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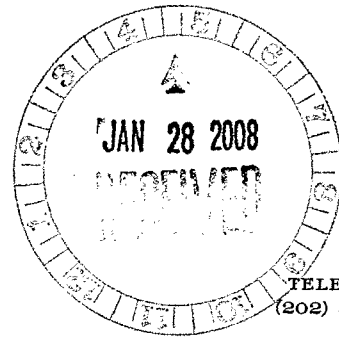
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January 28, 2008

VIA HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Handwritten notes and stamps, including "JAN 28 2008" and "RECEIVED".

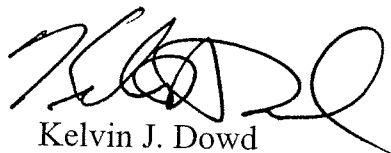
Re: STB Finance Docket No. 35087, *Canadian National Railway Company, et al. - Control - EJ&E West Company*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-referenced proceeding, please find an original and 10 copies of the Comments and Request for Conditions of Wisconsin Public Service Corporation (designated as **WPS-4**). Also enclosed is an electronic copy of the filing on CD-Rom.

We have included an extra copy of the filing. Please indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,


Kelvin J. Dowd

Enclosures

Surface Transportation Board
CN-EJ&E EIS - FD-35087

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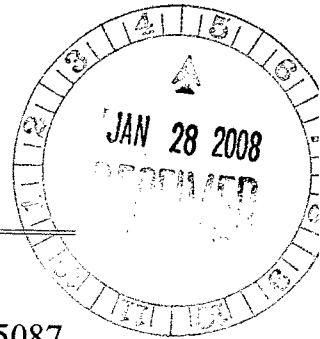
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WPS-4

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



CANADIAN NATIONAL RAILWAY
COMPANY, ET AL. – CONTROL –
ELGIN, JOLIET & EASTERN WEST
COMPANY

Finance Docket No. 35087

**COMMENTS AND REQUEST FOR CONDITIONS
OF
WISCONSIN PUBLIC SERVICE CORPORATION**

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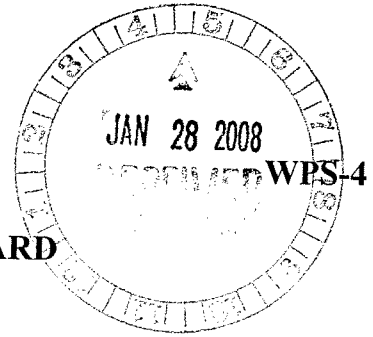
Dated: January 28, 2008

Attorneys for Wisconsin Public Service Corporation

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



CANADIAN NATIONAL RAILWAY
COMPANY, ET AL. – CONTROL –
ELGIN, JOLIET & EASTERN WEST
COMPANY

Finance Docket No. 35087

**COMMENTS AND REQUEST FOR CONDITIONS
OF
WISCONSIN PUBLIC SERVICE CORPORATION**

INTRODUCTION

Wisconsin Public Service Corporation (“WPSC”) hereby submits its Comments and Request for Conditions in response to the Application by Canadian National Railway Company and its rail affiliates (“CN”) for authority to control Elgin, Joliet & Eastern West Company (“EJ&EW”), a wholly-owned non-carrier subsidiary of Elgin, Joliet & Eastern Railway Company (“EJ&E”) (collectively “Applicants”).

SUMMARY OF POSITION

WPSC is a major rail shipper of Powder River Basin (“PRB”) coal that relies on efficient and reliable unit train service to meet its electric generating system requirements. WPSC’s coal trains operate in joint line service with a substantial portion of its traffic interchanged at Chicago via the EJ&E’s Western Subdivision. BNSF

Railway Company ("BNSF") is WPSC's originating carrier. BNSF routes WPSC's coal trains via the EJ&E at Eola, IL, for connection with CN, WPSC's delivering carrier, at Leithton, IL.

While comprising only 3.0% of the total one-way, line-haul trip to WPSC's electric plants (approximately 40 miles out of a total of 1,200 miles), the part of the haul moving on the EJ&E line is critical from a service performance perspective. Over the past several years, the EJ&E line has been a major service bottleneck for WPSC's trains, and too often has resulted in service performance problems for WPSC.

WPSC utilizes a major portion of EJ&E's Western Subdivision. Under the proposed transaction, dramatic rail traffic increases will occur on the Western Subdivision, the same lines utilized by WPSC trains. As proposed, the transaction could result in deterioration in the quality of rail service that WPSC receives for the movement of its essential PRB coal supplies. The subject portion of the EJ&E line is single-track, with several at-grade rail crossings involving dozens of conflicting daily freight and commuter trains. Based upon information contained in the Application, it will remain single-track post-transaction. The Applicants represent that the transaction will bring about improved service and efficiencies for all customers (including trackage rights customers), but they have not demonstrated that they have sufficient capacity or operating plans in place to ensure this result, or that they can handle the increased traffic volumes on the Western portion of the EJ&E lines without service deteriorations for existing customers whose trains operate over these lines.

If the Board decides to approve the transaction, WPSC respectfully submits that it should condition its grant of control authority upon appropriate conditions that would help ensure that existing EJ&E coal shippers such as WPSC do not suffer deterioration in the level of service provided by CN as a result of the transaction. WPSC proposes two such conditions for the Board's consideration, as explained further below.¹

The relevant facts that support WPSC's position and proposed conditions as set out in these Comments are presented in the accompanying Verified Statement of David J. Wanner ("V.S. Wanner"), WPSC's Fuel Procurement Agent.

¹ WPSC recently became aware of the submission of a Verified Statement of R.J. Pirlot on Behalf of Wisconsin Manufacturers & Commerce ("WMC"), a Wisconsin business association, which was filed in this proceeding on or around December 27, 2007. WPSC is listed as a member of WMC. However, WPSC was not consulted regarding Mr. Pirlot's Statement prior to its filing, and does not subscribe to the representations and position set forth therein. WPSC is participating in this proceeding independently from WMC and from any other party, and these Comments comprise WPSC's complete views on the transaction as of the date hereof.

BACKGROUND²

WPSC is a major electric service provider that relies on the railroads to provide it with reliable and efficient transportation service for its baseload coal fuel, which is used to generate electricity for approximately 430,000 Wisconsin and Upper Michigan electric customers. V.S. Wanner at 2. Two of WPSC's coal-fired generating plants are served by CN: the Pulliam Generating Station at Green Bay, WI, and the Weston Generating Station near Wausau, WI. These plants currently collectively receive approximately 3.5 million tons of low-sulfur Southern Powder River Basin coal annually, and total annual volumes are expected to increase to approximately 5.3 million tons by mid-2009. *Id.* at 2-5. The majority of this coal is shipped in joint line service by BNSF-CN through Chicago, via trackage rights over EJ&E. *Id.* and Exhibit DJW__01.

