

STB FINANCE DOCKET NO. 32974

BURLINGTON NORTHERN SANTA FE CORPORATION,
BNSF ACQUISITION CORP., AND BURLINGTON NORTHERN
RAILROAD COMPANY--CONTROL--WASHINGTON
CENTRAL RAILROAD COMPANY

Decided October 24, 1996

The Board approves Burlington Northern Santa Fe Corporation's proposal to reacquire the portion of the Stampede Pass line in the State of Washington that it had sold to the Washington Central Railroad Company and to reestablish the line as a third main line route for certain traffic.

BY THE BOARD:¹

By application filed June 17, 1996, the Burlington Northern Santa Fe Corporation (BNSF), BNSF Acquisition Corp. (Acquisition), Burlington Northern Railroad Company (BNRR) and Washington Central Railroad Company (Washington Central) (collectively, Applicants) seek approval under 49 U.S.C. 11323-25 for BNSF to continue in control of Acquisition, its non-carrier subsidiary, after Acquisition acquires the common stock of and subsequently merges with Washington Central. Applicants also seek approval, under 49 U.S.C. 11323, for BNRR to operate the Washington Central's 151-mile main line between Pasco and Cle Elum, WA, and the following connecting branch lines: (1) the 28.6-mile branch line between Gibbon and Granger, WA; (2) the 13.1-mile branch line between Yakima and Naches, WA; (3) the 8.1-mile

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to railroad acquisitions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323-25.

branch line between Yakima and Moxee City, WA; and (4) the 18.7-mile branch line between Kennewick and Richland, WA. BNRR also proposes to assume Washington Central's obligations to operate over the Yakima Branch line of the Union Pacific Railroad Company (UP) between Kennewick and Yakima, WA.²

In a notice served July 17, 1996, and published at 61 Fed. Reg. 37,313 (1996), we accepted the application and determined that this is a minor transaction as defined in 49 CFR 1180.2(c).³ We invited comments from interested parties, including the Secretary of Transportation and the Attorney General of the United States, by August 16, 1996. We gave the Applicants until August 30, 1996, to reply to any comments.

Comments were filed by: the Washington State Department of Transportation (WSDOT); the Ports of Seattle and Tacoma, WA (collectively, the Ports); North Dakota Public Service Commission (NDPSC); The Beach Co-operative Grain Company, Berthold Farmers Elevator, North Dakota Farm Bureau, North Dakota Grain Dealers Association, North Dakota Grain Growers Association, and North Dakota Wheat Commission (collectively, ND Grain Producers); Cities of Kent and Auburn, WA (Cities); Rail Services Update (Update); United Transportation Union (UTU); and John D. Fitzgerald, General Chairman for the United Transportation Union located in Vancouver, WA (WA-UTU).⁴ Applicants replied.

² Applicants also propose to lease WCRC's remaining lines to the Columbia Basin Railroad Company (CBRC). Those lines are from: (1) Connell (MP 186.9) to Wheeler, WA (MP 147.3); (2) Bassett Junction (MP 0.0) to Shrag, WA (MP 12.50); and (3) Moses Lake (MP 18.3) to Sieler, WA (MP 5.0). In addition, BNRR proposes to grant CBRC trackage rights to provide local service over BNRR's 13-mile line between Warden (MP 1976.0) and Othello, WA (MP 1989.0). The Applicants state that authority for the lease and trackage rights would be sought in a separate proceeding before the Board.

³ This transaction is subject to the standards of 49 U.S.C. 11324(d), because the transaction does not involve the merger or control of two Class I railroads. Section 204(a) of the ICCTA provides that all ICC rules in effect on the date of the enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * * or operation of law." While the standards and procedures of former sections 11343-45 and current sections 11323-25 are substantially similar insofar as minor transactions are concerned, the procedures of current section 11325(d) differ slightly from those at 49 CFR 1180.4 and shall govern. Otherwise, the use of the regulations at 49 CFR part 1180 for this proceeding appears proper.

⁴ In addition, on October 17, 1996, the Board received a letter from Representative Jennifer Dunn of the Eighth Congressional District of Washington. Representative Dunn refers to the "Board's decision not to hold a hearing on this matter" and asks that the Board refrain from issuing

(continued...)

