation of the transactions contemplated by this Agreement, to remove any injunctions or other impediments or delays (legal or otherwise) and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Articles VI and VII of this Agreement).

§5.5 Regulatory Matters.

(a) As soon as reasonably practicable after the date of this Agreement, Seller and Purchaser shall, in accordance with their obligations under Section 5.4, take the following actions: (i) Seller shall and Seller shall cause Company to prepare and present to the STB a Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(3) whereby Seller will Spin-Off to Company all of the land, rail and related assets located west of the center line of Buchanan Street in Gary, IN as shown on the drawing attached as Exhibit B and all the assets set forth on Schedule 1 of the Disclosure Letter, with associated employees ("the Exemption Proceeding"); and (ii) Purchaser shall prepare and present to the STB an application for approval of the acquisition by Purchaser of all of the issued and outstanding stock of Company pursuant to 49 U.S.C. § 11323(a)(3) ("the Control Proceeding") and all other necessary or appropriate filings and other presentations in connection with seeking any STB approval, exemption or other authorization necessary to consummate the transactions contemplated by this Agreement (the

Exemption Proceeding, the Control Proceeding and any other related proceedings hereinafter collectively referred to as "the STB Proceedings").

(b) Seller shall with respect to the Exemption Proceeding and Purchaser shall with respect to the Control Proceeding and any related proceedings that it may initiate: (i) prosecute such filings and other presentations with reasonable diligence; (ii) diligently oppose, to the extent reasonable, any objections to, appeals from or petitions to reconsider or reopen any such STB approval by persons not party to this Agreement, and (iii) take all such further actions as in the reasonable judgment of Seller and Purchaser, as applicable, may facilitate obtaining a final order or orders of the STB approving such transactions consistent with this Agreement and the transactions contemplated herein.

(c) It is understood and agreed that Seller and Purchaser shall use their respective reasonable best efforts to make their initial filings referred to in subsection (a) hereof within thirty days following the date of this Agreement. The Seller, in accordance with its obligations under Section 5.4 shall cooperate with Purchaser to achieve the foregoing to the extent reasonably requested by the Purchaser, including the preparation and filing of all documents in connection with the Exemption Proceeding and assisting in the preparation of all other filings, documents or other public statements related to any other STB proceedings or rulemaking or any other legal or legislative proceeding or deliberation that could in the reasonable opinion of the Purchaser affect the likelihood of obtaining STB approval. In furtherance of the foregoing, the Purchaser shall, subject to the terms and conditions of this Agreement, have final authority over the development, presentation and conduct of the Control Proceeding, including over decisions as to whether to agree to or acquiesce in conditions, provided that such conditions: (i) are not inconsistent with the provisions of the Transportation Services Agreement, the Railway Services Agreement and the other Agreements entered into or to be entered into between Purchaser and Seller as described in Sections 6.9 through 6.11 and Section 6.14; and (ii) do not adversely affect transportation service to U. S. Steel's Gary Works or to any other U. S. Steel facilities or the operations of Seller. Except for necessary regulatory actions and communications with the STB in connection with the Exemption Proceeding and to enforce Seller's rights in connection with the STB Proceedings, Seller: (i) shall take no regulatory action with the STB relating to or affecting, directly or indirectly, this Agreement or the transactions contemplated hereunder without the Purchaser's prior written consent; and (ii) shall not have any other communication with the STB with respect to any other matter that would reasonably be expected to affect the STB's consideration of the transactions contemplated by this Agreement, without the Purchaser's prior written consent. Purchaser and Seller agree that the prohibitions and restrictions on Seller's rights herein are limited only to the Control Proceeding and are not intended to limit or restrict Seller's rights under this Agreement that are not directly related to the Control Proceeding. Notwithstanding any provision to the contrary in this Agreement, the Purchaser shall not be required to take any action in connection with seeking STB approval that would cause, directly or indirectly, the transactions contemplated by this Agreement to be reviewed by the STB in any way other than as a "minor" transaction (except that Purchaser shall take any and all reasonable actions to resist any attempt by any third parties to seek a determination by the STB that the transaction is a "significant" transaction) or would (x) require inclusion of any rail carriers or rail properties material to the Purchaser or any of its Subsidiaries, (y) change the amount or nature of the Purchase Price or (z) impose on the Purchaser or any of its Subsidiaries any terms or

conditions (including labor protective provisions, but excluding conditions heretofore imposed by the United States Interstate Commerce Commission in *New York Dock* and any other condition offered, volunteered or agreed to by the Purchaser) that would materially and adversely affect the Purchaser's reasonably anticipated financial benefits of the transactions contemplated by this Agreement to the Purchaser.

(d) In addition to the agreements set forth in Sections 5.3, 5.4 and 5.5(a)-(c), if any administrative, judicial or legislative action or proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of the ICC Termination Act, the Seller shall cooperate with the Purchaser to contest and resist any such action or proceeding, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits consummation of the transactions contemplated by this Agreement, including by pursuing all mutual avenues of administrative and judicial appeal.

§5.6 Public Announcements. Neither the Seller nor the Purchaser shall, nor shall any of their respective representatives or Affiliates, without the approval of the other party, issue any press releases or otherwise make any public statements with respect to the transactions contemplated by this Agreement and/or with respect to any other party to this Agreement or any of their respective representatives or Affiliates, except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange so long as such party has used commercially reasonable efforts to obtain the approval of the other party prior to issuing such press release or making such public disclosure. Nothing in this Section 5.6 shall limit the Purchaser's right to make public statements in connection with its efforts to comply with Section 5.5, so long as Seller is given prior notice of such statements. --

§5.7 Post-Closing Information. For a period of five (5) years following the Closing, upon reasonable written request delivered to the Purchaser, the Purchaser shall, and shall cause the Company to, at the Seller's sole expense, afford to the Seller, its Affiliates and their respective representatives, reasonable access during normal business hours to the personnel, properties, books and records of the Company existing on and prior to the Closing Date (which books and records shall be preserved by the Purchaser at its sole expense for such period). The Purchaser agrees, for a period of five (5) years following the Closing, not to destroy or otherwise dispose of any such books and records unless the Purchaser first offers in writing to surrender such books and records to the Seller (at the sole expense of the Seller) and the Seller does not agree in writing to take possession thereof during the 60 calendar day period after such offer is made by the Purchaser to the Seller.

§5.8 Indemnification of Officers and Directors. For a period of two (2) years after the Closing, the Certificate of Incorporation and by-laws (or other applicable organizational documents) of the Company shall contain provisions no less favorable with respect to indemnification of former directors, officers, employees or agents of the Company (each, together with such person's heirs, executors or administrators, a "Company Covered Person") relating to service prior to the Closing than are provided, at any time and from time to time, to the then-present directors, officers, employees or agents of the Company relating to service following the Closing. The provisions of this Section 5.8 shall survive the consummation of the

transactions contemplated hereby and are expressly intended to benefit each of the Company Covered Persons (and their respective heirs and legal representatives), who are express third-party beneficiaries hereof.

§5.9 Related Party Payments. All liabilities and obligations of the Company to the Seller and its Affiliates shall be paid or otherwise settled, and terminated, prior to or concurrently with the Closing.

§5.10 Updating the Disclosure Letter. The Seller shall deliver to the Purchaser, prior to the Closing Date a written update or supplement to the Disclosure Letter reflecting events, matters, items or facts occurring after the date hereof. To the extent that any such updated or supplemented Disclosure Letter reflects events, matters, items or facts which have occurred after the date hereof, or matters that were not disclosed as of September 21, 2007 in the Intralinks virtual data room established for this transaction by Seller (the "Data Room Disclosures") then, upon the prior consent of Purchaser, the Disclosure Letter shall be deemed to be amended as of the Closing Date to include the information on such updated or supplemented Disclosure Letter. No updated or amended Disclosure Letter shall be deemed an amendment to this Agreement or the related Schedules without the written consent of Purchaser, nor will any such updated or amended Disclosure Letter constitute a waiver of the condition specified in Section 6.2 hereof or a limitation of Purchaser's rights under Section 9.1(c) hereof.

§5.11 Tax Matters. (a) Except as otherwise provided in (b) and (c) below, the Seller, at its cost and expense, shall be responsible for preparing and filing all Tax Returns for the Company for Tax periods ending on or prior to the Closing Date (the "Pre-Closing Tax Period"). Such Tax Returns will report the operations of the Company consistent with past practices. Prior to the Closing Date, the Seller shall cause the Company to pay any Taxes imposed on the Company attributable to any taxable periods ending on or prior to the Closing Date, except to the extent such Taxes are not yet due and payable and are properly accrued as a current liability on the financial statements of the Company. The Seller shall also pay all liabilities imposed on the Company for payments attributable to Taxes that are owed by the Company in connection with the Spin-Off. For purposes of the foregoing, the obligations imposed on the Seller under this Section 5.11 shall include the filing of any Tax Return on which the gain or loss arising from the making of the Asset Sale Election and the payment of all liabilities imposed on the Company for Taxes that are owed by the Company as a consequence of the Asset Sale Election.

(b) The Purchaser, at its cost and expense, shall be responsible for preparing and filing all Tax Returns for Tax periods beginning before and ending after the Closing Date ("**Straddle Periods**"). No later than thirty (30) days prior to the due date of any such Tax Returns, Purchaser shall deliver copies of such Tax Returns to Seller for its review and approval, such approval not to be unreasonably withheld.

(c) At Closing, the Purchaser shall be responsible for reimbursement or payment of any property Transfer Taxes or sales or use taxes imposed upon the Company in connection with the Spin-Off or the transactions contemplated hereunder. In the event the Purchaser terminates this Agreement, Purchaser shall still be responsible for the payments under

this Section 5.11(c).

(d) The Seller and Purchaser shall promptly notify each other in writing upon receipt by them or their Affiliates of any notice of any pending or threatened audit or assessment with respect to Taxes for any periods prior to the Closing Date. Upon Seller's acknowledgement of its liability with respect thereto, Seller shall have the right, at its expense, to control any audit, administrative or court proceeding relating to such Taxes; provided, however, that if the audit or assessment involves Taxes the determination of which could reasonably be expected to affect any post-Closing Taxes of the Company or of the Purchaser, the Purchaser may elect to control any audit, administrative or court proceeding related to such Taxes, in which event Seller shall be kept informed and allowed, at Seller's expense, to participate therein.

§5.12 Employee and Labor Matters. (a) As provided in Section 5.2, prior to the Closing Date, Seller and Purchaser will allocate Seller's current Non-Represented Employees between the Company and Seller. Immediately prior to the Closing, all of the employees who have been allocated to the Company will be transferred to the Company by Seller. If, at any time following the Closing Date and prior to the first anniversary of the termination of the Services Agreement described in Section 6.15 hereof, any of the Pittsburgh Support Personnel are adversely affected by the Spin-Off or the Control Transaction contemplated herein, and thereby are entitled to receive labor protective payments pursuant to employee protective conditions imposed by the STB, then Purchaser shall pay for (and indemnify Seller against) the cost of such labor protective payments for up to twenty-five (25) employees of Parent. Purchaser shall be responsible for all labor-protective payments imposed by the STB for any employees who select or are assigned to the Company and are adversely affected by the Spin-Off or Control Transaction contemplated herein.

(b) For the two-year period beginning on the Closing Date, Purchaser, the Company, or another Affiliate of Purchaser shall employ Non-Represented Employees allocated to Company subject to the terms by which Purchaser and its Affiliates employ their other U.S.-based Non-Represented Employees, and shall provide Company Non-Represented Employees with cash compensation (including base salary and bonus and other incentive opportunities) and employee benefits that are substantially equivalent to those provided to Purchaser's and its Affiliates' other U.S.-based Non-Represented Employees holding similar positions during that two-year period.

(c) Seller and its Affiliates shall cause the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 2003) (the "USS Pension Plan") to recognize continuous service performed as an employee for Purchaser and its Affiliates on and after the Closing Date by a Company Non-Represented Employee or, subject to an applicable collective bargaining agreement, by an employee whose employment is governed by a collective bargaining agreement to which the Company is a party (a "Company Represented Employee") who is a participant in the USS Pension Plan immediately prior to the Closing Date as continuous service under the USS Pension Plan for purposes of determining (i) vesting in benefits; (ii) eligibility for retirement (as limited by the sale of facility provisions referenced below), but not for benefit accrual purposes, with creditable earnings under the USS Pension Plan limited to earnings which are paid during the last 120 full calendar months of continuous

service prior to the Closing Date. The USS Pension Plan benefits for Company Employees who are participants in the USS Pension Plan shall be determined by applying the terms and conditions of the sale of facilities provisions of Sections 34.A, B, and C(34) of the General Provisions of the USS Pension Plan in effect on the Closing Date, which includes (among other provisions) limiting benefits that are not tied to continuous service years (e.g., special initial pension payment, and minimum widow benefits) to the portion based on the years of continuous service performed for Seller and its Affiliates up to the Closing Date divided by the sum of the combined service at retirement performed for Seller, Purchaser and their Affiliates at retirement.

(d) Purchaser and its Affiliates shall cause each of their retiree welfare benefit plans (a "Purchaser Retiree Welfare Plan") to recognize continuous service performed, as an employee, for Purchaser and its Affiliates on and after the Closing Date, by a Company Non-Represented Employee or, subject to an applicable collective bargaining agreement, by a Company Represented Employee who is not eligible for an unreduced 30 year, 60/15, 62/15 or 65/5 retirement pension (an "Unreduced USS Pension") as of the Closing Date for purposes of eligibility to participate, vesting, entitlement for benefits, and benefit accrual under a Purchaser Retiree Welfare Plan in which such employee is eligible to participate after the Closing Date. A Purchaser Retiree Welfare Plan means an employee benefit plan to the extent that it provides medical, death, and other welfare benefits to retired employees but not to the extent it provides pension or other retirement income benefits. Seller and its Affiliates shall retain, under their retiree life and medical welfare benefit plans, the liabilities for any Company Non-Represented Employee and, subject to an applicable collective bargaining agreement, any Company Represented Employee who was eligible for an Unreduced USS Pension as of the Closing Date.

(e) Following the execution of this Agreement but prior to the Closing Date, Seller shall obtain, through negotiations or arbitration, reasonable implementing agreements governing the selection and assignment of Seller's employees between the Gary Railway Company and the Company. If any arbitration proceeding shall be required to complete the allocation of employees between Seller and Company, or if there is litigation relating to such process, Purchaser shall reimburse Seller for the reasonable costs incurred by Seller in connection with such proceeding and shall have the right to reasonably approve counsel selected by Seller. The implementing agreements shall require the employees allocated to the Company to accept employment with the Company pursuant to a selection and assignment process specified by the implementing agreements. The Company shall continue to apply Seller's collective bargaining agreements in effect prior to the Spin-Off and shall continue to recognize the labor unions that, prior to the Spin-Off, represented Seller's Represented Employees. The Company's collective bargaining agreements will remain in effect until Purchaser obtains implementing agreements with respect to the Control Transaction or subsequent collective bargaining agreements, and nothing in the foregoing is intended to limit Purchaser's right to obtain implementing agreements upon terms acceptable to Purchaser with respect to the Control Transaction.

(f) Unless otherwise agreed by Purchaser, Seller shall not execute any implementing agreements that increase the level of labor protective benefits beyond those required by New York Dock, or relieve covered employees of their obligation to accept work with the Company or to demonstrate their eligibility and entitlement to any labor protective

payments claimed by such employees. Seller will confer with Purchaser concerning the terms of proposed implementing agreements.

§ 5.13 Asset Sale Election.

(a) The Seller hereby consents to the making of the election available under Section 338 (h)(10) with respect to the Purchaser's acquisition of the Shares (the "**Asset Sale Election**"), and the Seller shall take those actions, as reasonably requested by the Purchaser, to effect such Asset Sale Election, including, but not limited to, executing IRS Form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

(b) Not later than 90 days after the Closing, the Purchaser shall deliver to Seller for its review and approval, such approval not to be unreasonably withheld, a calculation of the modified aggregate deemed sale price of the assets of the Company, in accordance with Treasury Regulation §1.338-4 and the allocation of such amount among the assets of the Company for purposes of Section 338(b)(5) of the Code. The Seller and the Purchaser shall (A) use such determination and allocation for purposes of preparing all Tax Returns on which the tax consequences of the transactions contemplated under this Agreement are reported and (B) shall take no position that is inconsistent with the foregoing allocation or the Asset Sale Election on any Tax Return, in connection with any proceeding before any taxing activity or otherwise.

§5.14 Trackage Rights Agreements. In connection with the Spin-Off, the Company will assume Seller's existing trackage rights, haulage and run-through power agreements with other railroad carriers to the extent permitted under such agreements.

§5.15 Restrictions on Transfer. Purchaser agrees that, for a period of ten years following the Closing, Purchaser shall not sell or transfer the stock of the Company or substantially all of the Company's assets to an entity not affiliated with CN, unless (i) required to do so by Law, rule or regulation adopted by a Governmental or Regulatory Authority, or (ii) in connection with a transaction involving the sale or transfer of the Company as part of the sale or transfer of the stock or substantially all of the assets of the U.S. rail operating subsidiaries of CN; provided, however, in the event the Company is to be transferred pursuant to subparagraphs (i) or (ii), Purchaser and CN will require the acquirer to assume Purchaser's and CN's commitments to Seller, Parent and U. S. Steel under this Agreement and the agreements and transactions contemplated hereby, as such commitments may be amended from time to time by agreement between Purchaser and Seller, Parent or U. S. Steel, as the case may be.

§5.16 Name Change. Promptly following the Closing, Seller will change its name and adopt car reporting marks other than "EJE" so its current name and car marks will be available for adoption by Purchaser. Seller will cooperate in any reasonable requests to facilitate that change.

ARTICLE VI

CONDITIONS TO THE PURCHASER'S OBLIGATIONS

§6. Conditions to the Purchaser's Obligations. The purchase of the Shares by the Purchaser on the Closing Date is conditioned on satisfaction or waiver by the Purchaser, at or prior to the Closing, of the following conditions:

§6.1 Confirmatory Due Diligence. Satisfactory completion of Purchaser's due diligence review of the Business, the Seller, the Company and the transactions contemplated hereby, such satisfaction to be in Purchaser's sole and absolute discretion and to be completed within ninety (90) days after the date hereof. In the event that Purchaser reasonably determines that any matters relating to the Business or the Company are materially different than as had been represented to Purchaser, and Seller is unable or unwilling to cure or correct such material differences after notice from Purchaser, then Purchaser shall have the right to terminate this Agreement.

§6.2 Truth of Representations and Warranties. The representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as though made at that time, except to the extent that such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date).

§6.3 Performance of Agreements. All of the agreements and covenants of the Seller to be performed on or prior to the Closing Date pursuant to this Agreement shall have been duly performed in all material respects.

§6.4 No Injunctions. No preliminary or permanent injunction, decree or other Order shall have been issued or be the subject of deliberation by any court or by any Governmental or Regulatory Authority which prohibits or would prohibit the consummation of the transactions contemplated by this Agreement and which is in effect on the Closing Date.

§6.5 Governmental Consents. The STB shall have issued a decision (which decision has not been stayed or enjoined) that (a) constitutes a final non-appealable order approving, exempting or otherwise authorizing consummation of the transactions contemplated by this Agreement (or subsequently presented to the STB by agreement of the Seller and the Purchaser) as may require such authorization; (b) does not require further review, under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. or the National Historic Preservation Act, 16 U.S.C. § 470, in connection with the Exemption Proceeding or the Control Proceeding, of any aspect of the transactions contemplated by this Agreement; and (c) does not (1) require inclusion of any rail carriers or rail properties material to the Purchaser or any of its Subsidiaries (except any such inclusions as may have been offered, volunteered or agreed to by the Purchaser), (2) impose on the Purchaser or any of its Subsidiaries any other terms or conditions (including labor protective provisions, but excluding conditions heretofore imposed by the United States Interstate Commerce Commission in *New York Dock* and any other

condition offered, volunteered or agreed to by the Purchaser) that would materially and adversely affect the Purchaser's reasonably anticipated financial benefits of the transactions contemplated by this Agreement to the Purchaser, or (3) change the amount or nature of the Purchase Price.

§6.6 Other Consents. All other material consents, authorizations, Orders or approvals of, and filings or registrations with, any Governmental or Regulatory Authority and all third party consents, each as set forth on Schedule 6.6 of the Disclosure Letter, shall have been obtained or made and shall be in full force and effect on the Closing Date.

§6.7 Statutes; Orders. No Law or Order of any kind shall have been enacted, entered, promulgated or enforced by any court or Governmental or Regulatory Authority which would prohibit or materially delay the consummation of the transactions contemplated by this Agreement or has the effect of making them illegal.

§6.8 No Material Adverse Effect. After the execution of this Agreement, there shall not have occurred any event or occurrence that results in or would be reasonably likely to result in a Material Adverse Effect on the Business.

§6.9 Contract Switching Agreement. Seller and Purchaser shall have entered into a contract switching agreement to cause GRR to provide rail switching service to those non-U. S. Steel shippers located within the geographic boundaries of Gary Works, on terms and conditions reasonably acceptable to Purchaser and GRR (the "Contract Switching Agreement"). -

§6.10 Transportation Services Agreement. The Company, Purchaser, Seller and U. S. Steel shall have entered into a transportation services agreement under which the Company shall provide transportation services to U. S. Steel following the Closing Date in form and substance satisfactory to the parties thereto (the "Transportation Services Agreement").

§6.11 Railway Services Agreement. Seller and Purchaser shall have entered into a railway services agreement in form and substance satisfactory to the parties (the "Railway Services Agreement").

§6.12 Guaranty. Parent shall execute the Seller Guaranty, in form and substance satisfactory to Parent and Purchaser (the "Seller Guaranty").

§6.13 Interchange and Side Track Agreements. The parties shall have entered into interchange and side track agreements in form and substance satisfactory to the parties thereto (collectively, the "Interchange and Side Track Agreements"), including, without limitation the following:

(a) An interchange agreement between Seller and Company applicable to U. S. Steel and non U. S. Steel traffic;

(b) A side track agreement between Company and U. S. Steel for the Company to travel on U. S. Steel tracks in Gary Works.

§6.14 Labor Implementing Agreements. Seller shall have obtained, through negotiation or arbitration, reasonable labor implementing agreements as required by Section 5.12. If such implementing agreements are achieved through arbitration, any and all litigation challenging such arbitrated implementing agreements shall have been finally resolved.

§6.15 Transition Services Agreement. The Company, Seller and Parent shall have entered into a services agreement under which Parent or Seller shall provide services to Company following the Closing Date in form and substance satisfactory to the parties thereto (the "Services Agreement").

ARTICLE VII

CONDITIONS TO THE SELLER'S OBLIGATIONS

§7. Conditions to the Seller's Obligations. The sale of the Shares by the Seller on the Closing Date is conditioned upon satisfaction or waiver by the Seller, at or prior to the Closing, of the following conditions:

§7.1 Truth of Representations and Warranties. The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on such date (except for representations and warranties that relate to a specific date, which shall be true and correct in all material respects as of such date).

§7.2 Performance of Agreements. All of the agreements and covenants of the Purchaser to be performed on or prior to the Closing Date pursuant to this Agreement shall have been duly performed in all material respects.

§7.3 No Injunctions. No preliminary or permanent injunction, decree or other Order shall have been issued by any court or by any Governmental or Regulatory Authority which prohibits the consummation of the transactions contemplated by this Agreement and which is in effect at the Closing.

§7.4 Governmental Consents. Any and all approvals and authorizations required by the ICC Termination Act with respect to the transactions contemplated by this Agreement shall have been obtained.

§7.5 Other Consents. All other material consents, authorizations, Orders or approvals of, and filings or registrations with, any Governmental or Regulatory Authority and all third party consents, each as set forth on Schedule 7.5 of the Disclosure Letter, shall have been obtained or made and shall be in full force and effect on the Closing Date.

§7.6 Statutes; Orders. No Law or Order of any kind shall have been enacted, entered, promulgated or enforced by any court or Governmental or Regulatory Authority which

prohibits the consummation of the transactions contemplated by this Agreement or has the effect of making them illegal.

§7.7 Contract Switching Agreement. Seller and Purchaser shall have entered into the Contract Switching Agreement.

§7.8 Transportation Services Agreement. The Company, Purchaser, Seller and U. S. Steel shall have entered into the Transportation Services Agreement.

§7.9 Railway Services Agreement. Seller and Purchaser shall have entered into the Railway Services Agreement.

§7.10 Guaranty. CN shall execute the Purchaser Guaranty, form and substance satisfactory to the Seller (the "Purchaser Guaranty").

§7.11 Interchange and Side Track Agreements. The parties shall have entered into the Interchange and Side Track Agreements.

§7.12 Assignment and Assumption Agreement. Company shall execute an Assignment and Assumption Agreement in form and substance satisfactory to Seller.

§7.13 Transition Services Agreement. The Company, Seller and Parent shall have entered into the Transition Services Agreement.

ARTICLE VIII

INDEMNIFICATION

§8.1 Agreements to Indemnify. As used in this Agreement, “**Indemnifiable Damages**” means, without duplication, the aggregate of all expenses, losses, costs, deficiencies, liabilities and damages (including reasonable counsel and paralegal fees and expenses) incurred or suffered by a party hereto (or any other person covered by this Section 8.1), on a pre-tax basis (which shall mean that payments shall not be grossed up for any taxes incurred as a result of the indemnity payment), to the extent resulting from (i) any breach by the other party of any representation or warranty made by such other party in this Agreement (a “**Breach of Warranty Claim**”); (ii) any violation by the other party of any covenant or agreement made by such other party in this Agreement (unless waived in writing by the party making the claim); or (iii) in the case of Purchaser Parties (as defined below) as a result of any of the following items (in each case regardless of any disclosure made by Seller in the Disclosure Letter): (w) any environmental remediation or inspection work performed by or on behalf of Seller or Parent pursuant to § 8.3 hereof; (x) any income, sales or other taxes payable by the Business prior to or as of the Closing Date, including, in each case, any interest or penalties related thereto, but excluding any Taxes imposed on Company or Seller under Section 5.11(c) or Section 10.14; (y) any liability under any Indebtedness of the Business existing immediately prior to the Closing; and (z) any Retained Liabilities. Indemnifiable Damages shall not include consequential, incidental or indirect damages.

(a) Subject to the limitations provided for herein, Seller shall indemnify and hold the Purchaser and its officers, directors, employees, shareholders, agents, successors and assigns (the “**Purchaser Parties**”) harmless in respect of all Indemnifiable Damages suffered by the Purchaser Parties.

(b) Subject to the limitations provided for herein, Purchaser shall indemnify and hold the Seller and Parent, their shareholders, officers, directors, agents, successors and assigns (collectively, the “**Seller Parties**”) harmless in respect of all Indemnifiable Damages suffered by the Seller Parties.

(c) None of the representations and warranties made herein by the parties shall survive the Closing.

(d) Indemnification for Taxes.

(i) After the Closing, Seller shall indemnify and hold harmless the Purchaser and the Company and each of their respective Affiliates, successors and assigns from and against any unpaid Tax liability (calculated after taking into account any estimated Tax payments and other Tax payments made by the Company prior to the Closing) with respect to a Pre-Closing Tax Period, or Seller’s allocable share of liability for Taxes arising in the Straddle Period, as determined on the basis set forth in Section 8.1(d)(ii) below. Seller shall pay such amounts to the Purchaser or the Company within 15 calendar days after payment of any applicable Tax liability by the Purchaser or the Company. The Seller shall also indemnify and hold harmless the Purchaser and the Company, from and against any Tax liability for any Pre-

Closing Tax Period or the Seller's allocable share of liability for Taxes arising in the Straddle Period, as determined on the basis set forth in Section 8.1(d)(ii) below, as resulting from the Company being severally liable for any Taxes of any consolidated group of which the Company (prior to the Closing) was or is a member pursuant to Treasury Regulations Sec. 1.1502-6 or any analogous foreign, state, provincial or local tax provisions. The payment of any income Tax liability by the Seller as provided under this Section 8.1(d)(i) shall not be subject to the any limitations. Claims made pursuant to this Section 8.1(d)(i) may be asserted no later than 90 days after the expiration of the applicable statute of limitations.

(ii) Any Taxes for Straddle Period shall be apportioned between such pre-Closing period and the post-Closing period based, in the case of real and personal property Taxes, on a per diem basis and in the case of other Taxes, on the actual activities, taxable income or taxable loss of the Company during such pre-Closing period and post-Closing period determined as if the books of the Company were closed on the Closing Date.

§8.2 Settlement of Claims.

(a) The party or parties seeking indemnification under Section 8.1 (the "**Indemnified Party**") shall give written notice (a "**Claim Notice**") to the other party or parties, as the case may be (the "**Indemnifying Party**") after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it (if by a third party) or discovering the liability, obligation or facts giving rise to such claim for indemnification and in any event within the period specified in relevant item of subsection 8.1(c), describing the claim, the amount thereof (if known and quantifiable), and the basis thereof; provided that the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent such failure shall have prejudiced the Indemnifying Party. If any action, lawsuit, proceeding, investigation or other claim shall be brought or asserted by any third party which, if adversely determined, would entitle the Indemnified Party to indemnity pursuant to Section 8.1, the Indemnified Party shall promptly notify the Indemnifying Party of the same in writing, specifying in detail the basis of such claim and the facts pertaining thereto and the Indemnifying Party shall be entitled to participate in the defense of such action, lawsuit, proceeding, investigation or other claim giving rise to the Indemnified Party's claim for indemnification at its expense, and at its option (subject to the limitations set forth below), if, but only if, the Indemnifying Party gives notice of such election to the Indemnified Party within 10 days after receiving notice of such action, lawsuit, proceeding, investigation or other claim, shall be entitled to appoint lead counsel of such defense with reputable counsel reasonably acceptable to the Indemnified Party and assume control of such defense; provided that in the event the Indemnifying Party elects to assume control of such defense, it shall:

(i) be fully responsible for all Indemnifiable Damages relating to such claims and that it will provide full indemnification to the Indemnified Party for all such Indemnifiable Damages relating to such claim;

(ii) unconditionally guarantee the payment and performance of any liability or obligation which may arise with respect to such claim or the facts giving rise to such claim for indemnification;

provided that the Indemnifying Party shall not have the right to assume control of such defense, and shall pay the fees and expenses of counsel retained by the Indemnified Party, if the claim which the Indemnifying Party seeks to assume control (i) seeks non-monetary relief, (ii) involves criminal or quasi-criminal allegations solely against the Indemnified Party, (iii) involves a claim as to which the Indemnified Party reasonably believes an adverse determination would materially injure the Indemnified Party's reputation or future business prospects, or (iv) involves a claim which, upon petition by the Indemnified Party, the Indemnifying Party failed or is failing to vigorously prosecute or defend.

If the Indemnifying Party is permitted to assume and control the defense and elects to do so, the Indemnified Party shall have the right to employ counsel separate from counsel employed by the Indemnifying Party in any such action and to participate in the defense thereof, but the fees and expenses of such counsel employed by the Indemnified Party shall be at the expense of the Indemnified Party unless (i) the employment thereof has been specifically authorized by the Indemnifying Party in writing, or (ii) the Indemnifying Party has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnifying Party and the Indemnified Party.

If the Indemnifying Party shall control the defense of any such claim, the Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement of a claim or ceasing to defend such claim, if pursuant to or as a result of such settlement or cessation, injunction or other equitable relief will be imposed against the Indemnified Party or if such settlement does not expressly unconditionally and irrevocably release the Indemnified Party from all liabilities and obligations with respect to such claim, with prejudice.

(b) The Indemnifying Party shall pay the Indemnified Party in immediately available funds (in U.S. Dollars) promptly after the Indemnified Party provides the Indemnifying Party with written notice of a claim hereunder and the parties reasonably agree that there is a reasonable basis for such claim.

(c) Amounts paid to or on behalf of any party under Section 8.1 as indemnification shall be treated as adjustments to the Purchase Price.

§8.3 Environmental Matters.

(a) This provision shall apply solely to the environmental obligations with respect to Retained Liabilities described in Section 5.2 of this Agreement. Seller shall retain all environmental liabilities and perform all obligations with respect to such Retained Liabilities. Seller, at no cost to Purchaser, shall undertake all environmental response actions or other activities required by Environmental Laws and otherwise discharge the Company's obligations with respect to such Retained Liabilities. Seller shall promptly provide Purchaser with copies of all final documents, including final reports of the results of all assessments, audits, investigations, correspondence, data, studies and reports related to such matters. If the Retained Liability relates to or involves the Owned Real Property and/or Leased Property, Seller shall: (a)

give Purchaser reasonable advance notice of its desire to enter onto such property, including a copy of a work plan describing the work to be performed; and (b) cause to be delivered to Purchaser a certificate or certificates of insurance evidencing insurance in the types and coverage limits reasonably acceptable to Purchaser and naming Purchaser as an additional insured.

