STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY —CONTROL AND OPERATING LEASES/AGREEMENTS— CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 89[1]

Decided July 20, 1998

The Board approves, with certain conditions: (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS.

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[1] This decision covers the STB Finance Docket No. 33388 lead proceeding and the embraced proceedings listed in Appendix A.

BY THE BOARD:

INTRODUCTION[2]

Applicants. By application (sometimes referred to as the primary application) filed June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)[3] seek approval under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. By various ancillary filings also filed June 23, 1997, applicants seek approval for or exemption of various ancillary control-related matters.[4]

Parties Supporting The Application. The application has been endorsed by more than 2,700 parties, including more than 2,200 shippers, more than 350 public officials, and more than 80 railroads. *See,* Application Volumes 4A, 4B, 4C, 4D, 4E, 4F, and 4G.[5]

Protestants: Freight Railroads. Submissions opposing the CSX/NS/CR transaction and/or urging the imposition of conditions have been filed by Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad (AA), Housatonic Railroad Company, Inc. (HRRC), Illinois Central Railroad Company (IC), I & M Rail Link, LLC (I&M),[6] Indiana Southern Railroad, Inc. (ISRR), Livonia,

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[2] Abbreviations frequently used in this decision are listed in Appendix B.

[3] CSXC and CSXT and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as New York Central Lines LLC (NYC), are referred to collectively as CSX. NSC and NSR and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as Pennsylvania Lines LLC (PRR), are referred to collectively as NS. CRR and CRC, and also their wholly owned subsidiaries other than NYC and PRR, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants (or, sometimes, the primary applicants).

[4] The primary application and ancillary filings filed June 23, 1997 (CSX/NS-18, -19, -20, -21, -22, -23, -24, and -25) were supplemented on July 7, 1997 (CSX/NS-26, labor impact exhibit), August 4, 1997 (CSX/NS-33, supplemental support statements), August 6, 1997 (CSX/NS-35, errata), August 28, 1997 (CSX/NS-54, environmental errata and supplemental environmental report), August 29, 1997 (CSX-21 and NS-19, train schedules), October 29, 1997 (CSX/NS-119, North Jersey Shared Assets Area operating plan), and December 3, 1997 (safety integration plans).

[5] Volumes 4A, 4B, 4C, 4D, and 4E (all of which are labeled CSX/NS-21) were submitted on June 23, 1997. Volumes 4F and 4G (both of which are labeled CSX/NS-33) were submitted on August 4, 1997.

[6] The I&M responsive application was actually filed by I&M and two additional parties: Elgin, Joliet & Eastern Railway Company (EJ&E) and Transtar, Inc. (Transtar, EJ&E's corporate (continued...)

Avon & Lakeville Railroad Corporation (LAL), New England Central Railroad, Inc. (NECR), New York Cross Harbor Railroad (NYCH), New York & Atlantic Railway (NYAR), the Philadelphia Belt Line Railroad Company (PBL), Ohi-Rail Corporation (Ohi-Rail), R.J. Corman Railroad Company/Western Ohio Line (RJCW), The Elk River Railroad, Incorporated (TERRI), Reading Blue Mountain & Northern Railroad Company (RBMN), Wheeling & Lake Erie Railway Company (W&LE), and Wisconsin Central Ltd. (WCL). Submissions have also been filed: by Providence and Worcester Railroad Company (P&W); jointly by the American Short Line Railroad Association (ASLRA) and Regional Railroads of America (RRA); jointly by Boston and Maine Corporation (B&MC), Springfield Terminal Railway Company (ST), and Maine Central Railroad Company (MC);[7] jointly by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW);[8] by Durham Transport, Inc. (Durham); jointly by Gateway Western Railway Company (GWWR) and Gateway Eastern Railway Company (GWER);[9] and jointly by North Shore Railroad Company (NSHR), Juniata Valley Railroad Company (JVRR), Nittany & Bald Eagle Railroad Company (NBER), Lycoming Valley Railroad Company (LVRR), Shamokin Valley Railroad Company (SVRR), and Union County Industrial Railroad Company (UCIR). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix C.

Protestants: Passenger Railroads. Submissions opposing the CSX/NS/CR transaction and/or urging the imposition of conditions have been filed by the National Railroad Passenger Corporation (NRPC or Amtrak), the American Public Transit Association (APTA), the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois (referred to as Metra or, on occasion, Chicago Metra), Metro-North Commuter Railroad Company (MNCR), the METRO Regional Transit Authority (referred to as METRO or, on occasion, Northeast Ohio METRO),[10] the Northern Virginia Transportation Commission (NVTC), and the Potomac and Rappahannock Transportation Commission

[6](...continued)
parent). EJ&E and Transtar, however, announced at the oral argument (on June 3, 1998) that they were withdrawing from participation in the I&M responsive application.

[7] B&MC, ST, and MC are referred to collectively as B&M or Guilford.

[8] CNR, GTC, and GTW are referred to collectively as CN.

[9] GWWR and GWER are referred to collectively as Gateway.

[10] METRO's comments were submitted on its behalf by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO).

(P&RTC).[11] The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix D.

Protestants: Shipper Organizations. Submissions opposing the CSX/NS/CR transaction and/or urging the imposition of conditions have been filed by The National Industrial Transportation League (NITL), the U.S. Clay Producers Traffic Association, Inc. (CPTA), The Fertilizer Institute (TFI),[12] the Chemical Manufacturers Association (CMA), The Society of the Plastics Industry, Inc. (SPI),[13] the Institute of Scrap Recycling Industries, Inc. (ISRI), the American Farm Bureau Federation (AFBF), the American Feed Industry Association (AFIA), the National Cattlemen's Beef Association (NCBA), the National Corn Growers Association (NCGA), the National Pork Producers Council (NPPC),[14] the National Grain and Feed Association (NGFA), and the National Mining Association (NMA). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix E.

Protestants: Coal Shippers. Submissions opposing the CSX/NS/CR transaction and/or urging the imposition of conditions have been filed by A. T. Massey Coal Company, Inc. (Massey), American Electric Power Service Corporation (AEP), Centerior Energy Corporation (Centerior),[15] Consumers Energy Company (Consumers), Eastman Kodak Company (Kodak), Eighty-Four Mining Company (EFMC), GPU Generation, Inc. (GPU), Indianapolis Power & Light Company (IP&L), Niagara Mohawk Power Corporation (NIMO), Northern Indiana Public Service Company (NIPS), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix F.

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[11] NVTC and P&RTC, the co-owners of Virginia Railway Express (VRE), filed jointly.

[12] On October 21, 1997: NITL, CPTA, and TFI filed jointly, *see* NITL-7; and TFI also filed separately, *see* TFI-2. Later, NITL entered into a settlement agreement with applicants, and, in accordance with the provisions of that agreement, withdrew its request that we impose most of the conditions detailed in NITL-7, but renewed its request that we impose the post-implementation rate conditions detailed in NITL-7. *See,* NITL-11 at 2-3. Still later, TFI entered into a similar settlement agreement with applicants. *See,* TFI-7 (filed June 3, 1998). The result is that NITL, CPTA, and TFI continue to seek the post-implementation rate conditions detailed in NITL-7, and CPTA continues to seek, in addition, all the other conditions detailed in NITL-7.

[13] CMA and SPI filed jointly.

[14] AFBF, AFIA, NCBA, NCGA, and NPPC filed jointly. AFBF also filed separately.

[15] Although Centerior recently consummated a merger with Ohio Edison to form FirstEnergy Corporation, we will continue to refer to Centerior by its prior name. *See,* CEC-17 at 1 n.1.

Protestants: Chemicals/Plastics Shippers. Submissions opposing the CSX/NS/CR transaction and/or urging the imposition of conditions have been filed by ASHTA Chemicals Inc. (ASHTA), E.I. DuPont de Nemours and Company, Inc. (DuPont), Fina Oil and Chemical Company (Fina), Millennium Petrochemicals Inc. (Millennium), PPG Industries, Inc. (PPG), Occidental Chemical Corporation (OxyChem), Shell Oil Company, Shell Chemical Company,[16] Union Camp Corporation (Union Camp), and the Westlake Group of Companies (Westlake). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix G.

Protestants: Other Commercial Interests. Submissions opposing the CSX/NS/CR transaction and/or urging the imposition of conditions have been filed by APL Limited (APL), the American Trucking Associations (ATA), AK Steel Corporation (AK Steel), Wyandot Dolomite, Inc. (Wyandot), National Lime and Stone Company (NL&S), Redland Ohio, Inc. (Redland), Fort Orange Paper Company (FOPC), The International Paper Company (IP), Joseph Smith & Sons, Inc. (JS&S), Inland Steel Company (ISC), Prairie Material Sales, Inc. (Prairie Group), General Mills, Inc. (General Mills), the New York/New Jersey Foreign Freight Forwarders and Brokers Association (NYNJFFF&BA), Resources Warehousing & Consolidation Services, Inc. (RWCS), the Transportation Intermediaries Association (TIA), JStar Consolidated, Inc. (JStar),[17] J.B. Hunt Transport, Inc. (Hunt), DeKalb Agra, Inc. (DeKalb Agra), Cargill, Incorporated (Cargill), and A.E. Staley Manufacturing Company (Staley). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix H.

Regional/Local Interests In The Northeast (New York, Pennsylvania, New Jersey, and New England). Submissions respecting the CSX/NS/CR transaction have been filed by: the State of New York, acting by and through its Department of Transportation (NYDOT); the New York City Economic Development Corporation (NYCEDC), acting on behalf of the City of New York;[18] United States Representative Jerrold Nadler and 23 other Members of the United States House of Representatives (referred to collectively as the

[16] Shell Oil Company and Shell Chemical Company, which filed jointly, are referred to collectively as Shell.