BACKGROUND

Overview

Applicants state that the transaction will enable BNRR to reestablish its former Stampede Pass route as a third main line for traffic to and from the ports of Seattle and Tacoma and the area around Puget Sound. Prior to 1983, BNRR operated three overhead main lines serving the area: (1) the Cascade route from Spokane, WA, through Wenatchee, WA, to Seattle and Tacoma, WA; (2) the Columbia River route between Spokane and Seattle and Tacoma via Pasco and Vancouver, WA; and (3) the Stampede Pass route between Auburn and Pasco, WA.

In 1983, BNRR downgraded the Stampede Pass route by limiting it to the carriage of local traffic, assertedly because the railroad had adequate capacity on its two other routes. In 1986, BNRR sold a 151-mile portion of the Stampede Pass route between Cle Elum and Pasco, and several branch lines to the Washington Central, which was then a new short-line carrier. BNRR continued to operate the remaining 77.9-mile portion of the Stampede Pass route between Cle Elum and Auburn to provide limited local service.

Applicants indicate that they now propose that BNSF reacquire the segment it sold to Washington Central to reestablish the Stampede Pass route as a main line for through traffic. They project that intermodal and grain traffic will soon exceed BNRR's capacity on the Cascade and Columbia River routes. BNSF also expects traffic to increase because of the recently approved BNRR/ATSF consolidation. The Applicants indicate that reestablishing the Stampede Pass route is the lowest-cost alternative to improve capacity to handle increased business and meet expected demand. Applicants propose to accomplish this by having BNSF acquire operational and financial control over Washington Central's lines.

⁴(...continued)

a decision in this case "until the issues raised in this proceeding are addressed in a hearing." Like almost all proceedings before the Board, this case is being considered on a written record. Representative Dunn has given no reason why a written record is inadequate in this proceeding, and has noted no deficiencies in the record before us. Nor have we received such an argument from any party to the proceeding. We will therefore deny the request.

1 S.T.B.

The Applicants

BNSF is a non-carrier corporation, which indirectly owns BNRR⁵ and The Atchison, Topeka, and Santa Fe Railway Company (ATSF).⁶ BNSF's control of the BNRR/ATSF system was approved in *Burlington Northern et al.--Merger--Santa Fe Pacific et al.*,¹⁰ I.C.C.2d 661 (1995). BNSF also controls several rail carriers and holds stock interest in other regional operating and terminal railroads subject to our jurisdiction.

Acquisition is a non-carrier, wholly owned subsidiary of BNSF. Acquisition was formed to acquire Washington Central.

BNRR is a Class I railroad that operates approximately 25,000 miles of railroad in the United States and Canada. BNRR's principal routes run from the Pacific Northwest across Montana, North Dakota, Minnesota and the western edge of Wisconsin to Chicago; from the Powder River Basin in Wyoming through Lincoln, NE, to Chicago, IL and Kansas City, MO; from the Powder River Basin to Denver, CO, and Fort Worth, TX; from the Powder River Basin to Bismarck, ND and Minneapolis/St. Paul, MN, with an auxiliary line to the Head of the Lakes; from Denver, CO to Chicago with a junction at Lincoln, NE; from Avard, OK east to Memphis, TN and Birmingham, AL; and from Chicago to Houston, TX through Kansas City and Dallas, with an auxiliary line from St. Louis, MO to a junction point east of Tulsa, OK.

Washington Central is a Class III rail carrier that operates approximately 303.2 miles of rail line within the State of Washington. Washington Central acquired its lines from BNRR in 1986.⁷ In addition, Washington Central serves

⁵ BNRR is directly owned by Burlington Northern, Inc. (BNI). Applicants indicate that BNI has not been made an applicant to this proceeding because it is not a party to the merger agreement. BNI will not acquire control of Acquisition or WCRC and will not operate WCRC's lines.