(b) As a condition to Seller's obligation hererunder, Purchaser shall grant to Seller all necessary and appropriate access to the site of the Environmental Condition and related property for the purpose of conducting any investigation, response action, or other activities required to investigate, respond to, contain and remediate any environmental loss, injury or liability, and/or restore the environment.

(c) Any remediation, restoration, removal, investigation and corrective action conducted by Seller as required by this Agreement shall be considered complete and fully satisfied as to each environmental liability whenever Seller completes the action and satisfies applicable Environmental Laws for property used for Industrial purposes, as that standard is defined by applicable Environmental Laws. For this purpose, a "no further action" determination or the equivalent finding by the Government or Regulatory Authority with jurisdiction over the site shall be conclusive.

ARTICLE IX

TERMINATION AND ABANDONMENT

§9.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned, at any time prior to the Closing:

(a) by mutual consent of Seller, on the one hand, and of Purchaser, on the other hand;

(b) by any Party if the Closing shall not have occurred by December 31, 2008; provided that the right to terminate this Agreement under this Section 9.1(b) shall not be available (i) to any Party whose failure to fulfill any obligation under this Agreement shall be the cause of the failure of the Closing to occur on or before such date, or (ii) if the reason for the failure of the Closing to occur on or before such date is one or more of the following: (A) the STB has not issued a final decision in the Exemption Proceeding or the Control Proceeding; (B) a final decision in accordance with Section 6.5 of this Agreement has been issued by the STB but has been stayed pending administrative or judicial review; (C) the STB has not completed such review of the transactions contemplated by this Agreement as may be required under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. or the National Historic Preservation Act, 16 U.S.C. § 470, in connection with the Exemption Proceeding and the Control Proceeding; or (D) the labor implementing agreements required by Section 6.14 of this Agreement have not been obtained;

(c) by either the Seller or the Purchaser if there has been a material breach of any covenant or a material breach of any representation or warranty of the Purchaser or the Seller, respectively, which breach would cause the failure of any condition precedent set forth in Article VI or VII, as the case may be; provided that any such breach of a covenant or

representation or warranty has not been cured within twenty (20) Business Days following receipt by the breaching party of written notice of such breach;

(d) by any Party, if there shall be any Law of any competent authority that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if any Order of any competent authority prohibiting or denying approval of such transactions is entered and such Order shall become final and non-appealable;

(e) by the Purchaser, if the STB shall have issued a decision (which decision shall not have been stayed or enjoined) that (A) constitutes a final non-appealable order approving, exempting or otherwise authorizing consummation of the transactions contemplated by this Agreement (or subsequently presented to the STB by agreement of Seller and the Purchaser), as may require such authorization and (B) imposes any conditions or requirements contrary to Section 6.5(b); or

(f) by the Purchaser if any Governmental or Regulatory Authority imposes material conditions on the transactions contemplated by this Agreement, which are, in Purchaser's sole discretion, unacceptable to Purchaser.

Notwithstanding any provision to the contrary in this Agreement, the determination by the STB that the transactions contemplated by this Agreement constitute a "significant" transaction within the meaning of 49 C.F.R. §1180.2(b) shall not constitute a basis for the termination of this Agreement by Purchaser.

§9.2 Effect of Termination. (a) If this Agreement is terminated pursuant to Section 9.1 by the Purchaser, on the one hand, or Seller, on the other hand, written notice thereof shall be given to the other party specifying the provision of Section 9.1 pursuant to which such termination is made and describing (in reasonable detail) the event(s) giving rise to such termination, and this Agreement shall be terminated and become void and of no effect with no further liability on the part of any party or any of their respective Affiliates, officers, directors, employees, advisors, consultants, agents or other representatives (except that the provisions of Section 5.3(c) (Confidentiality), Section 5.6 (Public Announcements), Section 5.11(c) (Transfer Taxes), Section 9.1 (Termination), this Section 9.2, Section 10.1 (Expenses), Section 10.2 (Governing Law/Jurisdiction) and Section 10.12 (Waiver of Jury Trial) shall survive any termination of this Agreement and continue in full force and effect).

(b) Upon termination of this Agreement by Purchaser, Purchaser shall reimburse Seller for any and all out-of-pocket costs, including but not limited to Transfer Taxes described in Section 10.14, incurred by the Seller through the date of termination in connection with the consummation of the Spin-Off.

(c) Notwithstanding the foregoing to the contrary, nothing in this Agreement shall relieve either party from liability or damages resulting from any breach of this Agreement, provided that neither party shall be entitled to claim, and hereby expressly waives any right to, any and all lost profits, lost revenues, lost opportunities and consequential, punitive and other special damages (regardless of legal theory).

ARTICLE X

MISCELLANEOUS

§10.1 Expenses. Subject to section 9.2(b), the parties hereto shall pay all of their own expenses relating to the transactions contemplated by this Agreement, including the fees and expenses of their respective counsel and financial advisers.

§10.2 Governing Law; Jurisdiction. THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF. THE STATE OR FEDERAL COURTS LOCATED WITHIN THE STATE OF ILLINOIS AND COOK COUNTY SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES HERETO, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (I) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, (II) SUCH PARTY AND THE PROPERTY OF SUCH PARTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS OR (III) ANY LITIGATION OR OTHER PROCEEDING COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HEREBY AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 10.4, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED.

§10.3 Table of Contents; Captions. The table of contents and the Article and Section captions used herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

§10.4 Notices. Any notice or other communication required or permitted under this Agreement shall be deemed to have been duly given (i) five (5) Business Days following deposit in the mails if sent by registered or certified mail, postage prepaid, (ii) when sent, if sent by facsimile transmission, if receipt thereof is confirmed by telephone, (iii) when delivered, if delivered personally to the intended recipient and (iv) two (2) Business Days following deposit with a nationally recognized overnight courier service, in each case addressed as follows:

if to the Seller, to:

Transtar, Inc.
600 Grant Street
Pittsburgh, PA 15219
Telephone: 412.433.4640
Facsimile: 412.433.4645
Attn: President

with a copy (which shall not constitute notice) to:

Office of the General Counsel
United States Steel Corporation
600 Grant Street
Pittsburgh, PA 15219
Facsimile: 412.433.1145
Attn: General Counsel

and if to the Purchaser, to:

Grand Trunk Corporation
c/o Canadian National Railway Company
935 rue de La Gauchetiere Ouest
Montreal, QC H3B 2M9
Canada
Telephone: (514) 399-4192
Facsimile: (514) 399-4720
Attn: Ami Haasz

with a copy (which shall not constitute notice) to:

Freeborn & Peters LLP
311 S. Wacker Drive
Suite 3000
Chicago, Illinois 60606
Telephone: 312-360-6652
Facsimile: 312-360-6570
Attn: Cynthia A. Bergmann

or such other address or number as shall be furnished in writing by any such party.

§10.5 Parties in Interest; Assignment. This Agreement may not be transferred, assigned, pledged or hypothecated by any party hereto other than by operation of law; provided that the Purchaser may assign its rights (but not its obligations) to purchase all or any portion of the Business to any of its affiliates. This Agreement shall be binding upon and shall inure to the

benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

§10.6 Counterparts. This Agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

§10.7 Entire Agreement. This Agreement, the other documents referred to herein which form a part hereof contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. In the event of an ambiguity or conflict within this Agreement and the other documents referred to herein, a court of competent jurisdiction may consider the memorandum of understanding dated July 25, 2007 and countersigned August 1, 2007 in determining the intention of the parties.

§10.8 Amendments. This Agreement may not be changed, and any of the terms, covenants, representations, warranties and conditions cannot be waived, except pursuant to an instrument in writing signed by the Purchaser and the Seller or, in the case of a waiver, by the party waiving compliance.

§10.9 Severability. If any term, provision, agreement, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, agreements, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

§10.10 Third Party Beneficiaries. Except as set forth in Section 5.8, each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

§10.11 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

§10.12 Waiver of Jury Trial. Each of the Purchaser and the Seller hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any litigation as between the parties directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated hereby or disputes relating hereto.

§10.13 Transfer Taxes. All stamp, transfer, documentary, value added, registration and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement (collectively, the "Transfer Taxes") shall be paid by Purchaser, and Purchaser shall, at its own expense, procure any stock transfer stamps required by, and properly file on a timely basis all necessary tax returns and other documentation with respect to, any Transfer Tax and provide to Seller evidence of payment of all Transfer Taxes.

§10.14 Spin-Off Transfer Taxes. At the Closing, Purchaser shall reimburse Seller for all state, county and local Transfer Taxes or sales or use taxes incurred by Seller in connection with the Spin-Off.

§10.15 Time. If the last day permitted for the giving of any notice or the performance of any act required or permitted under this Agreement falls on a day which is not a Business Day, the time for the giving of such notice or the performance of such act will be extended to the immediately succeeding Business Day.

§10.16 No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.

§10.17 Rights Cumulative All rights and remedies of each of the parties under this Agreement will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement or applicable Law

IN WITNESS WHEREOF, each of the Purchaser and the Seller has caused its corporate name to be hereunto subscribed by its officer thereunto duly authorized all as of the day and year first above written.

GRAND TRUNK CORPORATION

By: 
Name: Claude Mongeau
Title: Executive Vice-President and
Chief Financial Officer

ELGIN JOLIET AND EASTERN RAILWAY
COMPANY

By: 
Name: John C. Prunaitis
Title: President

14 (000)1

**Stock Purchase Agreement
By and between
Grand Trunk Corporation and
Elgin Joliet and Eastern Railway Company**

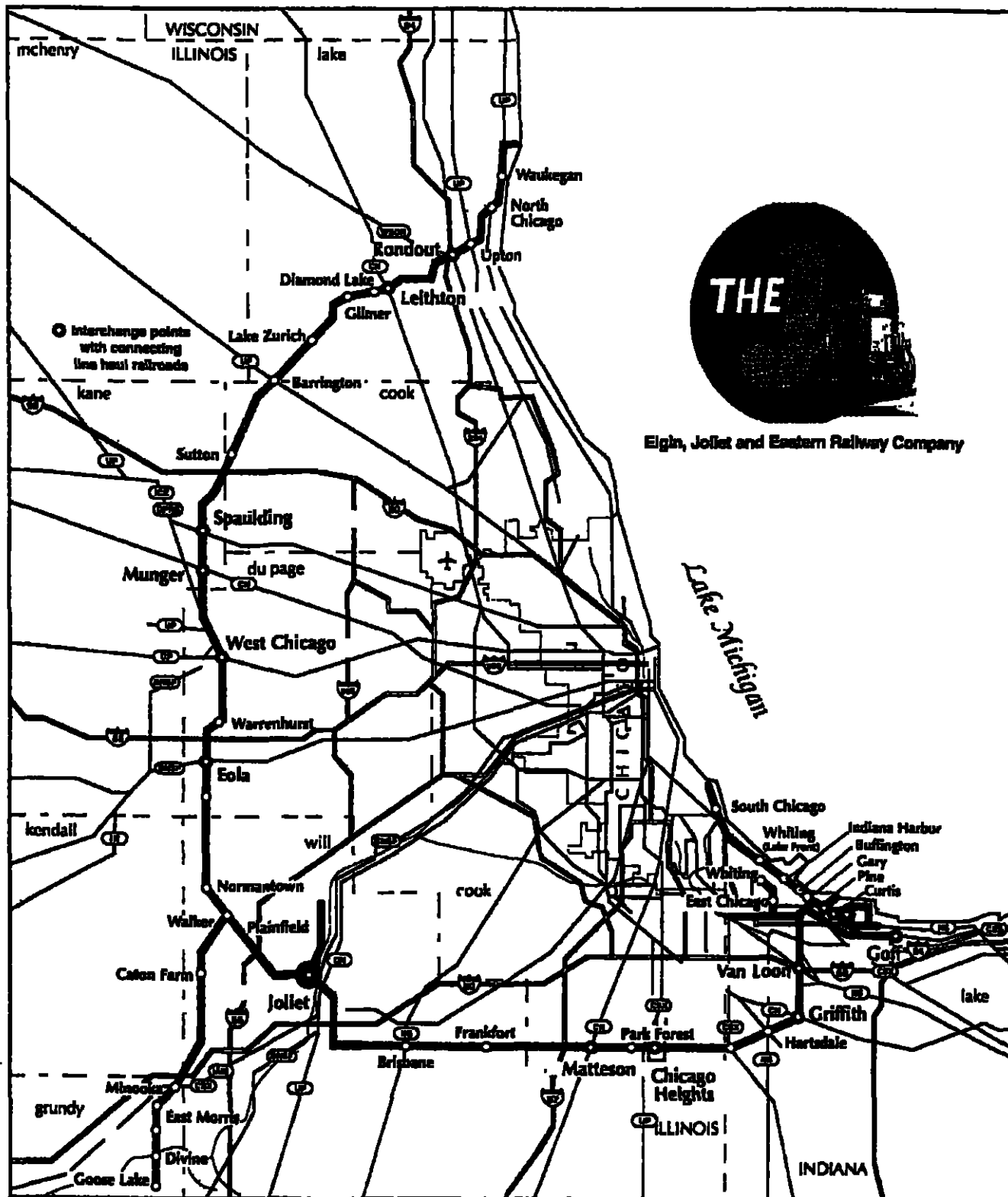
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EXHIBIT A
Existing Business



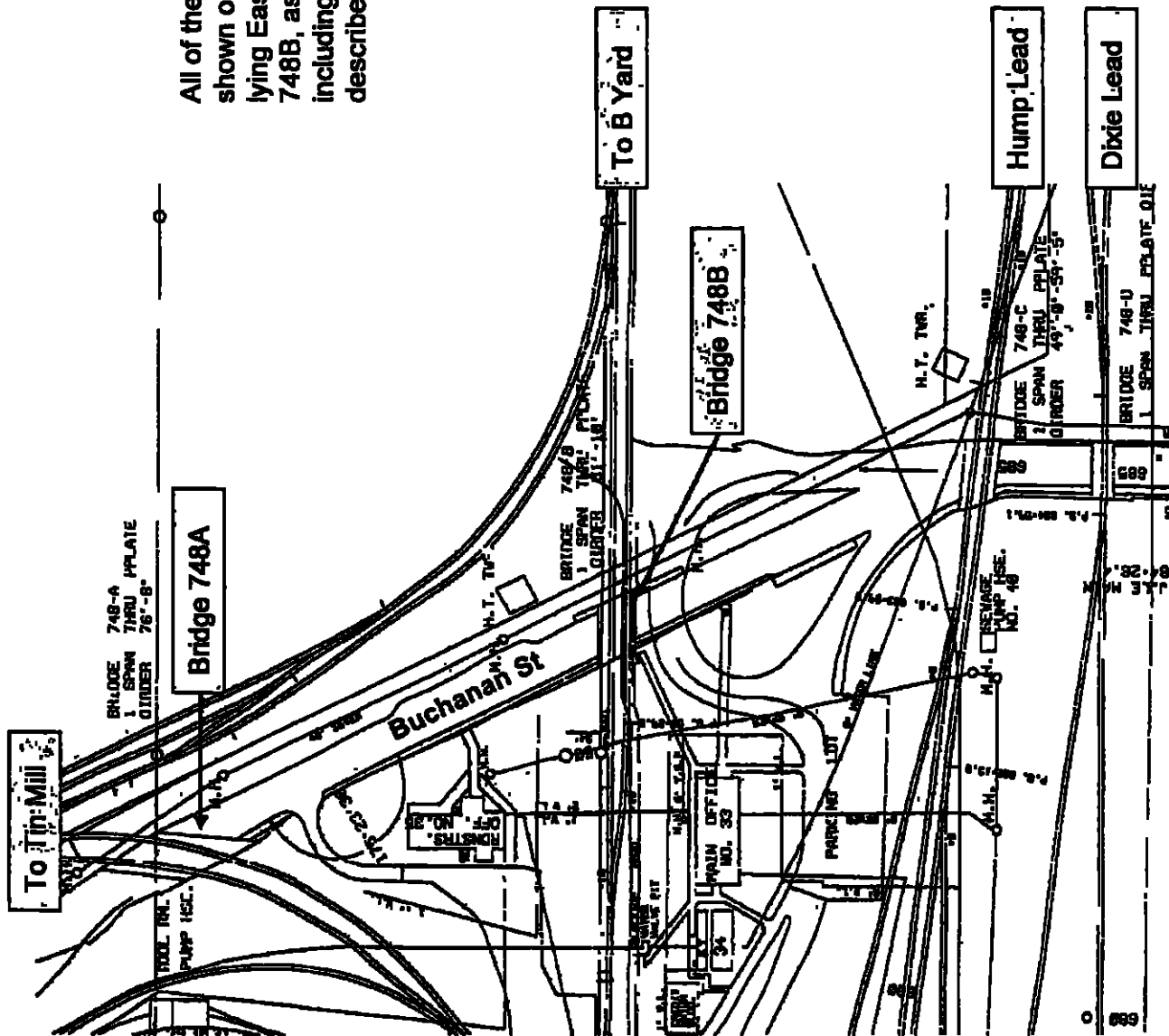
Elgin, Joliet and Eastern Railway Company

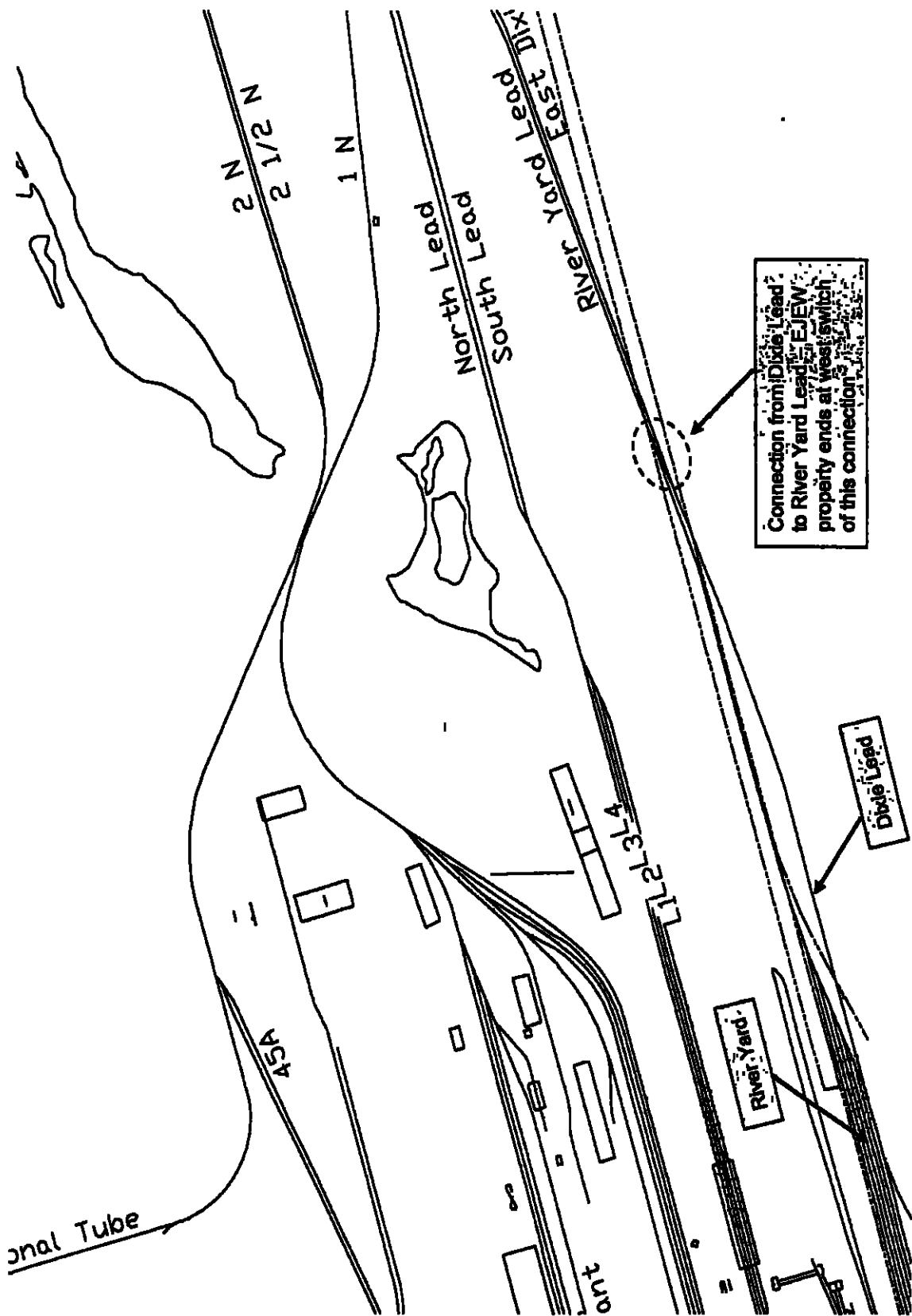
EXHIBIT B

Spin-Off

Exhibit B

All of the land, rail and related assets as shown on Exhibit A, except that portion lying East of the centerline of Bridge 748B, as shown on this Exhibit B, but including the Hump Lead and Dixie Lead described below.





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**STATEMENTS BY SHIPPERS
IN SUPPORT OF THE APPLICATION**



BADGER MINING CORPORATION

409 SOUTH CHURCH ST , P O BOX 328, BERLIN, WI 54923
(920) 361-2388 • FAX (920) 361-2826
www.badgerminingcorp.com

VERIFIED STATEMENT OF ROBERT BARTOL ON BEHALF OF BADGER MINING CORPORATION

I am Robert Bartol, the Manager of Transportation Services for Badger Mining Corporation. In this capacity, my responsibilities include negotiation of rail rates, rail property leases, rail equipment leases, and arranging for containers on flat car shipments. This is a position I have held for over 23 years.

Badger Mining Corporation operates two mines in Wisconsin which produce silica sand, a specialty sand used in the oil, gas, foundry, glass, and water filtration industries. Badger Mining Corporation's two Wisconsin mines produce and ship by rail in excess of 1,000,000 tons of silica sand annually to points throughout the United States, Canada, Mexico, South America, Europe, and the Far East. Badger Mining Corporation's mine at Taylor, Wisconsin is served exclusively by the Canadian National railroad, and the majority of our rail shipments originate from this facility, much of it moving through the Chicago area on CN's lines. Badger Mining Corp. pays in excess of \$35,000,000 per year in rail freight charges.

It is my understanding that Canadian National is requesting authority to acquire and operate the EJ&E West Company. We strongly support this application as the combined company would offer improved efficiency for movements through the Chicago area. This merger will reduce congestion in Chicago by allowing the CN to cycle equipment faster. Since the majority of equipment shipped on the Canadian National belongs to Badger Mining Corporation, speed of cycle time is very important from a cost expenditure standpoint.

I do believe that a CN/EJ&E combination will create the kind of efficient service and effective competition that companies such as Badger Mining Corporation require to compete in today's market place.

For these reasons, Badger Mining Corporation supports the proposed transaction and urges that the STB support them.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on October 19, 2007.

Robert Bartol, Manager of Transportation Services

Notary public:

310

Janell Seeliger
Green Lake County, Wisconsin
commission expires 9-7-08



VERIFIED STATEMENT OF KEN R. CUPPLES

On behalf of

CENTRAL STATES ENTERPRISES, INC

My name is Ken Cupples, Executive Vice President of Central States Enterprises with headquarters at 300 International Parkway, Heathrow, FL 32746. I am one of the owners of the company and have been at Central States since 1974, serving in my current position for the past seven years. I am responsible for all trading and rail activity at Central States.

Central States is a grain merchandising, logistics and trading company. Our grain facilities and elevators are located at New Haven and Montpelier, Indiana. We also have retail/bulk and bag operation at Lake City, Florida. These locations are on the Norfolk Southern Railroad. A large part of our business however involves running our private hopper cars (as well as CN equipment) on the CN to buy grain (corn, wheat, soybeans, etc.) that we sell to our customers in Mississippi, Chicago, Tennessee, Canada and the Gulf of Mexico for export. We will ship around 140,000 carloads of grain annually so service and railroad performance is extremely important to us.

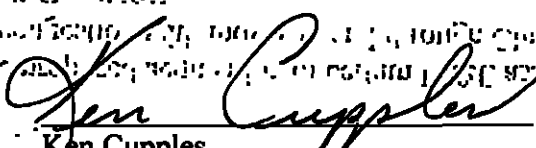
Central States strongly supports the proposed acquisition of certain EJ&E assets by the CN. We feel it would help relieve congestion with moves in and through Chicago thus improving turn times and service to our customers.

We purchase and load many trainloads of grain from CN origins in Iowa that are routed through Chicago to New Orleans, Mississippi, Tennessee and Canada. This acquisition of a portion of the EJ&E should improve CN service to our customers.

Specifically, what this acquisition would do for Central States is to improve turn times on our private cars thereby reducing costs on traffic routed through Chicago.

My company has been shipping grain on the CN (formally IC) for over thirty years and we have seen many changes and acquisitions. We would expect a smooth transition on this as has been the history of the Canadian National. This proposed acquisition, we believe, will benefit many shippers and receivers. Central States Enterprises supports the application.

I, Ken Cupples, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on October 19, 2007.


Ken Cupples
Executive Vice President



OCTOBER 11, 2007

MR. VERNON A. WILLIAMS
SECRETARY SURFACE TRANSPORTATION BOARD
395 E STREET S.W
WASHINGTON, D C 20423-0001

DEAR MR WILLIAMS

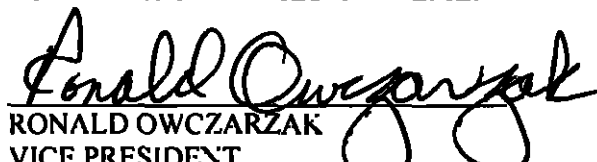
I, RONALD OW CZARZAK, VICE PRESIDENT PRODUCTION AND SALES AT RAW MATERIALS INC./CHICAGO HEIGHTS STEEL LOCATED AT 211 E MAIN STREET, CHICAGO HEIGHTS, IL 60411 STRONGLY SUPPORT THE PROPOSED ACQUISITION OF CERTAIN EJ&E ASSETS BY THE CANADIAN NATIONAL RAILROAD I HAVE HELD MY PRESENT POSITION WITH THIS COMPANY SINCE 1985

RAW MATERIALS INC /CHICAGO HEIGHTS STEEL PROCESSES OVER 150,000 TONS OF USED RAILROAD RAILS YEARLY INTO VARIOUS FINISHED PRODUCTS SUCH AS STUDDED TEE FENCEPOSTS, GRAPE STAKES, GARAGE DOOR TEE RAILS, HIGHWAY SIGN POSTS, AND OTHER SPECIAL SHAPES OUR OPERATIONS ALSO PROCESS AN ADDITIONAL 35 TO 45 THOUSAND TONS OF SCRAP RAILS INTO USEABLE LENGTHS FOR MELT SHOPS AND FOUNDRIES. OUR FACILITY IS VERY DEPENDENT ON THE RAILROAD INDUSTRY FOR BOTH INBOUND AND OUTBOUND DELIVERIES OF RAW MATERIALS AND FINISHED GOODS.

RAW MATERIALS INC /CHICAGO HEIGHTS STEEL HAS RECEIVED AND DELIVERED OVER 785 RAILROAD CAR LOADS YEAR TO DATE VIA THE CN AND EJ&E RAILROAD SYSTEMS WE ARE CONFIDENT THAT COMBINING AND STREAMLINING THE OPERATIONS OF THESE TWO RAILROADS WILL FACILITATE FASTER MOVEMENTS OF RAIL CARS INTO AND OUT OF OUR PLANT. COMBINING THE RAILROADS WILL ELIMINATE ONE COSTLY SWITCH CHARGE ON A LARGE NUMBER OF CAR MOVES THAT ARE HANDLED INDEPENDENTLY BY THE TWO CARRIERS INTO AND OUT OF OUR PLANT.

WE AT RAW MATERIALS INC /CHICAGO HEIGHTS STEEL ARE 100% IN FAVOR OF INTEGRATION OF THE EJ&E'S ASSETS INTO THE CANADIAN NATIONAL SYSTEM FOR US THIS WILL STREAMLINE RAIL CAR MOVEMENTS INTO AND OUT OF OUR PLANT.

I, RONALD OW CZARZAK DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT FURTHER, I CERTIFY THAT I AM QUALIFIED AND AUTHORIZED TO FILE THIS VERIFIED STATEMENT


RONALD OW CZARZAK
VICE PRESIDENT
RAW MATERIALS INC /CHICAGO HEIGHTS STEEL

DATE 10-11-2007

312

**VERIFIED STATEMENT
OF
BRIAN D. GALLAWAY
On behalf of
CONSUMERS ENERGY COMPANY**

My name is Brian D. Gallaway and I am employed by Consumers Energy Company as its Fuels Transportation and Planning Director. My business address is 1945 West Parnall Road, Jackson, Michigan, 49201. In my current position that I have held for the past five years, I am responsible for planning the amount of coal, natural gas, and oil needed to fuel Consumers Energy Company's fossil fuel burning generation fleet as well as procuring and managing the transportation of this fuel from supplier to each respective generating plant.

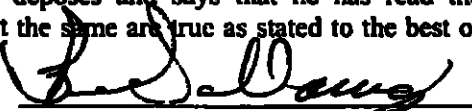
Consumers Energy Company is a Michigan public utility that provides natural gas and electricity to nearly 6.5 of the state's 10 million residents in all Lower Peninsula counties. It owns and operates 2,858 MWs of coal fueled generation and burns approximately 8 million tons of Powder River Basin ("PRB") coal that traverses through the Chicago area annually.

The Canadian National Railway ("CN") services two of Consumers Energy's four major coal fueled generating complexes – the Karn/Weadock generating complex and the Whiting generating plant. CN currently delivers 1.5 million tons of PRB coal to these two generating sites.

Consumers Energy strongly supports the proposed acquisition of certain Elgin, Joliet & Eastern ("EJ&E") assets by CN. This acquisition should help relieve rail congestion in downtown Chicago and improve PRB coal transportation services to our Karn/Weadock and Whiting generating sites. It is estimated that over 100 of our coal unit trains per year will be able to transition around Chicago, avoiding downtown rail traffic, with the acquisition of the EJ&E by CN. This should not only improve cycle time for Consumers Energy PRB coal movements on CN's rail, but reduce rail congestion in Chicago for other rail customers, which will also provide indirect benefits for PRB coal delivery to our other plants. Consumers Energy expects that this acquisition will also make CN more competitive. Consistent with Consumers Energy's understanding of current STB merger policy, we would expect to see the benefits of this increased competition, together with the increased efficiency, translate into lower cost for CN coal service to Consumers' facilities. The proposed acquisition of the EJ&E by CM should provide meaningful benefits to Consumers Energy.

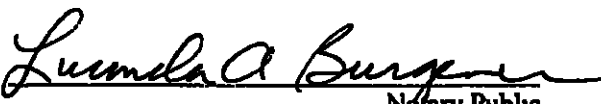
STATE OF MICHIGAN)
) ss.
COUNTY OF JACKSON)

Brian D. Gallaway, being first duly sworn, deposes and says that he has read the foregoing document, knows the facts asserted therein, and that the same are true as stated to the best of his knowledge.



Brian D. Gallaway

Subscribed and sworn to before me this October 25, 2007.


_____, Notary Public
State of Michigan, Jackson County
My Commission Expires 7-18-2011
Acting in the County of Jackson

LUCINDA A. BURGER
NOTARY PUBLIC, STATE OF MI
COUNTY OF JACKSON
MY COMMISSION EXPIRES Jul 18, 2011
ACTING IN COUNTY OF Jackson



October 18, 2007

**Verified Statement
Of
Thomas Waskiewicz
On Behalf of
Corn Products International, Inc.**

I am Thomas Waskiewicz, Director of Rail Transportation for Corn Products International located at Five Westbrook Corporate Center, Westchester, Illinois 60154. In my capacity, I am responsible for the rail transportation at US and Canadian plants and from these facilities to our Mexican subsidiary, CPIngredientes with plants in Guadalajara, Mexico City and San Juan Del Río, Mexico.

I have held this position for nine years and prior to that I worked for Roquette America, a customer and competitor of Corn Products International. In fact, I have been involved in transportation since 1974.

Corn Products is a multinational company, operating plants in 22 countries worldwide. We are a manufacturer of corn derived raw materials for the Food & Beverage, Paper and Pharmaceutical industries worldwide. Our product portfolio includes corn derived sweeteners, i.e. corn syrup and high fructose corn syrup, starch and dextrose. We are a major user of rail transportation for inbound and outbound movements working with each of the five Class 1 carriers and our switching partners thorough out the US.