[17] JStar is a division of Jacobs Industries Ltd.

[18] NYDOT and NYCEDC filed jointly and separately.

Nadler Delegation);[19] the Erie-Niagara Rail Steering Committee (ENRSC); the Genesee Transportation Council (GTC); the Tri-State Transportation Campaign (TSTC); the Business Council of New York State, Inc. (BCNYS); the Empire State Passengers Association (ESPA); the Southern Tier West Regional Planning and Development Board (STWRB); the Northwest Pennsylvania Rail Authority (NWPRA); the Eight State Rail Preservation Group (ESRPG); the Pennsylvania House and Senate Transportation Committees (referred to collectively as the Pennsylvania Transportation Committees); United States Senator Arlen Specter of Pennsylvania; the Delaware Valley Regional Planning Commission (DVRPC); the Southwestern Pennsylvania Regional Planning Commission (SPRPC); the Philadelphia Regional Port Authority (PRPA), the South Jersey Port Corporation (SJPC), The Delaware River Port Authority (DRPA), and The Port of Philadelphia and Camden, Inc. (PPC);[20] the Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and the Pennsylvania Department of Transportation (referred to collectively as PADOT); the City of Philadelphia and the Philadelphia Industrial Development Corporation (referred to collectively as PIDC); United States Representative Robert Menendez of New Jersey; the Village of Ridgefield Park, New Jersey; the South Jersey Transportation Planning Organization (SJTPO); the Coalition of Northeastern Governors (CNEG); the Connecticut Department of Transportation (CTDOT); the Rhode Island Department of Transportation (RIDOT); United States Senator Jack Reed of Rhode Island; the Commonwealth of Massachusetts; the State of Vermont; the Maine Department of Transportation (MEDOT); and the Conservation Law Foundation (CLF). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix I.

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[19] The 24 members of the Nadler Delegation, each of whom is (or, at the time of the filing of the Nadler Delegation's intervention petition, was) a Member of the United States House of Representatives from either New York or Connecticut, are: the Honorable Jerrold Nadler, the Honorable Christopher Shays, the Honorable Charles Rangel, the Honorable Ben Gilman, the Honorable Barbara Kennelly, the Honorable Nancy Johnson, the Honorable Charles Schumer, the Honorable Rosa DeLauro, the Honorable Michael Forbes, the Honorable Sam Gejdenson, the Honorable Nita Lowey, the Honorable Major Owens, the Honorable Thomas Manton, the Honorable Maurice Hinchey, the Honorable Ed Towns, the Honorable Carolyn B. Maloney, the Honorable Nydia M. Velazquez, the Honorable Floyd Flake, the Honorable Gary Ackerman, the Honorable Eliot L. Engel, the Honorable Louise M. Slaughter, the Honorable John LaFalce, the Honorable Michael McNulty, and the Honorable James Maloney.

[20] PRPA, SJPC, DRPA, and PPC are referred to collectively as the Delaware River Port Interests.

Regional/Local Interests In The Mid-Atlantic States (Maryland, Delaware, and West Virginia). Submissions respecting the CSX/NS/CR transaction have been filed by: Baltimore Area Transit Association (BATA), the Citizens Advisory Committee for the Baltimore region (CAC), the State of Delaware Department of Transportation (DEDOT), the West Virginia Association for Economic Development (WVED),[21] and the West Virginia State Rail Authority (WVSRA). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix J.

Regional/Local Interests In The Midwest (Ohio, Indiana, and Illinois). Submissions respecting the CSX/NS/CR transaction have been filed by: the Ohio Attorney General (OAG), the Ohio Rail Development Commission (ORDC), and the Public Utilities Commission of Ohio (PUCO);[22] the City of Cleveland, OH; the Cities of Bay Village, Rocky River, and Lakewood, OH (referred to collectively as the BRL Cities);[23] United States Representative Dennis J. Kucinich of Ohio; the Summit County Port Authority (SCPA);[24] the Stark Development Board, Inc. (SDB); the City of Cincinnati, OH; the Toledo-Lucas County Port Authority (TLCPA); the Toledo Metropolitan Area Council of Governments (TMACOG); the Four City Consortium (FCC, an association of the Cities of East Chicago, Hammond, Gary, and Whiting, IN); the City of Indianapolis, IN; the Indiana Port Commission (IPC); the Parks and Recreation Department of St. Joseph County, IN; the Illinois International Port District (the Port of Chicago); the Illinois Department of Transportation (ILDOT); the Village of Riverdale, IL; the City of Georgetown, IL; and the Environmental Law & Policy Center of the Midwest (EL&PC). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix K.

Labor Parties. Submissions respecting the CSX/NS/CR transaction have been filed by various labor parties, including the Allied Rail Unions (ARU), the International Association of Machinists and Aerospace Workers (IAM), the Transportation•Communications International Union (TCU), Transportation

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[21] WVED's full name is: the West Virginia Association for Economic Development through the Joint Use of Conrail Tracks by Norfolk Southern and CSXT.

[22] OAG, ORDC, and PUCO filed jointly.

[23] The BRL Cities filed jointly.

[24] SCPA's comments were submitted by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) on behalf of the Summit County Port Authority and the METRO Regional Transit Authority.

Trades Department (TTD),[25] the United Railway Supervisors Association (URSA), and the United Transportation Union (UTU). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix L.

Federal Parties. Submissions have also been filed by the United States Department of Agriculture (USDA), the United States Department of Justice (DOJ), and the United States Department of Transportation (DOT). The evidence and arguments, and any related requests for affirmative relief, contained in these submissions are summarized in Appendix M.

Additional Parties. Numerous additional parties, including elected officials, government agencies, shippers, shortline railroads, and labor organizations, have participated in this proceeding. Their submissions have generally been limited to expressions of either support for or opposition to either the CSX/NS/CR transaction or the conditions requested by one or more of the parties urging the imposition of conditions upon any approval of the transaction.

Summary of Decision. In this decision, we are taking the following action: (1) except as otherwise indicated, we are approving the primary application in its entirety;[26] (2) with certain limited restrictions, we are approving applicants' request to override antiassignment and other similar clauses in shipper contracts, but only for a period of 180 days from Day One;[27] (3) with one exception, we are approving applicants' request to override antiassignment and other similar clauses in Conrail's Trackage Agreements;[28] (4) we are exempting the

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[25] TTD is a department of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

[26] CSX and NS have made, both in their written submissions and also at the oral argument that was held on June 3 and 4, 1998, numerous representations to the effect that certain issues will be addressed, certain services will be provided, and so on. Some of these representations are specifically referenced in this decision; many, however, are not specifically referenced. We think it appropriate to note, and to emphasize, that CSX and NS will be required to adhere to all of the representations made on the record during the course of this proceeding, whether or not such representations are specifically referenced in this decision.

[27] Day One (also known as the Closing Date) is the date on which CSX and NS will effect the division of the operation and use of Conrail's assets. We are further providing that, at the end of the 180-day period that will begin on Day One, a shipper with a contract that contains an antiassignment or other similar clause may elect either: to continue the contract until the expiration thereof under the same terms with the same carrier that has provided service during the 180-day period; or, without making any showing with regard to service, can exercise whatever termination rights the contract may contain, provided the shipper gives 30 days' written notice to the serving carrier.

[28] The one exception concerns Conrail's Cahokia/Willows trackage rights on Gateway. As respects these trackage rights, we are rejecting applicants' request to override antiassignment clauses in Conrail's Trackage Agreements.

transactions at issue in the Sub-Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 32, 33, and 34 dockets;[29] (5) we are granting the application in the Sub-No. 26 docket; (6) we are requiring applicants to give 14 days' prior notice to the Board and the public of the date that will be designated as Day One; (7) we are imposing as conditions, but with certain modifications, the terms of the NITL agreement;[30] (8) we are imposing as conditions the terms of the settlement agreements that applicants entered into with certain parties; (9) we are requiring CSX to participate in New York City's Cross Harbor Freight Movement Major Investment Study in order to assess the feasibility of upgrading cross-harbor float and tunnel operations to facilitate cross-harbor rail movements; (10) we are requiring CSX to negotiate an agreement with CP[31] to grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to the parties, taking into account the investment that needs to continue to be made to the line;[32] (11) we are requiring CSX to make, by October 21, 1998, an offer to the City of New York to establish a committee intended to develop ways to promote the development of rail traffic to and from the City, with particular emphasis on Conrail's Hudson Line, as well as ways to address the City's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient, and profitable rail freight service; (12) we are requiring CSX to discuss with P&W the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh Pond, NY, and New Haven, CT, focusing on operational and ownership impediments related to service over that line; (13) we

[29] We are dismissing the petition filed in the Sub-No. 31 docket.

[30] The NITL agreement is the settlement agreement that CSX and NS entered into with NITL. We are making several modifications to the terms of the NITL agreement: we are expanding the oversight period from 3 years to 5 years; we are extending to Class III rail carriers the benefits of the provision that affords remedies to shippers whose pre-transaction single-line Conrail service will become post-transaction joint-line CSX/NS service; we are expanding the reciprocal switching provisions to require preservation, where feasible, of reciprocal switching in both directions (*i.e.*, not only CSX and NS over Conrail, but also Conrail over CSX and NS); and we are extending the benefits of the reciprocal switching provisions to Class III rail carriers that pay switching charges to Conrail.

[31] Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited are referred to collectively as CP.