⁶ ATSF is directly owned by Santa Fe Pacific Corporation (SFP), a non-carrier holding company. Applicants indicate that ATSF and SFP are not included as applicant carriers in this transaction because neither is a party to the merger agreement nor would they effect control over WCRC's lines. Moreover, they state, ATSF's lines do not connect with and will not be consolidated with WCRC's lines.

⁷ See, *Washington Central Railroad Company, Inc.--Exemption Acquisition and Operation--Burlington Northern Railroad Company*, Finance Docket No. 30916 (ICC served October 3, 1986).

customers on UP's Yakima Branch under a trackage rights and haulage agreement dated April 7, 1992.⁸

The Proposed Transaction

The terms of the transaction are contained in an agreement among BNSF, Acquisition and Washington Central dated April 18, 1996. The agreement provides that Acquisition will acquire all the common stock of Washington Central, and it will be merged into Acquisition. Each share of Washington Central's common stock will be canceled and converted into the right to receive an adjusted fraction of a share of BNSF common stock. Immediately prior to the closing of the merger agreement, Washington Central will buy out all shares of the Washington Central's preferred stock (and common stock, if any) owned by the Washington Central Railroad Employee Stock Ownership Trust (ESOP). The ESOP will repay to Washington Central the outstanding amount of principal and interest due as of that time pursuant to the ESOP Loan and Pledge Agreement, dated May 4, 1994, between Washington Central and the Washington Central ESOP.

Applicants will consolidate the railroad operations of BNRR and Acquisition. Although Acquisition and BNRR will be marketed as part of the BNSF rail system, BNSF says that Acquisition will retain its separate existence and will not be merged into BNRR at the present time. After the merger, BNRR will operate the Washington Central's segment of the Stampede Pass route and connected branch lines.

According to Applicants, this transaction will not lessen competition. Reestablishing the Stampede Pass route will assertedly enable the BNSF system to improve capacity and reduce congestion in the Pacific Northwest area. The transaction, they say, will also provide additional routing and service options to shippers, improve transit times and car supply, and result in a more efficient operation. Applicants also expect to serve customers on BNSF's recently combined system more efficiently, thus enhancing competition for transportation into and out of the PNW. Additionally, shippers on the Washington Central will allegedly continue to have the same competitive options available to them, and

⁸ The trackage rights agreement was the subject of a notice of exemption in *Washington Central Railroad Company--Trackage Rights--Union Pacific Railroad Company*, Finance Docket No. 32051 (ICC served June 1, 1992).

their points of connection will remain the same. Applicants maintain that the transaction will improve the competitive balance that currently exists today, but will not create a monopoly or restrain trade in freight surface transportation in any particular region of the United States.

BNRR states that, for the reasonably foreseeable future, it intends to use the Stampede Pass route for a total of approximately 10 daily overhead trains that are presently operating over the Cascade and Columbia River routes. The 10 trains include 4 merchandise trains, 3 loaded grain trains, and 3 empty grain trains.

The 4 merchandise trains operate over 4 separate routes. One east-bound merchandise train currently operates between Seattle and Pasco over the Columbia River route and moves through the cities of Auburn and Kent. After the merger, this train will continue to move through Kent and Auburn and then turn east on the Stampede Pass route to Pasco. A second east-bound merchandise train presently operates between Tacoma and Pasco via the Columbia River route. After the merger, this train will operate north from Tacoma to Auburn and then east across the Stampede Pass route to Pasco. It will not operate through Kent. A third west-bound merchandise train presently operates between Pasco and Seattle over the Columbia River route through both Auburn and Kent. After the merger, this train will operate from Pasco over the Stampede Pass route to Auburn and then north through Kent to Seattle. The fourth west-bound merchandise train presently operates between Pasco and Tacoma, and does not operate either through Auburn or Kent. After the merger, this train will operate from Pasco over the Stampede Pass route to Auburn and then south to Tacoma. It will not operate through Kent.

The 3 loaded grain trains currently operate over 2 routes. Two of the loaded west-bound grain trains presently operate between Pasco and Tacoma over the Columbia River route and do not move through either Auburn or Kent. After the merger, the trains will operate from Pasco west over the Stampede Pass route to Auburn and then south to Tacoma. They will not move through Kent. The third loaded west-bound grain train presently operates from Pasco to Seattle over the Columbia River route through Auburn and Kent. After the merger, this train will operate west from Pasco over the Stampede Pass route to Auburn and then north through Kent to Seattle.