Our plants are located in:

- Argo, Illinois served by the IHB, BRC and CN
- Winston Salem, North Carolina served by the WSSB
- Stockton, California served by the UP
- Cardinal, Ontario served by the CN
- London , Ontario served by the CN
- Port Colborne, Ontario served by the Trillium Railroad

The Canadian National Railroad is third largest transportation provider to Corn Products and our largest plant is at Argo, Illinois.

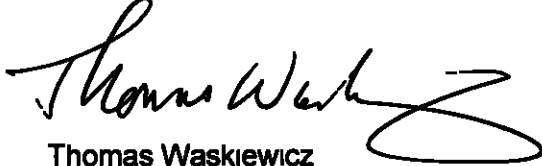
We understand that the Canadian National is requesting authority to acquire and operate the EJ&E West Company. We strongly support this acquisition as the new operation will relieve congestion, improve transportation and provide opportunities for expansion and growth for Corn Products International and the Chicago rail industry.

Over the last twelve months we have been working with the EJ&E and Bulkmatic Transportation to access their facility in Chicago Heights for transloading and storage of loaded and empty cars. If approved, direct access by the CN will improve the operations, service and cost on this project.

As with the CN's previous mergers, we expect a smooth and orderly transition and significant improvements in cost containment and service.

In closing, we believe that this application will provide significant benefits to all shippers and therefore Corn Products supports the application before the STB.

I, Thomas Waskiewicz, declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge. I further certify that I am qualified and authorized to file this verified statement. Executed on October 18, 2007.

A handwritten signature in black ink, appearing to read 'Thomas Waskiewicz', with a large, stylized flourish at the end.

Thomas Waskiewicz
Director, Rail Transportation
Corn Products International, Inc.
Five Westbrook Corporate Center
Westchester, Illinois 60154

**VERIFIED STATEMENT
OF
GARY E. LAPPLANDER
On behalf of
Detroit Edison Company**

My name is Gary E. Lapplander. I have been the Director of Fuel Supply for the Detroit Edison Company ("DE") for ten years. The Fuel Supply organization is responsible for procuring and transporting all of the fossil fuels consumed at DE's electric generating units. This includes approximately 16 million tons of Powder River Basin ("PRB") coal, of which approximately 8 million tons are transported by rail through Chicago, IL to DE's facilities.

DE has the option of contracting with three rail carriers, including The Canadian National Railway ("CN") to transport PRB coal from interchange with western rail carriers in Chicago to DE's facilities in southeastern Michigan. CN transports PRB coal from interchange with another rail carrier in Chicago to two DE facilities through its Grand Trunk Western Railroad.

DE understands that CN is requesting authority to acquire and operate the EJ&E West Company ("EJ&EW"). We strongly support this application as the combined company would offer improved efficiency for movements through the heavily congested Chicago area. DE believes that by utilizing a single line route comprised of the EJ&EW and CN track that the transportation of DE's PRB coal by CN will be able to bypass much of the congestion in the Chicago area and provide DE with more fluid, efficient and reliable service. DE also believes that by routing rail traffic around Chicago utilizing the EJE, CN will alleviate some of the existing congestion in the Chicago area allowing for more efficient transportation of all rail traffic through Chicago including DE's PRB coal transported by other carriers.

DE expects a smooth integration of EJE's assets into the CN system given CN's prior history and experience of integrating other carriers into its network. DE believes the proposed acquisition will provide significant benefits to shippers, including DE and it therefore supports this application.

I, Gary E. Lapplander, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on October 26, 2007.


Gary E. Lapplander



**VERIFIED STATEMENT OF
SCOTT SINCLAIR
On behalf of Erco Worldwide**

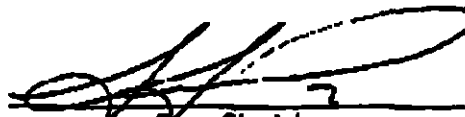
My name is Scott Sinclair. I am the logistics Manager for ERCO Worldwide. I am writing to express the support of ERCO Worldwide for Canadian National's proposed acquisition of EJ&E West Company.

Our company is a chemical manufacturer with 8 plants spread throughout North America. Our largest plant in Port Edwards, WI would be most affected by this acquisition. The plant is served by CN and is an important supplier of chloralkali products to the Midwest states. All of our equipment is privately owned and consists of tank cars and covered hoppers. Our traffic patterns are primarily Midwest USA, most through the Chicago interchange, with some traffic to the east and west coast. 75% of our production is shipped by rail.

ERCO Worldwide understands that Canadian National is requesting authority to acquire and operate the EJ&E West Company. We strongly support this application, as the combined company would offer improved efficiency and greater effective capacity for movements through the Chicago area. ERCO Worldwide should benefit from these improvements through increased asset utilization with decreased transit times. By allowing additional traffic to be routed around downtown Chicago, there should be a substantial decrease on overall transit times. ERCO Worldwide will be able to take advantage of single-line service for movements to and from points on the EJ&E lines to be acquired by CN.

We expect a smooth integration of EJ&E's assets into the CN system, given CN's prior history and experience of integrating our previous rail provider in Port Edwards, Wisconsin Central. We believe that the proposed acquisition will provide significant benefits to shippers. Our company supports the application.

I, Scott Sinclair, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on Friday, October 26, 2007.



Scott Sinclair



Engineering • Research • Commitment • Optimization

ERCO Worldwide

302 The East Mall, Suite 200
Toronto, Ontario M3B 6C7

Tel: 416-239-7111
Fax: 416-239-0235

Web: www.ercoworldwide.com



Diane Elhakim
Logistics Manager

Evonik Degussa Corporation
PO Box 677
379 Interpace Pkwy
Parsippany, NJ 07054-0677
Direct 973-541-8076
Fax 973-541-8070
Email diane.elhakim@evonik.com
Web site www.evonik.com

**VERIFIED STATEMENT
OF
DIANE ELHAKIM
On behalf of
Evonik Degussa Corporation**

My name is Diane Elhakim. I am the Logistics Manager for Evonik Degussa Corporation, based in Parsippany NJ. I have worked for thirty years in the transportation and logistics field, the last nineteen with Evonik Degussa Corporation. Prior to Evonik Degussa Corporation, I was employed by GAF Chemicals and Congoleum Corporation, both in New Jersey. I hold a BS in General Management from Bloomfield College, an MBA in Marketing from Fairleigh Dickinson University, and a certificate from the Academy of Advanced Traffic

Evonik Degussa Corporation is a global company, with production facilities and offices in more than 60 countries. Worldwide, Evonik Degussa employs over 44,000 people. Some of Evonik Degussa's main product lines are chemicals, feed additives, carbon blacks, silica, colorants, surfactants, and polymers.

In North America, Evonik Degussa employs approximately 7,000 people at 120 facilities. For the calendar year 2006, Evonik Degussa had sales within the NAFTA region in excess of \$3.5 billion.

In calendar year 2006, Evonik Degussa did over \$35 million in business with the NAFTA railroads. With production facilities in Alabama, Texas, Louisiana, Ohio, Arkansas, Alberta, Canada, and several other states and provinces, Evonik Degussa utilizes all of the Class I railroads.

As everyone knows, the last few years have been trying times for rail shippers and railroads alike, in that record carloads and skyrocketing intermodal units have congested our railways. Not only were our Class I's affected, but the strain carried over to our shortlines and regional railroads as well. The EJ&E, with connections to Class I's in several Midwest areas, was no exception, having been affected by the masses of railcars that move through the Chicago gateway. The Midwest area is a prime market for many of Evonik Degussa's products – feed additives, silica, hydrogen peroxide, quaternary compounds, colorants, and a host of other commodities. We depend on rail transportation to deliver these products safely and in a timely fashion. Our experience with cars connecting in the Midwest region, namely Chicago; IL; and Curtis; IN; has been less than satisfactory due to delays in connections for various reasons – the main reasons being congestion and the interchange process between railroads.

We understand that CN is requesting authority to acquire and operate the EJ&E Railroad, and we strongly support this application. We believe that this acquisition will afford Evonik Degussa Corporation and other shippers and receivers of rail transportation on the EJ&E improved efficiencies by way of seamless carriage, reduced transit time, and transparency of movement. We also believe that this combination will

allow cars to move around downtown Chicago, thus circumventing the horrendous delays that plague rail shippers in that area. With CN's commitment to investing in infrastructure along the EJ&E lines, without a doubt the additional capacity created will improve fluidity, not only on the EJ&E, but in the entire Chicago area as well.

Given CN's track record for smooth integration as seen with the Illinois Central Railroad and the Wisconsin Central, we can only expect that good performance to continue with the integration of the EJ&E. This, along with the expectation of improved transit times, increased capacity, and other benefits mentioned above, will afford the shipping public significant improvements in their overall business.

We strongly support the CN in this endeavor, and applaud the CN for its commitment to improving the rail industry.

Yours truly,



Diane Elhakim
Logistics Manager
Evonik Degussa Corporation

VERIFICATION

I, Diane Elhakim, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on October 22, 2007.





Verified Statement of Bruce Markwardt on Behalf of Ford Motor Company

My name is Bruce Markwardt, Supervisor, Transportation Purchasing, Ford Motor Company, located in Dearborn Michigan. I am responsible for the purchase of Ford's rail services. I have had this position for approximately 9 years.

Ford is a major automobile producer. We currently use rail services to move parts and materials into our plants, as well as to move finished vehicles to market. Rail plays a vital role in our global transportation network. We currently utilize both CN and the EJ&E in our business. CN currently serves 4 of our North American assembly plants and one of our stamping plants.

We believe that CN's acquisition of a portion of the EJ&E would be of benefit to Ford as it would offer an additional competitive alternative for the movement of traffic out of and through Chicago. We believe the acquisition would offer new single line movement from one of our facilities, which will offer improved service and a more competitive rate. In addition, we believe the acquisition would reduce congestion in the Chicago area, which could be a general benefit for our traffic.

Based on CN's prior history and experience, we believe the integration of the EJ&E's assets in to the CN network will be seamless to the customers of both railroads.

We believe that the proposed acquisition will provide significant benefits to shippers. Our company supports the application.

I, Bruce Markwardt, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on October 17, 2007.

A handwritten signature in black ink, appearing to read "B. Markwardt", with a long horizontal flourish extending to the right.



HAMPTON LUMBER SALES

9600 SW Barnes Road
Suite 200
Portland, OR 97225-6666
phone 503 297 7691
www.hamptonaffiliates.com

October 26, 2007

Mr. Vernon A Williams, Secretary
Surface Transportation Board
395 E. Street, S W.
Washington, D.C. 20423-0001

Dear Mr. Williams:

My name is George Bonner; and I hold the position of Director of Transportation for Hampton Affiliates. I have been employed by Hampton for 15 years and have held this position for 5 years. Prior to my career with Hampton, I held numerous positions in the Transportation industry with a total of 30 years of Transportation experience.

Hampton is a large producer of Lumber and Lumber Products with five saw mills located in the United States along with two mills that we recently purchased last year located in Northern BC, served by the Canadian National Railway. All together Hampton ships approximately 17,000 carloads of lumber per year, and is heavily depended on rail service. Approximately 65% of our total mill production ships by rail and 35% by truck. However, from our Canadian facilities, roughly 95% of our production ships by rail.

Hampton ships a great deal of lumber over the Chicago gateway, and we understand that the Canadian National is requesting authority to acquire and operate the EJ&E West Company. We strongly support this application as the combined company would offer improved efficiency for movements through the Chicago area.

Hampton believes this acquisition, would not only improve rail service, but would help alleviate congestion for rail movements in the Chicago area. This would also create a single-line service net-work, thereby increasing operational efficiencies.

In conclusion, we believe that the proposed acquisition will provide significant benefits to Hampton Lumber and for all shippers. Therefore, Hampton Lumber supports this application.

Sincerely,

George Bonner
Director of Transportation & Logistics
Hampton Lumber Sales

I, George Bonner, declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this verified statement.
Executed on October 26, 2007

George Bonner



October 9, 2007

VERIFIED STATEMENT
of
Greg Maindonald
on behalf of
IPSCO INC.

My name is Greg Maindonald, Vice President – Operations Services for IPSCO Inc. I currently am responsible for all aspects of our operations procurement and transportation functions and have held that position for over 5 years. I have worked for IPSCO Inc. for over 33 years in various administrative functions and have been directly involved in the transportation function for most of my career. IPSCO Inc. is a manufacturer of hot rolled steel coil, discrete plate, pipe and tubing, having facilities in both the United States and Canada. We currently ship over eight million tons per year of material into, out of and among our facilities and we utilize approximately 70% rail for these moves. Most of our facilities in Canada have access to Canadian National (CN) through inter-switching provisions. Our US facilities utilize the CN in various lanes through joint line routings. We also purchase scrap from various facilities served by the Elgin, Joliet and Eastern (EJ&E) in addition to shipping finished product to customers served by the EJ&E.

Our facility in Montpelier, Iowa, ships approximately 40,000 NT of steel coil and plate per year to various CN served destinations. This traffic is currently interchanged between the Iowa, Chicago & Eastern Railroad ("IC&E") and the CN in Chicago. The proposed acquisition of the EJ&E by the CN should decrease transit time through Chicago and eliminate an intermediate switch, reducing our costs accordingly on this traffic. Two of our other Central Operations facilities in the US also receive approximately 10,000 NT of coil per year from a CN served facility in the Eastern US. Transit time for this traffic should also improve by the proposed routing of CN traffic over the lines of the EJ&E. Our Mobile Alabama steel mill also interchanges with the CN main line and we utilize the CN for approximately 25,000 tons per year of traffic at that site.

Chicago is a major gateway for all North American rail traffic and continues to be congested given continuing increasing rail traffic moving through that gateway. The proposed acquisition should reduce traffic flows through the terminal district, increasing equipment utilization and reducing pollution in the area. Additional safety benefits will be derived by less rail/vehicular traffic at crossings in the Chicago Metropolitan area by routing CN traffic over the lines of the EJ&E.

ipSCO

650 Warrenville Road, Suite 500, Lisle, Illinois 60532
Phone (630) 810-4800 Fax (630) 810-4800



October 9, 2007
Page 2 of 2

IPSCO Inc. strongly supports the proposed acquisition of the Elgin, Joliet and Eastern by the Canadian National. We believe it will improve rail service, especially traffic moving through the Chicago area. Any improvement on rail service through Chicago will ultimately favorably impact rail traffic throughout the system. Quality rail service is very important to IPSCO, given the significant volumes we ship via rail throughout North America.

IPSCO does not see any anti-competitive consequences arising from Canadian National's acquisition of the EJ&E. This is a proposed consolidation between two non-competing rail entities that can only help competition and service.

We urge the Board to approve the transaction at the earliest possible time.

I, Greg Maindonald, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on October 9th, 2007.

Greg Maindonald
V.P. Operations Services



MILLAR WESTERN FOREST PRODUCTS LTD.

Tel 780 486 8200 Fax 780 486 8282

October 16, 2007

**VERIFIED STATEMENT
OF
GREG SIMPSON
On behalf of
MILLAR WESTERN FOREST PRODUCTS LTD.**

On behalf of Millar Western, I, Greg Simpson, Director of Logistics, am pleased to provide a statement in support of the application filed with the Surface Transportation Board (STB) by Canadian National (CN) for approval of its proposed acquisition of a newly created subsidiary of the Elgin, Joliet and Eastern Railway Company (EJ&E).

My 28 years of logistics experience encompasses responsible roles with organizations including British Columbia Railway, Desticon Transportation, Wilkinson Steel and forestry companies Sitka, Welco, Noranda and Millar Western. My related post-secondary education includes the study of transportation law and regulation at the British Columbia Institute of Technology and of logistics management at York University, sales training through the North American Wholesale Lumber Association, and executive leadership training at the Niagara Institute.

As Director of Logistics, based in Millar Western's corporate head office in Edmonton, Alberta, I am responsible for conducting all logistics negotiations for the company, including those for rail, truck, container, vessel, intermodal, warehousing and other related services, and for managing all aspects of the transportation and distribution of our pulp and wood products.

Millar Western traces its beginnings to 1906, and has been active in Alberta's forest industry since 1922. The company operates three sawmills and one pulp mill in the province, in addition to the woodlands operations supplying fibre to all four facilities. We produce 480 million board feet of lumber and 300,000 tonnes of pulp each year, transporting our products to destinations in North America and around the globe. Three of our four facilities are served by CN, and CN is our main carrier to the United States and through the Chicago gateway.

Millar Western understands that CN is seeking to acquire the EJ&E West Company. We support the acquisition, believing it should be beneficial to the shipping public, in allowing direct, single-line service, the movement of increased volumes via the vital Chicago/Illinois hub, improved transit times and car cycles, and increased asset utilization. We believe CN has the resources necessary for required investments in infrastructure, and that it has demonstrated through previous acquisitions its capacity to effect a smooth integration of EJ&E's assets into the CN system.

In that the proposed acquisition of the EJ&E subsidiary promises to be of significant benefit to shippers, Millar Western strongly supports CN's application to the STB

I, Greg Simpson, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement Executed on October 16, 2007.

A handwritten signature in black ink, appearing to read "Greg Simpson", is written over a horizontal line.

Greg Simpson, Director of Logistics

**VERIFIED STATEMENT OF
GLENN J. GIBISCH
On Behalf Of
Seeler Industries, Incorporated**

My name is Glenn J. Gibisch and I am the Executive Vice President and Chief Operating Officer of Seeler Industries, Incorporated, located at One Genstar Drive, Joliet, Illinois 60435. I have held this position for the last 8 years, which includes responsibilities for business development, engineering, operations and finance. My educational background includes a Bachelor's Degree in Mechanical Engineering from Northwestern University in 1974. For over 30 years I have worked in the bulk liquids terminal industry in the Chicago metropolitan area, including at other companies such as Lake River Corporation and Union Oil of California.

Seeler Industries is a chemical distributor of bulk liquids and dry bulk chemicals that are received in railcar quantities, packaged and transferred to other containers or bulk tank trailers. Products handled include hydrogen peroxide, caustic soda, hydrochloric acid, glycerin, acetic acid, sodium sulfate, boron and propylene glycol. A division of Seeler Industries known as Three Rivers Terminal, located at the same address, provides a service to third party chemical manufacturers and distributors by receiving railcar quantities of liquid chemicals, storing, blending, packaging and shipping finished product at the direction of the customer.

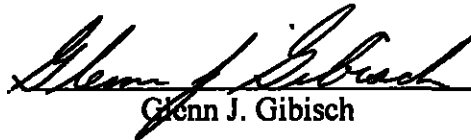
Seeler Industries receives bulk railcars from many different parts of the United States. Major origins include Houston Texas, Atlanta Georgia, and Louisiana. Approximately 600 railcars are unloaded at our facility each year. We also store an average of 50 railcars on site at any given time. Our total storage capacity is 100 railcars.

We understand that the Canadian National Railway is requesting authority to acquire and operate the EJ&E West Company. We strongly support this application as the combined company would offer improved business opportunities throughout the Joliet, Illinois area.

As a result of this proposed transaction, Seeler Industries and most of our customers would gain a more competitive position with a main line railway and open more opportunities to receive imported product from Canada. This acquisition would also help minimize routing delays and would allow customer railcar assets to be better utilized. Overall, it should provide significant benefits to the Joliet business district

For these reasons, Seeler Industries wishes to register its strong support for this proposed acquisition, and to ask that the Board authorize the transaction as soon as possible.

I, Glenn J. Gibisch, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed on October 29, 2007.

 10-29-07
Glenn J. Gibisch

**VERIFIED STATEMENT
OF
Mike Blackwell
On behalf of
Temple-Inland**

My name is Michael O. Blackwell. I am Vice President – Transportation for Temple-Inland, which is headquartered at 1300 Mopac Expressway, Austin, Texas 78746.

I understand that Canadian National Railway (“CN”) is applying for authority to acquire and operate the EJ&E West Company (“EJ&EW”), which will hold most of the rail lines of the current Elgin Joliet & Eastern Railway Company (“EJ&E”). Temple-Inland strongly supports this application, as the combined CN/EJ&EW would offer improved efficiency for our movements through the Chicago area.

Before beginning my long career in transportation and logistics for the forest products industry, I earned a BBA in Economics and an MBA in Business management. I began my work in forest products transportation and logistics with Boise Cascade, where I worked for 19 years in various positions. I later moved to Georgia-Pacific where I oversaw its transportation needs for 12 years. I have held my present position with Temple-Inland for 3 years, and I am currently responsible for all of its transportation. Our annual freight bill is in excess of \$400 million for rail carload, van and flat truckload, and intermodal.

Temple-Inland has four core operations - corrugated packaging, forest products, real estate, and financial services. Corrugated packaging is the largest segment of the paper market.

Our corrugated packaging business includes: (1) five rail-served containerboard mills located at Ontario, CA, Rome, GA, Orange, TX, Bogalusa, LA and Maysville, KY, (2) one corrugating medium mill at New Johnsonville, TN, and (3) 67 converting facilities or other operations dispersed throughout the continental United States as well as Mexico and Puerto Rico. Three of Temple-Inland’s facilities are served by CN – the containerboard mill at Bogalusa, Louisiana, and two converting operations, one at Carol Stream, Illinois, and another at Bogalusa, Louisiana.

Temple-Inland ships pulpboard by rail in boxcars from distances as short as across the yard at Bogalusa to locations in Mexico and Canada. In 2006, Temple-Inland shipped approximately 9,400 carloads originating at Bogalusa, Louisiana and received about 300 cars of inbound scrap paper and pulpboard at Bogalusa. Temple-Inland’s Carol Stream, Illinois facility received about 500 cars of inbound pulpboard. Temple-Inland also

Temple-Inland

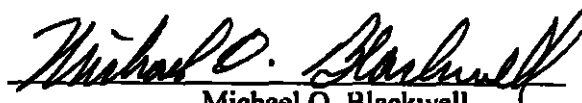
shipped about 1200 carloads of traffic from our various mills to CN-served destinations or used CN as an overhead carrier.

Many of our shipments via CN and other rail carriers pass through Chicago. Therefore, smooth railroad operations in the Chicago area are critical to our business. This is the primary reason that Temple-Inland believes it will benefit from CN's proposed acquisition of the FJ&E West Company. CN's various lines in Chicago do not presently interconnect efficiently. With EJ&E's belt line as part of the CN system, CN's lines will have better links that will allow CN to carry our pulp and paper products through Chicago with faster transit times and fewer unexpected delays. Temple-Inland and other shippers also stand to benefit from CN's planned infrastructure investments in EJ&E's lines. These investments should add capacity and improve the flow of traffic through Chicago. As the use of rail transportation continues to grow, this type of continued investment in the rail network is critical.

We also support this proposed acquisition because we believe CN can implement the transaction and integrate the lines of EJ&E without disrupting our business. CN has proven itself adept at integrating other carriers. It acquired and smoothly integrated Illinois Central as well as Wisconsin Central. We expect that CN will be similarly successful in integrating EJ&E's lines.

For all of these reasons, we believe that CN's proposed acquisition of the EJ&EW will provide significant benefits to our company and to other shippers. We support the application and ask that the Board approve it as expeditiously as possible.

I, Michael O. Blackwell, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed on October 29, 2007


Michael O. Blackwell

**VERIFIED STATEMENT OF
CHRISTOPHER J. NAVETTA**
on behalf of
UNITED STATES STEEL CORPORATION

1. My name is Christopher J. Navetta and I am the Senior Vice President - Procurement, Logistics and Diversified Businesses, for United States Steel Corporation ("U. S. Steel"). In that capacity, I have responsibility for all logistics services purchased by U. S. Steel, including, but not limited to, all rail services purchased by U. S. Steel.
2. I am a graduate of Michigan State University with a bachelor's degree in business administration. I am also a Certified Management Accountant and a member of the Institute of Management Accountants. Following my graduation from Michigan State in 1969, I began my career with U. S. Steel as an accounting trainee at Gary Works in Indiana. From 1969 until 1985 I served in a variety of financial positions for U. S. Steel in various locations throughout the United States. In 1985, I was appointed Manager-Accounting for Fairless Works near Philadelphia. I was transferred to U. S. Steel headquarters in Pittsburgh in 1987 as Director-Analysis and General Accounting and two years later was named General Manager-Administration and Group Comptroller for U. S. Steel's Diversified Group. In 1992, I was appointed Comptroller-Raw Materials for Diversified Business and Joint Ventures, a position which included representing the company on the management committees for several joint ventures. I returned to Gary Works as General Manager-Plate Products in 1994. In 2001, I was named

president of USX Engineers and Consultants, Inc. and served in that post until December, 2002 when I was appointed executive vice president of U. S. Steel Košice (USSK), a U. S. Steel subsidiary located in Košice, Slovakia, with responsibility for all operations and administrative functions. I was promoted to president of USSK in 2003. In 2005, I returned to headquarters in my current position as Senior Vice President - Procurement, Logistics and Diversified Businesses.

3. The Transtar companies consist of a group of rail and water carriers that were developed over the years to meet the transportation needs of the steel making facilities that were the predecessors of today's U. S. Steel. Historically, the Transtar companies were the direct wholly-owned transportation subsidiaries of U. S. Steel. In 1988, as part of a financial restructuring, these transportation companies became subsidiaries of a new holding company, Transtar, Inc. ("Transtar"), a direct subsidiary of U. S. Steel. U. S. Steel then sold a 51% interest in Transtar to the Blackstone Group ("Blackstone"). In 2001, U. S. Steel and Blackstone essentially split the Transtar subsidiaries. Transtar spun off its interest in two railroads, a dock company and a water carrier (i.e., Bessemer and Lake Erie Railroad, Duluth, Missabe and Iron Range Railroad, Pittsburgh and Conneaut Dock Company and Great Lakes Fleet) to Great Lakes Transportation LLC ("GLT"), a holding company controlled by Blackstone. Transtar became a wholly owned subsidiary of U. S. Steel and retained 100% ownership of its other transportation subsidiaries, including the Elgin, Joliet & Eastern Railway Company ("EJ&E"). The common control of the Transtar railroads by U. S. Steel

has been approved by the STB in a number of exemption proceedings. In 2004, in a transaction unrelated to U. S. Steel, the Canadian National Railroad ("CN") acquired the GLT subsidiaries.

4. Transtar's rail transportation subsidiaries today move raw materials, such as iron ore, coal, coke and limestone; provide certain in-plant transportation services, including some movements of semi-finished steel; and transport outbound finished steel products. Those railroads serve U. S. Steel's Gary Works in Gary Indiana (EJ&E); Mon Valley Works near Pittsburgh, Pennsylvania (Union Railroad Company and McKeesport Connecting Railroad Company); Great Lakes Works near Detroit, Michigan (Delray Connecting Railroad Company); Fairfield Works near Birmingham, Alabama (Birmingham Southern Railroad Company); and Lorain Tubular Works at Lorain, OH (The Lake Terminal Railroad Company). As a result of U. S. Steel's recent purchase of Lone Star Steel, U. S. Steel also controls, through Transtar, the Texas & Northern Railway Company, serving the Lone Star facility at Lonestar, Texas.
5. The EJ&E was formed through a series of mergers and acquisitions of Chicago area railroads in the late 1800's. Ownership by U. S. Steel began when U. S. Steel was formed in 1901. The EJ&E's rail operations form an arc around Chicago from Waukegan, Illinois southbound to Joliet, Illinois, then in an easterly direction to Gary, Indiana and then northwest to South Chicago, Illinois along Lake Michigan. At one time the EJ&E served U. S. Steel facilities located in Waukegan, Joliet and South Chicago, Illinois, as well as Gary Works in Indiana. As the steel industry contracted, U. S. Steel closed its facilities in Waukegan,

Joliet and South Chicago, Illinois. Today, the U. S. Steel Gary Works and associated facilities in Indiana are the only U. S. Steel facilities directly served by the EJ&E.

- 6 Since the EJ&E loop track around Chicago is no longer directly related to the service of U. S. Steel facilities in Illinois, U. S. Steel identified the loop as a non-core asset and decided to attempt to sell most of the loop, while retaining a small railroad at Gary to continue to provide direct rail service at Gary Works. In September of 2007, U. S. Steel entered into a Stock Purchase Agreement with the CN.
- 7 The Stock Purchase Agreement provides that the EJ&E will transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary, IN (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to a new EJ&E subsidiary, EJ&E West Company ("EJ&EW"), which, upon completion of the transfers, would become a rail common carrier. EJ&E will retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). Upon approval by the Board, the EJ&EW will be sold to a CN subsidiary.
- 8 U. S. Steel is quite familiar with the CN's proven track record of acquiring railroad assets in the United States and successfully and efficiently integrating those assets into the CN system. U. S. Steel is confident that the CN will develop and invest in the loop track around Chicago in a manner and to an extent that will dramatically exceed the development and investment that U. S. Steel could be

expected to provide to a non-core asset. U. S. Steel believes that the development and investment contemplated by the CN will give CN the ability to greatly improve the quality and quantity of the rail service that will be able to be provided on or over the loop track in and around the Chicago area to U. S. Steel and other shippers.

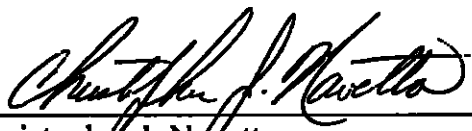
9. For the reasons set forth above, U. S. Steel urges the Board to approve the application for authority for the CN to control the EJ&EW.

/57798

VERIFICATION

I, Christopher J. Navetta, declare under penalty of perjury, that I am the Senior Vice President-Procurement, Logistics and Diversified Business for United States Steel Corporation; I am qualified and authorized to file this Verified Statement in behalf of United States Steel Corporation; and the facts therein are true and correct to the best of my knowledge, information and belief.

Signed this 23rd day of October, 2007.


Christopher J. Navetta

157799

UNITED STATES STEEL CORPORATION
600 Grant Street
Pittsburgh, PA 15219-2800

By Its Attorney

A. Bradley Cramer, Esq.
United States Steel
Corporation
600 Grant Street – Room 1500
Pittsburgh, PA 15219-2800
(412) 433-2952



**2625 Victoria Ave.
Regina, Saskatchewan S4T 7T9 Canada
Website: viterra.ca**

My name is Tim Kennedy. I am the Director of Transportation and Logistics for Viterra and have served in management positions in rail transportation for 16 years

The recent merger of Saskatchewan Wheat Pool and Agricore United combines the strengths of Canada's two largest grain handlers. Viterra is now Canada's leading agri-business, with extensive operations and distribution capabilities across Western Canada, and with operations in the United States and Japan. The new company is diversified into sales of crop inputs and services, grain handling terminals and marketing, livestock feed, agri-food processing and financial services. These operations are complemented by value-added businesses and strategic alliances, which allow Viterra to leverage its pivotal position between Prairie farmers and destination customers. With revenues estimated at over \$4 billion, the new company sources agricultural commodities through more than 100 grain handling and marketing facilities across the Prairies, has strong export capabilities in British Columbia and Ontario, and operates an agri-products retail network consisting of 276 sites prairie-wide. Business holdings include 100% ownership of Western Co-operative Fertilizers Ltd. a leading fertilizer distributor with investments in manufacturing; Can-Oat Milling, the largest industrial oat miller in the world; and Livestock Services, which has feed plants in Western Canada, Texas and New Mexico.

The Canadian National Railway is approximately 50% of our \$500 million dollar per year freight expenditures serving 50% of our infrastructure serving both export and North American domestic customers.

We understand that the Canadian National is requesting authority to acquire and operate EJ&E West Company. Viterra strongly supports this acquisition as in our opinion this will help to relieve congestion and increase through-put in the Chicago area

As many of our customers in the US require routing over Chicago through-put in this area is key. As many of our end use customers in the United States have small capacity and rely on just in time inventory increasing through-put through Chicago is key.

Viterra believes this acquisition will provide greater efficiencies to all shippers to and over the Chicago gateway.

I, Tim Kennedy, declare under penalty of perjury under the laws of the United States that the forgoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement Executed on October 19, 2007.


Signature

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35087 (Sub-No. 1)
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
—CORPORATE FAMILY EXEMPTION—
EJ&E WEST COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U. S.C. §10502(a) AND
THE REGULATIONS AT 49 C.F.R. §1180.2(d)(3)

OF COUNSEL:

VUONO & GRAY, LLC
310 Grant Street
Suite 2310
Pittsburgh, PA 15219

Richard J. Munsch, Esq.
Elgin, Joliet and Eastern Railway Company
600 Grant Street
Pittsburgh, PA 15219
412-433-2920

John A. Vuono, Esq.
Vuono & Gray, LLC
310 Grant Street
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Pittsburgh, PA 15219
412-471-1800

Attorneys for
Elgin, Joliet and Eastern Railway Company
and EJ&E West Company

Date: October 26, 2007

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EXHIBITS

<u>Exhibit 1</u>	Map
<u>Exhibit 2</u>	Agreement

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35087 (Sub-No. 1)
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
--CORPORATE FAMILY EXEMPTION--
EJ&E WEST COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U. S.C. §10502(a) AND
THE REGULATIONS AT 49 C.F.R. §1180.2(d)(3)

Elgin, Joliet and Eastern Railway ("EJ&E") hereby files this Verified Notice of Exemption based on a corporate family transaction involving EJ&E West Company ("EJ&EW"), a non-carrier subsidiary of EJ&E, pursuant to 49 C.F.R. §1180.2(d)(3).