[32] We are further providing that, if the parties have not reached agreement by October 21, 1998, we will initiate a proceeding to resolve this issue.

are requiring applicants to monitor origins, destinations, and routings for the truck traffic at their intermodal terminals in Northern New Jersey and in Massachusetts in a manner that would permit the determination of whether the transaction has led to substantially increased truck traffic over the George Washington Bridge; (14) we are requiring the application of the $250 maximum reciprocal switching charge provided for in the NITL agreement to certain points in the Niagara Falls area for traffic using International Bridge and Suspension Bridge, for which Conrail recently replaced its switching charges with so-called "line haul" charges; (15) we are requiring that CSX's trackage rights over a line of the former Buffalo Creek Railroad be transferred to NS; (16) we are initiating a 3-year rate study to assess whether Buffalo-area shippers have been subjected to higher rates because of the CSX/NS/CR transaction; (17) we are requiring CSX to meet with regional and local authorities in the Buffalo area to establish a committee for the development of rail traffic to and from that area; (18) we are requiring CSX to adhere to its agreements with CN and CP that provide for lower switching fees in the Buffalo area; (19) we are requiring CSX to adhere to its representation regarding investment in new connections and upgraded facilities in the Buffalo area; (20) we are granting the responsive application filed by LAL to the extent necessary to permit LAL to cross Conrail's Genesee Junction Yard to forge a connection with NS via a short movement on the Rochester & Southern Railroad (R&S); (21) we are imposing a condition that will ensure that the effects of the "blocking" provisions to which certain shortlines, such as the RBMN, are subject are not given greater force as a result of the CSX/NS/CR transaction; (22) we are requiring CSX to grant NECR trackage rights between Palmer, MA, and West Springfield, MA, to facilitate joint-line movements with NECR's affiliate, Connecticut Southern Railroad, Inc. (CSO); (23) we are directing CSX to meet with IC to attempt to resolve their dispute regarding a dispatching plan for the short segment of CSX's Memphis line over which IC has trackage rights;[33] (24) we are requiring applicants (a) to grant Wheeling & Lake Erie Railway Company (W&LE) overhead haulage or trackage rights access to Toledo, OH, with connections to AA and other railroads at Toledo, (b) to extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) to grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to the Indiana & Ohio Railway Company (IORY) at Lima; (25) we are also requiring applicants to negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregates shippers or to serve shippers along

[33] CSX and IC will be required to report to the Board by September 21, 1998.

CSX's line between Benwood and Brooklyn Junction, WV; (26) we are imposing a condition intended to ensure that AA's quality interline service under its new Chrysler contract is continued and that this contract is not undermined; (27) we are affirming that our approval of the CSX/NS/CR transaction will not preempt the Belt Line Principle advocated by PBL; (28) we are requiring that IP&L be given the choice of having its Stout plant served by NS directly or via switching by Indiana Rail Road Company (INRD), and we are further requiring the creation of an NS/ISRR interchange at MP 6.0 on ISRR's Petersburg Subdivision along with conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line; (29) we are requiring that Conrail's trackage rights on the NS line between Keensburg, IL, and Carol, IN, be transferred to CSX rather than NS;[34] (30) we are imposing a condition intended to assure the preservation of the build-out option that JS&S now has at its Capital Heights, MD, scrap metal processing facility; (31) we are requiring applicants to consult with ASHTA concerning the routing of its hazardous materials shipments; (32) we are directing applicants to discuss with the Port of Wilmington any problems concerning switching services and charges, and to report back to the Board by September 21, 1998; (33) we are exempting the several abandonments and the one discontinuance proposed by applicants in the abandonment dockets; (34) we are imposing the standard labor protective conditions as further discussed;[35] (35) we are directing CSX and NS to meet

[34] These trackage rights will enable CSX to haul certain coal shipments to the Gibson plant of PSI Energy, Inc.

[35] The labor protective conditions set forth in *New York Dock Ry. — Control — Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979) (*New York Dock*), will apply to: (1) the authority granted in the lead docket for (a) the acquisition and exercise by CSX and NS of control, joint control, and common control of CRR, CRC, NYC, and PRR, (b) the NYC/PRR assignments, (c) the entry into and performance of operating agreements for Allocated Assets and Shared Assets, and (d) the transfer of the Streator Line to NS; (2) the line transfer exempted in the Sub-No. 24 docket; and (3) the control transaction approved in the Sub-No. 26 docket. The labor protective conditions set forth in *Mendocino Coast Ry., Inc. — Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980) (*Mendocino Coast*), will apply to the authority granted in the lead docket for the operation by CSX and NS of track leases with other rail carriers to which Conrail is a party. The labor protective conditions set forth in *Norfolk and Western Ry. Co. — Trackage Rights — BN*, 354 I.C.C. 605, 610-15 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653, 664 (1980) (*Norfolk and Western*), will apply to: (1) the trackage rights authorizations provided for in the lead docket; (2) the trackage rights provided for in the Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34 dockets; and (3) any additional trackage rights imposed as conditions. The labor protective conditions set forth in *Oregon Short Line R. Co. — Abandonment — Goshen*, 360 I.C.C. 91, 98-103 (1979) (*Oregon Short Line*), will apply to: (1) the (continued...)

with labor representatives and to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues; (36) we are imposing an operational monitoring condition, and, in connection therewith, we are requiring CSX, NS, and Conrail to file periodic status reports and progress reports; (37) we are imposing certain environmental mitigating conditions; (38) we are establishing oversight for 5 years so that we may assess the progress of implementation of the CSX/NS/CR transaction and the workings of the various conditions we have imposed,[36] and we are retaining jurisdiction to impose additional conditions if, and to the extent, we determine that additional conditions are necessary to address harms caused by the CSX/NS/CR transaction; and (39) we are denying all other conditions heretofore sought by the various parties to this proceeding.[37]

THE PRIMARY APPLICATION AND RELATED FILINGS

APPLICANTS. CSX operates approximately 18,504 route miles and 31,961 track miles of railroad in 20 states east of the Mississippi River and in Ontario, Canada. Of that total, approximately 1,607 miles are operated under trackage rights while the remaining mileage is either owned by CSX or operated by CSX under contract or lease. CSX has principal routes to, and serves, virtually every

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[35](...continued)
one discontinuance approved in the lead docket; (2) the relocation exempted in the Sub-No. 23 docket; and (3) the abandonments and one discontinuance exempted in the abandonment dockets. The *New York Dock* conditions, on the one hand, and the *Mendocino Coast, Norfolk and Western* and *Oregon Short Line* conditions, on the other hand, provide differing levels of protection, but, as respects affected employees of applicants and their rail carrier affiliates, these differences will be of no consequence: affected employees of applicants and their rail carrier affiliates covered by the *Mendocino Coast, Norfolk and Western* and/or *Oregon Short Line* conditions will also be covered by, and will therefore be entitled to the protections of, the *New York Dock* conditions.

[36] Our oversight will include: applicants' adherence to the various representations that they made on the record during the course of this proceeding; the effect of the acquisition premium on the jurisdictional threshold applicable to rate reasonableness cases and to the Board's revenue adequacy determinations; and transaction-related impacts on Amtrak passenger operations and regional rail passenger operations.

[37] Several parties submitted, after the voting conference held June 8, 1998, requests seeking either clarification or reconsideration of determinations made at that conference. Nothing in our schedule for this proceeding, our procedural regulations, or our precedents authorizes parties to submit post-voting conference requests for clarification or reconsideration with respect to matters that will or may be discussed in our written decision, and, for this reason, we will not address the post-voting conference requests for clarification or reconsideration heretofore submitted in this proceeding. *See, Decision No. 88.* Parties must await our written decision before seeking clarification or other forms of appellate relief.

major metropolitan area east of the Mississippi River, from Chicago, IL, St. Louis, MO, Memphis, TN, and New Orleans, LA, on the West to Miami, FL, Jacksonville, FL, Charleston, SC, Norfolk, VA, Washington, DC, and Philadelphia, PA, on the East. Other major metropolitan areas served by CSX include Atlanta, GA, Nashville, TN, Cincinnati, OH, Detroit, MI, Pittsburgh, PA, Baltimore, MD, Charlotte, NC, Birmingham, AL, and Louisville, KY. CSX interchanges traffic with other railroads at virtually all of the aforementioned locations and at numerous other points on its railroad system.

NS operates approximately 14,282 route miles and 25,236 track miles of railroad in 20 states, primarily in the South and the Midwest, and in Ontario, Canada. Of that total, approximately 1,520 miles are operated under trackage rights while the remaining mileage is either owned by NS or operated by NS under contract or lease. NS has routes to, and serves, virtually every major market in an area that stretches from Kansas City, MO, in the Midwest to Norfolk, VA, in the East, to Chicago, IL, and Buffalo, NY, in the North, and to New Orleans, LA, and Jacksonville, FL, in the South. These markets include Memphis, Chattanooga and Knoxville, TN; St. Louis, MO; Fort Wayne, IN; Detroit, MI; Toledo, Cincinnati, Columbus, and Cleveland, OH; Louisville and Lexington, KY; Bluefield, WV; Alexandria, Roanoke, Lynchburg, and Richmond, VA; Winston-Salem, Raleigh, Durham, Charlotte, and Morehead City, NC; Greenville, Spartanburg, Columbia, and Charleston, SC; Atlanta, Macon, Valdosta, and Savannah, GA; Bessemer, Birmingham, Montgomery, and Mobile, AL; Des Moines, IA; and Peoria, Springfield, and Decatur, IL. NS interchanges traffic with other railroads at virtually all of these locations and at numerous other locations on its railroad system.