The 3 empty grain trains now also operate over 2 routes. Two of the empty east-bound grain trains presently move over the Cascade route from Tacoma to Spokane through both Auburn and Kent. After the merger, these trains will operate north from Tacoma to Auburn and then east over the Stampede Pass route to Pasco. They will no longer move through Kent. The third east-bound empty grain train presently moves from Seattle to Spokane over the Cascade route. It does not move through either Auburn or Kent. After the merger, the train will operate south from Seattle through Kent to Auburn. At Auburn, the train will move east over the Stampede Pass route to Pasco.

Additionally, BNRR proposes to provide local service between (1) Pasco and Cle Elum; (2) Gibbon and Granger; (3) Yakima and Naches; (4) Yakima and Moxee City; and (5) Kennewick and Richland. BNRR's local service will essentially be the same as is provided today by Washington Central, but operations could change if additional traffic becomes available. BNRR will provide local service at Kennewick out of its Pasco Yard.

Acquisition will also assume Washington Central's obligations under the trackage rights agreement with UP. BNRR will operate UP's Yakima Branch to serve UP customers on that line. Washington Central's trackage rights with UP will be assigned to BNRR. BNRR will perform the same level of switching that Washington Central performs today for those UP customers.

BNRR initially had considered using the Stampede Pass route for scheduled double-stack intermodal service, and had planned to expand the Stampede Pass tunnel to accommodate this traffic. BNRR states that it has since determined that it will not use the Stampede Pass route for double-stack intermodal traffic for the reasonably foreseeable future, but will use its other lines for this traffic. Rerouting a total of approximately 10 trains over the Stampede Pass route will assertedly free up track capacity on BNRR's other Pacific Northwest routes for movements of double-stack traffic. BNRR states that it has no plans to expand the Stampede Pass tunnel for the reasonably foreseeable future, and that no capital funds to expand the tunnel have been allocated through 1999.

Applicants expect that BNRR will realize significant operating benefits by using the Stampede Pass Route. Because of the shorter distances over the route, rerouting the merchandise and loaded grain trains will reduce ton miles, car miles, locomotive unit miles, and train miles. The 3 empty grain trains, however, will have to travel a longer distance over the Stampede Pass route than over the Cascade route. BNRR expects to realize annual savings of \$15.24 million as follows:

<i>Category Savings</i>	<i>Miles Saved</i>
Train Miles	226,260
\$ 1,241,010	
Locomotive Miles	495,786
768,187	
Car Miles	21,751,997
2,451,602	
Ton Miles	3,468,970,909
<u>7,958,686</u>	
\$12,419,485	

The train reroutes will also produce substantial fuel savings of approximately 4.5 million gallons of diesel fuel per year. At current fuel prices of an average of \$.63 per gallon, the reroutes described above will produce annual savings of about \$2.83 million, resulting in the total savings figure of \$15.24 million.

Applicants state that the reroutes will also enable the Columbia River route to handle an additional 7 trains per day to carry traffic to and from points such as Portland, OR, Vancouver, WA, and Kalama, WA. Rerouting the empty grain trains is expected to improve BNRR's ability to provide intermodal service over the Cascade route. The rerouted empty grain trains will move directly into the Pasco Yard for classification before movement to loading points on the BNRR system. BNRR has indicated a preference for classifying empty grain cars at its Pasco Yard because its facilities at Spokane and Hauser, ID, were not designed for this function and are often congested during the periods of heavy grain movements.

Comments

WSDOT states that the transaction would be in the best interests of shippers in the State of Washington. It believes that the proposal would enhance rail service and increase main line rail capacity across the state. WSDOT indicates that the rail network is an important element of the state's multimodal transportation network. WSDOT contends that container traffic through Puget Sound ports is projected to increase substantially. It notes that this traffic is

highly time sensitive and requires top quality rail service for these ports to be competitive. WSDOT maintains further that large increases are also projected for grain traffic exported through its ports. It views the reopening of the Stampede Pass route as meeting the growth needs by providing a third corridor across the state.