I. SUMMARY

The exemption noticed herein would permit EJ&E to transfer certain of its rail assets, as described in more detail in Section IV.1., herein, to EJ&EW, which would thereupon become a rail common carrier. Thereafter, pursuant to a Railroad Control Application ("Application") being filed concurrently herewith in STB Finance Docket No. 30587. Canadian National Railway Company ("CNR"), through its wholly-owned

U.S. subsidiary Grand Trunk Corporation (“GTC”), would acquire all of the stock of EJ&EW (“the Control Transaction”). Thus, the proposed exempt transfer of assets from EJ&E to EJ&EW is an initial step to facilitate the control transaction under 49 U.S.C. §11323 described in the Application.

II. DESCRIPTION OF PARTIES

EJ&E is a wholly-owned indirect subsidiary of United States Steel Corporation (formerly USX Corporation) (“USS”), a non-carrier. USS owns all of the issued and outstanding stock of Transtar, Inc. (“Transtar”), a non-carrier holding company which owns all of the issued and outstanding stock of seven common carrier railroads, including EJ&E (“the Transtar Railroads”). The common control of the Transtar Railroads by USS was approved by the STB in prior exemption proceedings. *See USX Corporation – Control Exemption – Transtar Inc.*, STB Finance Docket No. 33942 (served Nov. 30, 2000); *United States Steel Corporation – Acquisition of Control Exemption – Delray Connecting Railroad Company*, STB Finance Docket No. 34311 (served Feb. 19, 2003); *Transtar, Inc -Continuance in Control Exemption-Delray Connecting Railroad Company*, STB Finance Docket No. 34767 (served November 1, 2005); *United States Steel Corporation – Acquisition of Control Exemption – Texas & Northern Railway Company*, STB Finance Docket No. 35027 (served May 25, 2007); and *Transtar, Inc.-Control Exemption-Texas & Northern Railway Company*, STB Finance Docket No. 35070 (served August 8, 2007)

EJ&E is a Class II rail common carrier that was founded on December 4, 1988. It was originally incorporated under the general laws of the States of Illinois and Indiana and is presently a Delaware corporation.

EJ&E operates in northeastern Illinois and northwestern Indiana over 198 track miles consisting primarily of an arc around Chicago extending from Waukegan, IL southward to Joliet, IL, then in an easterly direction to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics and chemical producers, steel processors, distribution centers and scrap processors.

EJ&EW is an Illinois corporation formed on August 16, 2007 and is a wholly-owned non-carrier subsidiary of EJ&E.

III. GOVERNING LAW AND REGULATIONS

Pursuant to 49 U.S.C. §10502(a), the STB must exempt a transaction which is otherwise subject to its jurisdiction whenever it finds that the application of its jurisdiction:

“(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

“(2) either --

“(A) the transaction or service is of limited scope; or

“(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.”

Pursuant to these statutory provisions, the Board has promulgated detailed regulations concerning railroad acquisitions and certain other transactions. Specifically, transactions proposed under 49 U.S.C. §11323 involving more than one common carrier railroad are classified into one of four categories, namely “*major, significant, minor and exempt*”. 49 C.F.R. §1180.2.

The regulations provide that a transaction is “exempt” if it falls within one of eight described categories. 49 C.F.R. §1180.2(d). The category applicable to the present transaction is the corporate family exemption set forth at 49 C.F.R. §1180.2(d)(3).

With respect to transactions which fall within any one of the exempt categories, the regulations provide that the STB has found that those transactions meet the *per se* exemption requirements of 49 U.S.C. §10502(a), specifically that the STB’s prior review and approval of the transactions are not necessary to carry out the rail transportation policy of 49 U.S.C. §10101 and are of limited scope or unnecessary to protect shippers from market abuse. 49 C.F.R. §1180.2(d).

IV. REQUIRED INFORMATION

The following is the information required by 49 C.F.R. §1180.4(g) to qualify for an exemption under 49 C.F.R. §1180.2(d), including the intra-corporate family transaction that is the basis for this exemption notice:

1. Description of Proposed Transaction (49 C.F.R. §1180.6(a)(1)(i)).

Before CNR and GTC acquire control of EJ&EW, EJ&E intends to transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary, IN (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to EJ&EW, which upon completion of the transfers would become a rail common carrier. EJ&E would retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). These transfers and the assets involved are more precisely described in the Stock Purchase Agreement dated as of September 25, 2007, between GTC and EJ&E, which is attached to the Application as Exhibit 2.

It is anticipated that, after CNR and GTC acquire control of EJ&EW, EJ&E will change its name to Gary Railway Company and EJ&EW will assume the Elgin, Joliet and Eastern Railway Company name.

**2. Names of Parties, Legal Counsel and Contact Information
(49 C.F.R. §1180.6(a)(1)(i)).**

2.1 Parties.

Elgin, Joliet & Eastern Railway Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

2.2 Legal Counsel.

Richard J. Munsch, Esq.
Elgin, Joliet and Eastern Railway Company
600 Grant Street
Pittsburgh, PA 15219-2800
Telephone: 412-433-2920
Facsimile: 412-433-2811
E-Mail: rjmunsch@uss.com

John A. Vuono, Esq.
Vuono & Gray, LLC
310 Grant Street
Suite 2310
Pittsburgh, PA 15219
Telephone: (412) 471-1800
Facsimile: (412) 471-4477
E-Mail: jvuono@vuonogray.com

**3. Proposed Time Schedule for Consummation
(49 C.F.R. §1180.6(a)(1)(ii)).**

EJ&E intends to consummate the transaction with EJ&EW immediately before CNR and GTC acquire control of EJ&EW, which consummation would not occur until after approval of the Control Transaction by the STB.¹ Nevertheless, EJ&E requests the STB to permit the exemption to take effect without stay in order to permit the negotiation, in advance of consummation of the Control Transaction, of implementing

¹ As this transfer would be followed immediately by the Board approved acquisition of EJ&EW by CN and GTC, this transfer would itself have no affect on service levels, operations, or competition

agreements pursuant to *New York Dock – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979) (“*New York Dock*”).

4. Purpose of the Transaction (49 C.F.R. §1180.6(a)(1)(iii)).

The intra-corporate family transfer of assets would allow EJ&E to segregate into a separate corporate entity (EJ&EW) the rail properties to be acquired by GTC, facilitating the Control Transaction described in the primary Application.

5. List of States in Which Applicant Carrier’s Property is Located (49 C.F.R. §1180.6(a)(5)).

The portions of EJ&E’s rail line to be transferred to EJ&EW are situated in the States of Illinois and Indiana.

6. Carrier’s Operating Map (49 C.F.R. §1180.6(a)(6)).

There is attached as Exhibit 1 hereto a railroad operating map of the area served by EJ&E, showing the lines of EJ&E to be transferred to EJ&EW, the lines to be retained by EJ&E, short line connections, other rails lines in the territory and the principal geographic points in the involved region.

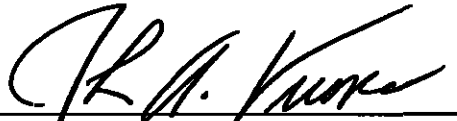
7. Agreement (49 C.F.R. §1180.6(a)(7)(ii)).

The Stock Purchase Agreement dated as of September 25, 2007 between GTC and EJ&E is attached as Exhibit 2 to the Application, filed simultaneously herewith, and is incorporated herein by reference.

8. Level of Labor Protection (49 C.F.R. §1180.4(g)(1)(i)).

EJ&E acknowledges that the transaction will be subject to the employee protective conditions and other procedures adopted in *New York Dock*.

Respectfully submitted,

By: 

John A. Vuono, Esq.
Vuono & Gray, LLC
310 Grant Street, Suite 2310
Pittsburgh, PA 15219
412-471-1800

OF COUNSEL:

VUONO & GRAY, LLC
310 Grant Street, Suite 2310
Pittsburgh, PA 15219

Richard J. Munsch, Esq.
Elgin, Joliet and Eastern Railway Company
600 Grant Street
Pittsburgh, PA 15219
412-433-2920

Date: October 26, 2007

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VERIFICATION

John C. Pranaitis, under penalty of perjury, deposes and says that he is the President of Transtar, Inc.; that he is authorized to file this Verification to the Notice of Exemption on behalf of Elgin, Joliet and Eastern Railway Company and EJ&E West Company; that he knows the contents thereof; and that the facts therein are true as stated to the best of his knowledge, information and belief.

Signed this 23rd day of October, 2007.



John C. Pranaitis

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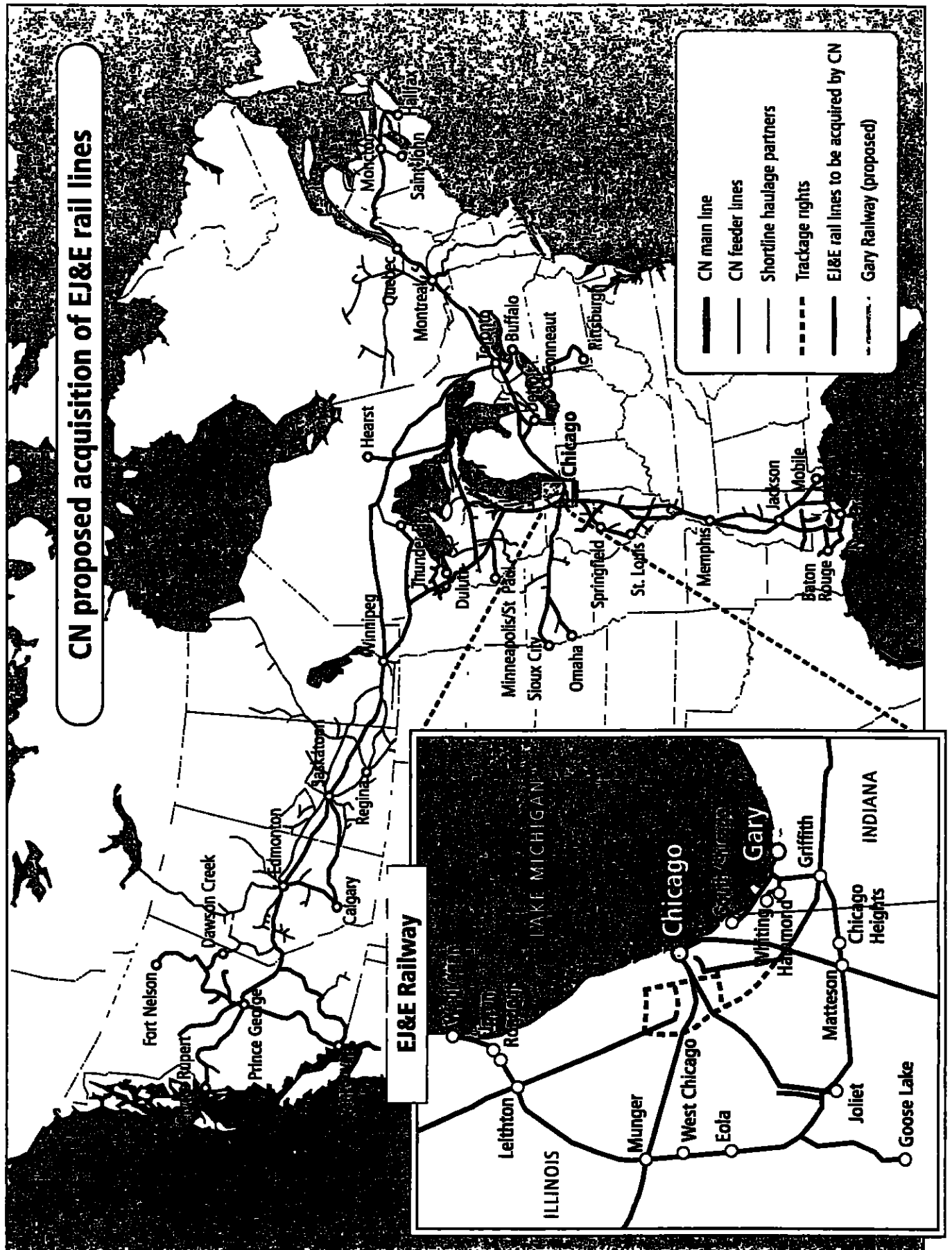


EXHIBIT 2

AGREEMENT

**(See Exhibit 2 of Railroad Control Application in
STB Finance Docket No. 35087)**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 2)

**CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430**

**Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600**

**Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840**

Counsel for Chicago, Central & Pacific Railroad Company

October 30, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 2)

**CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Chicago, Central & Pacific Railroad Company ("CCP"):

**Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840**

**Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006
(202) 973-7600**

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), CCP hereby files
this verified notice of exemption relating to trackage rights to be granted to CCP, a
subsidiary of Canadian National Railway Company ("CNR"), by EJ&E West Company
("EJ&EW") over EJ&EW's lines¹ between Milepost 74.6 at Waukegan, Illinois and

¹ As explained in the Railroad Control Application in STB Finance Docket No. 35087, EJ&EW is a noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company and will, it is proposed, become a rail carrier upon consummation of the transaction that

Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, IN plus the trackage associated with the hump and Dixie leads located east of Buchanan Street.

Simultaneously with this grant of trackage rights, CNR intends to cause EJ&EW to grant trackage rights (1) to Grand Trunk Western Railroad Incorporated ("GTW") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;² (2) to Illinois Central Railroad Company ("IC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;³ and (3) to Wisconsin Central Ltd. ("WC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana.⁴ Additionally, CCP intends to grant EJ&EW trackage rights over CCP's line between Munger, IL and Belt Crossing, IL,⁵ and IC intends to grant EJ&EW trackage rights over IC's line between Highlawn, IL and University Park, IL and between Joliet, IL and Lemoyne, IL.⁶

This reciprocal grant of trackage rights is intended to take effect at the time CNR and Grand Trunk Corporation ("GTC") acquire control of EJ&EW pursuant to the application filed by CNR and GTC in STB Finance Docket No. 35087. Together, this

is the subject of the Verified Notice of Exemption in, *Elgin, Joliet & E. Ry. Co. – Corporate Family Transaction Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 1).

² See Verified Notice of Exemption, *Grand Trunk W. R.R. Inc. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 3).

³ See, Verified Notice of Exemption, *Ill. Cent. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 4).

⁴ See Verified Notice of Exemption, *Wisc. Cent. Ltd. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 5).

⁵ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Chicago, Cent. & Pac. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 6).

⁶ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Ill. Cent. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 7).

reciprocal grant of trackage rights will give the railroad subsidiaries of CNR and GTC (collectively, "CN") maximum operational flexibility in their use of the lines.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
(§ 1180.6(a)(1)(i))

Under the proposed transaction, EJ&EW will grant CCP trackage rights over all of EJ&EW's line, which will run between Milepost 74.6 at Waukegan, Illinois and Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus trackage associated with the hump and Dixie leads located east of Buchanan Street, a distance of approximately 120 miles, in the States of Illinois and Indiana.

The business address of CCP is:

Chicago, Central & Pacific Railroad Company
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

The business address of EJ&EW is:

EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
(§ 1180.6(a)(1)(ii))

CNR intends that the trackage rights that are the subject of this notice be granted

pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CNR intends to have it executed by representatives of CCP and EJ&EW promptly upon CNR's acquisition of control of EJ&EW, pursuant to an order of the Board approving the Application in STB Finance Docket No. 35087. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CNR's acquisition of control of EJ&EW.

PURPOSE OF THE TRANSACTION
(§ 1180.6(a)(3))

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the EJ&EW's line that it would own upon consummation of the control of EJ&EW that is proposed in the Application in STB Finance Docket No. 35087.

LIST OF STATES
(§ 1180.6(a)(5))

The following are the states in which any part of the property of each applicant carrier will be situated at the time the proposed trackage rights are consummated:

CCP: Illinois, Iowa, Nebraska

EJ&EW: Illinois, Indiana

MAP
(§ 1180.6(a)(6))

Attached as Exhibit 1 hereto is a railroad map of the area to be served by EJ&EW, showing the lines of EJ&EW and CCP in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the

regions traversed.

AGREEMENT
(§ 1180.6(a)(7)(ii))

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CNR expects to cause this Agreement to be executed promptly after the acquisition of EJ&EW by CNR and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 35087.

LEVEL OF LABOR PROTECTION
(§ 1180.4(g)(1)(i))

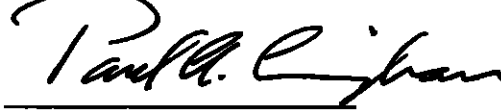
Norfolk & Western labor protective conditions⁷ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
(§ 1180.4(g)(2)(i))

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

⁷ See *Norfolk & W. Ry. – Trackage Rights – Burlington N Inc*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. – Lease & Oper. – Calif. W. R.R.*, 360 I.C.C. 653 (1980).

Respectfully submitted,



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(202) 973-7600

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CANADIAN NATIONAL RAILWAY
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(514) 399-5430

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CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Counsel for Chicago, Central & Pacific Railroad Company

October 30, 2007

VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Chicago, Central & Pacific Railroad Company

Executed on October 22, 2007


Paul Ladue

EXHIBIT 1

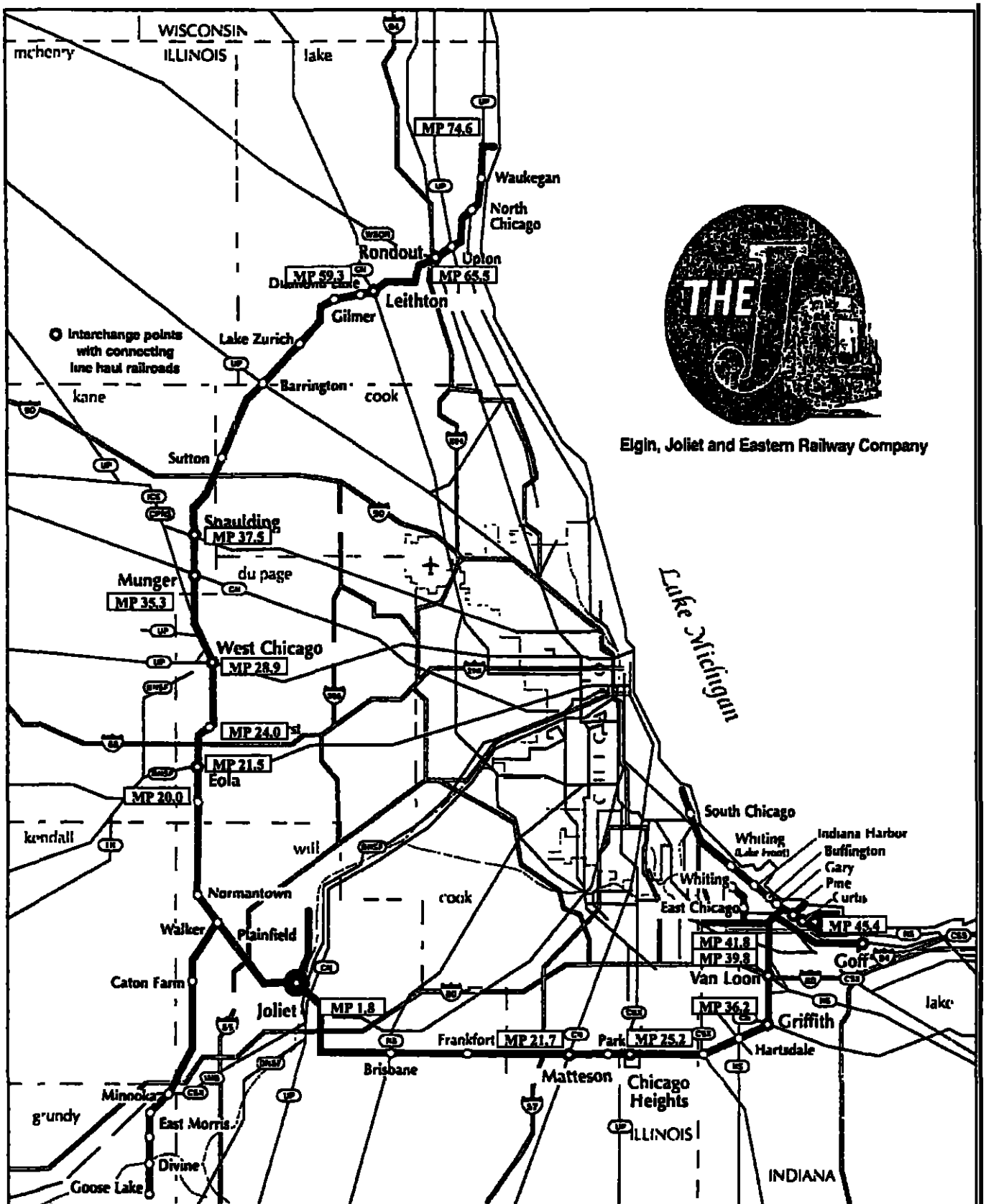


EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

EJ&E WEST COMPANY

("EJ&EW" or "Owner")

And

CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY

("CCP" or "User")

Relating to CCP's Limited Trackage Rights Over

EJ&EW between Waukegan, IL and Gary, IN.

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, 200__, by and between **EJ&E WEST COMPANY** (hereinafter referred to as "**EJ&EW**" or "**OWNER**") and **CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY** (hereinafter referred to as "**CCP**" or "**USER**").

WHEREAS, Elgin, Joliet and Eastern Railway Company ("**EJE**") and Grand Trunk Corporation, a Delaware corporation, ("**CN**") entered into a stock purchase agreement dated September 25, 2007, for the purpose of **CN** purchasing that portion of **EJE**'s assets from Gary, IN to Waukegan, IL, which assets shall constitute a new company known as **EJ&E West Company** or **EJ&EW**; and

WHEREAS, **EJ&EW** owns and operates a segment of railroad located between Waukegan, IL and Gary, IN; and

WHEREAS, **CCP** has requested trackage rights over **EJ&EW**'s line of railroad between Waukegan, IL and Gary, IN; and

WHEREAS, **EJ&EW** agrees to grant **CCP** limited overhead trackage rights for the sole movement of traffic between Waukegan, IL and Gary, IN, subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0

GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- That portion of **EJ&EW** between at **EJ&EW**'s end of ownership at or near Milepost 74.6 at Waukegan, IL on **EJ&EW**'s Western Subdivision and **EJ&EW**'s Milepost 45.4 including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus the trackage associated with the hump and Dixie leads located east of Buchanan Street, all as shown on the drawing attached hereto as Exhibit B, on **EJ&EW**'s Eastern Subdivision, including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 120 miles.

- Such rights shall include the right to enter and exit the Subject Trackage at:
 - EJ&EW's connection with CCP at or near EJ&EW Western Subdivision Milepost 35.3 at Munger, IL.
 - EJ&EW's connections with other railroads on EJ&EW Western Subdivision at:
 - a. Rondout, IL at or near Milepost 65.5
 - b. Leithton, IL, at or near Milepost 59.3
 - c. Spaulding, IL at or near Milepost 37.5
 - d. West Chicago, IL, at or near Milepost 28.9
 - e. Eola, IL, at or near Milepost 21.5
 - f. Joliet, IL at or near Milepost 1.8
 - EJ&EW's connections with other railroads on EJ&EW Eastern Subdivision at:
 - a. Matteson, IL, at or near Milepost 21.7
 - b. Chicago Heights, IL, at or near Milepost 25.2
 - c. Griffith, IN, at or near Milepost 36.2
 - d. Van Loon, IN at or near Milepost 39.8
 - e. Ivanhoe, IN at or near Milepost 41.8

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0

COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ cents (\$.) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (200__) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (200__); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

B/A x C = Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)

(iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

SECTION 9.0

MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train

and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present

or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation),

and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both EJ&EW and CCP, then: (i) each of EJ&EW and CCP is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) EJ&EW and CCP are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both CCP and any other third party user of the Subject trackage not a party to this Agreement, then CCP's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered EJ&EW for the purpose of determining CCP's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by EJ&EW to CCP pursuant to this Agreement shall be considered as the employees of CCP while such employees are on board or getting on or off trains of CCP.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0

ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0

GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either EJ&EW or CCP to any party other than EJ&EW's and CCP's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Chicago, Central & Pacific Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0

COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that CCP shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

**CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY**

By: _____

Its: _____

Date: _____

WITNESS

EJ&E WEST COMPANY

By: _____

Its: _____

Date: _____

Exhibit A

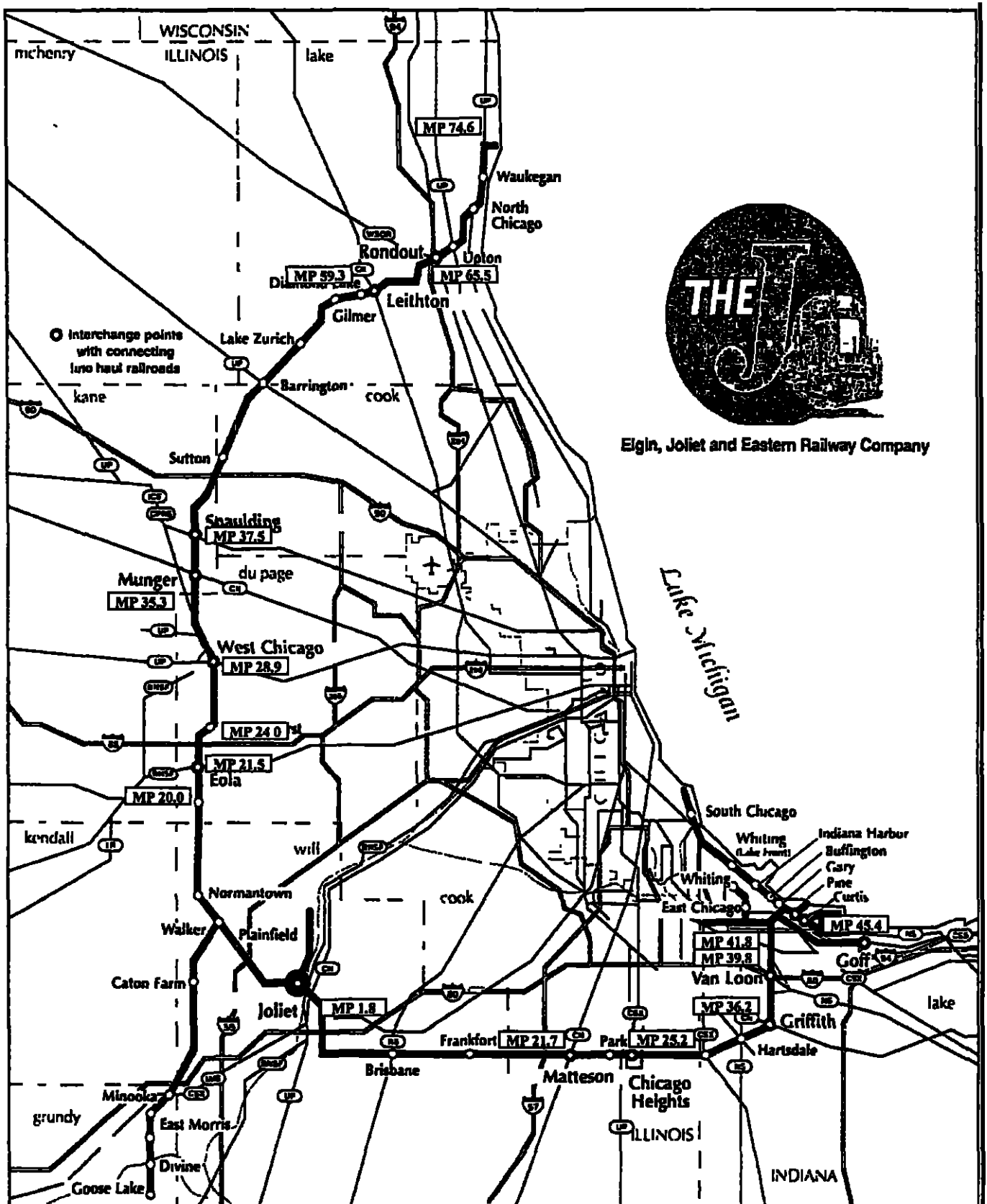
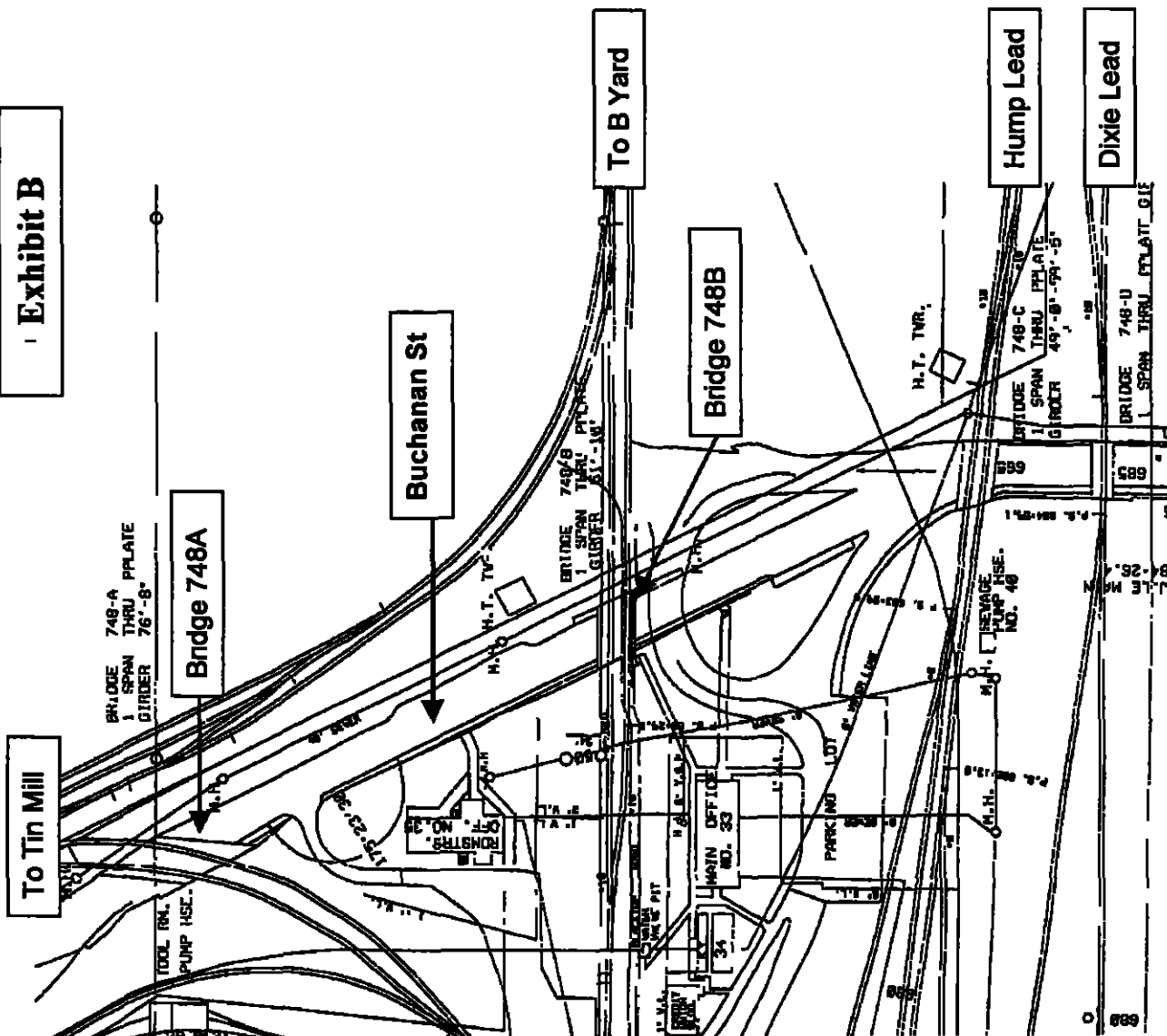


Exhibit B



The Dixie Lead continues to a point east of the River Yard and ends at the west switch of the connection that runs between the Dixie Lead and the River Yard Lead.