Conrail operates approximately 10,500 miles of railroad in the Northeast and Midwest, and its primary network forms an "X" connecting Chicago (via the Chicago Line) and East St. Louis (via the St. Louis and Indianapolis Lines) in the West, with Boston, MA, New York, NY, and Northern New Jersey (via the Chicago Line and other main lines), and with Pittsburgh, Harrisburg, PA, Philadelphia, Baltimore, and Washington, DC (via the Pittsburgh Line and other main lines) in the East. The "hub" of the "X" is located in, and about, Cleveland, OH. Conrail's principal interchange points are in: Chicago, East St. Louis, and Streator, IL; Salem, IL, via Union Pacific Railroad Company (UPRR) trackage rights between Salem and St. Elmo, IL, on the St. Louis Line; Cincinnati; Hagerstown, MD; and Washington, DC. Other important interchange points include Effingham, IL; Fort Wayne, IN; Toledo and Columbus, OH;

Buffalo and Niagara Falls, NY; Montreal, Quebec; Rotterdam Junction, NY; and Worcester (including Barbers), MA.[38]

THE CSX/NS/CR TRANSACTION. The transaction for which approval is sought in the primary application involves the joint acquisition of control by CSX and NS of CRR and its subsidiaries (the Control Transaction) and the division between CSX and NS of the operation and use of Conrail's assets (the Division). The Control Transaction and the Division are governed principally by an agreement (the Transaction Agreement) dated as of June 10, 1997, between CSXC, CSXT, NSC, NSR, CRR, CRC, and CRR Holdings LLC (CRR Holdings, a recently created limited liability company jointly owned by CSXC and NSC). *See,* CSX/NS-25, Volumes 8B & 8C (the Transaction Agreement, including various schedules and exhibits). The Control Transaction and the Division are also governed by a letter agreement (the CSX/NS Letter Agreement) dated as of April 8, 1997, between CSXC and NSC, but only to the extent such CSX/NS Letter Agreement has not been superseded either by the Transaction Agreement or by the agreement (the CRR Holdings Agreement) that governs CRR Holdings. *See,* CSX/NS-25, Volume 8A at 350-99 (the CSX/NS Letter Agreement) and at 400-36 (the CRR Holdings Agreement).

Control Of Conrail. CSX and NS have already acquired 100% of the common stock of CRR in a series of transactions that included a CSX tender offer that was consummated on November 20, 1996, an NS tender offer that was consummated on February 4, 1997, a joint CSX/NS tender offer that was consummated on May 23, 1997, and a merger that was consummated on June 2, 1997. Following this series of transactions: CRC remains a direct wholly owned

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[38] Conrail's Chicago Line extends between Chicago and the Albany, NY, area and connects there (through the Selkirk Branch) with the River Line (serving North Jersey via the west shore of the Hudson River), the Hudson Line (through which Conrail reaches New York City and Long Island), and the Boston Line (which extends to Boston and via which Conrail serves New England). Other important routes contiguous to the Chicago Line include the Detroit Line (between Detroit and a connection with the Chicago Line at Toledo), the Michigan Line (the portion between Detroit and Kalamazoo, MI), the Kalamazoo Secondary and Branch (between Kalamazoo, MI, and Elkhart, IN, on the Chicago Line), the Montreal Secondary (between Syracuse, NY, and Adirondack Junction, Quebec), and the Southern Tier (between Buffalo, NY, and Croxton, NJ). Conrail's St. Louis Line extends between East St. Louis, IL, and Indianapolis, IN, connecting there with the Indianapolis Line which, in turn, extends between Indianapolis and the Cleveland area (connecting there with the Chicago Line). Conrail's Cincinnati Line (between Cincinnati and Columbus, OH) and its Columbus Line (between Columbus and Galion, OH, on the Indianapolis Line) and the Scottslawn Secondary Track (between Columbus and Ridgeway, OH, on the Indianapolis Line) all accommodate traffic flows between other parts of the Conrail system and Cincinnati, Columbus and/or Conrail points served via the West Virginia Secondary Track between Columbus and the Kanawha Valley of West Virginia.

subsidiary of CRR; CRR has become a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSXC and NSC (CSXC holds a 50% voting interest and a 42% equity interest in CRR Holdings; NSC holds a 50% voting interest and a 58% equity interest in CRR Holdings). The merger that was consummated on June 2, 1997 (the Merger), involved the merger of Green Merger Corp. (Merger Sub, a direct wholly owned subsidiary of Tender Sub) into CRR, with CRR being the surviving corporation; and, in connection with the Merger: (i) each remaining outstanding share of CRR common stock not held by CSX, NS, or their affiliates was converted into the right to receive $115 in cash, without interest; and (ii) the shares of Merger Sub, all of which were then owned by Tender Sub, were converted into 100 newly issued shares of CRR, all of which were placed into a voting trust (the CSX/NS Voting Trust) to prevent CSXC and NSC, and their respective affiliates, from exercising premature control of CRR and its carrier subsidiaries pending review by the Board of the primary application. *See,* CSX/NS-25, Volume 8A at 323-49 (the agreement that governs the CSX/NS Voting Trust). At the present time, in accordance with the agreement that governs the CSX/NS Voting Trust, the affairs of CRR and CRC remain under the control of their independent boards of directors.

The Transaction Agreement provides that, following the effective date of the Board's approval of the primary application (the Control Date),[39] CRR and CRC will each be managed by a board of directors consisting of six directors divided into two classes, each class having three directors. On each board, CSXC will have the right to designate three directors and NSC will likewise have the right to designate three directors; and actions that require the approval of either board will require approval both by a majority of the directors on that board designated by CSX and by a majority of the directors on that board designated by NS.

Division Of Conrail. The Transaction Agreement provides that, if the primary application is approved, the division of the operation and use of Conrail's assets will be effected on the Closing Date, which is defined as the third business day following the date on which certain conditions precedent (including the effectiveness of a final Board order and, where necessary, sufficient labor implementing agreements) shall have been satisfied or waived, or such other date as may be agreed upon. *See,* CSX/NS-18 at 11; CSX/NS-25,

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[39] The agreement that governs the CSX/NS Voting Trust provides, in essence, that the trust shall cease and come to an end upon the Control Date. *See,* CSX/NS-25, Volume 8A at 333.

Volume 8B at 45. It is anticipated that, during the period beginning on the Control Date and ending on the Closing Date, CSX and NS will exercise joint control of Conrail as a separately functioning rail system.[40]

Formation Of NYC And PRR. To effect the Division, CRC will form two wholly owned subsidiaries (referred to collectively as the Subsidiaries): New York Central Lines LLC (NYC) and Pennsylvania Lines LLC (PRR). CSXC will have exclusive authority to appoint the officers and directors of NYC; NSC will likewise have exclusive authority to appoint the officers and directors of PRR; and CRC, as the sole member of the Subsidiaries, will (with certain exceptions) follow CSXC's and NSC's directions with respect to the management and operation of NYC and PRR, respectively.

Allocation Of Conrail Assets And Liabilities. On the date of the Division, CRC will assign to NYC and PRR certain of CRC's assets. NYC will be assigned those CRC assets designated to be operated as part of the CSX rail system (the NYC-Allocated Assets), and PRR will be assigned those CRC assets designated to be operated as part of the NS rail system (the PRR-Allocated Assets). These assets will include, among other things, certain lines and facilities currently operated by Conrail, whether owned by Conrail or operated by Conrail under trackage rights. Certain additional assets (referred to as the Retained Assets) will continue to be held by CRR and CRC (or their subsidiaries other than NYC and PRR) and will be operated by them for the benefit of CSX and NS. In addition, on the date of the Division: the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL (the Fort Wayne Line), will be transferred to Conrail in a like-kind exchange for Conrail's Chicago South/Illinois Lines (the Streator Line); and Conrail will assign the Fort Wayne line to NYC, to be operated together with the other Conrail lines to be assigned to NYC and used by CSX as part of the CSX rail system.

Assets Allocated To NYC. The NYC-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

(1) NY/NJ Area to Cleveland (New York Central Railroad route), including (a) line segments from North NJ Terminal to Albany (Selkirk), (b) Albany to Poughkeepsie, NY, (c) Poughkeepsie to New York City (TR), (d) New York City to White Plains (TR), (e) Albany to Cleveland via Syracuse, Buffalo and Ashtabula, OH, (f) Boston to Albany, (g) Syracuse to Adirondack Jct., PQ, (h) Adirondack Jct. to Montreal (TR), (i) Woodard, NY, to Oswego, NY, (j) Syracuse to Hawk, NY, (k) Hawk to Port of Oswego (TR), (l) Buffalo

[40] The Closing Date is commonly referred to as Day One.