² On January 7, 2008, WPSC submitted its First Set of Interrogatories and Document Requests to Applicants ("Discovery Requests"). While the due date for responses to these Requests was Tuesday, January 22, 2008, Applicants' discovery responses were not served on WPSC counsel until after the close of business on January 25, 2008. Given that the Applicants' discovery responses were not received until less than one business day prior to the due date for these Comments, WPSC was not able to thoroughly review or incorporate any additional factual information concerning the Application that may be gleaned from this discovery. For example, one of the areas of particular concern to WPSC relates to possible increases in rail traffic volumes on the CN line segments north of Leithton, IL, where WPSC has been experiencing service problems. While these lines are connected with the EJ&E, and are directly related to and impacted by the Transaction, Applicants represented in their discovery responses that they had not undertaken or prepared any analysis or studies of forecasted increases in rail traffic on the CN line segments North of Leithton, which is concerning to WPSC. *See* Applicants' Response to Wisconsin Public Service Corporation's First Set of Interrogatories and Document Production Requests to Applicants (dated Jan. 25, 2008) at 7 ("Applicants' Discovery Responses"). To the extent that WPSC obtains through the discovery process additional relevant factual information on this or any other subject of relevance to this proceeding, it expressly reserves the right to supplement these Comments as appropriate.

All of WPSC's Pulliam Station traffic moves via BNSF-CN, and is interchanged via EJ&E near Chicago (at Leithton, IL). Well over one-half of the Weston traffic is routed in the same fashion via EJ&E at Chicago, for final delivery to the plant by CN. In total, approximately 250-265 loaded and empty WPSC unit trains per year move through the Chicago interchanges over EJ&E's Western Subdivision. Id. at 3-4; Exhibit DJW__01.

WPSC's future coal transportation requirements depend on its railroad service providers having efficient interchanges over routings with sufficient capacity to handle WPSC's traffic on a timely and reliable basis. WPSC is concerned about the lack of detailed information in the Application relating to actions that Applicants will be taking to be able to efficiently serve WPSC over EJ&E's Western Subdivision. These concerns are heightened by the fact that, even at the relatively modest existing "base" traffic levels on the Subdivision described in the Applicants' Operating Plan, WPSC is currently experiencing considerable congestion and associated service lapses. Id. at 5-10.

As explained in further detail below, under the Operating Plan, this part of the EJ&E system will experience dramatic traffic volume growth on individual line segments of up to almost five times existing traffic levels over a single-track line. This increase in the volume of traffic moving over the same route used by WPSC's coal trains threatens a further deterioration in the quality and dependability of the service that WPSC receives. Id. There are no plans in the Application for CN to double-track most parts of

the Western portion of EJ&E's line, or make other investment/and or other operating improvements to accommodate the growth. Accordingly, unless properly conditioned, the control transaction could cause WPSC significant service and competitive harm.

ARGUMENT

1. MERGERS MUST BE CONSISTENT WITH THE PUBLIC INTEREST

The essential consideration in evaluating the merits of railroad transactions such as the one at issue here is whether the proposed transaction is in the public interest.³ While an examination of the public interest considerations often involves assessing the competitive impacts of the transaction,⁴ the STB in recent decisions also has recognized that unconditioned mergers can cause significant competitive, operational, and service harm requiring redress. In fact, the possibility of service deterioration resulting from a merger transaction has been considered a form of "competitive harm." See UP/SP, 1 S.T.B. at 430 n. 191 ("merger-related competitive harm results when the merging parties gain sufficient market power profitably to raise rates and/or reduce service").

In its merger decisions, the STB has recognized the need to redress problems that may occur when a shipper's pre-merger service options are adversely

³ "The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." 49 U.S.C. § 11324(c).

⁴ See, e.g., Union Pac. Corp. – Control and Merger – Southern Pac. Rail Corp., 1 S.T.B. 233, 363 (1996) ("UP/SP") ("[t]o determine the public interest, [the STB] balance[s] the benefits of the merger against any competitive harm that cannot be mitigated by conditions"); CSX Corp. – Control and Operating Leases/Agreements – Conrail Inc., 3 S.T.B. 196, 245 (1998) ("Conrail").

impacted See, e.g., UP/SP, 1 S.T.B. at 471 (awarding shipper “with the flow” option to perfect pre-merger routing alternative); id. at 430, 472-73 (imposing conditions over applicants’ operations “to ensure that the merger does not result in service degradation for Central Corridor coal (and other) movements”); UP/SP, General Oversight Decision No. 19, (STB served Nov. 8, 2001) at 7 n.15 (addressing “against the flow” routing issues); Conrail, 3 S.T.B. at 312-13 (requiring applicants to engage in run-through operations and pre-blocking arrangements for customers, and preserve pre-merger single-line service). Accordingly, even if the Board determines that the overall effect of a proposed merger is in the public interest, the Board still has broad authority to condition the merger in order to maximize its public interest benefits. The STB has stated the following criteria for the imposition of conditions:

Criteria For Imposing Conditions. The various conditions requested by parties involve the exercise of our conditioning power under section 11324(c), which gives us broad authority to impose conditions governing railroad consolidations. . . . The principal harms for which conditions are appropriate are a significant loss of competition or the loss by another rail carrier of the ability to provide essential services.

A condition must be operationally feasible, and produce net public benefits.

Canadian National, et al. – Control – Illinois Central Corporation, et al., 4 S.T.B. 122, 141 (1999) (“CN/IC”).

Elsewhere, the STB has confirmed that a key factor in assessing merger transactions is whether the transaction “will affect the ability of these carriers to meet their common carrier obligations and provide essential services,” and, in particular

whether the transaction “will be better able to offer improved services to their existing shippers.” Dakota, Minnesota & Eastern Railroad Corp. and Cedar American Rail Holdings, Inc. – Control – Iowa, Chicago & Eastern Railroad Corp., Finance Docket No. 34178, Decision No. 7 (STB served Feb. 3, 2003) at 15 (emphasis added) (“DM&E/IC&E”); CN/IC, 4 S.T.B. at 140 (“[i]n assessing the probable impacts and determining whether to impose conditions, our concern is the preservation of competition and essential services”).

This important service protection theme is echoed in the National Rail Transportation Policy ("NRTP"), which influences the Board's determination under Section 11324. Inter alia, the NRTP directs the Board “to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.” 49 U.S.C. § 10101(4). The Board has provided guidance as to the importance of service performance assurances with respect to railroad merger transactions, emphasizing that “the quality of service is of vital importance,” and requiring applicants to demonstrate that post-transaction service levels are “reasonable and adequate.” 49 C.F.R. § 1180.1(h).⁵ In fact, ensuring the preservation of service is vital in the context of mergers, as many of the major service interruptions in recent years have been closely related to railroad consolidations. As the Board has acknowledged:

⁵ While these merger rules specifically apply to the merger of two Class I carriers, they provide important guidance to the present transaction, especially given the poor service implementation track record of recent mergers.

In [recent] years, the railroad industry in the United States underwent several mergers involving the nation's largest railroads, with the result that now only four large railroads remain – two in the West and two in the East. Unfortunately, with those mergers came severe service disruptions that have cost shippers nationwide hundreds of millions of dollars in lost freight or delayed shipments, and, again unfortunately, many of those problems persist even to this day.