Exhibit B

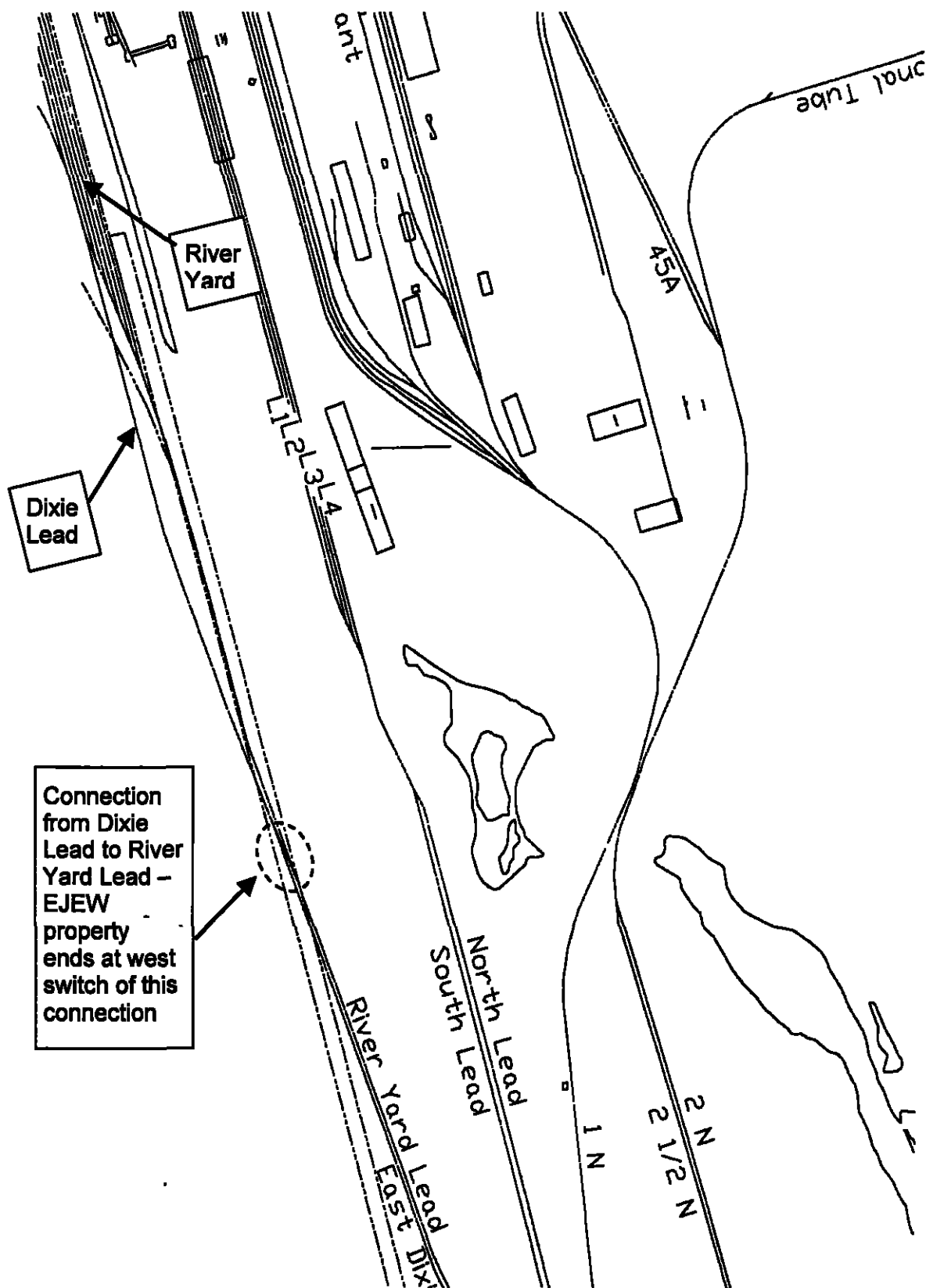


EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35087 (Sub-No. 2)

**CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

Canadian National Railway Company ("CNR") has proposed that EJ&E West Company ("EJ&EW") grant Chicago, Central & Pacific Railroad Company ("CCP") overhead trackage rights between Waukegan, Illinois and Gary, Indiana. Under the terms of the draft agreement between EJ&EW and CCP, CCP will have the right to operate its trains, locomotives, cars, and equipment with its own crews over EJ&EW between Milepost 74.6 at Waukegan, Illinois on EJ&EW's Western Subdivision, and Milepost 45.4 at Gary Indiana, on EJ&EW's Eastern Subdivision, a distance of approximately 120 miles, in the States of Illinois and Indiana.

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of EJ&EW, for which authority has been sought in STB Finance Docket No. 35087.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

**Vernon A. Williams,
Secretary**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 3)

**GRAND TRUNK WESTERN RAILROAD INCORPORATED
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430**

**Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600**

**Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840**

Counsel for Grand Trunk Western Railroad Incorporated

October 30, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 3)

**GRAND TRUNK WESTERN RAILROAD INCORPORATED
-- TRACKAGE RIGHTS EXEMPTION --
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Grand Trunk Western Railroad Incorporated ("GTW"):

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006
(202) 973-7600

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), GTW hereby files
this verified notice of exemption relating to trackage rights to be granted to GTW, a
subsidiary of Canadian National Railway Company ("CNR"), by EJ&E West Company
("EJ&EW") over EJ&EW's lines¹ between Milepost 74.6 at Waukegan, Illinois and

¹ As explained in the Railroad Control Application in STB Finance Docket No. 35087, EJ&EW is a noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company ("EJ&E") and will, it is proposed, become a rail carrier upon consummation of the

Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus trackage associated with the hump and Dixie leads located east of Buchanan Street.²

Simultaneously with this grant of trackage rights to GTW, CNR intends to cause EJ&EW to grant trackage rights (1) to Chicago, Central & Pacific Railroad Company ("CCP") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;³ (2) to Illinois Central Railroad Company ("IC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;⁴ and (3) to Wisconsin Central Ltd. ("WC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana.⁵ Additionally, CCP intends to grant EJ&EW trackage rights over CCP's line between Munger, IL and Belt Crossing, IL,⁶ and IC intends to grant EJ&EW trackage rights over IC's line between Highlawn, IL and University Park, IL and between Joliet, IL and Lemoyne, IL.⁷

transaction that is the subject of the Verified Notice of Exemption in *Elgin, Joliet & E. Ry. Co. – Corporate Family Transaction Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 1) ("*EJ&E/EJ&EW*").

² GTW currently has trackage rights over EJ&E lines between Griffith, IN (Milepost 36.2) and Eola, IL (Milepost 24.0), which EJ&EW would acquire in the *EJ&E/EJ&EW* transaction. This exemption would extend GTW's trackage rights to the entirety of EJ&EW's system.

³ See, Verified Notice of Exemption, *Chicago, Cent. & Pac R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 2).

⁴ See Verified Notice of Exemption, *Ill. Cent R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 4).

⁵ See Verified Notice of Exemption, *Wisc. Cent. Ltd. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 5).

⁶ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Chicago, Cent. & Pac. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 6).

⁷ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Ill. Cent R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 7).

This reciprocal grant of trackage rights is intended to take effect at the time CNR and Grand Trunk Corporation (“GTC”) acquire control of EJ&EW pursuant to the application filed by CNR and GTC in STB Finance Docket No. 35087. Together, this reciprocal grant of trackage rights will give the railroad subsidiaries of CNR and GTC (collectively, “CN”) maximum operational flexibility in their use of the lines.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

**SUMMARY OF TRANSACTION
(§ 1180.6(a)(1)(i))**

Under the proposed transaction, EJ&EW will grant GTW trackage rights over all of EJ&EW’s line, which will run between Milepost 74.6 at Waukegan, Illinois and Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus trackage associated with the hump and Dixie leads located east of Buchanan Street.

The business address of GTW is:

**Grand Trunk Western Railroad Incorporated
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430**

The business address of EJ&EW is:

**EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046**

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
(§ 1180.6(a)(1)(ii))

CNR intends that the trackage rights that are the subject of this notice be granted pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CNR intends to have it executed by representatives of GTW and EJ&EW promptly upon CNR's acquisition of control of EJ&EW, pursuant to an order of the Board approving the Application in STB Finance Docket No. 35087. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CN's acquisition of control of EJ&EW.

PURPOSE OF THE TRANSACTION
(§ 1180.6(a)(3))

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the EJ&EW's line that it would own upon consummation of the control of EJ&EW that is proposed in the Application in STB Finance Docket No. 35087.

LIST OF STATES
(§ 1180.6(a)(5))

The following are the states in which any part of the property of each applicant carrier will be situated at the time the proposed trackage rights are consummated:

GTW: Illinois, Indiana, Michigan, and Ohio

EJ&EW: Illinois, Indiana

MAP
(§ 1180.6(a)(6))

Attached as Exhibit 1 hereto is a railroad map of the area to be served by EJ&EW,

showing the lines of EJ&EW and GTW in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
(§ 1180.6(a)(7)(ii))

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CNR expects to cause this Agreement to be executed promptly after the acquisition of EJ&EW by CNR and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 35087.

LEVEL OF LABOR PROTECTION
(§ 1180.4(g)(1)(i))

Norfolk & Western labor protective conditions⁸ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
(§ 1180.4(g)(2)(i))

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

⁸ See *Norfolk & W. Ry – Trackage Rights – Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. – Lease & Oper. – Calif. W R R.*, 360 I.C.C. 653 (1980).

Sean Finn
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Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
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Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Respectfully submitted,



Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600

Counsel for Grand Trunk Western Railroad Incorporated

October 30, 2007

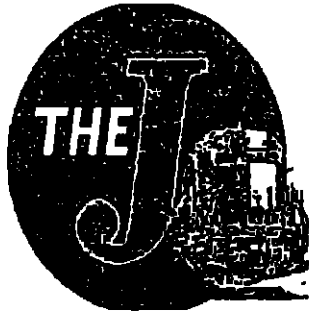
VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Grand Trunk Western Railroad Incorporated.

Executed on October 22, 2007


Paul Ladue

EXHIBIT 1



Elgin, Joliet and Eastern Railway Company

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

EJ&E WEST COMPANY

("EJ&EW" or "Owner")

And

GRAND TRUNK WESTERN RAILROAD INCORPORATED

("GTW" or "User")

Relating to GTW's Limited Trackage Rights Over EJ&EW between:

- > Waukegan, IL and Eola, IL, and**
- > Griffith, IN and Gary, IN**

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, 200__, by and between **EJ&E WEST COMPANY** (hereinafter referred to as "**EJ&EW**" or "**OWNER**") and **GRAND TRUNK WESTERN RAILROAD INCORPORATED** (hereinafter referred to as "**GTW**" or "**USER**").

WHEREAS, EJE and GTW entered into a Trackage Rights Agreement dated October 30, 1997, as amended which provides, among other things for GTW operation over EJE trackage between Griffith, IN Milepost 36.2, and Eola, IL, Milepost 24.0, all pursuant to the terms and conditions more specifically set forth therein; and

WHEREAS, Elgin, Joliet and Eastern Railway Company ("EJE") and Grand Trunk Corporation, a Delaware corporation, ("CN") entered into a stock purchase agreement dated September 25, 2007, for the purpose of CN purchasing that portion of EJE's assets from Gary, IN to Waukegan, IL, which assets shall constitute a new company known as EJ&E West Company or EJ&EW; and

WHEREAS, EJ&EW owns and operates segments of railroad located between Eola, IL and Waukegan, IL and between Griffith, IN and Gary, IN; and

WHEREAS, GTW has requested trackage rights over EJ&EW's lines of railroad between Eola, IL and Waukegan, IL and between Griffith, IN and Gary, IN; and

WHEREAS, EJ&EW agrees to grant GTW limited overhead trackage rights for the sole movement of traffic between Eola, IL and Waukegan, IL and between Griffith, IN and Gary, IN subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0

GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- That portion of EJ&EW between EJ&EW's end of ownership at or near Milepost 74.6 at Waukegan, IL and EJ&EW's Milepost 24.0 at or near Eola, IL, all on EJ&EW's Western Subdivision, a distance of approximately 50.6 miles.
- That portion of EJ&EW between EJ&EW's Milepost 36.2 at or near Griffith, IN and EJ&EW's Milepost 45.4, all on EJ&EW Eastern Subdivision, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus the trackage

associated with the hump and Dixie leads located east of Buchanan Street, all as shown on the drawing attached hereto as Exhibit B, on EJ&EW's Eastern Subdivision, a distance of approximately 9.2 miles.

- Such Subject Trackage shall include (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto,
- Such rights shall include the right to enter and exit the Subject Trackage at.
 - EJ&EW's connection with GTW at or near EJ&EW Eastern Subdivision Milepost 36.2 at Griffith, IN.
 - EJ&EW's connections with other railroads on EJ&EW Western Subdivision at:
 - a. Rondout, IL at or near Milepost 65.5
 - b. Leithton, IL, at or near Milepost 59.3
 - c. Spaulding, IL at or near Milepost 37.5
 - d. Munger, IL, at or near Milepost 35.3
 - e. West Chicago, IL, at or near Milepost 28.9
 - f. Eola, IL, at or near Milepost 21.5
 - g. Joliet, IL at or near Milepost 1.8
 - EJ&EW's connections with other railroads on EJ&EW Eastern Subdivision at:
 - a. Matteson, IL, at or near Milepost 21.7
 - b. Chicago Heights, IL, at or near Milepost 25.2
 - c. Van Loon, IN at or near Milepost 39.8
 - d. Ivanhoe, IN at or near Milepost 41.8

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2 4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ cents (\$.) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar

year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (200__) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (200__); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the

condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's

operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's

submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0

LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both EJ&EW and GTW, then: (i) each of EJ&EW and GTW is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) EJ&EW and GTW are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both GTW and any other third party user of the Subject trackage not a party to this Agreement, then GTW's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered EJ&EW for the purpose of determining GTW's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by EJ&EW to GTW pursuant to this Agreement shall be considered as the employees of GTW while such employees are on board or getting on or off trains of GTW.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other

party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising

from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the

trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either EJ&EW or GTW to any party other than EJ&EW's and GTW's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Grand Trunk Western Railroad Incorporated
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0

COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that GTW shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

**GRAND TRUNK WESTERN
RAILROAD INCORPORATED**

By: _____

Its: _____

Date: _____

WITNESS

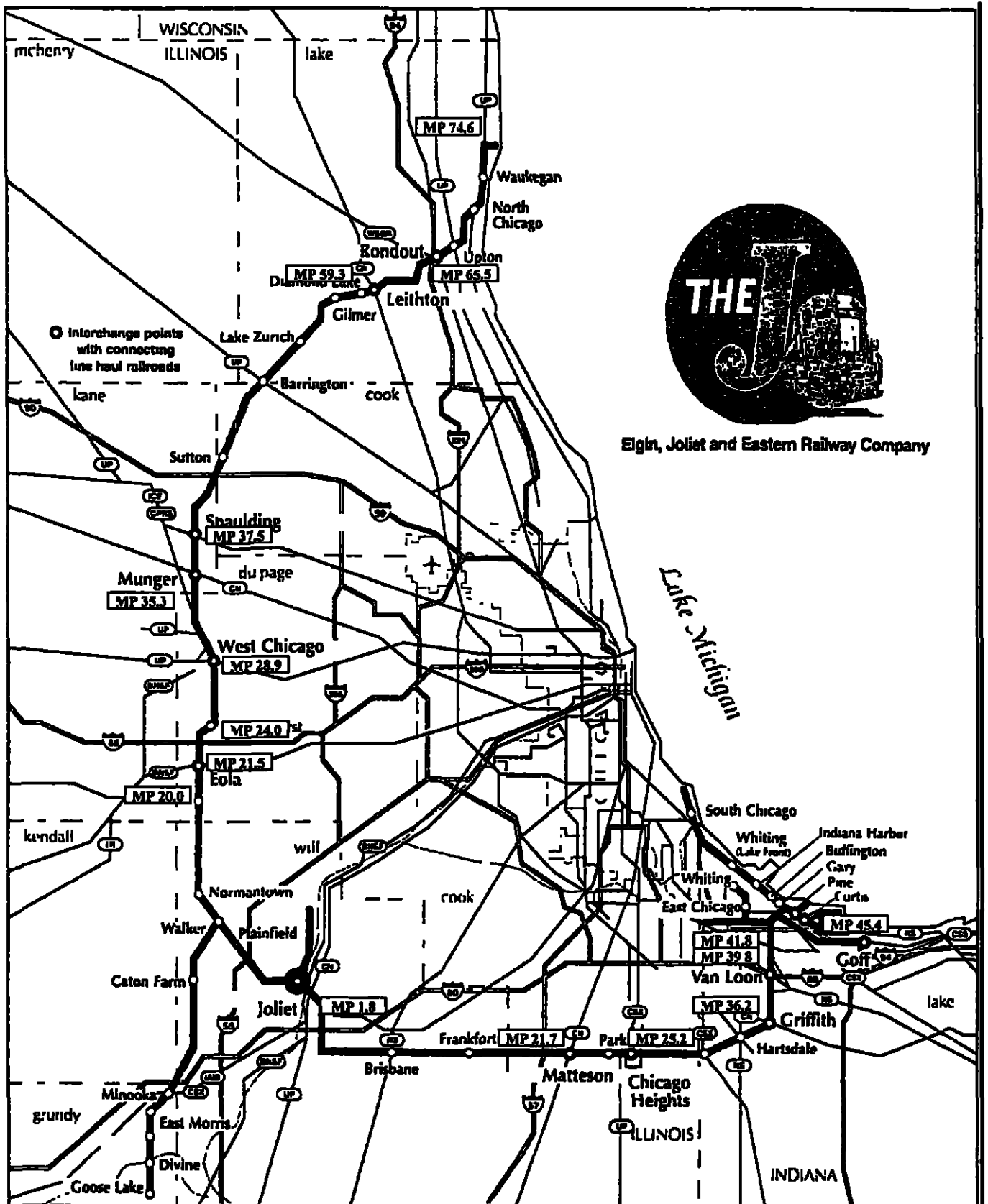
EJ&E WEST COMPANY

By: _____

Its: _____

Date: _____

Exhibit A



Elgin, Joliet and Eastern Railway Company

Exhibit B

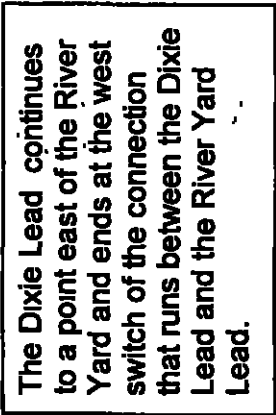


Exhibit B

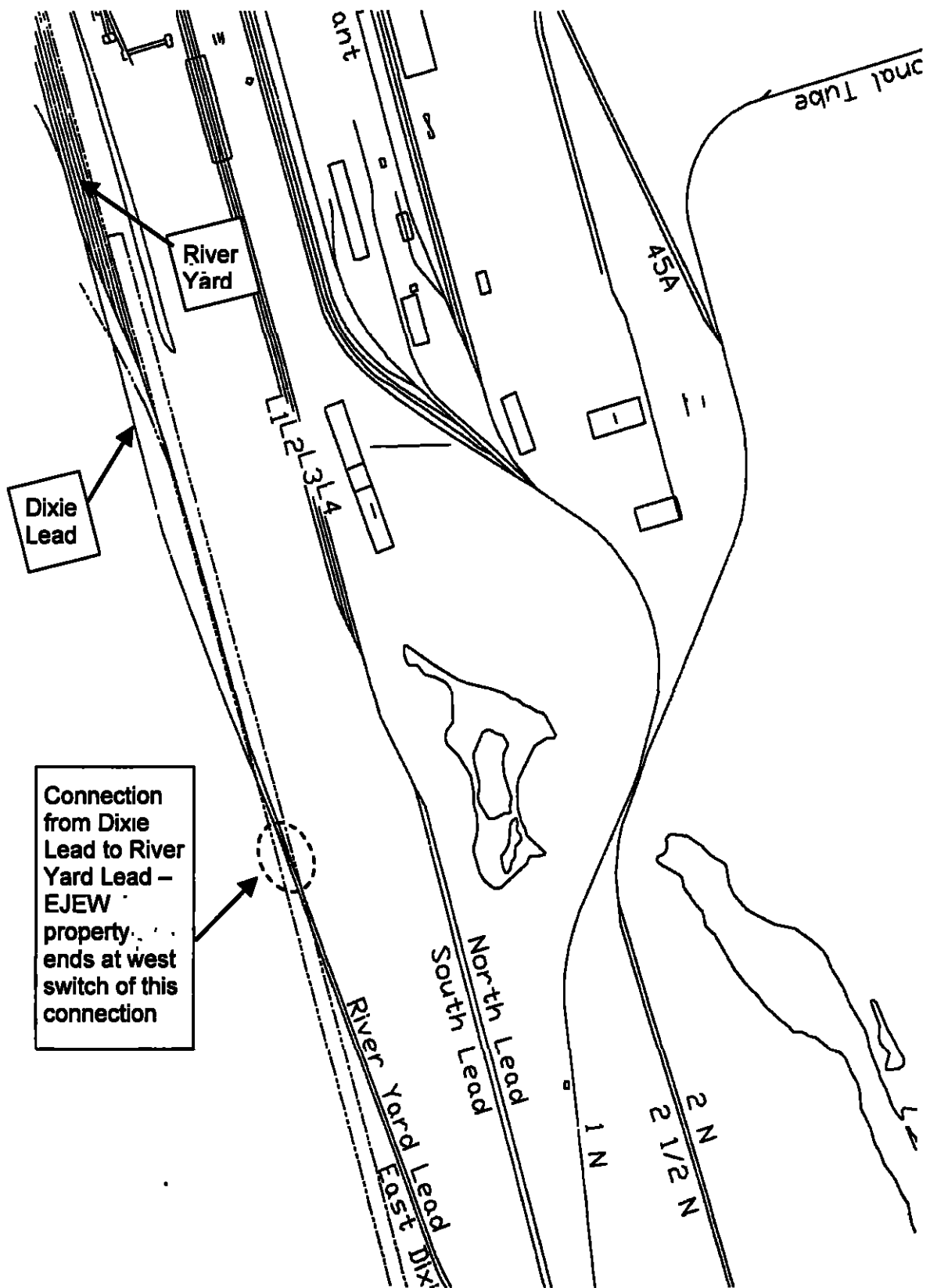


EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35087 (Sub-No. 3)

**GRAND TRUNK WESTERN RAILROAD INCORPORATED
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

Canadian National Railway Company ("CNR") has proposed that EJ&E West Company ("EJ&EW") grant Grand Trunk Western Railroad Incorporated ("GTW") trackage rights between Waukegan, Illinois and Gary, Indiana. Under the terms of the draft agreement between EJ&EW and GTW, GTW will have the right to operate its trains, locomotives, cars, and equipment with its own crews over EJ&EW between Milepost 74.6 at Waukegan, Illinois on EJ&EW's Western Subdivision, and Milepost 45.4 at Gary Indiana, on EJ&EW's Eastern Subdivision, a distance of approximately 120 miles, in the States of Illinois and Indiana.

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of EJ&EW, for which authority has been sought in STB Finance Docket No. 35087.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board

**Vernon A. Williams,
Secretary**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 4)

**ILLINOIS CENTRAL RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430**

**Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600**

**Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840**

Counsel for Illinois Central Railroad Company

October 30, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 4)

**ILLINOIS CENTRAL RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Illinois Central Railroad Company (“IC”):

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006
(202) 973-7600

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), IC hereby files this
verified notice of exemption relating to trackage rights to be granted to IC, a subsidiary of
Canadian National Railway Company (“CNR”), by EJ&E West Company (“EJ&EW”)
over EJ&EW’s lines¹ between Milepost 74.6 at Waukegan, Illinois and Milepost 45.4 at

¹ As explained in the Railroad Control Application in STB Finance Docket No. 35087, EJ&EW is a noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company and will, it is proposed, become a rail carrier upon consummation of the transaction that

Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, IN plus the trackage associated with the hump and Dixie leads located east of Buchanan Street.

Simultaneously with this grant of trackage rights, CNR intends to cause EJ&EW to grant trackage rights (1) to Chicago, Central & Pacific Railroad Company ("CCP") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;² (2) to Grand Trunk Western Railroad Incorporated ("GTW") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;³ and (3) to Wisconsin Central Ltd. ("WC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana.⁴ Additionally, CCP intends to grant EJ&EW trackage rights over CCP's line between Munger, IL and Belt Crossing, IL,⁵ and IC intends to grant EJ&EW trackage rights over IC's line between Highlawn, IL and University Park, IL and between Joliet, IL and Lemoyne, IL.⁶

This reciprocal grant of trackage rights is intended to take effect at the time CNR and Grand Trunk Corporation ("GTC") acquire control of EJ&EW pursuant to the application filed by CNR and GTC in STB Finance Docket No. 35087. Together, this

is the subject of the Verified Notice of Exemption in *Elgin, Joliet & E. Ry Co. – Corporate Family Transaction Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 1).

² See Verified Notice of Exemption, *Chicago, Cent. & Pac. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 2).

³ See Verified Notice of Exemption, *Grand Trunk W. R R. Inc. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 3).

⁴ See Verified Notice of Exemption, *Wisc. Cent. Ltd. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 5).

⁵ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Chicago, Cent. & Pac. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 6).

⁶ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Ill. Cent. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 7).

reciprocal grant of trackage rights will give the railroad subsidiaries of CNR and GTC (collectively, "CN") maximum operational flexibility in their use of the lines.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
(§ 1180.6(a)(1)(i))

Under the proposed transaction, EJ&EW will grant IC trackage rights over all of EJ&EW's line, which will run between Milepost 74.6 at Waukegan, Illinois and Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus trackage associated with the hump and Dixie leads located east of Buchanan Street.

The business address of IC is:

Illinois Central Railroad Company
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

The business address of EJ&EW is:

EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
(§ 1180.6(a)(1)(ii))

CN intends that the trackage rights that are the subject of this notice be granted pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That

Agreement has not yet been executed, but CNR intends to have it executed by representatives of GTW and EJ&EW promptly upon CNR's acquisition of control of EJ&EW, pursuant to an order of the Board approving the Application in STB Finance Docket No. 35087. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CNR's acquisition of control of EJ&EW.

PURPOSE OF THE TRANSACTION
(§ 1180.6(a)(3))

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the EJ&EW's line that it would own upon consummation of the control of EJ&EW that is proposed in the Application in STB Finance Docket No. 35087.

LIST OF STATES
(§ 1180.6(a)(5))

The following are the states in which any part of the property of each applicant carrier will situated at the time the proposed trackage rights are consummated:

IC: Alabama, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee

EJ&EW: Illinois, Indiana

MAP
(§ 1180.6(a)(6))

Attached as Exhibit 1 hereto is a railroad map of the area to be served by EJ&EW, showing the lines of EJ&EW and IC in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
(§ 1180.6(a)(7)(ii))

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CNR expects to cause this Agreement to be executed promptly after the acquisition of EJ&EW by CNR and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 35087.

LEVEL OF LABOR PROTECTION
(§ 1180.4(g)(1)(i))

Norfolk & Western labor protective conditions⁷ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
(§ 1180.4(g)(2)(i))

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

⁷ See *Norfolk & W. Ry. – Trackage Rights – Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. – Lease & Oper. – Calif. W. R.R.*, 360 I.C.C. 653 (1980).

Respectfully submitted,



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Counsel for Illinois Central Railroad Company

October 30, 2007

VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Illinois Central Railroad Company.

Executed on October 22, 2007


Paul Ladue

EXHIBIT 1



Elgin, Joliet and Eastern Railway Company

EXHIBIT 2

TRackage RIGHTS AGREEMENT

Agreement No. _____

between

EJ&E WEST COMPANY

("EJ&EW" or "Owner")

And

ILLINOIS CENTRAL RAILROAD COMPANY

("IC" or "User")

Relating to IC's Limited Trackage Rights Over

EJ&EW between Waukegan, IL and Gary, IN.

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, 200__, by and between **EJ&E WEST COMPANY** (hereinafter referred to as "**EJ&EW**" or "**OWNER**") and **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "**IC**" or "**USER**").

WHEREAS, Elgin, Joliet and Eastern Railway Company ("**EJE**") and Grand Trunk Corporation, a Delaware corporation, ("**CN**") entered into a stock purchase agreement dated September 25, 2007, for the purpose of **CN** purchasing that portion of **EJE**'s assets from Gary, IN to Waukegan, IL, which assets shall constitute a new company known as **EJ&E West Company** or **EJ&EW**; and

WHEREAS, **EJ&EW** owns and operates a segment of railroad located between Waukegan, IL and Gary, IN; and

WHEREAS, **IC** has requested trackage rights over **EJ&EW**'s line of railroad between Waukegan, IL and Gary, IN; and

WHEREAS, **EJ&EW** agrees to grant **IC** limited overhead trackage rights for the sole movement of traffic between Waukegan, IL and Gary, IN, subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0 GRANT OF TRACAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "**Trackage Rights**") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "**A**" (hereinafter referred to as the "**Subject Trackage**"):

- That portion of **EJ&EW** between **EJ&EW**'s end of ownership at or near Milepost 74.6 at Waukegan, IL on **EJ&EW**'s Western Subdivision and **EJ&EW**'s Milepost 45.4 including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus the trackage associated with the hump and Dixie leads located east of Buchanan Street, all as shown on the drawing attached hereto as Exhibit B, on **EJ&EW**'s Eastern Subdivision, including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 120 miles.

- Such rights shall include the right to enter and exit the Subject Trackage at:
 - EJ&EW's connection with IC at or near EJ&EW Eastern Subdivision Milepost 21.7 at Matteson, IL.
 - EJ&EW's connections with other railroads on EJ&EW Western Subdivision at:
 - a. Rondout, IL at or near Milepost 65.5
 - b. Leithton, IL, at or near Milepost 59.3
 - c. Spaulding, IL at or near Milepost 37.5
 - d. West Chicago, IL, at or near Milepost 28.9
 - e. Munger, IL, at or near Milepost 35.3
 - f. Eola, IL, at or near Milepost 21.5
 - g. Joliet, IL at or near Milepost 1.8
 - EJ&EW's connections with other railroads on EJ&EW Eastern Subdivision at:
 - a. Chicago Heights, IL, at or near Milepost 25.2
 - b. Griffith, IN, at or near Milepost 36.2
 - c. Van Loon, IN at or near Milepost 39.8
 - d. Ivanhoe, IN at or near Milepost 41.8

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ cents (\$.) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (200__) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (200__); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

B/A x C = Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

SECTION 9.0

MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train

and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present

or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation),

and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both EJ&EW and IC, then: (i) each of EJ&EW and IC is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) EJ&EW and IC are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both IC and any other third party user of the Subject trackage not a party to this Agreement, then IC's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered EJ&EW for the purpose of determining IC's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by EJ&EW to IC pursuant to this Agreement shall be considered as the employees of IC while such employees are on board or getting on or off trains of IC.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0

ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0

GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either EJ&EW or IC to any party other than EJ&EW's and IC's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail. .