Both Ports support the application. They note that the BNRR Cascade and Columbia River routes are nearing capacity. Each views the reopening of the Stampede Pass route as being important for increased rail capacity. They contend that the proposal will benefit shippers and improve service. In their view, growth of business at their ports depends on corresponding growth in rail capacity to transport traffic. They see BNSF's acquisition of Washington Central lines as vital to their interest.

NDPSC and ND Grain Producers support the proposal because it would open a new route for grain shipped to Pacific Northwest ports. They state that a lack of capacity has disrupted traffic to the Ports and has delayed the return of empty cars to meet shipper demands. They also note that congestion prevents grain shippers from shipping grain at the most opportune time of high demand and has been costly for producers.

The Cities, while not opposing the merger, express concern about the potential environmental impacts that could result from increased traffic. They have requested that we impose conditions to mitigate these impacts.

Update, a newsletter that deals with rail matters, supports the application. It notes that the Cascade and Columbia River lines are nearing capacity, and that the proposal will enable BNRR to acquire an additional route to handle the predicted growth of traffic in the Pacific Northwest without a large expenditure of capital.

UTU and WA-UTU seek the imposition of employee protective conditions. In addition, WA-UTU asserts that the transaction is not an end-to-end acquisition, but should be considered a parallel transaction, because BNRR will be diverting traffic from other routes.⁹ WA-UTU asks that we deny the transaction.

⁹ WA-UTU also contends that this proceeding should be deferred until CBRC files for authority to lease WCRC lines and acquire trackage rights from BNRR. WA-UTU had previously raised this contention in a petition requesting reopening of the July 17, 1996 procedural decision. We denied WA-UTU's request as unwarranted in the August 12, 1996 decision, and WA-UTU does not present any new reasons in its comments to reconsider our decision.

Applicants respond that none of the commenters raise any competitive concerns. They note that many of the commenting parties recognize the benefits to be derived from BNRR's ability to offer a shorter route for certain traffic and, at the same time, reduce congestion of other BNRR routes for time-sensitive traffic.

DISCUSSION AND CONCLUSIONS

Statutory criteria. Under 49 U.S.C. 11323(a)(2), the purchase by rail carriers of property of another rail carrier requires prior approval by the Board. The criteria for approval are set forth in section 11324. Because this transaction does not involve the merger or control of at least two Class I railroads, section 11324(d) governs and requires approval of the application unless the Board finds that:

(1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In transactions subject to section 11324(d), the primary focus is on the probable competitive effects. We consider the public interest factor only if we find significant anticompetitive effects. Any adverse competitive impact must be both "likely" and "substantial." Even then, the transaction may not be disapproved unless the anticompetitive impacts outweigh the public interest factors and cannot be mitigated through conditions.¹⁰ See, *Wilmington Terminal RR, Inc.--Pur. & Lease--CSX Transp., Inc.*, 6 I.C.C.2d 799, 803 (1990), and cases cited therein, 7 I.C.C.2d 60 (1990), *aff'd sub nom.*, *Railway Labor Executives Ass'n v. I.C.C.*, 930 F.2d 511 (6th Cir. 1991) (*Wilmington Terminal*).

There is nothing on record indicating any anticompetitive effects from this transaction. The WCRC lines to be operated by BNRR service two types of markets: (1) overhead, east-west grain and other traffic between the Pacific Northwest and other regions; and (2) local traffic which originates and terminates on the lines. The only change affecting overhead traffic brought

¹⁰ The quoted language from section 11324(d) is identical to the language in former section 11344(d). Therefore, in interpreting section 11324(d), we are guided by the case law interpreting former section 11344(d).

about by the transaction is to open a new route to the Puget Sound area for BNRR. No other carrier is configured to make such use of these lines.

All Washington Central local customers will continue to have the same rail alternatives available today. BNRR will assume existing trackage and haulage rights obligations and will serve shippers on UP's Yakima line. Consequently, these shippers face no loss of transportation alternatives. There is no evidence to indicate a loss of geographic competition, since local access by UP will be maintained. There has been no significant opposition citing competitive concerns. While WA-UTU argued that the application should be denied, it did not submit any evidence showing that the proposed transaction is anticompetitive.