* * *

The well-publicized service crisis that developed shortly after approval of the UP/SP merger cost American business (including both railroads and their customers) hundreds of millions of dollars and crippled railroad activities throughout the United States for nearly a year. The subsequent service problems following the Conrail division “threatened to bring parts of rail service in the East to a standstill” and “cost corporate shippers millions [of dollars] in delays.” The problems with the BN/SF merger, while less publicized, were also substantial, even though, as pointed out by several shippers and shipper groups, . . . that merger was considered to be largely an “end to end” combination that presumably would not create such difficulties. **And even the CN/IC merger . . . has not left all shippers satisfied.**

Western Coal Traffic League v. STB, (D.C. Cir. No. 00-1115, et al.), STB Brief at 4, 10-11 (footnotes omitted) (emphasis added). Further, recognizing the importance of coal transportation service, the Board recently established the Rail Energy Transportation Advisory Committee, with the established purpose to promote the efficient and reliable movement of coal by rail as a critical component of electric system reliability. On this topic, in a speech in May, 2006, STB Vice Chairman Buttrey remarked:

coal helps keep us warm in winter, cool in summer, and keeps factory assembly lines and hospital operating rooms in business. The efficient movement of coal is essential to the economic health and national security of this country. The

Board will use its authority, at least as long as I am there, to do whatever is within its power to do, to facilitate a steady supply of coal to the Nation's power grid.

W. Douglas Buttrey, Remarks to the Chicago Traffic Club (May 18, 2006)

(www.stb.dot.gov/testandspeech.nsf/9c0ecd4a0be1c80f852570ff004b208a/ed1a8428e2fc2a598525717e0051b821?OpenDocument).

Application of the above standards and guidance to the Applicants' proposed control transaction requires that the Board give serious consideration to conditions that would protect WPSC from the adverse service impacts that it may otherwise experience as consequence of the Applicants' plans.

**2. THE CONTROL TRANSACTION COULD
RESULT IN DETERIORATION OF THE
QUALITY OF WPSC'S RAIL SERVICE**

**a. Applicants' Post-Transaction Traffic Volume Levels Over
WPSC's Single-Track Routings Will Grow Dramatically**

The Application states that a principal purpose of CN acquiring the EJ&E lines is to enable CN to reroute its existing Chicago traffic to the "EJ&E arc on the periphery of the Chicago area"— which purportedly will enable the traffic to be moved "more efficiently, using routes that minimize movements on downtown rail lines." Application at 60-61 (V.S. Radloff). As Applicants further assert in their Operating Plan, "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.” Id. at 206.

The Application anticipates a substantial number of traffic pattern changes as a result of this “shifting” of train traffic to the EJ&E system “arc” lines. These traffic volume changes are reflected in Attachment A.2 to the Operating Plan (Application at 247). The traffic volume information for the EJ&E Western Subdivision line segments utilized by WPSC’s trains is set forth below:

<u>From Station</u>	<u>To Station</u>	<u>Freight Trains/Day</u>		
		<u>Base</u>	<u>Change</u>	<u>Total</u>
Leithton	Spaulding	5.3	15.0	20.3
Spaulding	Munger	5.5	18.0	23.5
Munger	West Chicago	4.4	20.0	24.4
West Chicago	East Siding (near Eola)	10.7	23.8	34.5

<u>From Station</u>	<u>To Station</u>	<u>Freight Gross Tons/Day</u>			
		<u>Base</u>	<u>Merged</u>	<u>Difference</u>	<u>Percent Change</u>
Leithton	Spaulding	20,457	158,701	138,244	676%
Spaulding	Munger	23,285	173,935	150,650	647%
Munger	West Chicago	14,397	184,969	170,572	1,185%
West Chicago	East Siding	62,233	245,049	182,816	294%

This planned traffic growth on the Western Subdivision lines obviously is very substantial, representing up to a 555% change in freight trains/day (Munger-to-West Chicago) and up to a 1,185% increase in gross tons/day (also Munger-to-West Chicago).

Further, the line segments of the Western Subdivision where WPSC's trains operate are anticipated to experience the largest growth of train traffic post-transaction (both in terms of trains/day and gross tons/day) of anywhere on the EJ&E system. This portion of the EJ&E system is comprised of single-track lines, and there are no plans offered by CN to expand most of the Western Subdivision track to double-track post-transaction.⁶

The single-track status of the Western Subdivision lines pre- and post-transaction raises considerable operating and system reliability/efficiency concerns in light of the traffic growth expected. For example, scheduled train meets must be precisely timed to ensure two trains operating in opposite directions on the single track will meet at the same time at the designating passing point. If there are delays to either of two passing trains, one train will need to wait on the siding until the other train passes. Additionally, given the relative lack of rail yards or sidings on the EJ&E's Western Subdivision, and the apparent lack of capacity in those sidings to handle longer unit trains, there are very limited opportunities (e.g., Sutton Yard) where WPSC's longer unit trains or other trains can be staged when on the EJ&E system.

Another operating consideration of particular concern to WPSC is the fact that modern Class I railroads such as CN prioritize their traffic. Trains are given a specific priority, and this prioritization is built into the carriers' computer-aided dispatching systems. Passenger, intermodal, automotive, and manifest traffic considered

⁶ In contrast, much of the eastern part of the EJ&E system currently is double-tracked or is anticipated to be upgraded post-transaction.

more time-sensitive is usually given priority, and bulk traffic, including coal, often is given lowest priority. Accordingly, to the extent that there are conflicts with other non-bulk traffic, WPSC's unit coal trains would not be expected to receive priority treatment.

All indications are that EJ&E's Western Subdivision over which WPSC's trains operate is an extremely difficult section of line on which to schedule trains. EJ&E has three significant at-grade rail crossings with freight and commuter lines over the section of track where WPSC's trains operate: Barrington, IL (UP/Metra), Spaulding, IL (CP/ICE/Metra), and West Chicago, IL (UP/Metra). These crossings create significant capacity and operating concerns, especially in light of the planned shifts in traffic to the Western Subdivision.

Metra operates over 50 commuter trains per day during weekdays over each of these at-grade crossings, and operates trains on both weekend days. See, e.g., Metra's Outer Circumferential Commuter Rail Feasibility Study (Apr. 1999) at App. F. http://metraconnects.metrarail.com/pdf/oc_feasibility_study.pdf; http://metraconnects.metrarail.com/pdf/oc_feasibility_appendices.pdf). At its EJ&E rail crossings, these dozens of Metra trains crossing at-grade on a daily basis have priority over other bulk trains, including WPSC's. Id. at 17. Added to this considerable conflicting commuter train traffic is the substantial incoming and outgoing Chicago area freight traffic moving over these same three interlocking freight lines at-grade. This traffic has not been documented in the Application.