SECTION 21.0

COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that IC shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

ILLINOIS CENTRAL RAILROAD COMPANY

By: _____

Its: _____

Date: _____

WITNESS

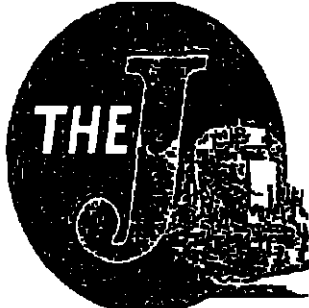
EJ&E WEST COMPANY

By: _____

Its: _____

Date: _____

Exhibit A



Elgin, Joliet and Eastern Railway Company

Exhibit B

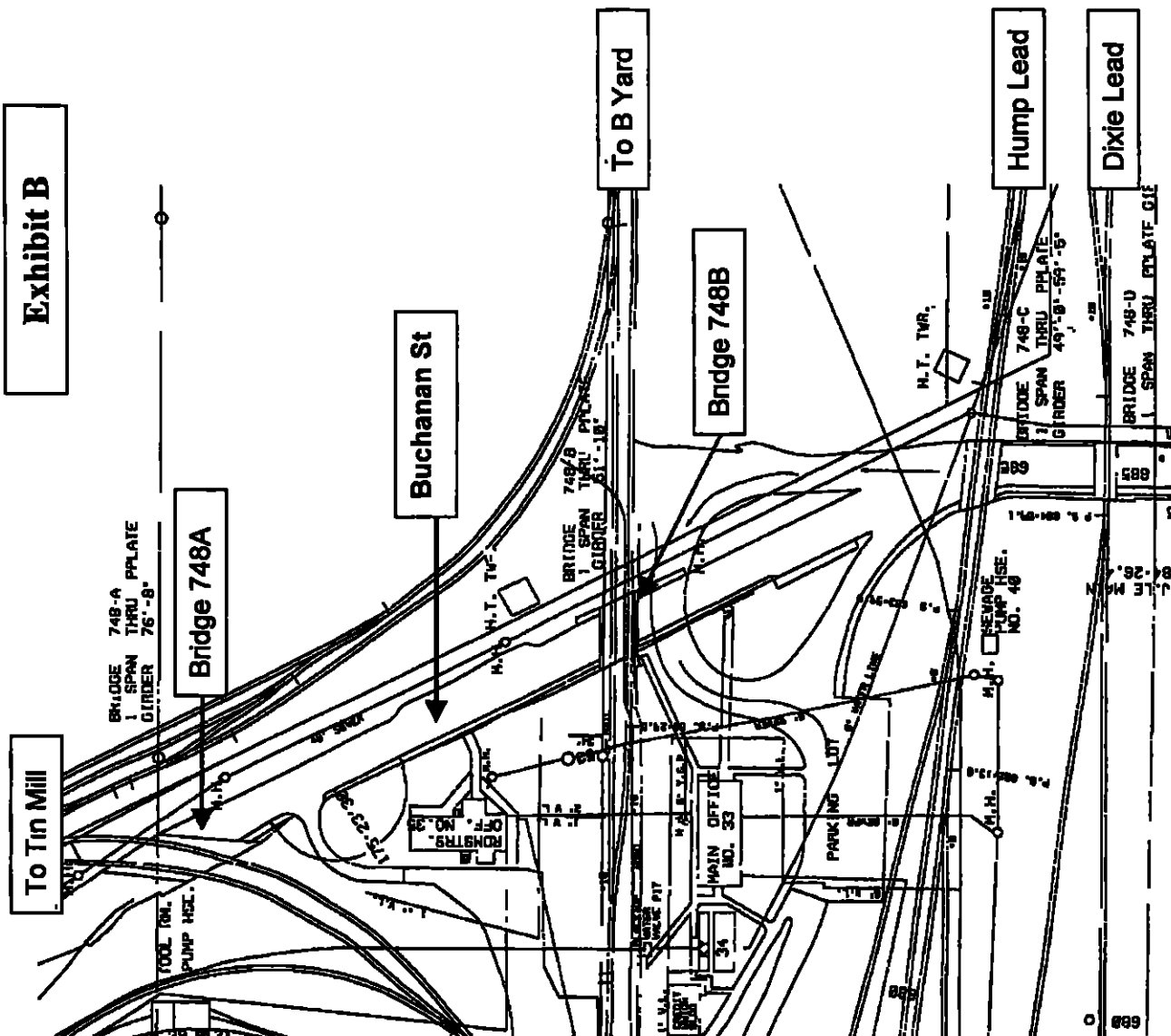


Exhibit B

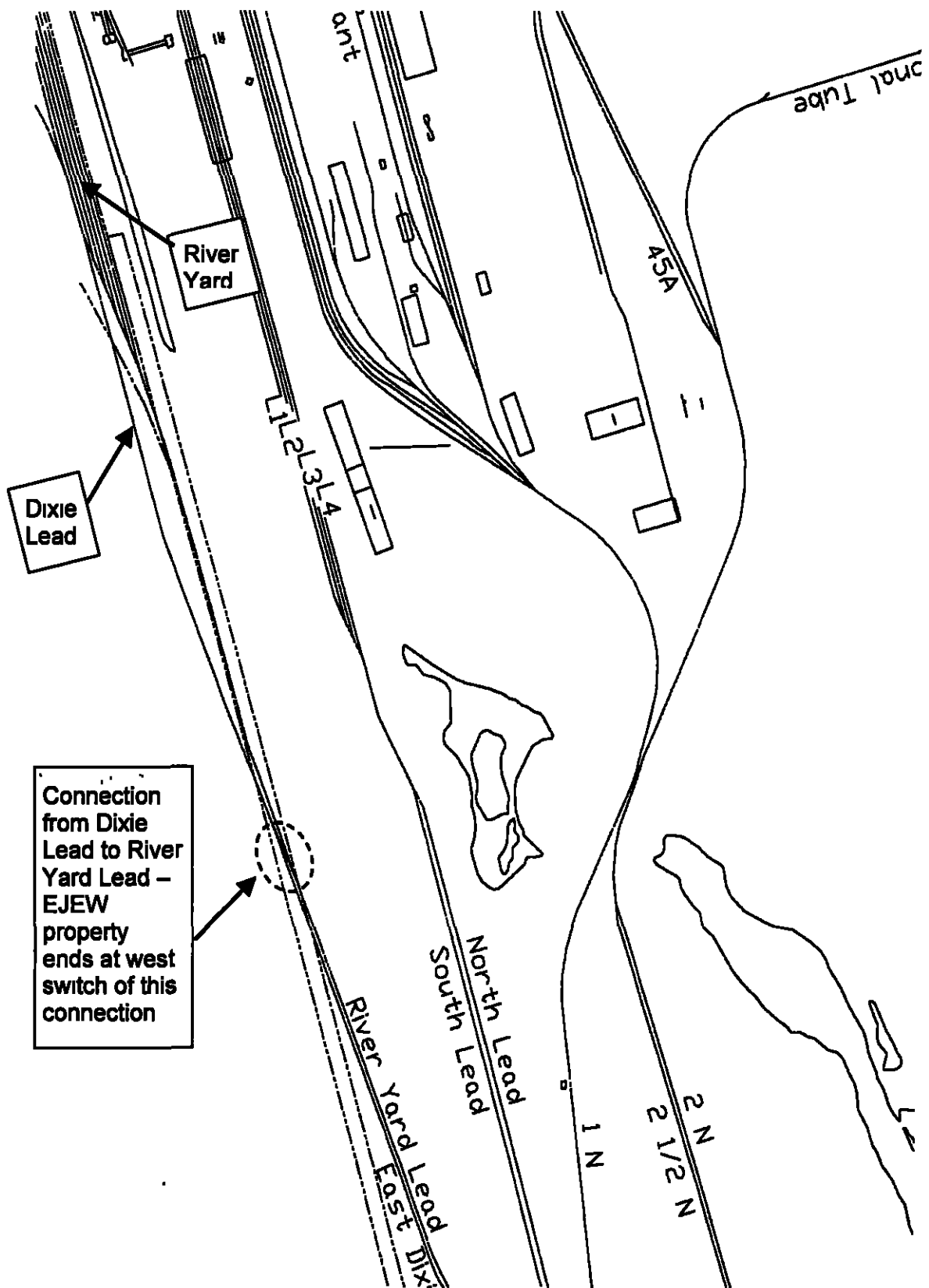


EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35087 (Sub-No. 4)

**ILLINOIS CENTRAL RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

Canadian National Railway Company ("CNR") has proposed that EJ&E West Company ("EJ&EW") grant Illinois Central Railroad Company ("IC") trackage rights between Waukegan, Illinois and Gary, Indiana. Under the terms of the draft agreement between EJ&EW and IC, IC will have the right to operate its trains, locomotives, cars, and equipment with its own crews over EJ&EW between Milepost 74.6 at Waukegan, Illinois on EJ&EW's Western Subdivision, and Milepost 45.4 at Gary Indiana, on EJ&EW's Eastern Subdivision, a distance of approximately 120 miles, in the States of Illinois and Indiana.

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of EJ&EW, for which authority has been sought in STB Finance Docket No. 35087.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Vernon A. Williams,
Secretary

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 5)

**WISCONSIN CENTRAL LTD.
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430**

**Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600**

**Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840**

Counsel for Wisconsin Central Ltd.

October 30, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 5)

**WISCONSIN CENTRAL LTD.
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Wisconsin Central Ltd. ("WC"):

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006
(202) 973-7600

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), GTW hereby files
this verified notice of exemption relating to trackage rights to be granted to GTW, a
subsidiary of Canadian National Railway Company ("CNR"), by EJ&E West Company
("EJ&EW") over EJ&EW's lines¹ between Milepost 74.6 at Waukegan, Illinois and

¹ As explained in the Railroad Control Application in STB Finance Docket No.
35087, EJ&EW is a noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company
("EJ&E") and will, it is proposed, become a rail carrier upon consummation of the

Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus trackage associated with the hump and Dixie leads located east of Buchanan Street.²

Simultaneously with this grant of trackage rights to WC, CNR intends to cause, and EJ&EW intends to grant, trackage rights (1) to Chicago, Central & Pacific Railroad Company (“CCP”) over EJ&EW’s entire line between Waukegan, Illinois and Gary, Indiana;³ (2) to Grand Trunk Western Railroad Incorporated (“GTW”) over EJ&EW’s entire line between Waukegan, Illinois and Gary, Indiana;⁴ and (3) to Illinois Central Railroad Company (“IC”) over EJ&EW’s entire line between Waukegan, Illinois and Gary, Indiana.⁵ Additionally, CCP intends to grant EJ&EW trackage rights over CCP’s line between Munger, IL and Belt Crossing, IL,⁶ and IC intends to grant EJ&EW trackage rights over IC’s line between Highlawn, IL and University Park, IL and between

transaction that is the subject of the Verified Notice of Exemption in *Elgin, Joliet & E. Ry. Co. – Corporate Family Transaction Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 1).

² WC currently has trackage rights over EJ&E between Leighton, IL (Milepost 59.3), and Munger, IL (Milepost 35.3). WC and EJ&E intend to amend their present trackage rights agreement in a separate transaction that would extend WC’s trackage rights to Eola, IL (Milepost 20.0). The transaction proposed in this Notice would extend WC’s trackage rights to the entirety of EJ&EW’s system.

³ See *Chicago, Cent. & Pac. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, Verified Notice of Exemption, STB Finance Docket No. 35087 (Sub-No. 2).

⁴ See Verified Notice of Exemption, *Grand Trunk W. R R. Inc. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 3).

⁵ See Verified Notice of Exemption, *Ill. Cent. R.R. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 4).

⁶ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Chicago, Cent. & Pac. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 6).

Joliet, IL and Lemoyne, IL.⁷

This reciprocal grant of trackage rights is intended to take effect at the time CNR and Grand Trunk Corporation (“GTC”) acquire control of EJ&EW pursuant to the application filed by CNR and GTC in STB Finance Docket No. 35087. Together, this reciprocal grant of trackage rights will give the railroad subsidiaries of CNR and GTC (collectively, “CN”) maximum operational flexibility in their use of the lines.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
(§ 1180.6(a)(1)(i))

Under the proposed transaction, EJ&EW will grant WC trackage rights over all of EJ&EW’s line, which will run between Milepost 74.6 at Waukegan, Illinois and Milepost 45.4 at Gary, Indiana, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus trackage associated with the hump and Dixie leads located east of Buchanan Street.

The business address of WC is:

Wisconsin Central Ltd.
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

The business address of EJ&EW is:

EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

Questions regarding the transaction may be addressed to the counsel listed at the

⁷ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Ill. Cent. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 7).

beginning of this notice.

PROPOSED TIME SCHEDULE
(§ 1180.6(a)(1)(ii))

CNR intends that the trackage rights that are the subject of this notice be granted pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CNR intends to have it executed by representatives of WC and EJ&EW promptly upon CNR's acquisition of control of EJ&EW, pursuant to an order of the Board approving the Application in STB Finance Docket No. 35087. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CNR's acquisition of control of EJ&EW.

PURPOSE OF THE TRANSACTION
(§ 1180.6(a)(3))

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the EJ&EW's line that it would own upon consummation of the control of EJ&EW that is proposed in the Application in STB Finance Docket No. 35087.

LIST OF STATES
(§ 1180.6(a)(5))

The following are the states in which any part of the property of each applicant carrier is situated:

WC: Illinois, Michigan, Minnesota, and Wisconsin

EJ&EW: Illinois, Indiana

MAP
(§ 1180.6(a)(6))

Attached as Exhibit 1 hereto is a railroad map of the area served by EJ&EW, showing the lines of EJ&EW and WC in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
(§ 1180.6(a)(7)(ii))

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CNR expects to cause this Agreement to be executed promptly after the acquisition of EJ&EW by CNR and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 35087.

LEVEL OF LABOR PROTECTION
(§ 1180.4(g)(1)(i))

Norfolk & Western labor protective conditions⁸ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
(§ 1180.4(g)(2)(i))

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

⁸ See *Norfolk & W. Ry. – Trackage Rights – Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. – Lease & Oper. – Calif. W. R.R.*, 360 I.C.C. 653 (1980).

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham", written over a horizontal line.

Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600

Counsel for Wisconsin Central, Ltd

October 30, 2007

VERIFICATION

I, Paul Laduc, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Wisconsin Central, Ltd.

Executed on October 22, 2007

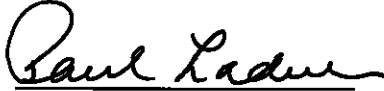
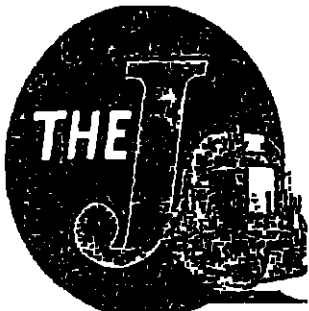

Paul Laduc

EXHIBIT 1



Elgin, Joliet and Eastern Railway Company

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

EJ&E WEST COMPANY

("EJ&EW" or "Owner")

And

WISCONSIN CENTRAL LTD.

("WCL" or "User")

Relating to WCL's Limited Trackage Rights Over EJ&EW between:

- > Waukegan, IL and Leithton, IL, and**
- > Eola, IL and Gary, IN**

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, 200__, by and between **EJ&E WEST COMPANY** (hereinafter referred to as "**EJ&EW**" or "**OWNER**") and **WISCONSIN CENTRAL LTD.** (hereinafter referred to as "**WCL**" or "**USER**").

WHEREAS, EJE and WCL entered into a Trackage Rights Agreement dated April 8, 2003, as amended which provides, among other things for WCL operation over EJE trackage between Leithton, IL, Milepost 59.3, and Munger, IL, Milepost 35.3, all pursuant to the terms and conditions more specifically set forth therein; and

WHEREAS, by separate amendment to the April 8, 2003 Trackage Rights Agreement, EJE and WCL have agreed to extend the limits of such trackage rights from Munger, IL, Milepost 59.3 to Eola, IL Milepost 20.0, and such amendment shall be in effect prior to the effective date of this Agreement, all pursuant to the terms and conditions more specifically set forth therein; and

WHEREAS, Elgin, Joliet and Eastern Railway Company ("EJE") and Grand Trunk Corporation, a Delaware corporation, ("CN") entered into a stock purchase agreement dated September 25, 2007, for the purpose of CN purchasing that portion of EJE's assets from Gary, IN to Waukegan, IL, which assets shall constitute a new company known as EJ&E West Company or EJ&EW; and

WHEREAS, EJ&EW owns and operates segments of railroad located between Leithton, IL and Waukegan, IL and between Eola, IN and Gary, IN; and

WHEREAS, WCL has requested trackage rights over EJ&EW's lines of railroad between Leithton, IL and Waukegan, IL and between Eola, IN and Gary, IN; and

WHEREAS, EJ&EW agrees to grant WCL limited overhead trackage rights for the sole movement of traffic between Leithton, IL and Waukegan, IL and between Eola, IN and Gary, IN subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows.

SECTION 1.0

GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- That portion of EJ&EW between EJ&EW's end of ownership at or near Milepost 74.6 at Waukegan, IL and EJ&EW's Milepost 59.3 at or near Leithton, IL, all on EJ&EW's Western Subdivision, a distance of approximately 15.3 miles.
- That portion of EJ&EW between Milepost 20.0 at or near Eola, IL and EJ&EW's Milepost 45.4, all on EJ&EW Eastern Subdivision, including all trackage west of the centerline of Buchanan Street in Gary, Indiana, plus the trackage associated with the hump and Dixie leads located east of Buchanan Street, all as shown on the drawing attached hereto as Exhibit B, on EJ&EW's Eastern Subdivision, a distance of approximately 65.4 miles.
- Such Subject Trackage shall include (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto,
- Such rights shall include the right to enter and exit the Subject Trackage at:
 - EJ&EW's connection with WCL at or near EJ&EW Western Subdivision Milepost 59.3 at Leithton, IL.
 - EJ&EW's connections with other railroads on EJ&EW Western Subdivision at:
 - a. Rondout, IL at or near Milepost 65.5
 - b. Spaulding, IL at or near Milepost 37.5
 - c. Munger, IL, at or near Milepost 35.3
 - d. West Chicago, IL, at or near Milepost 28.9
 - e. Eola, IL, at or near Milepost 21.5
 - f. Joliet, IL at or near Milepost 1.8
 - EJ&EW's connections with other railroads on EJ&EW Eastern Subdivision at:
 - a. Matteson, IL, at or near Milepost 21.7
 - b. Chicago Heights, IL, at or near Milepost 25.2
 - c. Griffith, IN at or near Milepost 36.2
 - d. Van Loon, IN at or near Milepost 39.8
 - e. Ivanhoe, IN at or near Milepost 41.8

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals (including those entry and exit locations defined in Section 1.0) of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ cents (\$. __) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year, and applying this percentage of increase or decrease to the current Base Charge to be escalated

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (200__) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (200__); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0

MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0

CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0

ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers,

agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee)

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim

is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0

LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both EJ&EW and WCL, then: (i) each of EJ&EW and WCL is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) EJ&EW and WCL are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both WCL and any other third party user of the Subject trackage not a party to this Agreement, then WCL's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered EJ&EW for the purpose of determining WCL's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by EJ&EW to WCL pursuant to this Agreement shall be considered as the employees of WCL while such employees are on board or getting on or off trains of WCL.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so

notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this

Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0**ABANDONMENT OF SUBJECT TRACKAGE**

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0**GENERAL PROVISIONS**

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either EJ&EW or WCL to any party other than EJ&EW's and WCL's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Wisconsin Central Ltd.
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that WCL shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

WISCONSIN CENTRL LTD.

By: _____

Its: _____

Date: _____

WITNESS

EJ&E WEST COMPANY

By: _____

Its: _____

Date: _____

Exhibit A

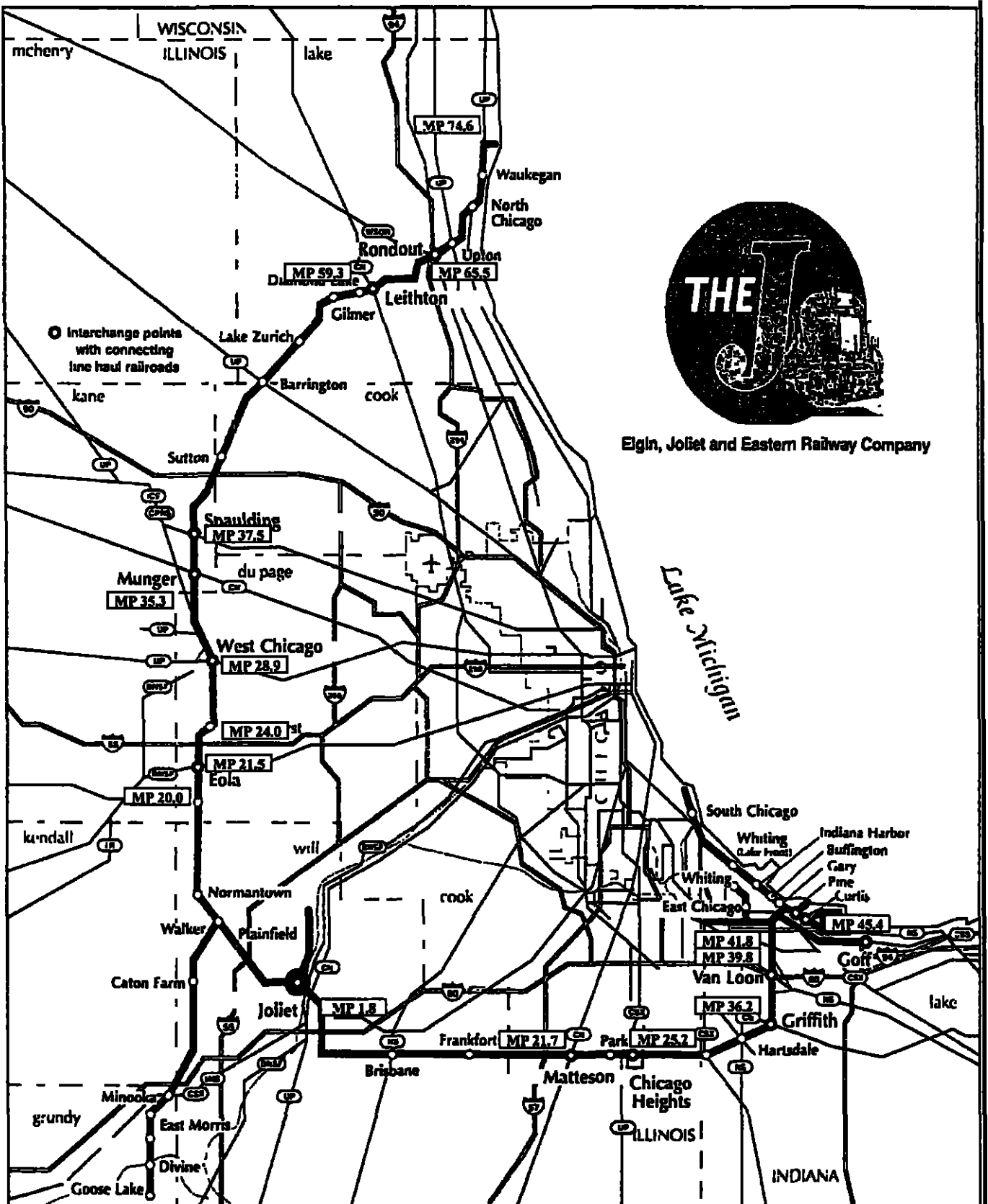


Exhibit B

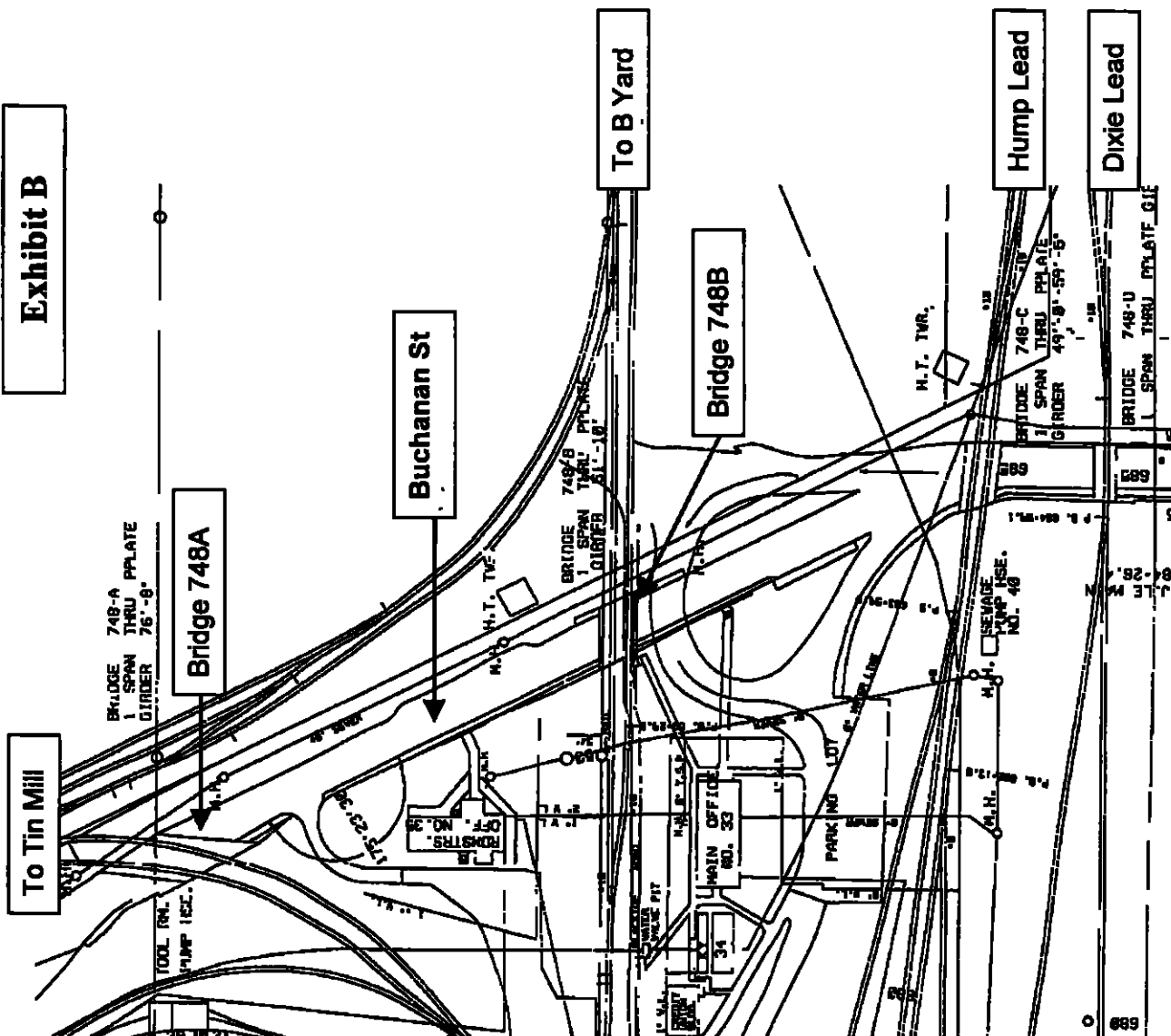


Exhibit B

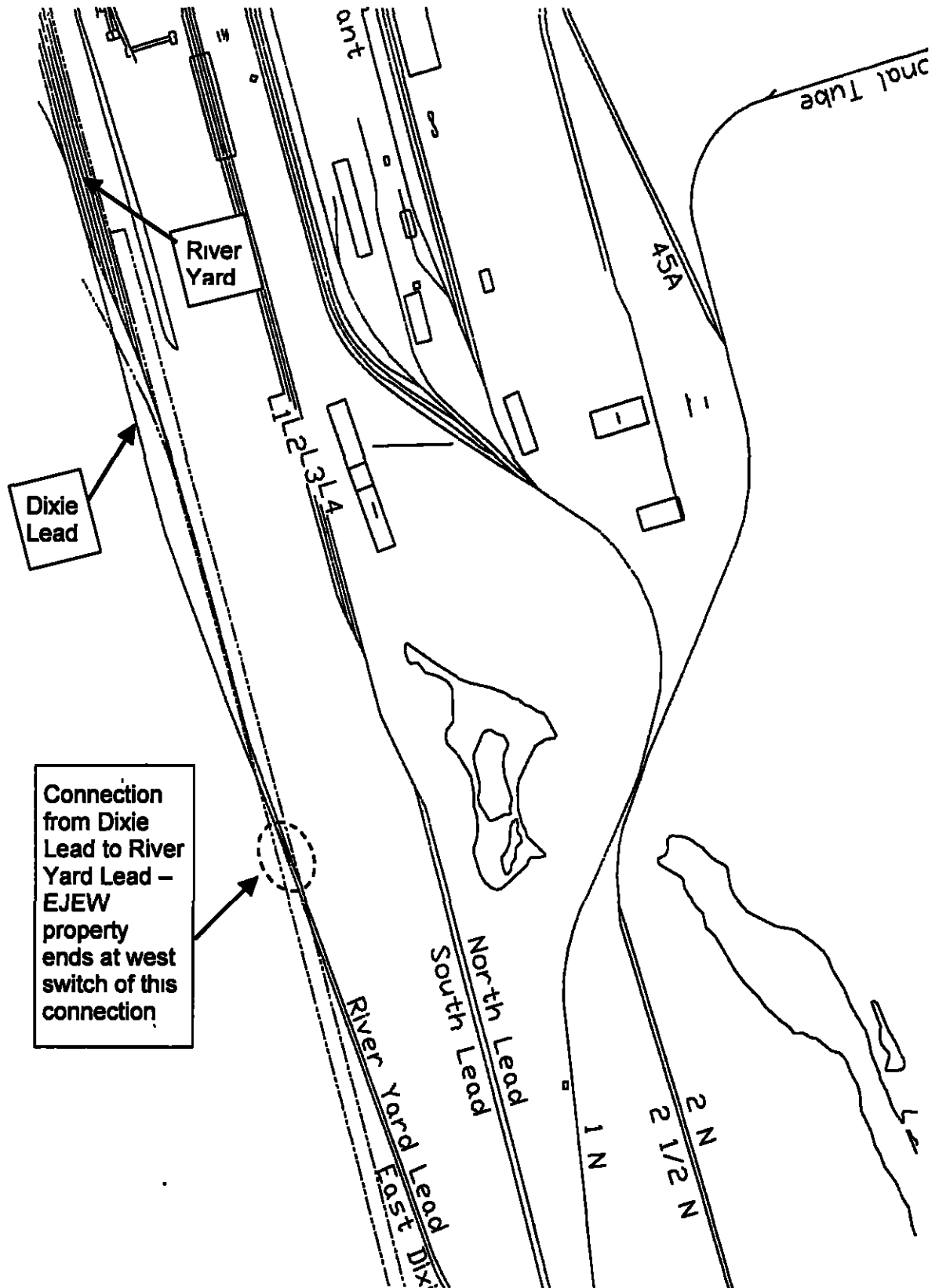


EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35087 (Sub-No. 5)

**WISCONSIN CENTRAL LTD.
– TRACKAGE RIGHTS EXEMPTION –
EJ&E WEST COMPANY**

Canadian National Railway Company ("CNR") has proposed that EJ&E West Company ("EJ&EW") grant Wisconsin Central Ltd. ("WC") trackage rights between Waukegan, Illinois and Gary, Indiana. Under the terms of the draft agreement between EJ&EW and WC, WC will have the right to operate its trains, locomotives, cars, and equipment with its own crews over EJ&EW between Milepost 74.6 at Waukegan, Illinois on EJ&EW's Western Subdivision, and Milepost 45.4 at Gary Indiana, on EJ&EW's Eastern Subdivision, a distance of approximately 120 miles, in the States of Illinois and Indiana.

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of EJ&EW, for which authority has been sought in STB Finance Docket No. 35087.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Vernon A. Williams,
Secretary

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 6)

**EJ&E WEST COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
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Counsel for Canadian National Railroad Company

October 30, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 6)

**EJ&E WEST COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Canadian National Railway Company ("CNR"):

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In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), CNR hereby files
this verified notice of exemption relating to trackage rights to be granted to EJ&E West
Company ("EJ&EW")¹ by CNR's subsidiary, Chicago, Central & Pacific Railroad

¹ As explained in the Railroad Control Application in STB Finance Docket No. 35087, EJ&EW is a noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company and will, it is proposed, become a rail carrier upon consummation of the transaction that is the subject of the Verified Notice of Exemption in *Elgin, Joliet & E. Ry. Co. – Corporate Family Transaction Exemption – EJ&E W. Co.*, STB Finance Docket No.

Company ("CCP") over CCP's lines between Milepost 35.7 at Munger, IL and Milepost 8.3 at Belt Crossing, IL.

Simultaneously with this grant of trackage rights, CNR intends to cause, and EJ&EW intends to grant trackage rights (1) to CCP over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;² (2) to Grand Trunk Western Railroad Incorporated ("GTW") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;³ (3) to Illinois Central Railroad Company ("IC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;⁴ and (4) to Wisconsin Central Ltd. ("WC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana.⁵ Additionally, IC intends to grant EJ&EW trackage rights over IC's line between Highlawn, IL and University Park, IL and between Joliet, IL and Lemoyne, IL.⁶

This reciprocal grant of trackage rights is intended to take effect at the time CNR and Grand Trunk Corporation ("GTC") acquire control of EJ&EW pursuant to the application filed by CNR and GTC in STB Finance Docket No. 35087. Together, this reciprocal grant of trackage rights will give the railroad subsidiaries of CNR and GTC (collectively, "CN") maximum operational flexibility in their use of the lines.

35087 (Sub-No. 1).

² See Verified Notice of Exemption, *Chicago, Cent & Pac. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 2).

³ See Verified Notice of Exemption, *Grand Trunk W. R.R. Inc. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 3).

⁴ See Verified Notice of Exemption, *Ill. Cent. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 4).

⁵ See Verified Notice of Exemption, *Wisc. Cent. Ltd. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 5).

⁶ See Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Ill. Cent. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 7).

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
(§ 1180.6(a)(1)(i))

Under the proposed transaction, CCP will grant EJ&EW trackage rights over CCP's lines between Milepost 35.7 at Munger, IL and Milepost 8.3 at Belt Crossing, IL.