Terminal to Niagara Falls/Lockport, (m) Lockport to West Somerset (TR), (n) Syracuse to NYS&W/FL connections, NY,[41] (o) Albany/Boston Line to Massachusetts branch lines, (p) Albany/Boston Line to Massachusetts branch lines (TR), (q) New York City to Connecticut branch lines (TR), (r) Connecticut branch lines (TR), (s) Connecticut Branch lines, (t) Churchville, NY, to Wayneport, NY, (u) Mortimer, NY, to Avon, NY, and (v) Rochester Branch, NY;

(2) Crestline, OH, to Chicago (Pennsylvania Railroad route), including (a) Crestline to Dunkirk, OH, (b) Dunkirk to Fort Wayne, IN, (c) Fort Wayne to Warsaw, IN, (d) Warsaw to Chicago Terminal (Clarke Jct.), IN, and (e) Adams, IN, to Decatur, IN;

(3) Berea to E. St. Louis, including (a) Cleveland Terminal to Crestline, (b) Crestline to E. St. Louis via Galion, OH, Ridgeway, OH, Indianapolis, IN, Terre Haute, IN, Effingham, IL, and St. Elmo, IL, (c) Anderson, IN, to Emporia, IN, (d) Columbus to Galion, (e) Terre Haute to Danville, IL, (f) Danville to Olin, IN, (g) Indianapolis to Rock Island, IN, (h) Indianapolis to Crawfordsville, IN, (i) Indianapolis to Shelbyville, IN, (j) HN Cabin, IL, to Valley Jct., IL, (k) St. Elmo to Salem, IL (TR), (l) Muncie (Walnut Street), IN, to New Castle RT, IN (TR), and (m) New Castle RT, IN;

(4) Columbus to Toledo, including (a) Columbus to Toledo via Ridgeway, (b) Toledo Terminal to Woodville, and (c) Toledo Terminal to Stonyridge, OH;

(5) Bowie to Woodzell, MD, including (a) Bowie to Morgantown, and (b) Brandywine to Chalk Point;

(6) NY/NJ to Philadelphia (West Trenton Line), including Philadelphia to North NJ Terminal;

(7) Washington, DC, to Landover, MD;

(8) Quakertown Branch, line segment from Philadelphia Terminal to Quakertown, PA (TR); and

(9) Chicago Area, line segment from Porter, IN, to the westernmost point of Conrail ownership in Indiana.

Along with these lines, CSXT will operate certain yards and shops, as well as the Conrail Philadelphia Headquarters and Philadelphia area information technology facilities.

Assets Allocated To PRR. The PRR-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

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[41] The New York, Susquehanna & Western Railway Corporation is referred to as NYS&W. The Finger Lakes Railway is variously referred to as FGLK and FL.

(1) NJ Terminal to Crestline (Pennsylvania Railroad route), including (a) North NJ Terminal to Allentown, PA, via Somerville, NJ, (b) Little Falls, NJ, to Dover, NJ (TR), (c) Orange, NJ, to Denville, NJ (TR), (d) Dover to Rockport (TR), (e) Rockport to E. Stroudsburg via Phillipsburg, NJ, (f) Allentown Terminal, (g) Orange to NJ Terminal (TR), (h) NJ Terminal to Little Falls (TR), (i) Bound Brook to Ludlow, NJ (TR), (j) Allentown, PA, to Harrisburg via Reading, (k) Harrisburg Terminal, (l) Harrisburg to Pittsburgh, (m) Conemaugh Line via Saltsburg, PA, (n) Pittsburgh to W. Brownsville, PA, (o) Central City, PA, to South Fork, PA, (p) Pittsburgh Terminal, (q) Monongahela, PA, to Marianna, PA, (r) Pittsburgh to Alliance, OH, via Salem, (s) Beaver Falls, PA, to Wampum, PA, (t) Alliance to Cleveland Terminal, (u) Mantua, OH, to Cleveland Terminal, (v) Alliance to Crestline, (w) Alliance to Omal, OH, (x) Rochester, PA, to Yellow Creek, OH, (y) E. Steubenville, WV, to Weirton, WV, (z) Steubenville Branches Bridge, OH, (aa) Pittsburgh Branches, (bb) Ashtabula to Youngstown, OH, (cc) Ashtabula Harbor to Ashtabula, (dd) Niles, OH, to Latimer, OH, (ee) Alliance, OH, to Youngstown, (ff) Youngstown to Rochester, (gg) Allentown to Hazleton, PA, (hh) CP Harris, PA, to Cloe, PA (TR), (ii) Cloe to Shelocta, PA, (jj) Tyrone, PA, to Lock Haven, PA (TR), (kk) Creekside, PA, to Homer City, PA, (ll) Monongahela Railroad, (mm) portion of Kinsman Connection in Cleveland, (nn) portion of 44 Ind. Track including Dock 20 Lead, and (oo) Gem Ind. Track-Lordstown, OH;

(2) Cleveland to Chicago (New York Central Railroad route), including (a) Cleveland Terminal to Toledo Terminal, (b) Elyria, OH, to Lorain, OH, (c) Toledo Terminal to Sylvania, OH, (d) Toledo Terminal to Goshen, IN, (e) Elkhart, IN, to Goshen, and (f) Elkhart to Porter, IN;

(3) Philadelphia to Washington (Amtrak's Northeast Corridor, referred to as NEC), including (a) Philadelphia Terminal to Perryville, MD (TR), (b) Wilmington Terminal, DE, (c) Perryville to Baltimore (TR), (d) Baltimore Terminal, (e) Baltimore Bay View to Landover, MD (TR), (f) Baltimore to Cockeysville, MD, (g) Pocomoke, MD, to New Castle Jct., DE, (h) Harrington, DE, to Frankford/Indian River, DE, (i) Newark, DE, to Porter, DE, (j) Claremont R.T., (k) Loneys Lane Lead, and (l) Grays Yard (TR);

(4) Michigan Operations (excluding the Detroit Shared Assets Area), including (a) Toledo Terminal to Detroit Terminal, (b) Detroit Terminal to Jackson, MI, (c) Jackson to Kalamazoo, MI, (d) Kalamazoo to Elkhart, IN, (e) Jackson to Lansing, MI, (f) Kalamazoo to Grand Rapids, (g) Kalamazoo to Porter, IN (TR), (h) Kalamazoo Ind. Track, and (i) Comstock Ind. Track;

(5) Eastern Pennsylvania lines, including (a) Philadelphia Terminal to Reading, (b) Reading Terminal, (c) Thorndale, PA, to Woodbourne, PA, (d) Leola/Chesterbrook, PA, lines, (e) Philadelphia Terminal to Lancaster, PA

(TR), (f) Lancaster to Royalton, PA (TR), (g) Lancaster to Lititz/Columbia, PA, (h) portion of Stoney Creek Branch, (i) West Falls Yard, and (j) Venice Ind. Track;

(6) Indiana lines, including (a) Anderson to Goshen via Warsaw, (b) Marion to Red Key, IN, and (c) Lafayette Ind. Track;

(7) Buffalo to NY/NJ Terminal, including (a) NJ/NY Jct. to Suffern, NY (TR), (b) Suffern to Port Jervis, NY, (c) Port Jervis to Binghamton, (d) Binghamton to Waverly, (e) NJ/NY Jct. to Spring Valley, NY (TR), (f) Paterson Jct., NJ, to Ridgewood, NJ (TR), (g) Waverly to Buffalo, (h) Waverly to Mehoopany, PA, (i) Sayre, PA, to Ludlowville, NY, (j) Lyons, NY, to Himrods Jct., NY, (k) Corning, NY, to Himrods Jct., NY, (l) North Jersey Terminal to Paterson Jct., NJ (TR), (m) Paterson Jct. to North Newark, NJ, and (n) NJ/NY Jct. to North Jersey Terminal (TR);

(8) Buffalo to Harrisburg and South, including (a) Perryville, MD, to Harrisburg, PA, (b) Carlisle, PA, to Harrisburg, (c) Wago, PA, to York (area), PA, (d) Harrisburg to Shocks, PA, (e) Williamsport, MD, to Buffalo via Harrisburg, PA, (f) Watsontown, PA, to Strawberry Ridge, PA, (g) Ebenezer Jct., NY, to Lackawanna, NY, (h) Hornell, NY, to Corry, PA, (i) Corry to Erie, PA (TR), and (j) Youngstown to Oil City, PA;

(9) Cincinnati to Columbus to Charleston, WV, including (a) Columbus to Cincinnati, (b) Cincinnati Terminal, (c) Columbus Terminal to Truro, OH, (d) Truro to Charleston, WV, (e) Charleston to Cornelia, WV, and (f) Charleston to Morris Fork, WV;

(10) Chicago South/Illinois operations, including (a) Osborne, IN, to Chicago Heights, IL, via Hartsdale, (b) Hartsdale to Schneider, IN, (c) Schneider to Hennepin, IL, (d) Keensburg, IL, to Carol, IL, and (e) Schneider to Wheatfield, IN; and

(11) Chicago Market, including (a) Western Ave. Operations/Loop to Cicero/Elsdon, IL, (b) Chicago to Porter, IN, (c) Clarke Jct., IN, to CP 501, IN, (d) CP 509 to Calumet Park, IL, (e) Western Ave. Ind. Track, (f) Old Western Ave. Ind. Track, (g) North Joint Tracks, (h) Elevator Lead & Tri-River Dock, (i) CR&I Branch, (j) 49th Street Ind. Track, (k) 75th Street to 51st Street (TR), (l) Port of Indiana, IN, and (m) CP 502, IN, to Osborne, IN.

Along with these lines, the abandoned Conrail line from Danville to Schneider, IL, will also be a PRR-Allocated Asset.

Allocated Assets: Other Aspects. Certain equipment will be included in the NYC-Allocated Assets and the PRR-Allocated Assets and will be made available to CSXT and NSR pursuant to a CSXT Equipment Agreement and an NSR Equipment Agreement, respectively. Much of the locomotive equipment and rolling stock equipment, however, will not be included in the NYC- and

PRR-Allocated Assets but will be included, instead, in the Retained Assets (discussed below), and will be leased by CRC or its affiliates to NYC or PRR pursuant to equipment agreements to be negotiated by the parties.

CRC currently holds certain trackage rights over CSXT and NSR. In general (though there are exceptions), CRC will assign the trackage rights that it holds over CSXT to PRR (to be operated by NSR), and it will assign the trackage rights that it holds over NSR to NYC (to be operated by CSXT).