Obviously, post-transaction, CN will need to factor-in and accommodate the movement of these other systems' trains, and the operational priorities of these other users, which will involve significant scheduling issues. This raises further WPSC train scheduling and service concerns.⁷

**(1) Applicants' Post-Transaction Traffic
Volume Estimates Do Not Include
Other Expected Traffic Volumes**

While the Applicants assume a substantial transfer of existing CN and EJ&E Chicago traffic currently moving on CN rail lines through the City to the EJ&E "arc" lines, the Operating Plan anticipates very negligible new traffic volume gains (as opposed to the rerouting of existing CN traffic). The Applicants anticipate total traffic gains of 9,737 carloads over three years on a combined system that in 2006 moved over 5 million total carloads (or less than a 0.2% growth in new traffic). Application at 197 (V.S. Stuebner). Obviously, if there is even modest CN traffic growth, this would result in a major additional traffic expansion on the EJ&EW.

A related WPSC service concern in this regard is potential initiatives by Metra to utilize substantial portions of the EJ&E's lines as part of the Suburban Access Transit Route ("STAR Line"). This is one of the most significant new commuter rail line projects in the country, and it is being actively considered for the northwest suburbs of

⁷ Applicants state in their discovery request responses that they "have not definitively determined the specific content of the rules and procedures that would govern such operational matters once the Transaction is implemented" and "have not specifically determined how WPS trains will be accommodated in the future in the event of meets or conflicts." Applicants' Discovery Responses to WPSC at 8, 9.

Chicago along and on EJ&E's Western Subdivision. This line is projected to serve thousands of daily commuters and extend from Joliet, IL to the Chicago O'Hare Airport. The project also is expected to utilize approximately 36 miles of EJ&E's right-of-way on its Western Subdivision. The most recent feasibility studies show that Metra plans on operating its passenger trains over significant portions of EJ&E's existing single track line. See Star Line Feasibility Study for a Metra Commuter Rail Service System (March 2003) at 17-18. (http://metraconnects.metrarail.com/pdf/starline_feasibility_study.pdf). CN did not factor this possible conflicting use of the EJ&E Western Subdivision into its Operating Plan, other than to note vaguely that CN will seek a "win-win solution" to address Metra's new project.

Further, CN did not factor into its Operating Plan substantial volumes of traffic that may be moved by third party freight carriers via trackage rights arrangements over the EJ&E system. For example, Applicants state that they will "continu[e] . . . trackage rights arrangements with connecting carriers," (Application at 210) and that "CN's Operating Plan contemplates that four Class I railroads (BNSF, CSXT, NS, and UP) could significantly benefit from this Transaction by gaining a new direct connection with CN for interline traffic that can move around Chicago, rather than through Chicago as it moves today." Id. at 205. On November 20, 2007, BNSF filed Comments in this proceeding wherein it discussed the overhead trackage rights BNSF enjoys "with committed train volumes on a 'take or pay' basis on EJ&E between Eola and Joliet." BNSF Railway Company's Comments on the Suggested Procedural Schedule (BNSF-2)

(Nov. 20, 2007) at 6. Therein, BNSF raised serious concerns over whether there is sufficient capacity to handle the increased traffic flows expected by both carriers:

While Applicants have proposed to double-track certain portions of the line, it is not clear whether there will be sufficient additional line capacity to efficiently and timely handle all of the additional trains that are projected to operate over the line following the proposed transaction, in addition to the existing flows of BNSF and other carriers which currently operate on the line. These potential capacity problems need to be aligned with CN's promise to "ensure that trains now operating on the lines (including trackage rights trains operated by, and haulage trains operated for, other railroads), as well as trains to be re-routed onto EJ&EW, would move efficiently." *Id.* at 212. In addition, BNSF is concerned about its ability to promptly enter and exit the EJ&E line post-transaction at Eola and Joliet, as congestion occurring at those points would potentially impact both freight and passenger operations on adjacent lines.

Id. (emphasis added).

As BNSF is WPSC's originating carrier for its PRB coal movements and handles WPSC's trains at EJ&E's Eola interchange, WPSC has every reason to share BNSF's service and capacity concerns.

b. Applicants' Capital Investment Plans On EJ&E's Western Subdivision Are Inadequate In Light Of The Planned Significant Traffic Expansion

CN promises to invest \$100 million in infrastructure improvements on the EJ&E lines. *See* Application at 220. Much of the emphasis on infrastructure improvements is on improved intra- and interline connections where the EJ&E "arc" crosses CN's (and its subsidiaries) existing rail lines. *Id.* at 220-22. As part of this

initiative, CN plans on double-tracking its connecting track at the Leithton interchange and extending the siding, which may benefit WPSC trains that connect with CN at Leithton. However, as explained above, while CN will engage in some double tracking of EJ&E's main line south of Eola, it has no plans as part of the Transaction to double track portions of the line between Eola and Leithton. See Application at Figure 8 (p. 523) (reproduced at Exhibit __ (DJW-02)). CN also has no future plans to engage in any appreciable investment initiatives on these lines:

Other than these specific investments [as set forth in the Application], the Transaction is not otherwise expected to affect CN's capital investment plans for 2008 and beyond. EJ&E has relatively modest plans for continuing investment in plant and equipment upgrades. After consummation, CN would carefully review such investment plans in the context of broader integrated system requirements.

Applicants' Safety Integration Plan Submitted to Federal Railroad Administration (Dec. 28, 2007) at 75.

WPSC's EJ&E routings today are single-track, and will remain single-track post-transaction. Thus, while CN might gain additional capacity to hold WPSC trains at Leithton, nothing is planned that would ameliorate the threat to service on the Western Subdivision itself.

c. Applicants' Operating Plan Does Not Sufficiently Analyze Post-Transaction Capacity And Other Operational Issues, Or Impacts On Existing Customers

Throughout the Application, CN promises that there will be no service problems, and that the transaction will result in "improved reliability and service" for all

existing CN customers (including WPSC). Application at 203. See, e.g., Application at 24 (the transaction “would present a low risk of implementation-related service difficulties”); id. at 27 (the transaction “would not have any adverse impact on the continuation of essential transportation services to the public”); id. at 50 (the transaction “would result in meaningful service improvements . . . [including] for carriers that now utilize EJ&E as a connection”); id. at 63 (“business destined for points beyond Chicago on CN would especially benefit from increased transit time reliability”). However, nowhere in the Application is there adequate analysis showing how CN would be able to accommodate, let alone improve service for train traffic using the same routing used by WPSC; or deal with conflicting traffic at at-grade rail crossings/interlockings, etc. given the planned dramatic increases in train traffic. As set forth above, the Operating Plan reflects that there are minimal infrastructure improvements contemplated for EJ&E lines between Eola and Leithton, and Applicants have further clarified that they have not fully planned for their anticipated operational changes affecting WPSC service, and they have “not determined how WPS trains will be accommodated in the future in the event of meets or conflicts.” Applicants Discovery Responses to WPSC at 8, 9.