The business address of CCP is:

Chicago, Central & Pacific Railroad Company
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

The business address of EJ&EW is:

EJ&E West Company
600 Grant Street, 18th Floor
Pittsburgh, PA 15219
(412) 433-4046

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
(§ 1180.6(a)(1)(ii))

CNR intends that the trackage rights that are the subject of this notice be granted pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CNR intends to have it executed by representatives of CCP and EJ&EW promptly upon CNR's acquisition of control of EJ&EW, pursuant to an order of the Board approving the Application in STB Finance Docket No. 35087. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CNR's acquisition of control of EJ&EW.

PURPOSE OF THE TRANSACTION
(§ 1180.6(a)(3))

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the EJ&EW's line that it would own upon consummation of the control of EJ&EW that is proposed in the Application in STB Finance Docket No. 35087.

LIST OF STATES
(§ 1180.6(a)(5))

The following are the states in which any part of the property of each applicant carrier will be situated at the time the proposed trackage rights are consummated:

CCP: Illinois, Iowa, Nebraska

EJ&EW: Illinois, Indiana

MAP
(§ 1180.6(a)(6))

Attached as Exhibit 1 hereto is a railroad map of the area to be served by EJ&EW, showing the lines of EJ&EW and IC in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
(§ 1180.6(a)(7)(ii))

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CNR expects to cause this Agreement to be executed promptly after the acquisition of EJ&EW by CNR and GTC, pursuant to a Board order approving the Application in STB Finance

Docket No. 35087.

**LEVEL OF LABOR PROTECTION
(§ 1180.4(g)(1)(i))**

Norfolk & Western labor protective conditions⁷ are applicable to the trackage rights which are the subject of this notice.

**CAPTION SUMMARY
(§ 1180.4(g)(2)(i))**

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

⁷ See *Norfolk & W. Ry. – Trackage Rights – Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry. – Lease & Oper. – Calif. W. R.R.*, 360 I.C.C. 653 (1980).

Respectfully submitted,



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Counsel for Canadian National Railway Company

October 30, 2007

VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Canadian National Railway Company.

Executed on October 22, 2007


Paul Ladue

EXHIBIT 1

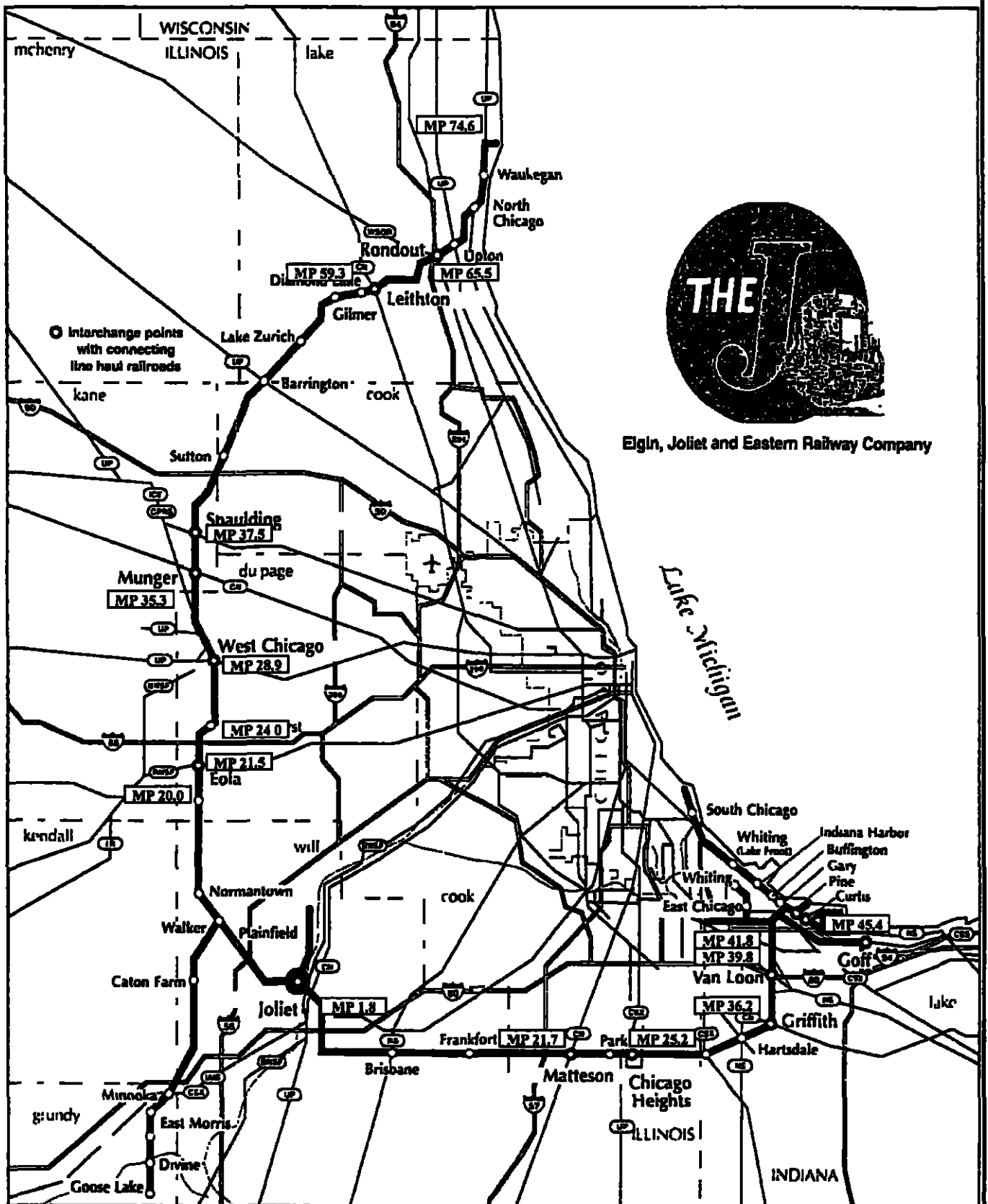


EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY

("CCP" or "Owner")

And

EJ&E WEST COMPANY

("EJ&EW" or "User")

Relating to EJ&EW's Limited Trackage Rights Over

CCP between Munger, IL and Belt Crossing, IL

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, 200__, by and between **CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY** (hereinafter referred to as "**CCP**" or "**Owner**") and **EJ&E WEST COMPANY** (hereinafter referred to as "**EJ&EW**" or "**User**").

WHEREAS, CCP owns and operates lines of railroad located between CCP's connection with EJ&EW at Munger and Belt Crossing, all in the State of Illinois; and

WHEREAS, Elgin, Joliet and Eastern Railway Company ("**EJE**") and Grand Trunk Corporation, a Delaware corporation, ("**CN**") entered into a stock purchase agreement dated September 25, 2007, for the purpose of CN purchasing that portion of EJE's assets from Gary, IN to Waukegan, IL, which assets shall constitute a new company known as EJ&E West Company or EJ&EW; and

WHEREAS, EJ&EW has requested trackage rights over CCP's lines of railroad between Munger and Belt Crossing, all in the State of Illinois; and

WHEREAS, CCP agrees to grant EJ&EW limited overhead trackage rights for the sole movement of traffic between Munger and Belt Crossing, all in the State of Illinois, subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0 GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "**Trackage Rights**") over the following segments of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "**A**" (hereinafter referred to as the "**Subject Trackage**");

- That portion of CCP's Freeport Subdivision between CCP's connection with EJ&EW at CCP's Milepost 35.7 in Munger and CCP's Milepost 8.3 at Belt Crossing, said tracks shown in green on the attachment marked Exhibit "**A**" of this Agreement, a distance of approximately 27.4 miles, all in the State of Illinois.
- Such Subject Trackage shall include (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto.

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ cents (\$. __) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

(i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior

year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (200__) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (200__); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

$$B/A \times C = \text{Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)}$$

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0

MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0

CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

SECTION 8.0

ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

SECTION 9.0 MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0 LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the

use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both CCP and EJ&EW, then: (i) each of CCP and EJ&EW is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) CCP and EJ&EW are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both EJ&EW and any other third party user of the Subject trackage not a party to this Agreement, then EJ&EW's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered CCP for the purpose of determining EJ&EW's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by CCP to EJ&EW pursuant to this Agreement shall be considered as the employees of EJ&EW while such employees are on board or getting on or off trains of EJ&EW.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18 5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains,

locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or

other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CCP or EJ&EW to any party other than CCP's and EJ&EW's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Chicago, Central & Pacific Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that EJ&EW shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

**CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY**

By: _____

Its: _____

Date: _____

WITNESS

EJ&E WEST COMPANY

By: _____

Its: _____

Date: _____

- - -

[illegible]

EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35087 (Sub-No. 6)

**EJ&E WEST COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY**

Canadian National Railway Company ("CNR") has proposed that Chicago, Central & Pacific Railroad Company ("CCP") grant EJ&E West Company ("EJ&EW") trackage rights over CCP's line between Munger, IL and Belt Crossing, IL. Under the terms of the draft agreement between CCP and EJ&EW, EJ&EW will have the right to operate its trains, locomotives, cars, and equipment with its own crews over CCP's lines between Milepost 35.7 at Munger, IL and Milepost 8.3 at Belt Crossing, IL, a distance of approximately 27.4 miles, all in the State of Illinois

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of EJ&EW, for which authority has been sought in STB Finance Docket No. 35087.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Vernon A. Williams,
Secretary

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 7)

**EJ&E WEST COMPANY
– TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430**

**Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600**

**Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840**

Counsel for Canadian National Railroad Company

October 30, 2007

-
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087 (Sub-No. 7)

**EJ&E WEST COMPANY
– TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Correspondence with respect to this notice may be addressed to the following
counsel for Canadian National Railway Company (“CNR”):

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006
(202) 973-7600

In accordance with 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), CNR hereby files
this verified notice of exemption relating to trackage rights to be granted to EJ&E West
Company (“EJ&EW”)¹ by CNR’s subsidiary, Illinois Central Railroad Company (“IC”)

¹ As explained in the Railroad Control Application in STB Finance Docket No. 35087, EJ&EW is a noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company and will, it is proposed, become a rail carrier upon consummation of the transaction that is the subject of the Verified Notice of Exemption in *Elgin, Joliet & E. Ry. Co. – Corporate Family Transaction Exemption – EJ&E W. Co.*, STB Finance Docket No.

over IC's lines between Milepost 17.9 at Highlawn, IL and Milepost 31.4 at University Park and between Milepost 36.7 at Joliet, IL and Milepost 7.9 at Lemoyne, IL.

Simultaneously with this grant of trackage rights, CN intends to cause EJ&EW to grant trackage rights (1) to Chicago, Central & Pacific Railroad Company over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;² (2) to Grand Trunk Western Railroad Incorporated ("GTW") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;³ (3) to Illinois Central Railroad Company ("IC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana;⁴ and (4) to Wisconsin Central Ltd. ("WC") over EJ&EW's entire line between Waukegan, Illinois and Gary, Indiana.⁵ Additionally, CCP intends to grant EJ&EW trackage rights over CCP's line between Munger, IL and Belt Crossing, IL.⁶

This reciprocal grant of trackage rights is intended to take effect at the time CNR and Grand Trunk Corporation ("GTC") acquire control of EJ&EW pursuant to the application filed by CNR and GTC in STB Finance Docket No. 35087. Together, this reciprocal grant of trackage rights will give the railroad subsidiaries of CNR and GTC

35087 (Sub-No. 1),

² See Verified Notice of Exemption, *Chicago, Cent. & Pac. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 2).

³ See Verified Notice of Exemption, *Grand Trunk W. R.R. Inc. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 3).

⁴ See Verified Notice of Exemption, *Ill. Cent. R.R. Co. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 4).

⁵ See Verified Notice of Exemption, *Wisc. Cent. Ltd. – Trackage Rights Exemption – EJ&E W. Co.*, STB Finance Docket No. 35087 (Sub-No. 5).

⁶ See, Verified Notice of Exemption, *EJ&E W. Co. – Trackage Rights Exemption – Chicago, Cent. & Pac. R.R. Co.*, STB Finance Docket No. 35087 (Sub-No. 6).

(collectively, "CN") maximum operational flexibility in their use of the lines.

As required by 49 C.F.R. § 1180.4(g), the following information is provided:

SUMMARY OF TRANSACTION
(§ 1180.6(a)(1)(i))

Under the proposed transaction, IC will grant EJ&EW trackage rights over IC's line between Milepost 17.9 at Highlawn, IL and Milepost 31.4 at University Park and between Milepost 36.7 at Joliet, IL and Milepost 7.9 at Lemoyne, IL.

The business address of IC is:

Illinois Central Railroad Company
935 de La Gauchetière Street West
Montréal, QC H3B 2M9
(514) 399-5430

The business address of EJ&EW is:

EJ&E West Company
1141 Maple Road
Joliet, IL 60432
(815) 740-6932

Questions regarding the transaction may be addressed to the counsel listed at the beginning of this notice.

PROPOSED TIME SCHEDULE
(§ 1180.6(a)(1)(ii))

CNR intends that the trackage rights that are the subject of this notice be granted pursuant to the Trackage Rights Agreement attached hereto as Exhibit 2. That Agreement has not yet been executed, but CNR intends to have it executed by representatives of IC and EJ&EW promptly upon CNR's acquisition of control of EJ&EW, pursuant to an order of the Board approving the Application in STB Finance

Docket No. 35087. Under the draft Agreement, the trackage rights which are the subject of this notice shall be effective upon CNR's acquisition of control of EJ&EW.

PURPOSE OF THE TRANSACTION
(§ 1180.6(a)(3))

The purpose of the trackage rights that are the subject of this notice is to give CN maximum flexibility in operating the EJ&EW's line that it would own upon consummation of the control of EJ&EW that is proposed in the Application in STB Finance Docket No. 35087.

LIST OF STATES
(§ 1180.6(a)(5))

The following are the states in which any part of the property of each applicant carrier will be situated at the time the proposed trackage rights are consummated:

IC: Alabama, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee

EJ&EW: Illinois, Indiana

MAP
(§ 1180.6(a)(6))

Attached as Exhibit 1 hereto is a railroad map of the area to be served by EJ&EW, showing the lines of EJ&EW and IC in their true relations to one another, short line connections, other rail lines in the territory, and the principal geographic points in the regions traversed.

AGREEMENT
(§ 1180.6(a)(7)(ii))

The draft Trackage Rights Agreement is attached hereto as Exhibit 2. CNR

expects to cause this Agreement to be executed promptly after the acquisition of EJ&EW by CNR and GTC, pursuant to a Board order approving the Application in STB Finance Docket No. 35087.

LEVEL OF LABOR PROTECTION
(§ 1180.4(g)(1)(i))

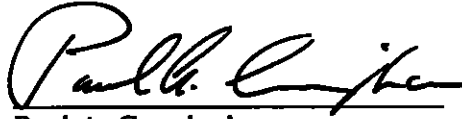
Norfolk & Western labor protective conditions⁷ are applicable to the trackage rights which are the subject of this notice.

CAPTION SUMMARY
(§ 1180.4(g)(2)(i))

In accordance with the Board's rules, a proposed caption summary is submitted as Exhibit 3 hereto.

⁷ See *Norfolk & W. Ry. – Trackage Rights – Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified sub nom. *Mendocino Coast Ry – Lease & Oper. – Calif. W. R.R.*, 360 I.C.C. 653 (1980).

Respectfully submitted,



Paul A. Cunningham
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600

Sean Finn
CANADIAN NATIONAL RAILWAY
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P.O. Box 8100
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(514) 399-5430

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

Counsel for Canadian National Railway Company

October 30, 2007

VERIFICATION

I, Paul Ladue, verify under penalty of perjury under the laws of the United States that information contained in the foregoing Notice of Exemption is true and correct. Further, I certify that I am qualified and authorized to provide this verification on behalf of Canadian National Railway Company.

Executed on October 22, 2007


Paul Ladue

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

Agreement No. _____

between

ILLINOIS CENTRAL RAILROAD COMPANY

("IC" or "Owner")

And

EJ&E WEST COMPANY

("EJ&EW" or "User")

Relating to EJ&EW's Limited Trackage Rights Over IC between:

- Stuenkel Road in University Park, IL and Highlawn, IL**
- IC's connection with Union Pacific Railroad Company ("UP") at**

Joliet, IL and Lemoyne, IL

AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____, 200____, by and between **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "**IC**" or "**Owner**") and **EJ&E WEST COMPANY** (hereinafter referred to as "**EJ&EW**" or "**User**").

WHEREAS, IC owns and operates lines of railroad located between Stuenkel Road in University Park and Highlawn and between IC's connection with UP in Joliet and Lemoyne, all in the State of Illinois; and

WHEREAS, Elgin, Joliet and Eastern Railway Company ("**EJE**") and Grand Trunk Corporation, a Delaware corporation, ("**CN**") entered into a stock purchase agreement dated September 25, 2007, for the purpose of CN purchasing that portion of EJE's assets from Gary, IN to Waukegan, IL, which assets shall constitute a new company known as EJ&E West Company or EJ&EW; and

WHEREAS, EJ&EW has requested trackage rights over IC's lines of railroad between Stuenkel Road in University Park and Highlawn and between IC's connection with UP in Joliet and Lemoyne, all in the State of Illinois; and

WHEREAS, IC agrees to grant EJ&EW limited overhead trackage rights for the sole movement of traffic between Stuenkel Road in University Park and Highlawn and between IC's connection with UP in Joliet and Lemoyne, all in the State of Illinois, subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.0 GRANT OF TRACAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- That portion of IC's Chicago Subdivision between IC's Milepost 17.9 at Highlawn and IC's Milepost 31.4 (Stuenkel Road) at University Park, said tracks shown in green on the attachment marked Exhibit "A" of this Agreement, a distance of approximately 13.5 miles, all in the State of Illinois.
 - Including the right to enter and exit the Subject Trackage at EJ&EW's connection with IC at or near IC's Milepost 28.5 at Matteson, IL, designated on Exhibit A.
- That portion of IC's Joliet Subdivision between IC's connection with UP at IC's Milepost 36.7 (Jackson St) in Joliet and IC's Milepost 7.9 at Lemoyne, said tracks shown in blue on the attachment marked Exhibit "A" of this Agreement, a distance of approximately 28.8 miles, all in the State of Illinois.

- Such Subject Trackage shall include (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto.

SECTION 2.0 USE OF SUBJECT TRACKAGE

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0 RESTRICTION ON USE

3.1 The trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 4.0 COMPENSATION

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be _____ cents (\$.) per car mile (hereinafter referred to as the "Base Charge")

4.2 Thereafter, User will pay Owner a sum computed by multiplying: (i) the Base Charge, as may be revised in accordance with Section 4.5, by (ii) the number of cars (loaded or empty), locomotive and caboose units moved by User with its own crews and power over the Joint Trackage by (iii) the miles of Joint Trackage used. For purposes of this Agreement, each locomotive unit, each caboose, and each platform of an articulated car shall be counted as one car.

4.3 With respect to articulate units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

4.4 User will furnish to Owner, in care of Manager Contract Compliance, or their designates, at the end of each month, a statement of the number of loaded and empty cars operated

over the Joint Trackage during the month. Based on this statement, Owner will render to User a bill, computed in accordance with the provisions of this Section 4, for User's use of the Joint Trackage.

4.5 The Base Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

- (i) The Base Charge set forth in Section 4.1 of this Agreement shall be revised effective July 1 of each year, beginning July 1, _____ to compensate for the prior year increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" index for the East District shall be used.

The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

- (ii) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the calendar year (200__) prior to the most recently completed calendar year; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for the most recently completed calendar year (200__); and "C" to be the current Base Charge to be escalated; the revised Base Charge would be determined by the following formula:

B/A x C = Revised Base Charge, Rounded to Nearest Whole Cent (5 Mills or More Rounds to Next Cent)

- (iii) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 5.0 PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

SECTION 6.0 MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, *except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.*

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage

SECTION 8.0

ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

SECTION 9.0

MANAGEMENT AND OPERATIONS

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment

which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to

notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 12.0

LIABILITY

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of one of the parties to this Agreement, then that using party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of both IC and EJ&EW, then: (i) each of IC and EJ&EW is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) IC and EJ&EW are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between or among them as to the cause of the Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both EJ&EW and any other third party user of the Subject trackage not a party to this Agreement, then EJ&EW's responsibility for the Loss shall be apportioned in the manner specified in Subsection (b) with the other third party user being considered IC for the purpose of determining EJ&EW's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to any party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.
- (e) In every case of death or injury suffered by an employee of any party to this Agreement, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by IC to EJ&EW pursuant to this Agreement shall be considered as the employees of EJ&EW while such employees are on board or getting on or off trains of EJ&EW.
- (g) If any suit or action shall be brought against any party for damages which under the provisions of the Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (h) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (i) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.
- (j) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted,-- and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and

employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each party shall assume and hold the other party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

16.2 Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 17.0 ABANDONMENT OF SUBJECT TRACKAGE

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User

not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or

appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either IC or EJ&EW to any party other than IC's and EJ&EW's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage (which date is referred to herein as the "Commencement Date"). The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for a period of _____ years from the Commencement Date, and shall continue in full force and effect for additional _____ year terms, provided, however, that EJ&EW shall have the right to terminate this Agreement upon giving sixty (60) days' advance written notice to the Owner.

21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

21.4 Upon termination or non-renewal of this Agreement, or for any other reason, User shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes Owner to file with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse Owner for all costs incurred.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS

ILLINOIS CENTRAL RAILROAD COMPANY

By: _____

Its: _____

Date: _____

WITNESS

EJ&E WEST COMPANY

By: _____

Its: _____

Date: _____

EXHIBIT A

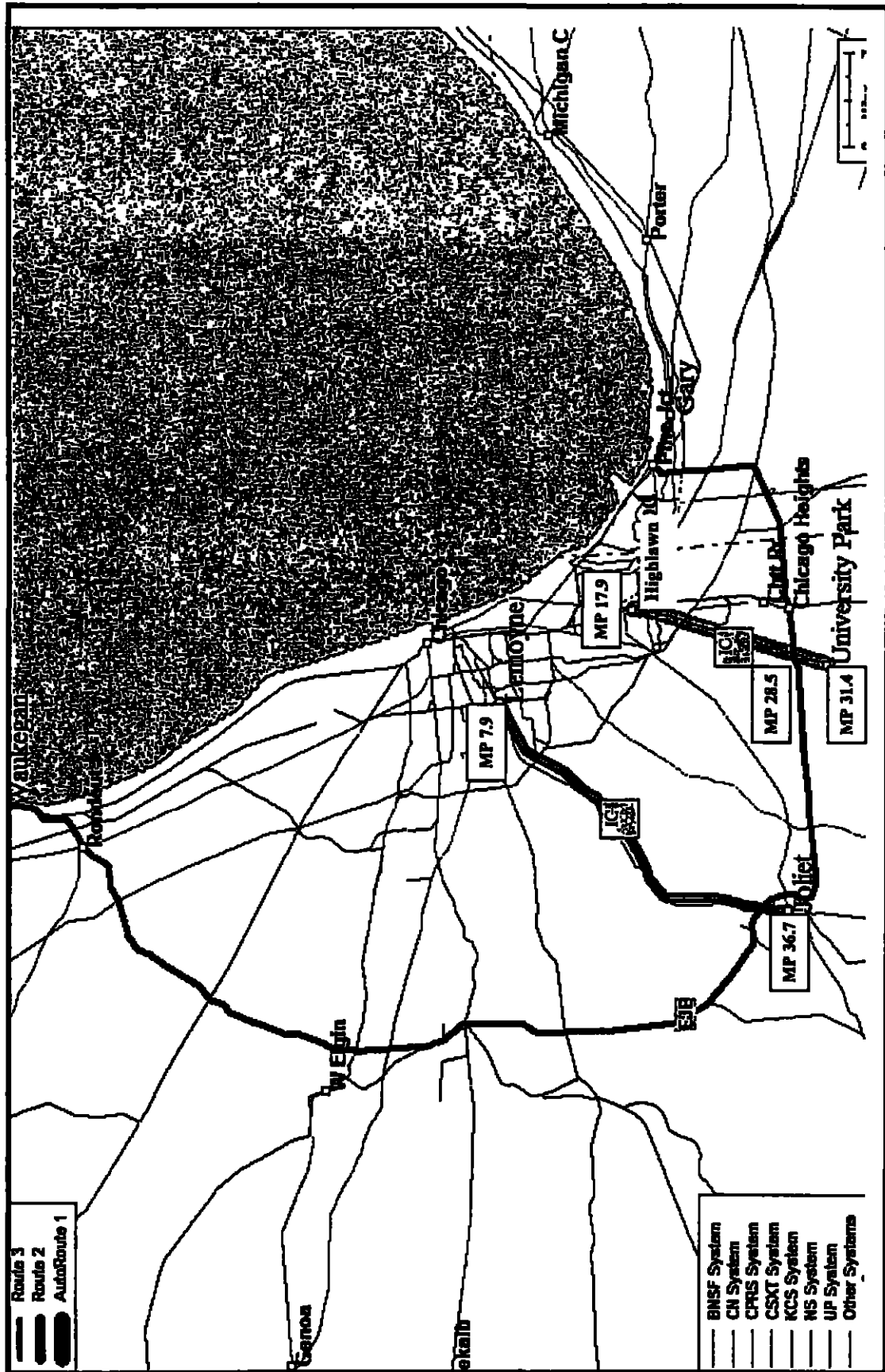


EXHIBIT 3

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35087 (Sub-No. 7)

**EJ&E WEST COMPANY
– TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

Canadian National Railway Company ("CNR") has proposed that Illinois Central Railroad Company ("IC") grant EJ&E West Company ("EJ&EW") trackage rights over IC's line between Highlawn, IL and University Park, IL and between Joliet, IL and Lemoyne, IL. Under the terms of the draft agreement between IC and EJ&EW, EJ&EW will have the right to operate its trains, locomotives, cars, and equipment with its own crews over IC between Milepost 17.9 at Highlawn, IL and Milepost 31.4 at University Park, a distance of approximately 13.5 miles, all in the State of Illinois, and between Milepost 36.7 at Joliet, IL and Milepost 7.9 at Lemoyne, IL, a distance of approximately 28.8 miles, all in the State of Illinois.

The trackage rights will be effective upon the acquisition by Canadian National Railway Company and Grand Trunk Corporation of control of EJ&EW, for which authority has been sought in STB Finance Docket No. 35087.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

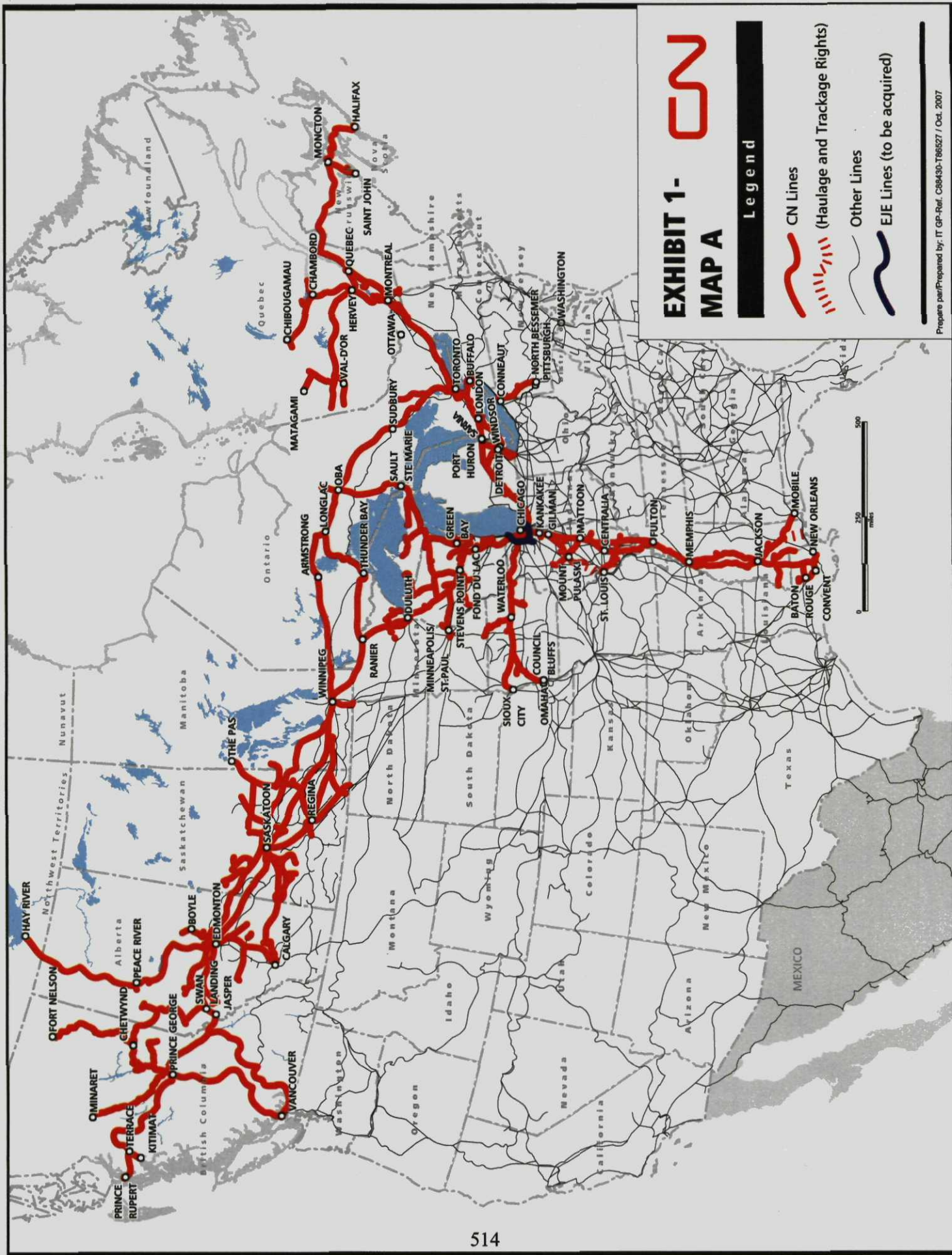
Dated:

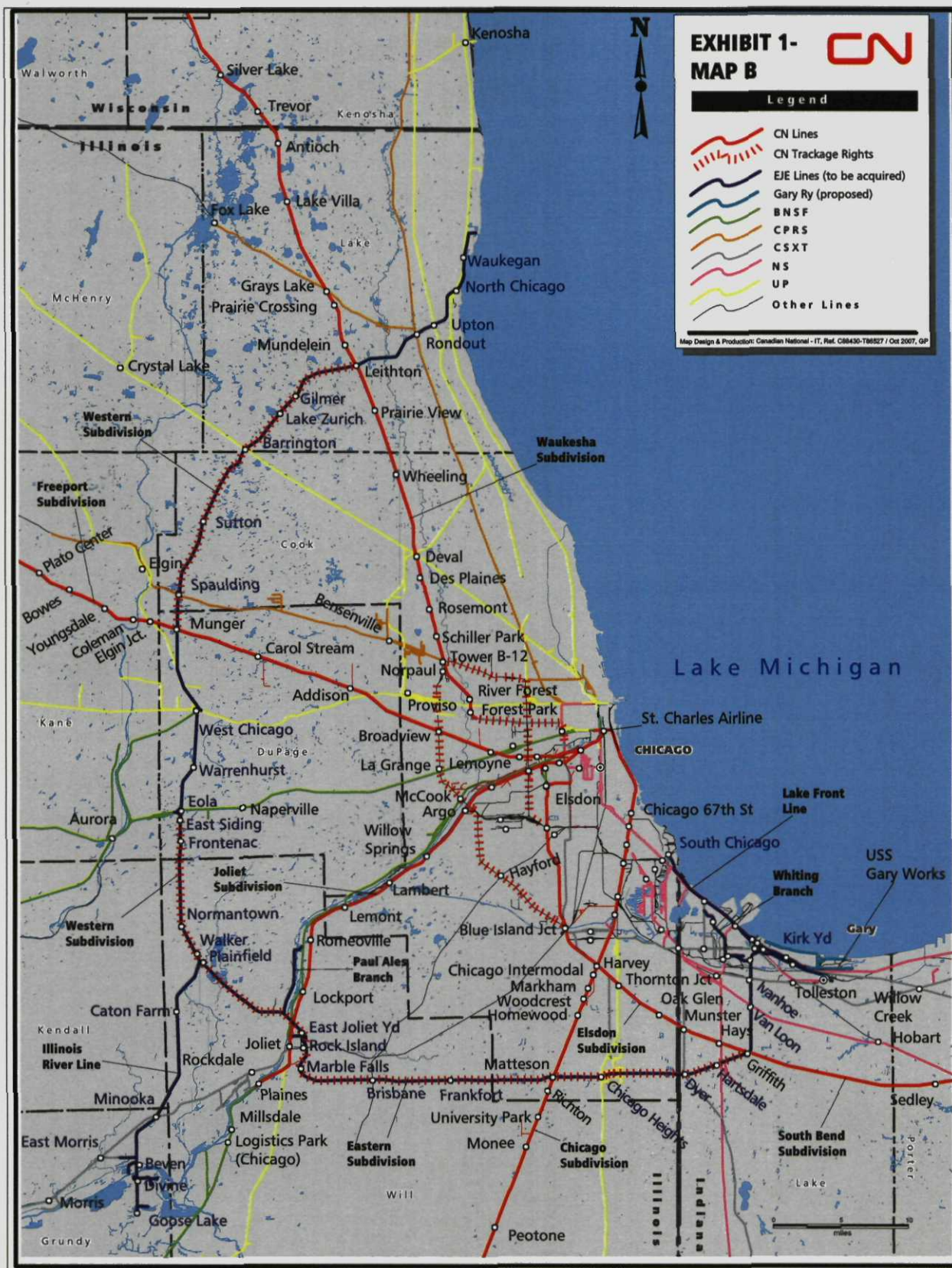
By the Board.