The shares currently owned by Conrail in TTX Company (TTX, formerly known as Trailer Train) will be allocated to NYC and PRR. Applicants' current ownership interests in TTX are: CSX, 9.345%; NS, 7.788%; Conrail, 21.807%. Following approval of the primary application, the ownership of TTX by applicants and their subsidiaries will be as follows: CSX, 9.345%; NYC, 10.125%; NS, 7.788%; PRR, 11.682%.

Conrail's 50% interest in Triple Crown Services Company will be allocated to PRR.

Certain additional special treatments are provided in particular areas within the allocated assets. A description of the areas in which special arrangements are made is set forth below under the heading "Other Areas with Special Treatments."[42]

Applicants indicate that they have taken steps to ensure that all of the existing contractual commitments of Conrail to its shippers will be fulfilled. The Transaction Agreement provides that all transportation contracts of CRC in effect as of the Closing Date (referred to as Existing Transportation Contracts) will remain in effect through their respective stated terms and will be allocated as NYC-Allocated Assets and PRR-Allocated Assets, and that the obligations under them shall be carried out after the Closing Date by CSXT, utilizing NYC-Allocated Assets, and by NSR, using PRR-Allocated Assets, or pursuant to the Shared Assets Areas Agreements, as the case may be. The Transaction Agreement further provides, with respect to the Existing Transportation Contracts, that CSX and NS: will allocate the responsibilities to serve customers under these contracts; and will cooperate as necessary to assure shippers under these contracts all benefits, such as volume pricing, volume refunds, and the like, to which they are contractually entitled.

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[42] The Transaction Agreement also contemplates that certain Conrail facilities currently used for the benefit of the entire Conrail system: will be operated, during a transition period following the Closing Date, for the joint benefit of CSX and NS; and will be operated, after such transition period, for the party to whom they have been allocated. *See*, CSX/NS-18 at 11 (lines 14-18) and 12 (line 1 & n.3).

Retained Assets. The Retained Assets include assets contained within three Shared Assets Areas (SAAs) that are more fully described below: the North Jersey SAA; the South Jersey/Philadelphia SAA; and the Detroit SAA.

The Retained Assets also include Conrail's System Support Operations (SSO) facilities, including equipment and other assets associated with such facilities, currently used by Conrail to provide support functions benefitting its system as a whole, including Conrail's: (1) customer service center in Pittsburgh, PA; (2) crew management facility in Dearborn, MI; (3) system maintenance-of-way equipment center in Canton, OH; (4) signal repair center in Columbus, OH; (5) system freight claims facility in Buffalo, NY; (6) system non-revenue billing facility at Bethlehem, PA; (7) system rail welding plant at Lucknow (Harrisburg), PA; (8) system road foreman/engineer training center at Philadelphia and Conway, PA; (9) police operations center at Mt. Laurel, NJ; (10) the Philadelphia Division headquarters building and offices located at Mount Laurel, NJ; and (11) other SSO facilities identified by CSX and NS prior to the Closing Date. Each SSO Facility will be operated by Conrail for the benefit of CSXT/NYC and NSR/PRR, and the costs of operating each SSO Facility will be retained by Conrail as "Corporate Level Liabilities" and will be shared between CSX and NS.[43]

Liabilities. In general: NYC will assume all liabilities arising on or after the Closing Date that relate predominantly to the NYC-Allocated Assets; PRR will assume all such liabilities that relate predominantly to the PRR-Allocated Assets; CRC will be responsible for all such liabilities that do not relate predominantly to the NYC- or PRR-Allocated Assets; and CRC will also be responsible for certain liabilities arising prior to the Closing Date.

Separation Costs (as defined in the Transaction Agreement, *see,* CSX/NS-25, Volume 8B at 20) incurred following the Control Date in connection with Conrail agreement employees now working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while Separation Costs incurred in connection with Conrail agreement employees now working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS. Separation Costs incurred in connection with Conrail agreement employees working jobs at or in respect of Retained Assets will be shared by CSX and NS. Separation Costs incurred following the Control Date for Conrail agreement employees at Conrail's Altoona and Hollidaysburg shops will be the responsibility of NS, and Separation Costs incurred following the Control Date

[43] At least some of the SSO Facilities will apparently be operated for the joint benefit of CSX and NS "for a short period" only. *See,* CSX/NS-18 at 12 (lines 2-5).

in connection with agreement employees at Conrail's Philadelphia headquarters and technology center and Conrail's Pittsburgh customer service center will be the responsibility of CSX. Separation Costs for eligible Conrail non-agreement employees will be shared by CSX and NS.

After the Closing Date, compensation and other expenses (excluding Separation Costs) for agreement employees (other than certain Conrail employees performing general and administrative functions) working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while such expenses for such agreement employees working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS.

Operation Of Assets. Applicants indicate: that CSXT and NYC will enter into the CSXT Operating Agreement, which will provide for CSXT's use and operation of the NYC-Allocated Assets; that NSR and PRR will enter into the NSR Operating Agreement, which will provide for NSR's use and operation of the PRR-Allocated Assets; and that CRC, NYC, PRR, CSXT and/or NSR will enter into certain Shared Assets Areas Operating Agreements, which will provide for the operation of certain Shared Assets Areas for the benefit of both CSXT and NSR.

Allocated Assets Operating Agreements. The CSXT Operating Agreement and the NSR Operating Agreement (collectively, the Allocated Assets Operating Agreements) will provide that CSXT and NSR will each have the right, for an initial term of 25 years, to use and operate, as part of their respective systems, the NYC-Allocated Assets and the PRR-Allocated Assets, respectively. These agreements will require CSXT and NSR each to bear the responsibility for and the cost of operating and maintaining their respective Allocated Assets. CSXT and NSR will each receive for its own benefit and in its own name all revenues and profits arising from or associated with the operation of its Allocated Assets.

CSXT will pay NYC an operating fee based on the fair market rental value of the NYC-Allocated Assets. NSR will similarly pay PRR an operating fee based on the fair market rental value of the PRR-Allocated Assets. CSXT and NSR will have the right to receive the benefits of NYC and PRR, respectively, under any contract or agreement included in the NYC-Allocated Assets or the PRR-Allocated Assets, respectively, and, with the consent of NYC and PRR, respectively, to modify or amend any such contract or agreement on behalf of NYC and PRR.

CSXT and NSR will each have the right to renew its Allocated Assets Operating Agreement for two additional terms of 10 years each. The Allocated Assets Operating Agreements contemplate that, upon termination of the agreements, CSXT and NSR will be deemed to have returned their Allocated Assets to NYC or PRR, subject to any regulatory requirements.

Shared Assets Areas And Operating Agreements. Both CSXT and NSR will be permitted to serve shipper facilities located within the three SAAs (the North Jersey SAA, the South Jersey/Philadelphia SAA, and the Detroit SAA), which will be owned, operated, and maintained by Conrail for the exclusive benefit of CSX and NS. CSXT and NSR will enter into an SAA Operating Agreement with CRC in connection with each of the SAAs, and CRC will grant to CSXT and NSR the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the SAAs. CSXT and NSR will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the SAAs. Other carriers that previously had access to points within the SAAs will continue to have the same access as before.

(1) The North Jersey SAA encompasses all Conrail Northern New Jersey trackage east of and including the NEC, and also (a) certain line segments north of the NEC as it turns east to enter the tunnel under the Hudson River, (b) the Conrail Lehigh line west to Port Reading Junction, (c) the rights of Conrail on the New Jersey Transit Raritan line, (d) the Conrail Port Reading Secondary line west to Bound Brook, (e) the Conrail Perth Amboy Secondary line west to South Plainfield, and (f) the NEC local service south to the Trenton area.

(2) The South Jersey/Philadelphia SAA encompasses all Conrail "Philadelphia" stations and stations within the Philadelphia City limits, industries located on the Conrail Chester Industrial and Chester Secondary tracks, all Conrail trackage in Southern New Jersey, Conrail's rights on the NEC north from Zoo Tower in Philadelphia to Trenton, NJ, and the Ameriport intermodal terminal and any replacement of such terminal built substantially through public funding.

(3) The Detroit SAA encompasses all Conrail trackage and access rights east of the CP-Townline (Michigan Line MP 7.4) and south to and including Trenton (Detroit Line MP 20).[44]

Other Areas With Special Treatments. A number of other areas, though not referred to as SAAs, are nevertheless subject to special arrangements that provide for a sharing of routes or facilities to a certain extent.

(1) Monongahela Area: Although the Conrail lines formerly a part of the Monongahela Railway will be operated by NS, CSX will have equal access for 25 years, subject to renewal, to all current and future facilities located on or

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[44] For a more complete description of the three SAAs, *see,* CSX/NS-18 at 46-49 (and references there cited).

accessed from the former Monongahela Railway, including the Waynesburg Southern.

(2) Chicago Area: Both CSX and NS will have access to Conrail's rights concerning access to and use of the Willow Springs Yard of The Burlington Northern and Santa Fe Railway Company (BNSF); applicants will enter into an agreement concerning their respective rights as successors to Conrail and as parties controlling the controlling shareholder in the Indiana Harbor Belt Railway (IHB), a 51%-owned Conrail subsidiary (the stock of IHB will be a Conrail-retained asset); certain trackage rights of Conrail over IHB will be assigned or made available to NYC to be operated by CSX or to PRR to be operated by NS; CSX and NS will enter into an agreement to permit each of them to maintain current access and trackage rights enjoyed by them over terminal railroads in the Chicago area; and CSX will be granted an option, exercisable if CSX and BNSF come under common control, to purchase the Streator Line from Osborne, IN, to Streator, IL.