It is apparent that the planned changes to be made are insufficient to improve the efficient movement of WPSC’s trains, or offset the adverse impacts that CN’s planned traffic shifts may have on these trains. Again, this is at least partly because the vast majority of the EJ&E’s Western Subdivision lines over which WPSC’s trains operate will continue to be single-track post-transaction, and will continue to face the

same operational and train conflict issues described above. As set forth in the accompanying Verified Statement of Mr. Wanner:

Another problem being experienced by WPSC today are parked trains awaiting movement over the EJ&E lines. Expanding sidings for those trains may provide additional areas to stage or park trains on the EJ&E's system, but it will do very little to improve traffic flows over the Western part of that system so long as it remains a single-line track railroad. . . . Meanwhile, under the operating plan, this Western part will be experiencing traffic volumes that will increase to over five times the existing levels."

V.S. Wanner at 8.

Absent from the Application is any mention of just how CN's traffic flows were modeled or configured. In discovery responses, CN has elaborated:

Robert Bart, Senior Manager, Service Design, Edmonton, Alberta, calculated the number of trains that would move over each segment post-implementation. In creating his model of post-implementation traffic flows, Mr. Bart started with a clean slate, and routed the traffic according to how it could flow most efficiently once EJ&EW's lines were fully integrated into CN's system, as proposed by Application. This exercise required Mr. Bart to construct, from scratch, the trains that would operate post-implementation, beginning first by placing individual cars into blocks based on the commonality of their origin and destination, and then placing the blocks (of which there were about 1200) into trains. . . . Mr. Bart routed the trains according to the most efficient flows possible on the new system.

Applicants' Responses and Objections to the Village of Barrington's First Discovery Requests (Jan. 3, 2008) at 16-17. Additional workpapers provided by Applicants appear to show that CN's operating plan experts assembled underlying traffic and track data, track speed, etc. which they utilized to calculate track capacity for individual line

segments. But even there, it appears that anticipated traffic volumes over certain EJ&E line segments were at, or exceeded, expected capacity.

Additionally, while it appears that CN used its experts to develop, by hand, the post-transaction Operating Plan, there is no evidence that the plan was tested via standard industry modeling (e.g., the Railroad Traffic Controller Model (“RTC”)) to determine whether the plan is realistic, or that the inputs were verified. In recent decisions in the maximum rate case area, the STB has mandated the use of traffic simulation modeling to test the adequacy of the submitted operating plans of hypothetical “stand-alone railroads” as a means of testing the “subjective judgment” of the experts developing an operating plan. See e.g., Public Serv. Co. of Colo. d/b/a Xcel Energy v. Burlington N. & S.F. Ry., Docket No. 42057 (STB served June 8, 2004) at 24-27 (“the RTC model has been thoroughly tested and has gained widespread acceptance among railroads, transit authorities, and government agencies”). It does not appear that any such model was utilized by CN in testing its Operating Plan.

Even under the Applicants’ projected conservative traffic volume estimates, WPSC’s service quality would face a threat of significant deterioration. As stated, it is WPSC’s experience that EJ&E already is having capacity and service problems on the Western line on which its trains operate. How these lines could accommodate such a huge increase in the volume of traffic in the absence of major infrastructure and other enhancements is of considerable concern to WPSC, because it well could result in less dependable service. V.S. Wanner at 5-10..

3. IF THE TRANSACTION IS APPROVED, THE BOARD SHOULD ADOPT CONDITIONS TO PROTECT WPSC FROM ADVERSE EFFECTS

As indicated above, if the Board determines that, on balance, the overall effect of a proposed transaction is in the public interest, it still has broad authority to specify conditions to maximize the public interest benefits. The following conditions are proposed by WPSC to reduce the likelihood of an unacceptable deterioration of service for the movement of coal to WPSC's plants that may otherwise occur as a result of the Applicants' transaction.

The Board's public interest analysis should be conducted "in light of the longstanding congressional policy favoring railroad mergers that increase efficiency and quality of service." Lamoille Valley R.R. Co. v. ICC, 711 F. 2d 295, 301 (D.C. Cir. 1983) (emphasis added); accord DM&E/IC&E at 15. WPSC submits that an appropriate condition should be imposed in this case which is comprised of two parts – each of which is necessary to accomplish the intended result of preserving adequate rail service.

First, the Board should impose an oversight condition during the implementation phase, and for a three-year period following the full implementation of the Operating Plan. Under this condition, CN should be required to prepare, submit, and serve detailed quarterly reports concerning traffic flows and changes on the Western Subdivision, including transit times, carloads handled, train delays (with causes identified), and other appropriate operating data sufficient to allow the Board and interested parties to assess whether the traffic shifts pursuant to the Operating Plan are

causing service quality reductions for shippers whose trains used the Subdivision pre-transaction. If such adverse impacts materialize and persist, the Board would retain jurisdiction to consider and/or impose specific, additional operational conditions, either on its own motion or upon request by affected parties.⁸

Second, consistent with Board practice in recent merger proceedings, the Board should hold CN to its representations made in the Application that customers (including trackage rights customers such as WPSC) will receive faster and more reliable service post-transaction. See, e.g., CN/IC, 4 S.T.B. at 186 (Condition No. 6); Conrail, 3 S.T.B. at 387 (Condition No. 19). As set forth above, CN has stated in the Application that these service improvements will occur, and there will not be any service disruptions caused by the transaction (both during and after the implementation of the planned multi-year Operating Plan). CN should be required to adhere to these and other representations that it may make on the record during the course of the proceeding. This would include enforcing CN's representation that no new rerouted train traffic will move on the acquired EJ&E lines until "after track and connections have been added and the Transaction completely implemented." Application at 247 (Attachment A.2). In this respect, the Board should clarify that the traffic shifts may not occur unless and until the

⁸ Such oversight and reporting conditions have been routinely imposed by the Board in railroad consolidation proceedings. See, e.g., CN/IC, 4 S.T.B. at 161, 187 (establishing an oversight condition for up to five years, including operating oversight, to "provide a fully effective mechanism for quickly identifying and resolving [problems]"); Conrail, 3 S.T.B. at 365-371, 387 (establishing an oversight condition for five years as well as separate informational reporting and monitoring in the area of customer service and in 14 other separate areas, to ensure that customer service goals are met).

necessary capacity, operating, and other improvements are made to ensure that there will be no derogation in service to existing customers such as WPSC, and that appropriate service protections are in place (and made in consultation with shippers) to protect existing customers against service harm.

The foregoing conditions fully satisfy the Board's enunciated standard for such remedial measures, and are consistent with prior merger conditions granted by the Agency. They are narrowly tailored to address the transaction's effects, they are operationally feasible, and they produce net public benefits by mitigating the merger's effects on WPSC and its ability to effectively manage and operate its coal generating facilities and serve its 430,000 electric consumers. The conditions also would not mandate any changes in CN's actual current or planned operations, so long as the carrier's representations concerning post-transaction traffic impacts are fulfilled. In the absence of conditions such as these, for the detailed reasons set forth herein, rather than increasing efficiency and quality of service for customers, the proposed acquisition may accomplish just the opposite.

CONCLUSION

For the reasons set forth in these Comments, WPSC commends for the Board's consideration the conditions described above, to ensure that any public interest benefits of the proposed transaction are not dissipated by a diminution of the level of

service necessary to ensure an adequate supply of low-cost fuel for the benefit of
WPSC's electric ratepayers.