On the other hand, the public benefits from the transaction are substantial. Applicants would realize \$15.24 million in annual savings from the rerouting of traffic over the shorter Stampede Pass route. There are also significant unquantified benefits. By reopening the Stampede Pass route, BNRR will relieve capacity constraints on the Cascade route and the Columbia River route.

In developing intermodal service over the Cascade route, BNSF indicates that it wants to replicate the "high quality, time sensitive service" between Chicago and Los Angeles provided now over ATSF lines. Rerouting non-intermodal traffic on to the Stampede Pass route will permit BNSF to provide quality intermodal service on its other lines as that traffic grows.

Applicants expect grain traffic to grow 7 percent per year to meet export demand. The routing of three loaded and three empty grain trains a day over the Stampede Pass route will result in more efficient handling of grain. Additionally, the Pasco Yard appears better suited for handling grain than the facilities BNRR currently uses.

Based on the evidence before us, we conclude that this transaction not only lacks anticompetitive effects but shows prospects of significant public benefits.

Labor protection. Applicants do not expect that existing BNRR employees or any of its subsidiaries' or affiliates' employees will be adversely affected by the proposed control transaction. They maintain that most Washington Central employees will be absorbed into BNRR after Washington Central's operations are integrated into BNRR. They state that most Washington Central employees will probably continue to perform the same or similar tasks with BNRR. Some work currently performed by Washington Central employees will be transferred to other BNRR locations. For example, Washington Central dispatchers may be

retrained for BNRR's Network Operations Center or ATSF's System Operation Center. Employees with mechanical skills may be absorbed at BNRR's other maintenance facilities in the Washington-Montana area.

Applicants anticipate that 17 Washington Central positions will be eliminated in the first year of common control. In addition, some management positions may be transferred or eliminated. They expect no labor impacts in the second and third years after consummation.¹¹

BNRR will establish a crew district between Pasco and Ellensburg with Pasco being the home terminal. An additional crew district will be established between Ellensburg and Seattle with Seattle being the home terminal. A helper district will also be established between Ellensburg and Eagle Gorge, WA,¹² to help the west-bound merchandise and the loaded grain trains over the Stampede Pass route.

Under 49 U.S.C. 11326(a), with exceptions not pertinent here, when approval is sought for a transaction under sections 11324 and 11325, the imposition of labor protective conditions is mandatory. In the absence of a need for greater protection, the conditions in *New York Dock Ry.--Control -- Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (*New York Dock*), are appropriate for this type of transaction. Because no need for greater protection has been shown, these conditions will be imposed here. This is consistent with the requests of Applicants and UTU.

Applicants state that no employee protection agreements have been reached as yet, but they are negotiating with BNRR's union representatives. Applicants expect to offer transfer or severance packages under the *New York Dock* conditions to Washington Central employees whose positions will be eliminated as a result of this transaction.

Environmental analysis. Under the National Environmental Policy Act (NEPA), an environmental review is required in this proceeding because, after BNRR acquires WCRC's segment of the Stampede Pass route, rail traffic is projected to exceed our thresholds for environmental review at 49 CFR 1105.7(e)(4) and (5). Here, an environmental assessment (EA) was prepared

¹¹ Applicants also indicate that CBRC expects to employ at least 15 of WCRC's current employees to operate lines to be acquired from WCRC.

¹² Applicants indicate that Eagle Gorge is located approximately 74 miles west of Ellensburg on BNRR's segment of the Stampede Pass route between Ellensburg and Auburn.

pursuant to 49 CFR 1105.6(b)(4). That section calls for an EA, rather than an Environmental Impact Statement, for proposed mergers which would involve major operational changes that are not expected to result in substantial adverse environmental impacts.