(3) Ashtabula Harbor Area: NS will have the right to operate and control Conrail's Ashtabula Harbor facilities, with CSX receiving use and access, up to a proportion of the total ground storage, throughput, and tonnage capacity of 42%.

(4) Buffalo Area: CSX will operate Seneca Yard, and NS will receive access to yard tracks in that yard.

(5) Cleveland Area: Conrail's switching yard at Collinwood will be operated by CSX and its Rockport Yard will be operated by NS.

(6) Columbus, OH: NS will operate Conrail's Buckeye Hump Yard, and CSX will operate the former Local Yard and intermodal terminal at Buckeye.

(7) Erie, PA: Norfolk and Western Railway Company (NW, a wholly owned NS subsidiary) will have a permanent easement and the right to build a track on the easement along the Conrail right of way through Erie, PA, to be operated by CSX. NW will have trackage rights in Erie to connect its existing Buffalo-Cleveland line if such connection can be achieved without using the Conrail Buffalo-Cleveland line to be operated by CSX.

(8) Fort Wayne, IN: CSX will operate the line between Fort Wayne and Chicago, currently owned by NS.

(9) Indianapolis, IN: NS will have overhead trackage rights from Lafayette and Muncie to Hawthorne Yard to serve, via CSX switch, shippers that presently receive service from two railroads.

(10) Toledo, OH: Conrail's Stanley Yard will be operated by CSX, and its Airline Junction Yard will be operated by NS.

(11) Washington, DC: Conrail's Landover Line from Washington, DC, to Landover, MD, will be allocated to CSX, and NS will be given overhead trackage rights.

(12) Allocation of Rights with Respect to Freight Operations Over Amtrak's NEC: Conrail's NEC overhead trackage rights north of New York (Penn Station) will be assigned to CSX. Both CSX and NS will have overhead rights to operate trains between Washington, DC, and New York (Penn Station), subject to certain limitations. From Zoo Tower, Philadelphia, to Penn Station, NY, Conrail's NEC rights to serve local customers will be part of the Retained Assets and Conrail will assign those rights to CSX and NS, with CSX and NS having equal access to all local customers and facilities. Between Washington, DC, and Zoo Tower, Philadelphia, Conrail's NEC rights to serve local customers will be assigned to NS. The right to serve local customers on the NEC north of New York (Penn Station) will be assigned to CSX.[45]

Succession To Conrail Activities. Applicants intend that the Allocated Assets conveyed to CSX (NYC) and NS (PRR) will be operated by CSXT and NSR, respectively, and that both the Allocated Assets conveyed to CSX and NS as well as the Retained Assets made available by Conrail to CSX or NS or both will be enjoyed and used by CSX and NS (subject to the terms of the governing agreements) as if the carrier in question were itself Conrail. Applicants similarly intend that the SAAs will be used, enjoyed, and operated as fully by CSX and NS as if each of them were Conrail.

THE CONTINUING CONRAIL ACTIVITIES. From the Closing Date forward, CSX and NS will be responsible for all of the operating expenses and new liabilities attributable to the assets which they are operating. It is expected, however, that most of the pre-Closing Date liabilities of CRC, CRR, and their subsidiaries will remain in place. It is contemplated that CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the SAAs. Applicants expect that such payments will be sufficient to permit CRC and its subsidiaries (1) to cover their operating, maintenance, and other expenses, (2) to pay all of their obligations as they mature, (3) to provide dividends to CRR sufficient to permit it to discharge its debts and obligations as they mature, and (4) to receive a fair return for the operation, use, and enjoyment by CSX and NS of the Allocated Assets and SAAs. Applicants add, however, that, if for any reason these sources of funds

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[45] For a more complete description of the areas addressed here under the heading "Other Areas with Special Treatments," *see*, CSX/NS-18 at 49-54 (and references there cited).

to CRC and CRR prove insufficient to permit them to pay and discharge their obligations, CSX and NS have agreed that CRR Holdings shall provide the necessary funds, which it will obtain from CSXC and NSC.

Applicants anticipate that, following the Division of Conrail, approximately 350 employees will be employed by Conrail in the Philadelphia area (where the headquarters of CRR and CRC are now located). These employees will include Conrail employees managing and operating trains for CSX and NS, the employees in the local SAA, and the management personnel for the continuing Conrail functions. In addition, CSX and NS each anticipates establishing a regional headquarters-type function in Philadelphia at which an undetermined number of additional personnel will be employed.

It is intended that, following the Division: CRC will not hold itself out to the public as performing transportation services directly and for its own account; CRC will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services; and all transportation services performed by CRC will be performed as agent or subcontractor of CSXT or NSR.

"2-to-1" Situations. Applicants claim: that the division of Conrail proposed in the primary application has enabled applicants to avoid, "wherever possible," situations where shippers will see their rail options decline from two carriers to one; and that in "virtually all of the few" 2-to-1 situations that the division proposed in the primary application would otherwise have entailed, CSX and NS have agreed to provide one another with trackage and/or haulage rights that will permit the continuation of two rail carrier service. *See,* CSX/NS-18 at 4. *See also,* CSX/NS-18 at 74-75 (CSX will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by CSX) and 80 (NS will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by NS).

Public Interest Justifications. Applicants claim that the CSX/NS/CR transaction: will create vigorous rail competition in large portions of the Mid-Atlantic and Northeastern regions now served only by Conrail; will create numerous new single-line routes between the Northeast and the Southeast and between the Northeast and the Midwest, which will result in improved transit times, greater reliability of on-time delivery, increased safety, and other service and efficiency gains; will allow CSX and NS to divert substantial freight traffic from the congested highways of the Eastern United States; and will generate, each year, nearly $1 billion in quantified public benefits[46] and also significant additional benefits (most notably those benefits resulting from the introduction of rail competition into areas now rail-served only by Conrail).

Labor Impact. Applicants have provided three Labor Impact Exhibits, each using a different base line in calculating the impacts that the transactions proposed in the primary application and the related filings will have on rail carrier employees. *See,* CSX/NS-26 (filed July 7, 1997), which: (a) corrects the single Labor Impact Exhibit filed with the primary application itself on June 23, 1997, *see,* CSX/NS-18 at 24-25; CSX/NS-20, Volume 3A at 485-546; CSX/NS-20, Volume 3B at 493-526; and (b) adds two additional Labor Impact Exhibits. *See also, Decision No. 7*, served May 30, 1997, at 8-9 (we required applicants to use the year 1995 as the base line for setting forth the impacts the proposed transactions will have on rail carrier employees, but we added that applicants, if they were so inclined, would be allowed to supplement 1995 data with data demonstrating employment reductions in 1996 and/or 1997).

Applicants' 1996/97 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,090 jobs and the creation of 1,109 jobs (for a net loss of 1,981 jobs), and will also result in the transfer of an additional 2,323 jobs. *See,* CSX/NS-26, 1996/97 Exhibit at 13. The 1996/97 Exhibit is based on an April 1, 1997, non-agreement employee count and a November 1996 agreement employee count.

Applicants' 1996 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,822 jobs and the creation of 1,152 jobs (for a net loss of 2,670 jobs), and will also result in the transfer of an additional 2,323 jobs. *See,* CSX/NS-26, 1996 Exhibit at 16. The 1996 Exhibit is based on calendar year 1996 average monthly employment levels.[47]

Applicants' 1995 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 6,654 jobs and the creation of 1,699 jobs (for a net loss of 4,955 jobs), and will also result in the transfer of an additional 2,288 jobs. *See,* CSX/NS-26, 1995 Exhibit at 33. The 1995 Exhibit is based on calendar year

[46] The quantified public benefits asserted by applicants will derive from operating expense reductions for CSX and NS, shipper logistics savings, and reduced road damage.

[47] The 1996 Labor Impact Exhibit submitted with the CSX/NS-26 filing on July 7, 1997, is a slightly corrected version of the Labor Impact Exhibit submitted with the primary application itself on June 23, 1997.

1995 average monthly employment levels. *But see,* CSX/NS-26, V.S. Peifer/Spenski at 1 n.1 (1995 data is incomplete).

Applicants emphasize that the projections contained in their Labor Impact Exhibits are short term projections; applicants maintain that, in the long run, the transactions proposed in the primary application and the related filings will provide opportunities for rail transportation growth and, therefore, new jobs. Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filings, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. *See,* CSX/NS-18 at 25.

RELIEF REQUESTED IN THE LEAD DOCKET. In the STB Finance Docket No. 33388 lead docket, applicants seek: approval of the transaction proposed in the primary application (in paragraph 1 below); approval of certain "elements" of that transaction, referred to as Transaction Elements (in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 below); and a "fairness determination" respecting the terms under which CSX and NS have acquired all of the common stock of CRR (in paragraph 12 below).