Respectfully submitted,

WISCONSIN PUBLIC SERVICE
CORPORATION
700 North Adams Street
Green Bay, Wisconsin 54301

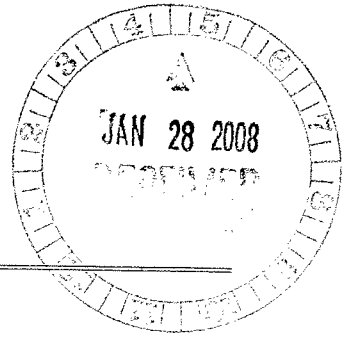
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Dated: January 28, 2008

Attorneys for Wisconsin Public Service
Corporation

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



CANADIAN NATIONAL RAILWAY
COMPANY, ET AL. – CONTROL –
EJ&E WEST COMPANY

)
)
) Finance Docket No. 35087
)
)

**VERIFIED STATEMENT OF
DAVID J. WANNER**

My name is David J. Wanner. My business address is 600 North Adams Street, Green Bay, Wisconsin 54301. I am the Fuel Procurement Agent for Wisconsin Public Service Corporation (“WPSC”). In this position, I am responsible for making arrangements for the procurement and transportation of coal for WPSC’s coal-fired generating stations. I am offering this Statement on behalf of WPSC, as a part of WPSC’s Comments and Request for Conditions (“WPSC Comments”) being submitted in response to the Application by the Canadian National Railway Company (“CN”) and Grand Trunk Corporation (collectively “Applicants”) to acquire control of EJ&E West Company (“EJ&EW”), which would own the principal lines of the existing Elgin, Joliet & Eastern Railway Company (“EJ&E”).

The purpose of my statement is to describe WPSC’s current rail transportation service requirements, and to explain its concerns regarding the effects that the proposed control transaction may have upon WPSC’s ability to obtain efficient transportation of its essential utility coal requirements in the future. Specifically, I will

explain how the unconditional approval of the CN-EJ&E transaction could have serious adverse effects on WPSC's coal transportation service. On the basis of these concerns, if the Board determines that it should approve the Application, WPSC respectfully requests that it adopt and enforce protective conditions as outlined in WPSC's accompanying Comments.

A. BACKGROUND

WPSC is an integrated electric and gas utility incorporated in Wisconsin, which serves approximately 430,000 residential, commercial and industrial electric customers in an 11,000 square mile area of Northeastern Wisconsin and an adjacent portion of Upper Michigan. While WPSC relies upon a mix of resources for the generation of electricity, coal-fired generation has been, and remains, our primary source. Over 55% of WPSC's total electric supply mix is fueled by coal.

WPSC owns and operates two (2) multi-unit coal-fired electric generating stations -- the Weston Generating Station near Wausau, Wisconsin, and the Pulliam Station in Green Bay. Collectively, these two plants currently receive approximately 3.5 million tons of coal annually. Starting later this year, shipments will begin to increase, and are expected to reach an annual rate of approximately 5.3 million tons by mid-2009. All of this coal is delivered by rail.

1. Coal Supply and Transportation
for the Pulliam Generating Station

The current operating units at WPSC's Pulliam Station are Unit Nos. 5-8.

These units depend upon low-sulfur, western sub-bituminous coal from sources in the Southern Powder River Basin ("PRB") in Wyoming. Total annual coal receipts at Pulliam are approximately 1.3 - 1.5 million tons, all of which are transported in rail cars supplied by WPSC. Historically, PRB coal has moved to Pulliam in unit train service from the mine origins to one of two interchanges -- Chicago, IL or Minneapolis-St. Paul, MN -- for further delivery to Pulliam by the CN.

As of January 1, 2008, WPSC's PRB origin transportation for Pulliam is handled by the BNSF Railway Company ("BNSF"), over its central coal corridor via Alliance, NE and Lincoln, NE to BNSF's Chicago interchange with the EJ&E at Eola, IL. The loaded Pulliam trains are routed northward over the EJ&E's Western Subdivision under trackage rights arrangements that BNSF has with EJ&E to a connection with the CN at Leighton, IL. At this point, the trains are turned over to CN for delivery to Pulliam. Empty trains are routed over the same interchanges, but in the opposite direction. WPSC's Pulliam trains average between 118 and 120 railcars per train, which translates into approximately 100 separate loaded and empty Pulliam trains moving annually over the EJ&E's Western Subdivision.

2. Coal Supply and Transportation
for the Weston Generating Station

Three (3) coal-fired generating units currently are in place at the Weston Station, and a fourth coal-fired unit is expected to be in operation later this year. These units also burn 100% Southern PRB coal. Total annual coal receipts at Weston have been approximately 1.8 - 2.2 million tons, all of which are transported in rail cars supplied by WPSC. Once Weston Unit No. 4 is fully operational, annual PRB coal requirements will approximate 4.0 million tons. Historically, PRB coal has moved to Weston in unit train service from the mine origins to one of two interchanges -- Chicago, IL or Minneapolis-St. Paul, MN -- for further delivery to Pulliam by either the CN or the Canadian Pacific Railway Company ("CP").

Under WPSC's current coal transportation arrangements, PRB coal moving to Weston originates on BNSF, for delivery via interchanges with CP at Minneapolis-St. Paul or with CN at Chicago. Well over half of the Weston traffic will move through Chicago for final delivery to the Weston plant via CN. The routing for this movement is the same as that for Pulliam: (BNSF-CN routing via the EJ&E at Chicago). At a current average of 115 cars per CN train, our Weston CN coal transportation requirements can be met at a rate of approximately 165 unit train shipments per year, including Weston 4 requirements. Actions are being taken to increase the train size for CN Weston shipments to 135 cars. This would reduce the number of Weston CN unit train shipments to approximately 150 total separate loaded and empty Weston CN trains per year moving

over the EJ&E's Western Subdivision.

A schematic showing the current routings of PRB coal destined for the Weston and Pulliam Stations and delivered by CN is attached to this Statement as Exhibit ___ (DJW-01).

B. IMPACTS OF THE TRANSACTION ON WPSC'S SERVICE

Applicants claim that a purpose of the control transaction is to improve the fluidity, efficiency, and service reliability of all regional rail traffic in and around Chicago, including the traffic of CN, its subsidiaries, and the connecting traffic of other carriers. However, the traffic and operating plan submitted by the Applicants raises serious concerns regarding the efficiency and reliability of the rail service that WPSC reasonably can expect if the transaction is approved without appropriate conditions to protect WPSC's essential utility fuel supplies.