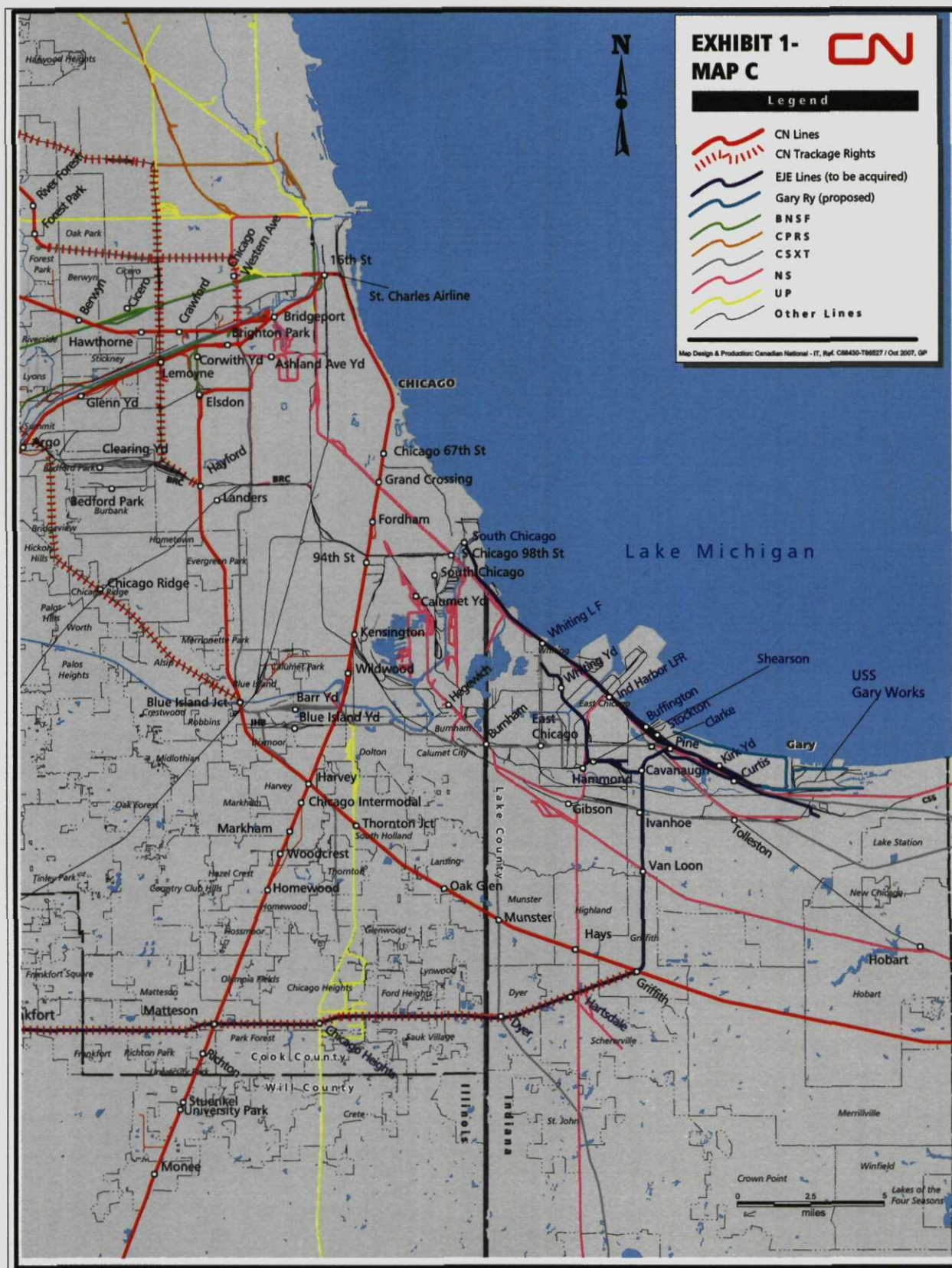
**Vernon A. Williams,
Secretary**

**APPENDIX C
COLOR FIGURES
(1104.2(d))**

In accordance with 49 C.F.R. § 1104.2(d), and in order to facilitate automated processing of color pages, CN did not insert color pages among pages containing text, but instead attaches them here as Appendix C. The color figures in Appendix C reference the page number of the Application where their black-and-white analog may be found.







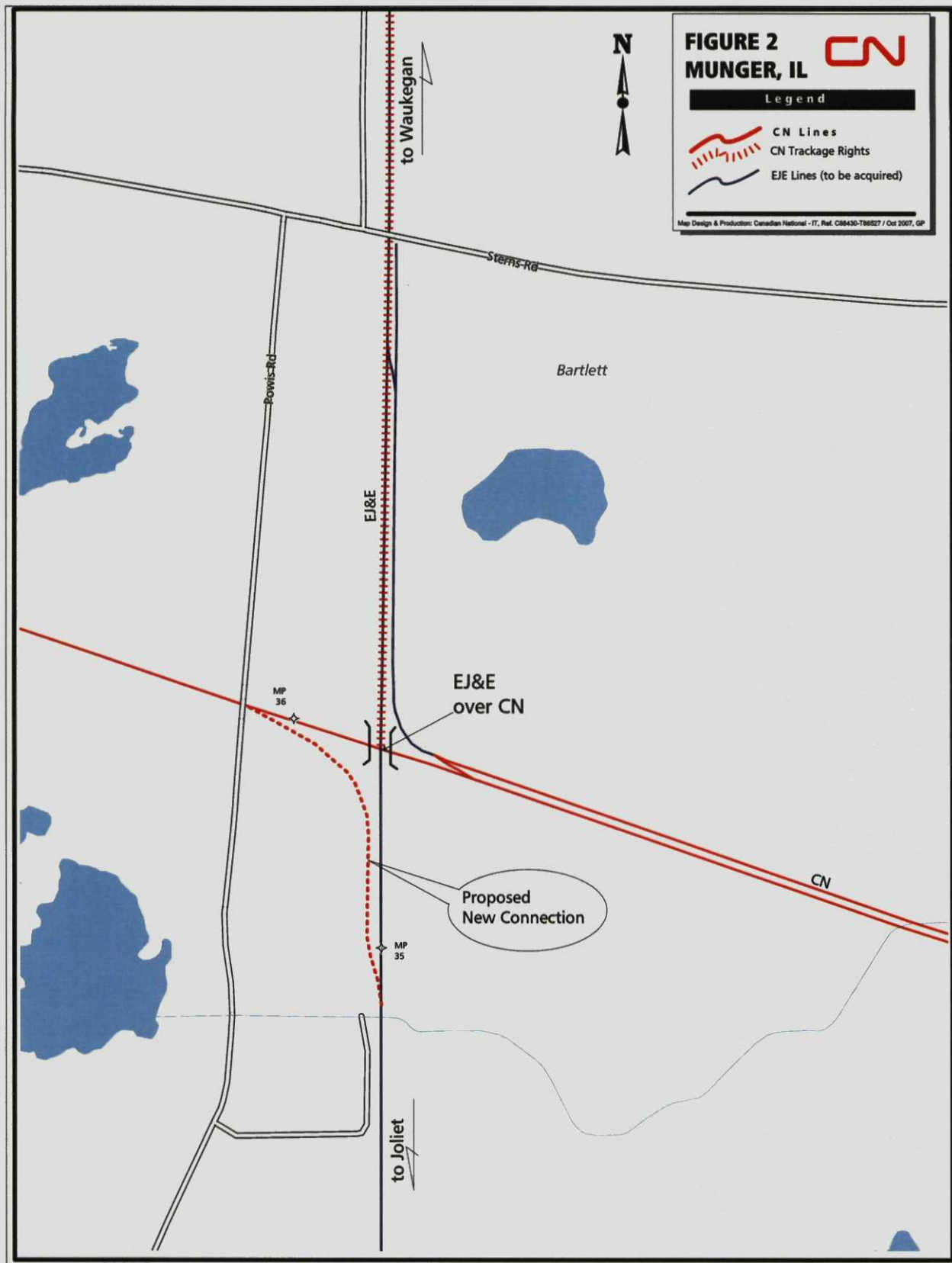


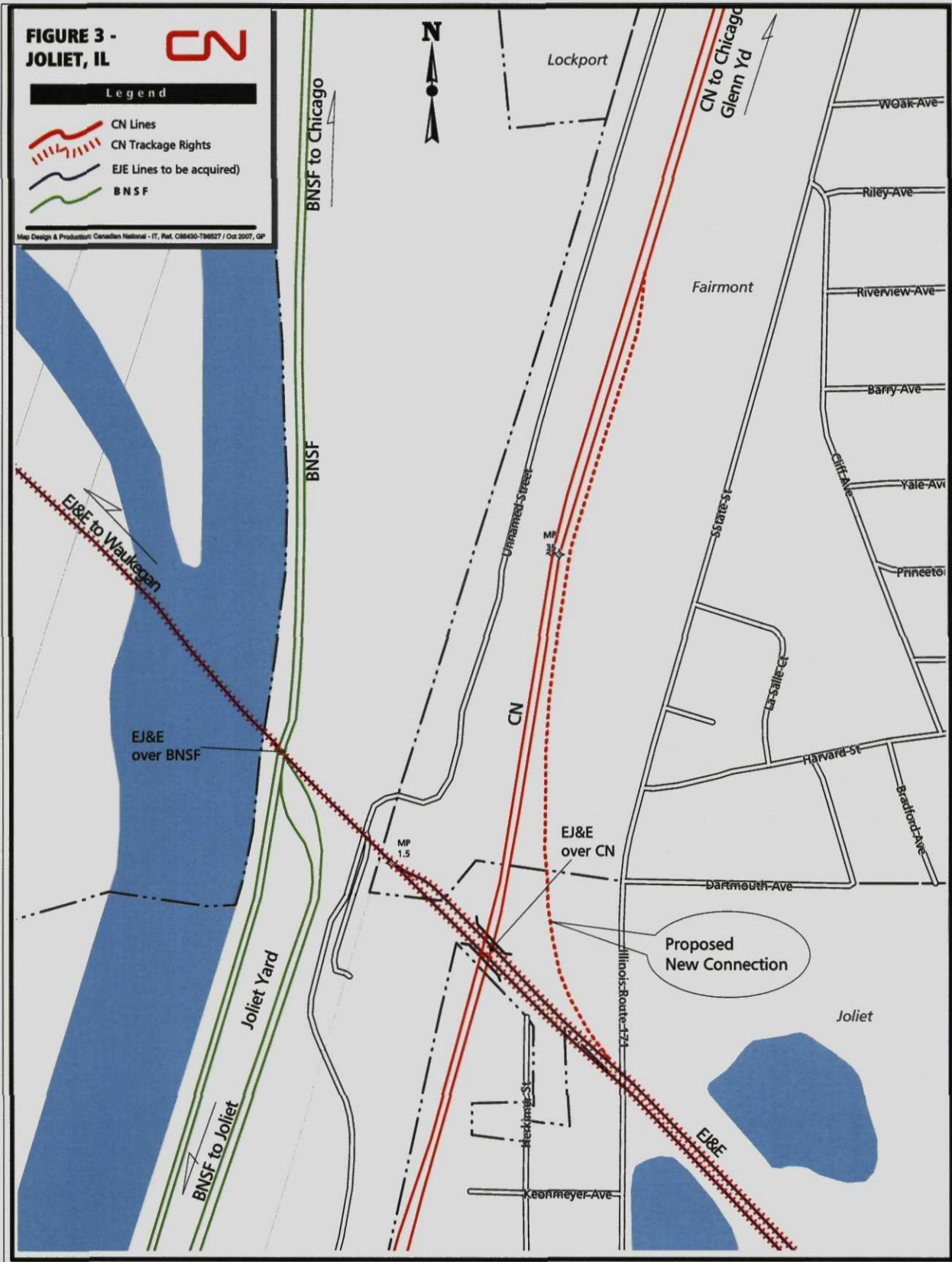
**FIGURE 3 -
JOLIET, IL**

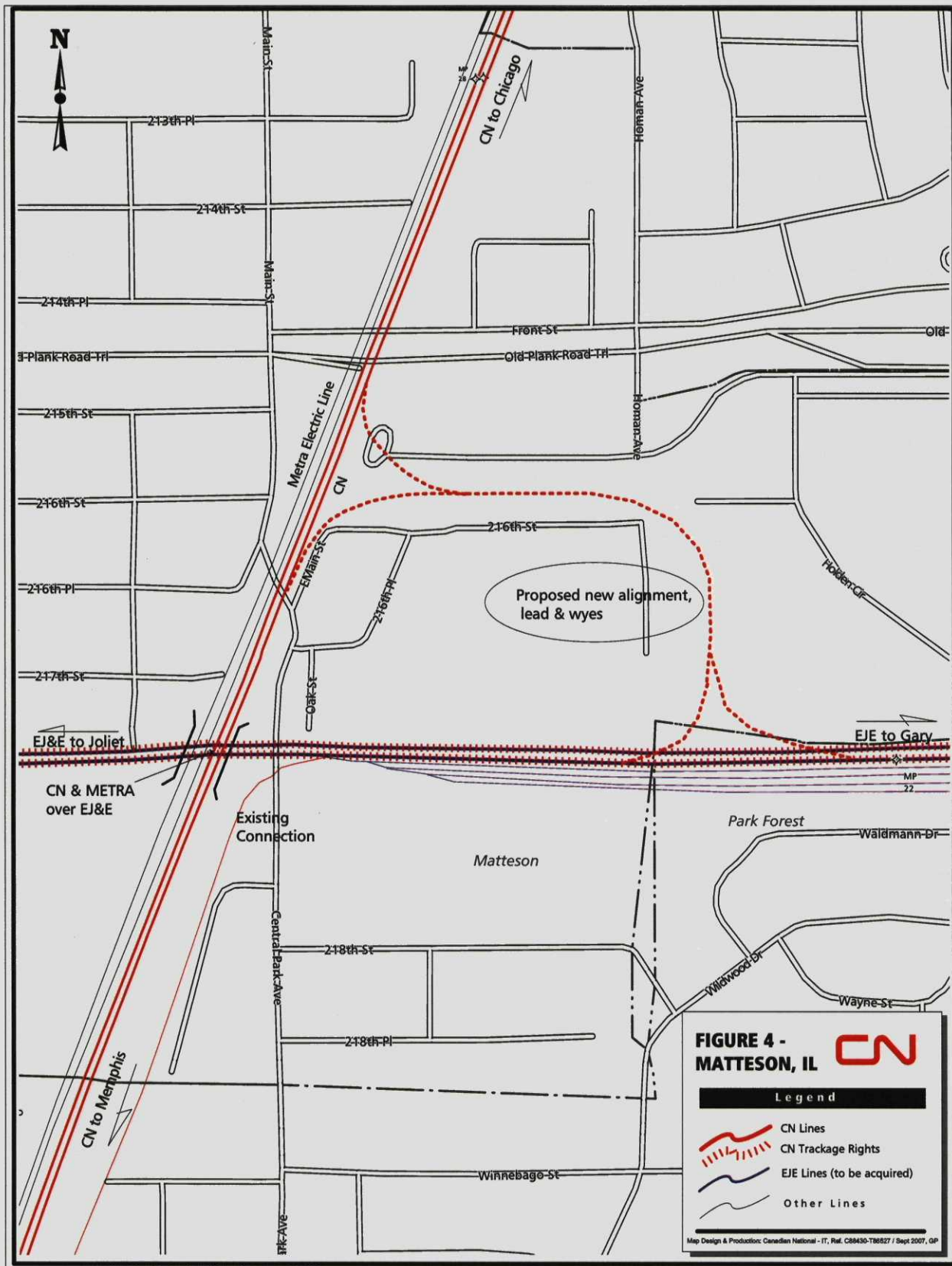


Legend

- CN Lines
- CN Trackage Rights
- EJE Lines to be acquired)
- BNSF

Map Design & Production: Canadian National - IT, Ref. CBN430-T88027 / Oct 2007, GP





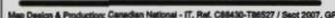


**FIGURE 6 -
IVANHOE, IL**



Legend

- CN Lines
- CN Trackage Rights
- EJE Lines (to be acquired)
- CSXT
- Other Lines

Map Design & Production: Canadian National - IT, Ref. C88430-T86527 / Oct 2007, GP

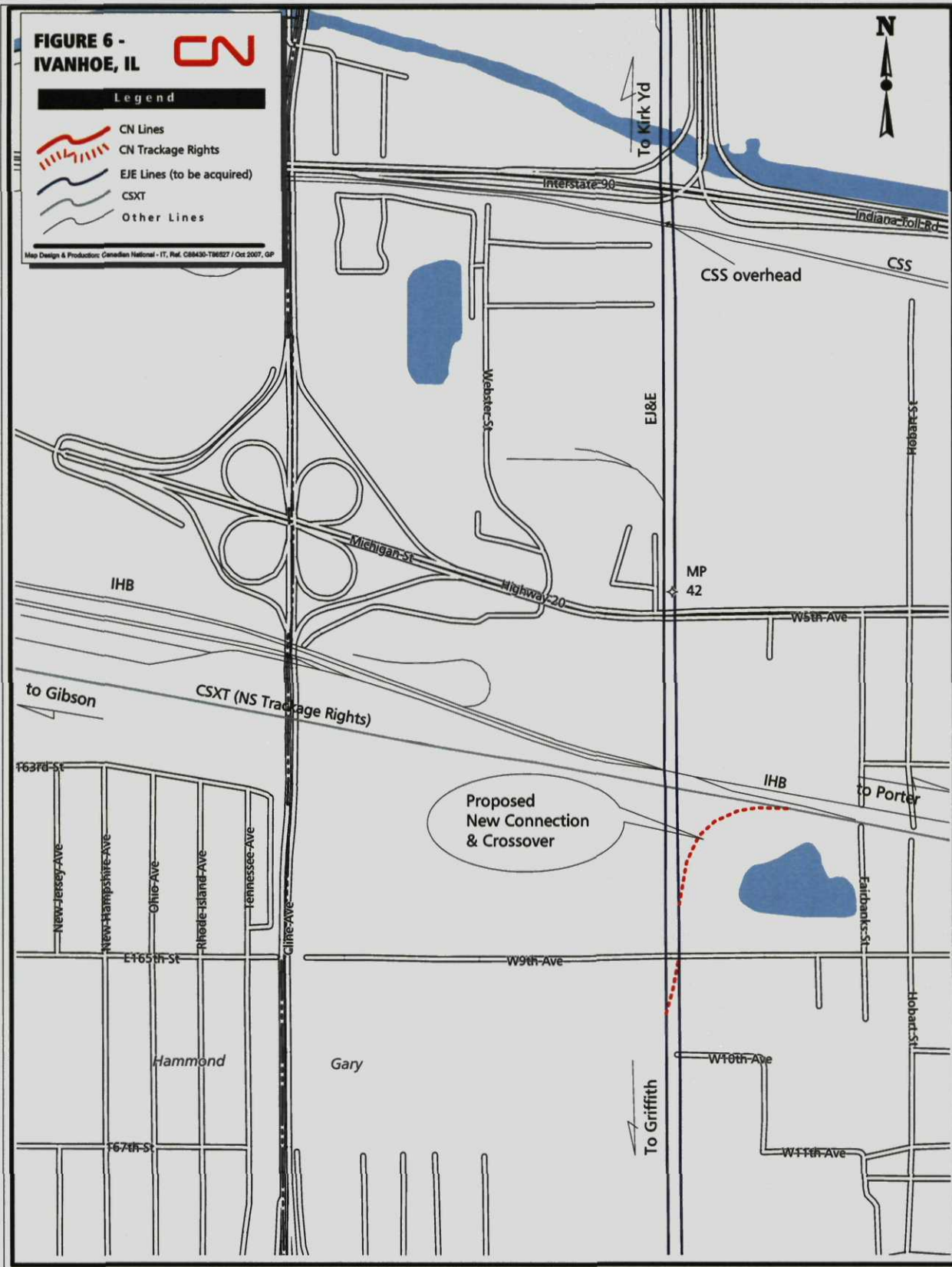


**FIGURE 7-
KIRK YARD, IN**



Legend

- CN Lines
- CN Trackage Rights
- EJE Lines (to be acquired)
- CSXT
- NS

Map Design & Production: Canadian National - IT, Ref. C88430-T88527 / Sept 2007, GP

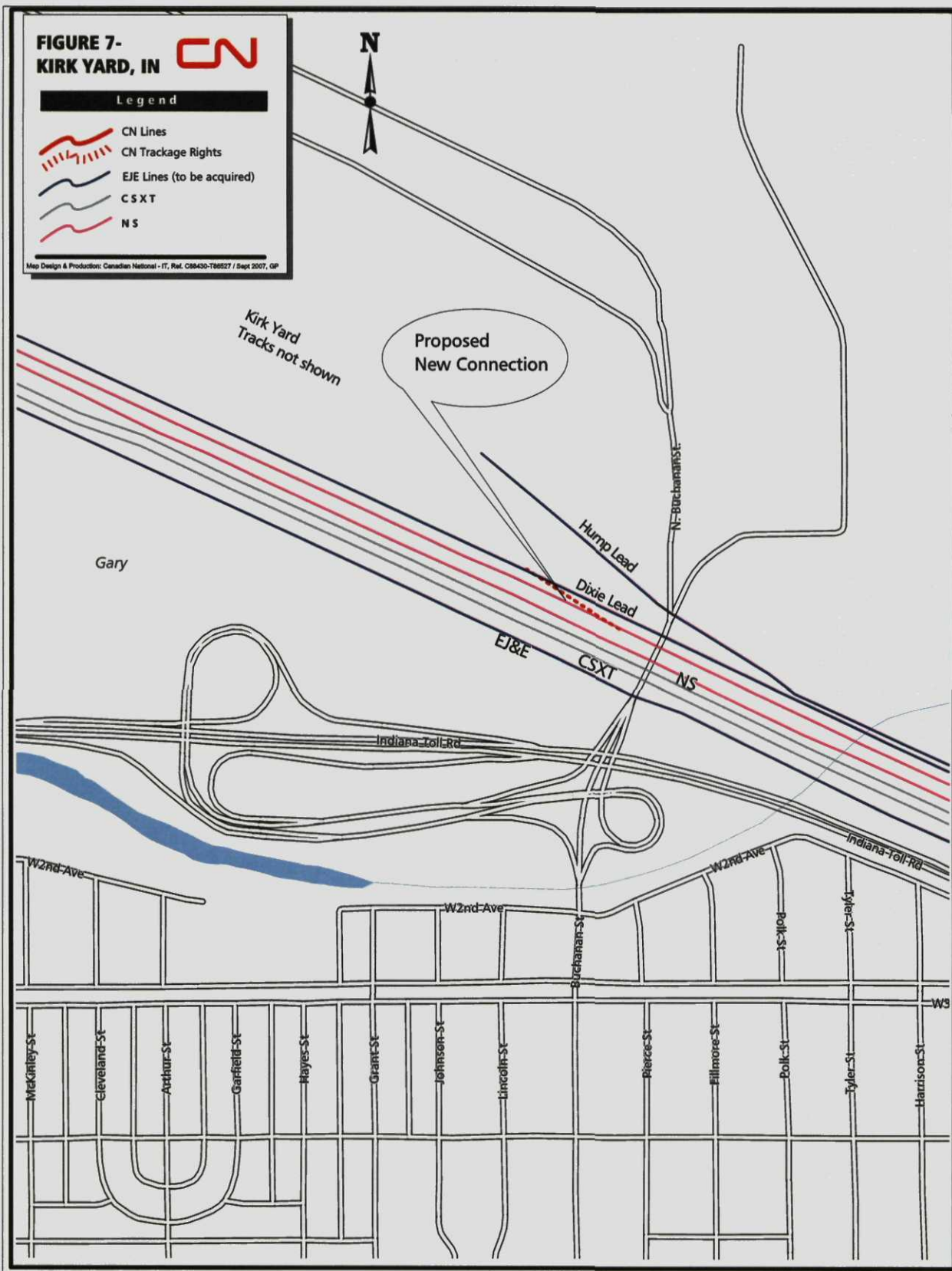
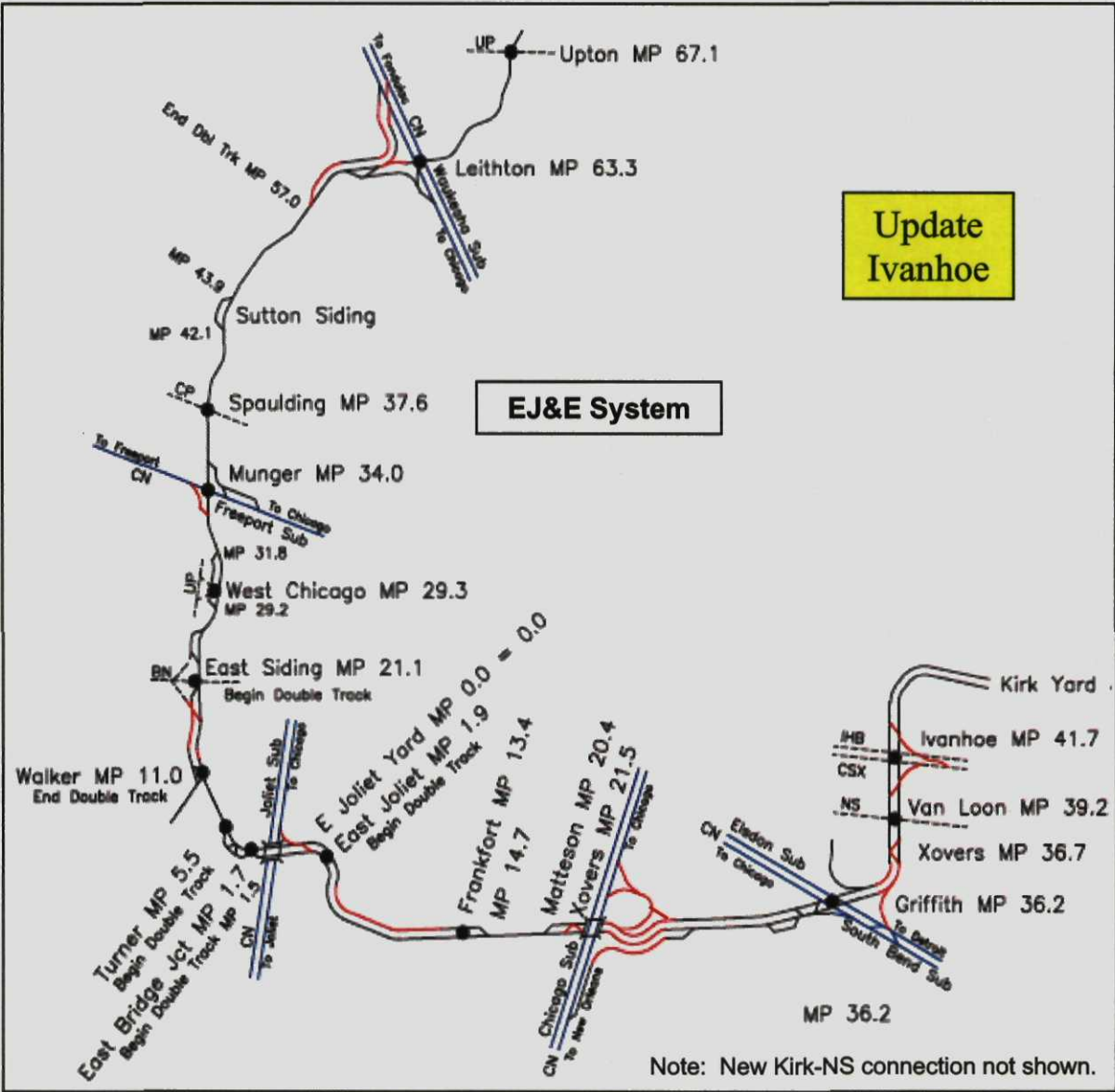


FIGURE 8: Summary of EJ&E Changes



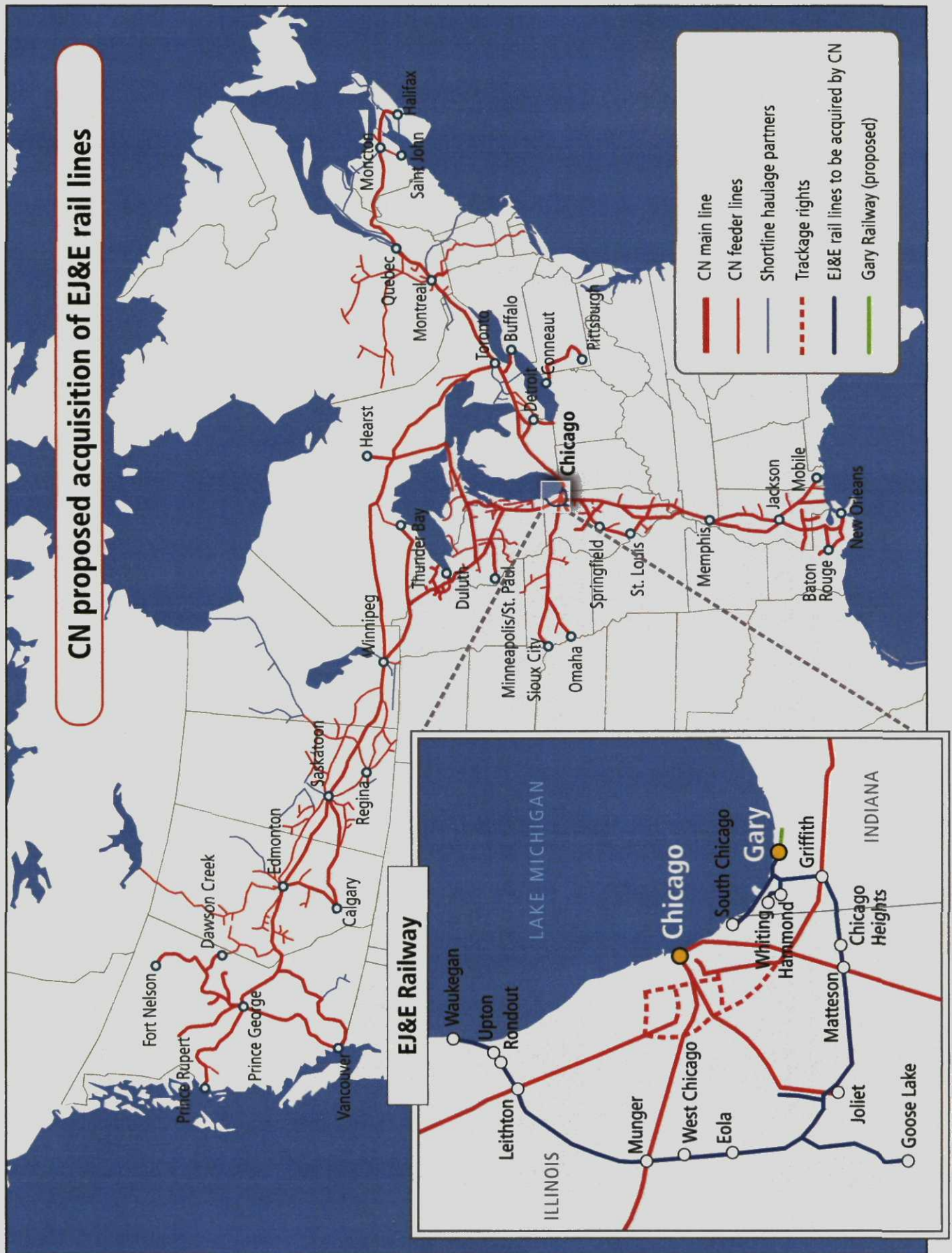


EXHIBIT A



EXHIBIT A

