

with SEA, CN prepared an Environmental Appendix that describes what CN regards as the reasonably foreseeable impacts of the CN/GLT Transaction, and that explains why CN believes that there is no need to prepare either an EIS or an EA. CN argues, in essence: that the only reasonably foreseeable Transaction-related operational change involves coordinated use of the DWP/DMIR lines in the 64-mile Shelton Junction-Nopeming Junction corridor (which, CN advises, lies in a relatively sparsely populated area of northeastern Minnesota); that, if foreseeable increases in tonnage on the DMIR line are compared to traffic volumes now moving on the DMIR line, the Board's presumptive tonnage thresholds for environmental analysis would be exceeded on a total of 61.5 miles of the DMIR line; but that, if foreseeable increases in tonnage on the DMIR line are compared to the traffic volumes generated before the recent closing of EVTAC's Fairlane facility, the Board's presumptive tonnage thresholds would not be exceeded at all, except on the 6.0-mile segment running through the rural territory between Adolph and Nopeming Junction. CN contends, in essence, that whether potential traffic shifts are measured against a base that includes or excludes EVTAC traffic, the reality of the situation is that the environmental consequences of the CN/GLT Transaction would be insignificant and thus do not warrant environmental review beyond that entailed in the preparation and review of CN's Environmental Appendix.

CN offers the following points in support of this contention: (1) The Transaction should have no impact on land use, biological resources, or natural resources because there would be no construction or abandonment of rail lines, and no construction or operational changes in connection with rail yards or intermodal facilities; (2) there are no plans to dispose of or alter any properties that are 50 years old or older; (3) the only operational change contemplated by CN is the coordination of operations on the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction; (4) any traffic increases resulting from such coordination would reflect shifts of existing traffic, not new traffic or diversions from trucks or other railroads; (5) the DMIR line between Shelton Junction and Nopeming Junction runs through a lightly populated area; (6) the estimated increase in rail traffic on that line would be below the applicable tonnage threshold on nearly the entire length of

that line, if the increase were measured against pre-May 2003 traffic volumes; (7) the potential environmental impacts from increased traffic on DMIR's Shelton Junction-Nopeming Junction line would be minimal (because there would be no increase in energy consumption, air quality would be unchanged or better, noise impacts would be insignificant, roadway at-grade crossings would remain safe, there would be little impact on rail safety, the quantities of hazardous materials shifted to the DMIR line would be modest, directional running should allow rail traffic to move more smoothly, and there would be no high and adverse impacts on any "environmental justice" populations); and (8) even the potential environmental impacts from increased traffic on the Adolph-Nopeming Junction segment of DMIR's Shelton Junction-Nopeming Junction line should be insignificant (CN claims that only 66 structures of any kind lie within 1,000 feet of the Adolph-Nopeming Junction right-of-way).

To facilitate public review of all aspects of the Environmental Appendix, and to provide an opportunity for comments to SEA on the CN/GLT Transaction, and, in particular, on CN's conclusion that the Transaction would have no significant environmental impacts, CN mailed copies of the Environmental Appendix to appropriate local, state, and federal environmental agencies and other interested parties, and placed notices in major newspapers delivered to potentially affected communities. December 10, 2003, is the date by which interested parties may submit comments on the Environmental Appendix directly to SEA.

CN has advised that, pursuant to the joint regulations adopted by the Board and the Federal Railroad Administration (FRA) to ensure adequate and coordinated consideration of safety integration issues by both the Board and FRA, *see* 49 CFR Parts 244 and 1106, CN will submit a Safety Integration Plan (SIP) to the Board and FRA by December 15, 2003. CN has further advised that it will distribute the SIP to appropriate government agencies and other interested parties, and will place notices in major newspapers delivered to potentially affected communities, to announce the availability of the SIP. Interested parties will have until January 22, 2004, to submit comments on the SIP to SEA. In accordance with past practice, the Board will include in any decision approving the CN/GLT Transaction a condition requiring CN to comply with the SIP. *See* 49 CFR 1106.4(b)(4).

Based on its consideration of all timely comments on the Environmental Appendix and the SIP and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review of the CN/GLT Transaction, and the Board will then determine whether formal environmental review is required and, if so, whether an EIS or an EA should be prepared. If an EIS or an EA is required to meet the Board's obligations under NEPA, the procedural schedule set forth in this decision will be adjusted accordingly.

Public Hearing/Oral Argument

To afford interested parties an opportunity to address the Board respecting any issues arising out of the CN/GLT Transaction, a public hearing/oral argument will be held the week of March 1, 2004. The precise date and the location will be announced later.

Discovery

Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Electronic Submissions: In General

As already mentioned, in addition to submitting an original and 20 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Parties unable to comply with the electronic submission requirement can seek a waiver from the Board. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1-2-3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1 (served October 29, 2003), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by computer data will facilitate timely review by the Board and its staff. The electronic