The changes in traffic patterns that are expected to result from the acquisition of EJ&E by CN could impact WPSC by increasing congestion on essential line segments and degrading WPSC's quality of service. Even at the current, relatively modest "base" levels of traffic reflected in the Application for the Western Division of the EJ&E, slow transit times and other associated service problems have been experienced regularly by WPSC. Coal train service has been erratic, with trains arriving late and/or trains periodically held for inordinate periods of time, which to WPSC's knowledge on many occasions has been due to operating or other issues associated with

the portion of the EJ&E lines used by WPSC coal trains, which are single-line track. These lines can be a significant service bottleneck for WPSC's loaded and empty movements. A delay of even several hours can prove to be very costly, and more serious rail service performance deteriorations have serious impacts on WPSC's electric system reliability. These service disruptions both adversely affect WPSC's ability to efficiently manage its fleet of train sets, in which we have invested considerable capital and incur substantial costs to maintain, and threaten WPSC's ability to maintain adequate coal inventory stocks during periods of peak electric demand.

As part of the transaction at issue, Applicants plan to dramatically increase rail traffic on the line segments that make up EJ&E's Western Subdivision. Applicants' operating plan states that "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." Application at 219. With this aim, Applicants' Operating Plan, at Attachment A.2 (p. 247), includes the following post-transaction traffic changes on the lines used by WPSC's trains:

<u>From Station</u>	<u>To Station</u>	<u>Freight trains/day</u>		<u>Total</u>
		<u>Base</u>	<u>Change</u>	
Leithton	Spaulding	5.3	15.0	20.3
Spaulding	Munger	5.5	18.0	23.5
Munger	West Chicago	4.4	20.0	24.4
West Chicago	East Siding (near Eola)	10.7	23.8	34.5

The potential adverse impacts of these increases in train traffic on existing movements are a matter of a serious concern to WPSC. Again, this part of the EJ&E system largely is single-line track. Nowhere in the Application is there any analysis of how CN hopes to handle this increase in new traffic without negatively impacting existing traffic, including WPSC's coal trains.

The Application references new infrastructure improvements that CN plans to make, but insofar as the effects on WPSC's traffic are concerned, this merely involves the expansion of sidings and connecting tracks at Leithton and near Eola, the end points of the EJ&E lines that WPSC's trains depend upon. The Application at Figure 8 (p. 523) contains a track schematic showing CN's planned infrastructure investment changes and improvements, which also are described in the Applicants' operating plan. While WPSC obviously encourages CN's planned infrastructure improvements, these might only modestly assist CN in efficiently moving EJ&E's current traffic base levels. These steps are not adequate to improve the efficient movement of WPSC's trains, or offset the adverse impacts that CN's planned traffic shifts are likely to have on these trains. This is

because the vast majority of the EJ&E's Western Subdivision lines over which WPSC's trains operate will continue to be single-line track post-transaction.

To illustrate WPSC's current train traffic on the EJ&E's system, and the anticipated handling of that traffic post-transaction, I have attached to this Statement Exhibit __ (DJW-02). This Exhibit consists of Figure 8 to the Operating Plan, showing Applicants' planned infrastructure improvements, with an overlay depicting WPSC's loaded and empty traffic routings over the EJ&E.

Another problem being experienced by WPSC today are parked trains awaiting movement over the EJ&E lines. Expanding sidings for those trains may provide additional areas to stage or park trains on the EJ&E's system, but it will do very little to improve traffic flows over the Western part of that system so long as it remains a single-line track railroad. CN's Application describes no plan to double track the vast majority of the western part of the EJ&E's system, as shown in Figure 8. Meanwhile, under the operating plan, this Western part will be experiencing traffic volumes that will increase to over five times the existing levels.

CN also acknowledges that commuter passenger rail service operated by the Chicago commuter train operator (Metra) crosses the EJ&E line at-grade at several locations. These at-grade crossings either exist on the EJ&E Western Subdivision lines or indirectly affect service on the lines over which WPSC's trains operate because of their impact on lower priority freight traffic elsewhere on the system. CN does not appear to

have any plan for dealing with this potential traffic conflict, other than to note that it “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.” Application at 223. However, at the same time, CN acknowledges in the Application that it “has a longstanding working relationship” with Metra, and that Metra is studying the feasibility of using significant portions of the EJ&E’s existing Western Subdivision (between MP 7.5 and MP 42.5) for light-rail commuter service. CN promises that it will “explore options” and work with Metra “in the interest of reaching a win-win solution.” But this eventuality poses obvious additional congestion and traffic flow concerns for WPSC, as its coal trains are routed over the same corridor. There are no assurances in the Application that existing freight customers such as WPSC will be protected against the deterioration of service quality resulting from existing or increased commuter line service.

Also, WPSC has been experiencing service problems on the CN lines North of Leithton, IL to Weston and Pulliam. WPSC remains very concerned that the Transaction may produce traffic flow congestion problems on those lines (CN’s Application does not contain traffic change information concerning those lines), or otherwise result in CN diverting resources or attention to addressing its service performance issues on those lines. These existing CN service performance issues also raise questions about CN’s repeated representations in its Application that it will be able

to ameliorate service degradation and actually improve service for its existing customers such as WPSC.

C. Proposed Conditions

WPSC requests that the Board condition any approval of the CN-EJ&E transaction on the railroads taking specific steps to mitigate the effects that I have described. The suggested conditions are set forth more specifically in WPSC's accompanying Comments. They are designed to ensure that WPSC does not suffer an unacceptable deterioration in its level of service as a consequence of the transaction, while avoiding the imposition of undue burdens on CN-EJ&E that would reduce the legitimate benefits of the proposed transaction. As all coal shippers are acutely aware, efficient rail service over non-circuitous, direct routings is critical to a utility's ability to maintain the flow of an adequate supply of coal at a reasonable cost, which in turn directly implicates the achievement of National Energy Policy goals.