On September 4, 1996, the Section of Environmental Analysis (SEA) issued an EA based on its independent analysis, consultations with appropriate Federal, state and local agencies, a site inspection, and review of all the information submitted to date. The EA analyzed BNRR's proposed operation over the entire Stampede Pass route between Auburn and Pasco, including Washington Central's 151-mile segment between Pasco and Cle Elum and BNRR's 77.9-mile segment between Auburn and Cle Elum (which is not part of this application). Both segments of the Stampede Pass route were included in the environmental analysis because the portion of the line between Auburn and Cle Elum is directly related to the Cle Elum to Pasco portion and is the link between WCRC's Cle Elum to Pasco line and BNRR's existing main line. Moreover, without BNRR's proposed control and operation of WCRC's segment, the Stampede Pass route would presumably remain relatively inactive. However, SEA's analysis of the Auburn to Cle Elum segment was limited to the anticipated impacts of an increase in train traffic on that segment. SEA's environmental review did not consider potential environmental impacts of upgrading or rehabilitating the line because these actions do not require Board approval, and maintenance, even if deemed to be upgrading, is more clearly committed to rail management discretion and less clearly related to the transaction we are approving here. SEA also assessed, and developed mitigating measures to address potential environmental impacts based on an increase in traffic to the City of Auburn, which is located at the western end of the Stampede Pass line.

As stated above, BNRR plans to operate a total of approximately 10 through trains per day over the Stampede Pass route for the reasonably foreseeable future. In comments to the EA and other documents, BNRR's traffic projections were disputed and assertions were made that BNRR intended to upgrade the Stampede Pass tunnel to accommodate an additional 15-22 trains per day, including double-stack trains. Because of this discrepancy, SEA requested that BNRR submit a verified statement addressing traffic projections on the line following upgrading and modification to any tunnels.

In its verified statement, BNRR reaffirmed that it would move a total of no more than approximately 10 through trains per day over the line for the reasonably foreseeable future and that it had no present plans to improve the

tunnel. SEA accepted BNRR's traffic projections of approximately 10 trains per day and assessed the potential environmental impacts based on that figure.

The EA considered impacts on safety, energy, air quality, noise and vibration, land use, water, biological resources and cultural resources. In the EA, SEA concluded that, based on its independent analysis of all available information and a site visit to the area, the proposal would not have significant environmental impacts if the mitigation measures recommended in the EA were imposed and implemented. Further, the EA found that the potential for environmental impact was reduced because the track infrastructure over which these trains would operate already is in place.

SEA received 23 comments on the EA. In its detailed Post Environmental Assessment (Post EA), dated October 16, 1996, SEA addressed the issues raised in the comments, recommended final mitigation measures, and concluded that if the mitigation recommended in the Post EA were imposed and implemented, the merger proposal would not have significant environmental impacts.¹³ We adopt SEA's Post EA conclusions and recommended mitigation measures, including SEA's reliance on the 10 trains per day traffic projections.

SEA's decision to rely on the traffic data submitted by BNRR during the environmental review process is reasonable. The Cities have challenged the EA's use of 10 trains a day as the reasonably foreseeable traffic following the proposed merger. The Cities argue that a likelier result of the merger is that between 15 and 22 trains per day will move over the Stampede Pass route. This argument is based on analysis undertaken by BNSF as to the result of raising the present clearances of the tunnel on the Auburn to Cle Elum portion of the line by 4 feet to permit BNSF to operate trains of containers stacked on top of each other. BNSF, however, submitted a verified statement stating that it has scrapped plans to increase the height of the tunnel at issue for the reasonably foreseeable future. It is uncontroverted that without modification of that tunnel the intermodal traffic will not move over the Stampede Pass route. Given this fact, we have no basis to conclude that traffic is likely to exceed a total of approximately 10 trains a day for the reasonably foreseeable future. In any event, as SEA stated, the same mitigation measures recommended in the Post EA would apply equally to a higher level of traffic. Thus, the communities

¹³ The Post EA has been made part of the Board's public record in this case. It is also available upon request by contacting Dana White, Section of Environmental Analysis, Surface Transportation Board, Washington, DC 20423, telephone: (202) 927-6213.

impacted by this merger would be protected even assuming *arguendo* that the level of traffic were to exceed 10 trains per day at some point in the future.