Current BNSF-CN Routings to WPSC's Weston and Pulliam Stations

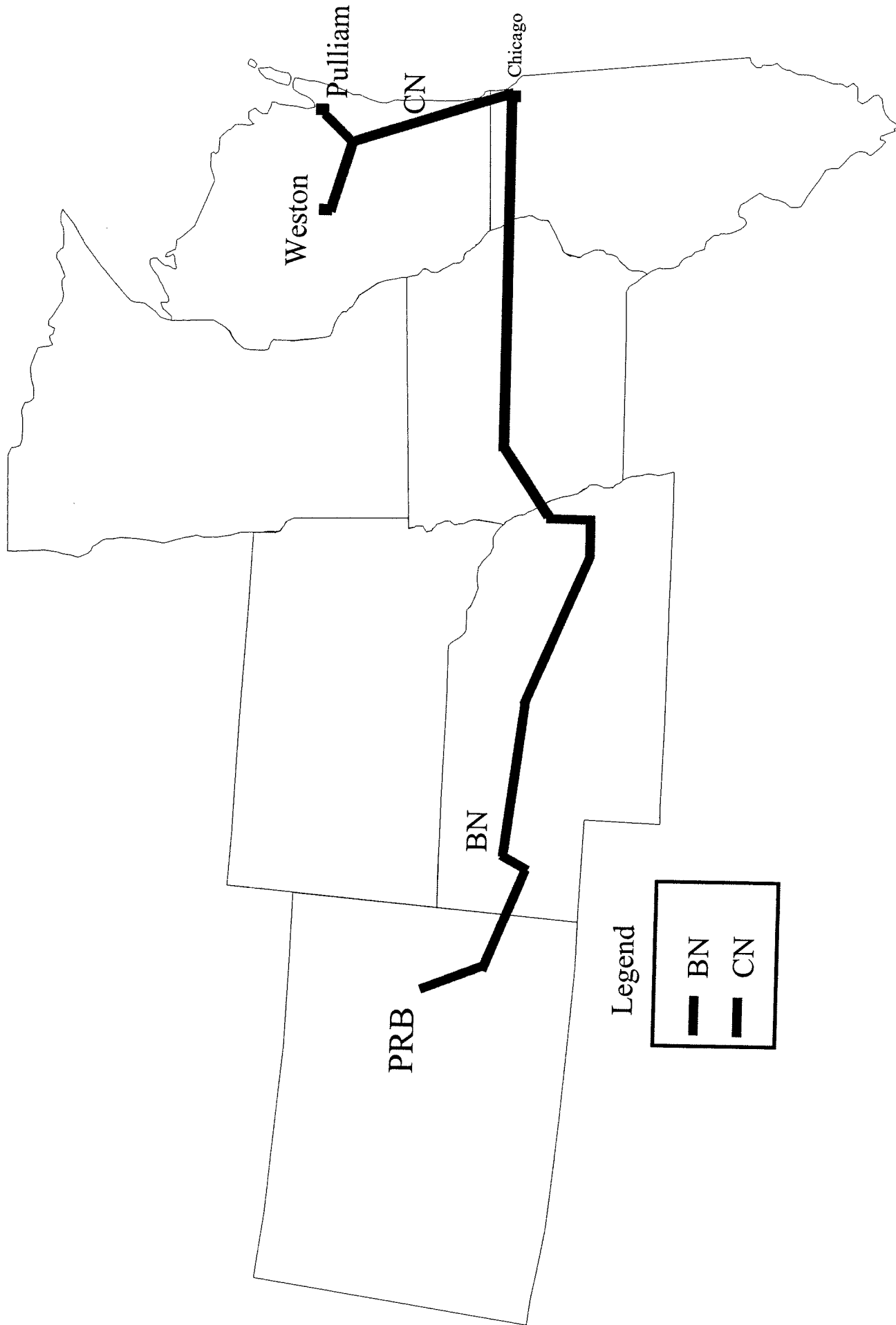
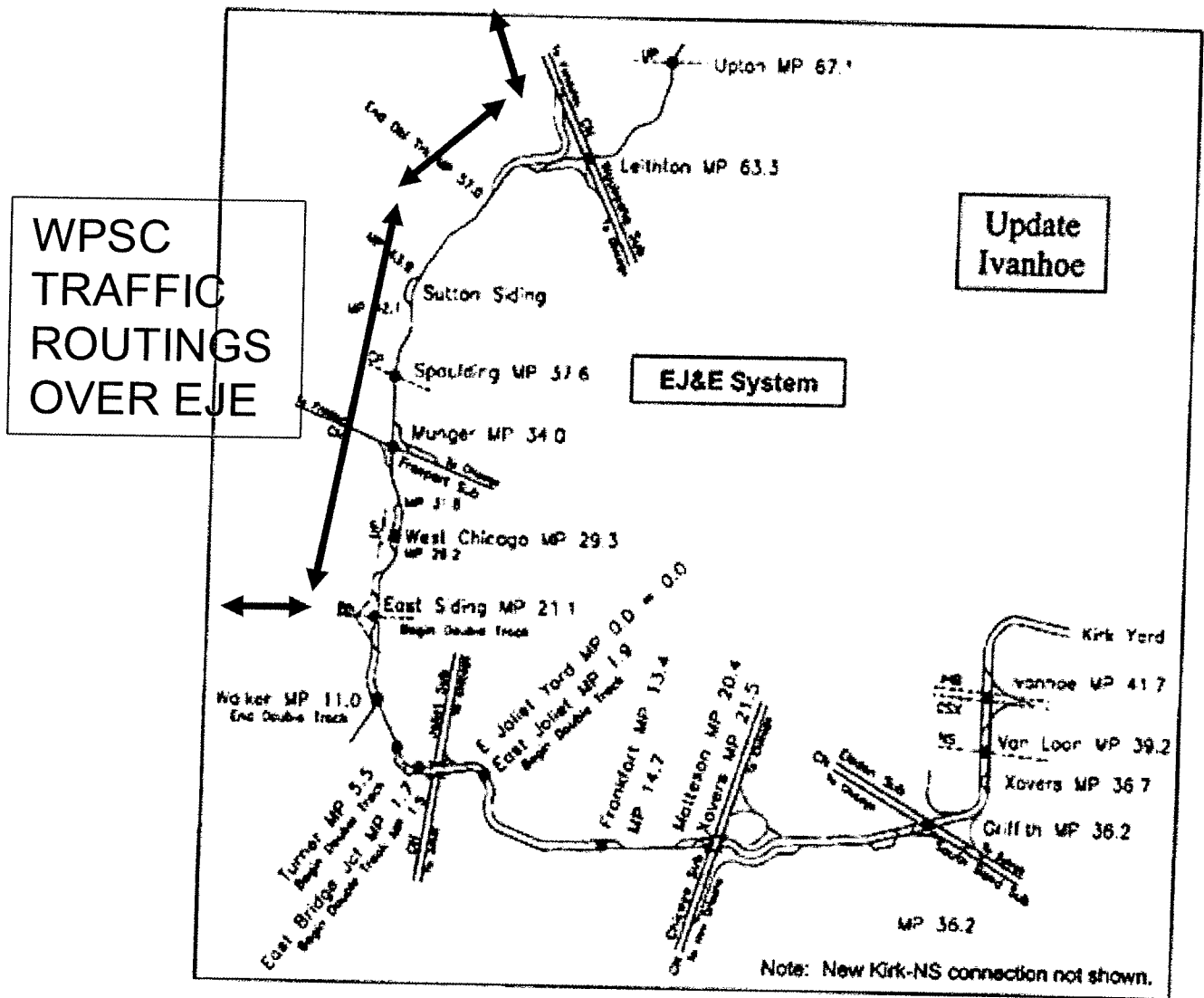


FIGURE 8: Summary of EJ&E Changes



VERIFICATION

STATE OF WISCONSIN)
) ss:
COUNTY OF Brown)

David J. Wanner, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

David J. Wanner

Subscribed and sworn to before me
this 24th day of January, 2008.

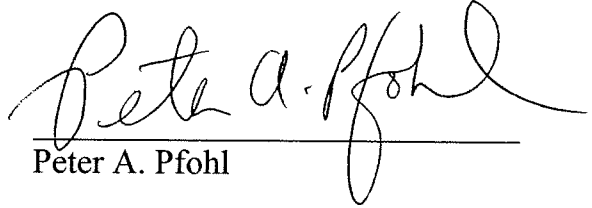
Notary Public

Dody L. Trost

My Commission expires 5/11/2008

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served this 28th day of January, 2008, by first-class mail, postage pre-paid, upon all Parties of Record in this Proceeding.



Peter A. Pfohl