SEA has developed measures designed specifically to mitigate potential impacts to safety, air quality, biological, and water resources. We will adopt the recommended final mitigation measures in the Post EA with minor changes. Our mitigation measures are set forth below:

1. As requested by a number of local authorities on the Cle Elum to Pasco segment, BNRR shall notify town and county governments along that line segment, as well as towns and counties along the Auburn to Cle Elum line segment, of its expected schedule of merchandise train operations, as soon as BNRR formulates such a schedule. Because of the seasonal nature of grain, however, BNRR shall provide reasonable notice to these same town and county governments of generally expected times of grain train movements.
2. BNRR shall provide all local and county governments along the Stampede Pass route with copies of all applicable Emergency Response Plans and, upon request, provide training of local emergency response personnel for coordinated responses to incidents. In the case of a hazardous material incident, BNRR shall follow appropriate emergency response procedures contained in its Emergency Response Plans.
3. BNRR shall provide 800 numbers to all emergency response forces in all towns and counties. These numbers shall provide access to BNRR supervisors who shall provide train movement information and work cooperatively with communities in emergency situations. These numbers are not to be disclosed to the general public.
4. BNRR shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 to 180).
5. BNRR shall consult with the State of Washington and appropriate local officials to develop a priority list and discuss funding options for upgrading crossing signals, where necessary, due to increases in rail traffic resulting from the proposed transaction. BNRR shall include in these consultations representatives from the Regional Office of the Federal Railroad Administration in Vancouver, WA. BNRR shall advise SEA as to the status and the results of these consultations.

6. To the extent possible, BNRR shall space train movements to allow time for grade crossings to clear.
7. To the extent practicable, BNRR shall apply operating practices that are designed to reduce locomotive fuel consumption and air pollution: avoidance of unnecessary locomotive idling; use of optimal locomotive power settings to decrease emissions; avoidance of high-throttle setting acceleration; isolation of unneeded horsepower; and closing of box car doors on empty cars.
8. Within 30 days of the effective date of this decision, BNRR shall consult with the Washington Department of Fish and Wildlife to facilitate:
 - (a) maximum protection of the Yakima and Green Rivers, including development of a spill and containment response plan specifically tailored to the Yakima and Green Rivers;
 - (b) vegetation control along the right-of-way as a means of fire-suppression management;
 - (c) wildlife movement and access to water;
 - (d) the minimizing of adverse impacts on wildlife and protection of water quality associated with any use of herbicides in aquatic areas;
 - (e) provision, placement and maintenance of fire suppression vehicles during the dry season from April to November in the Yakima Canyon area.

BNRR shall provide a written status report to SEA on the results of these consultations.

9. BNRR shall make every effort to prevent causing fires, and to contain and control any fire it might cause, and shall immediately report all such fires to the appropriate fire-fighting organization.
10. BNRR shall apply only herbicides registered with the U.S. Environmental Protection Agency for use in aquatic sites and these herbicides shall be applied by licensed herbicide contractors.
11. For safety purposes, BNRR shall install and maintain, if requested, protective fencing where recreation areas, or other similar public use areas, are located adjacent to the right-of-way.

12. To facilitate communication between local government authorities and BNRR, BNRR shall designate a representative (with a toll free number) to provide general assistance such as handling inquiries, providing train movement information, and responding to reports of malfunctioning signaling systems, etc.

13. Prior to the initiation of operations along any part of the Stampede Pass route, BNRR shall consult with appropriate state and local highway authorities to identify those grade crossings along the route where temporary signs should be posted by BNRR in order to alert motorists as to when reinstitution/increased rail traffic will begin.

Based on the record, we find:

1. The proposed transaction will not substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation.

2. As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

3. As conditioned, this action will not have any significant adverse effect on employees of either BNRR or Washington Central.

It is ordered:

1. The application under 49 U.S.C. 11323, *et seq.*, for BNSF to continue in control of BNSF Acquisition, after BNSF Acquisition acquires the common stock and subsequently merges with Washington Central, and for BNRR to operate the above-described Washington Central lines, is approved, subject to the employee protection conditions described in *New York Dock Ry. -- Control -- Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), and the environmental conditions set out in this decision.

2. This decision is effective October 30, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.