(1) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by CSXC and NSC (each a noncarrier corporation controlling one or more rail carriers) of joint control of, and the power to exercise joint control over, CRR (also a noncarrier corporation controlling one or more rail carriers). *See,* 49 U.S.C. 11323(a)(5).[48]

(2) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by NYC and PRR of, and of the operation by CSXT and NSR over, the Conrail lines and other assets, including without limitation trackage and other rights, that will be allocated to CSX (NYC) and NS (PRR), respectively. Applicants also ask that we expressly provide that, pursuant to the sought approval and authorization under 49 U.S.C. 11323 and 11324, and notwithstanding any purported limitations on assignability, NYC and PRR each will have the same right, title, and interest in the Conrail lines and other assets forming its part of the Allocated Assets as Conrail itself now has,

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[48] As applicants note, although joint control by CSXC and NSC of Conrail as a separately functioning rail system will last only until the Division is effected, such joint control, even though transitory, requires approval and authorization under 49 U.S.C. 11323(a)(5). *See,* CSX/NS-18 at 90 & n.14.

including the power to pass the use and enjoyment of those lines and other assets to CSXT and NSR.[49]

(3) Applicants request a declaratory order that 49 U.S.C. 10901 does not apply to the transfer of the Allocated Assets to NYC and PRR.[50] Applicants concede that, because NYC and PRR are not now carriers, an argument can be made that authority under 49 U.S.C. 10901 is required for the transfer; applicants maintain, however, that the transfer should be viewed in context as simply a part of a larger transaction involving the operation by CSX and NS of the assets to be transferred to NYC and PRR, respectively; and applicants claim that the transfer, when viewed in context, requires authorization not under 49 U.S.C. 10901 but rather under 49 U.S.C. 11323 and 11324. In the event we do not issue the sought declaratory order, applicants seek authorization for the transfer of the CRC assets to NYC and PRR: under 49 U.S.C. 10901; and, in order to bring the transfer within the scope of the immunizing power of 49 U.S.C. 11321(a), also under 49 U.S.C. 11323 and 11324.

(4) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (i) for CSXT and NSR to enter into the Allocated Assets Operating Agreements and to operate the assets held by NYC and PRR, respectively; (ii) for CSXT, NSR, and CRC to enter into the three SAA Operating Agreements and to operate the assets in the SAAs; and (iii) for CSX and NS to use, operate, perform, and enjoy the Allocated Assets and the assets in the SAAs consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts). *See,* 49 U.S.C. 11323(a)(2). *See also,* 49 U.S.C. 11323(a)(6). Applicants also request a declaratory order, or a declaration to the same effect as a declaratory order: (a) that, by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS will have the authority to conduct operations over the routes of Conrail covered by the Trackage Agreements as fully and to the same extent as Conrail itself could, whether or not such routes are listed in CSX/NS-18, Appendix L (CSX/NS-18 at 216-24), and notwithstanding any clause in any such agreement purporting to limit or

[49] The Conrail lines and other assets to be allocated to CSX and NS include both: (i) those owned by Conrail; and (ii) those not owned by Conrail but operated by Conrail under leases, trackage rights, and similar arrangements (such arrangements are hereinafter referred to as "Trackage Agreements"). Because applicants are concerned that Conrail's interests under some of these Trackage Agreements may be subject to limitations on assignability, approval and authorization under 49 U.S.C. 11323 and 11324 has been sought in order to bring these Trackage Agreements within the scope of the immunizing power of 49 U.S.C. 11321(a). *See, Norfolk & Western Ry. Co. v. American Train Dispatchers' Ass'n,* 499 U.S. 117 (1991).

[50] As applicants note, the immunizing power of 49 U.S.C. 11321(a) does not extend to an authorization under 49 U.S.C. 10901.

prohibit unilateral assignment by Conrail of its rights thereunder; and (b) that, also by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS may use, operate, perform, and enjoy the Allocated Assets and the assets in the SAAs consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts) as fully and to the same extent as Conrail itself could.

(5) For the period following the transfer of CRC assets to NYC and PRR, applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (a) for CSXC, NSC, and CRR to continue to control NYC and PRR; and (b) for the common control, by CSXC, CSXT, NSC, NSR, CRR, and CRC of (i) NYC and PRR, and (ii) the carriers currently controlled by CSXC, CSXT, NSC, NSR, CRR, and CRC. Such authorization and approval will be necessary because, as applicants note: CRC, NYC, and PRR will not be part of a "single system" of rail carriers, and therefore authorization to control CRC will not in and of itself imply authorization to control NYC and PRR; and, although CSX will exercise day-to-day control of NYC and NS will exercise day-to-day control of PRR, the fact that certain major actions concerning NYC and PRR will remain under the control of CRC will result in an ongoing common control relationship involving CSXC, NSC, and CRR, and the subsidiaries of each.

(6) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: for the acquisition by CSXT of certain trackage rights over PRR; and for the acquisition by NSR of certain trackage rights over NYC. *See,* 49 U.S.C. 11323(a)(6). The lines over which these trackage rights will run are listed in items 1.B and 1.A, respectively, of Schedule 4 to the Transaction Agreement. *See*, CSX/NS-25, Volume 8B at 110-21.[51]

(7) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the trackage rights provided to CSXT, *see,* CSX/NS-25, Volume 8C at 715-57, to access all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern. *See,* 49 U.S.C. 11323(a)(6).

(8) The trackage rights covered by paragraph 6 include, among many other such trackage rights, certain trackage rights to be acquired by NS over the NYC

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[51] The trackage rights identified in Schedule 4 to the Transaction Agreement, *see,* CSX/NS-25, Volume 8B at 110-21, fall into three categories: existing trackage rights held by Conrail over other carriers, which are covered in paragraph 4 above; new trackage rights to be held by CSXT over PRR and by NSR over NYC, which are covered in this paragraph 6; and certain additional new trackage rights provided for in the related filings in STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, & 34), which are covered in the "Related Filings" discussion below. *See,* CSX/NS-18 at 96 n.17.

Bound Brook, NJ-Woodbourne, PA line. *See,* CSX/NS-25, Volume 8B at 112 (item 20). These particular trackage rights, however, are intended to be temporary in duration, and will expire, by their terms, at the end of 3 years. Applicants therefore seek authorization, pursuant to 49 U.S.C. 10903, for NS to discontinue the Bound Brook-Woodbourne trackage rights in accordance with the terms thereof.

(9) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of certain incidental trackage rights granted in connection with operations within the SAAs. These trackage rights include: (i) trackage rights granted by CSXT to NSR and CRC; and (ii) trackage rights granted by NSR to CSXT and CRC. *See,* CSX/NS-18 at 97-98. *See also,* CSX/NS-25, Volume 8C at 76, 115-16, and 156.

(10) To the extent that any matter concerning either (i) the joint ownership by CSX and NS of CRR, CRC, NYC, and/or PRR, or (ii) the Transaction Agreement and the Ancillary Agreements referred to therein,[52] including the provision for handling Existing Transportation Contracts, might be deemed to be a pooling or division by CSX and NS of traffic or services or of any part of their earnings, applicants request approval for such pooling or division under 49 U.S.C. 11322.[53]

(11) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, for the transfer of Conrail's Streator Line from Conrail to NSR/NW.[54]

(12) Applicants seek a determination that the terms under which CSX and NS, both individually and jointly, have acquired all of the common stock of CRR are fair and reasonable to the stockholders of CSXC, the stockholders of

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[52] As used in the Transaction Agreement, the term "Ancillary Agreements" means the Equipment Agreements, the CSXT Operating Agreement, the NSR Operating Agreement, the NYC LLC Agreement, the PRR LLC Agreement, the CRR Holdings LLC Agreement, the Trackage Rights Agreements, the CSXT/NSR Haulage Agreements, the Tax Allocation Agreement, the Shared Assets Agreements, and the Other Operating Agreements. *See,* CSX/NS-25, Volume 8B at 10.

[53] Such approval under 49 U.S.C. 11322 is sought because, as applicants note, payments with respect to the rights granted in connection with both the Allocated Assets and the SAAs, as well as payments for the services performed by Conrail in connection with the SAAs, are to be made by CSX and NS to entities (CRC or its subsidiaries) in which both CSX and NS will have economic interests.

[54] *See, Decision No. 4* (served May 2, 1997), at 7 n.16: "The transfer of the Streator line from CRC to NSR will be considered in the lead docket because this transfer, like all aspects of the division of CRC assets between CSX and NS, is integral to, and an inseparable part of, the control transaction." *See also,* CSX/NS-22 at 446, defining the Streator Line as the Conrail line running: (i) between MP 6.3 at Osborn, IN, and MP 33.2 at Schneider, IN; and (ii) between MP 56.4 at Wheatfield, IN, and MP 186.0 at Moronts, IL.

NSC, and the stockholders of CRR. *See, Schwabacher v. United States*, 334 U.S. 192 (1948).

RELATED FILINGS. In STB Finance Docket No. 33388 (Sub-No. 1), CSXT has filed a notice of exemption under 49 CFR 1150.36 to operate, at Crestline, OH, a connection track in the northwest quadrant of the intersection of CRC's North-South line between Greenwich, OH, and Indianapolis, IN, and CRC's East-West line between Pittsburgh, PA, and Fort Wayne, IN. The connection will extend approximately 1,507 feet between approximately MP 75.4 on the North-South line and approximately MP 188.8 on the East-West line.[55]

In STB Finance Docket No. 33388 (Sub-No. 2), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to operate, in Willow Creek, IN, a connection track in the southeast quadrant of the intersection between CSXT's line between Garrett, IN, and Chicago, IL, and CRC's line between Porter, IN, and Gibson Yard, IN (outside Chicago). The connection will extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT line and approximately MP 246.8[56] on the CRC line.[57]

In STB Finance Docket No. 33388 (Sub-No. 3), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to operate, in Greenwich, OH, connection tracks in the northwest and southeast quadrants of the intersection between the CSXT line between Chicago and Pittsburgh and the CRC line between Cleveland and Cincinnati. The connection in the northwest quadrant, a portion of which will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company, will extend approximately 4,600 feet between approximately MP BG-

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[55] By decisions served July 11, 1997, September 16, 1997, and November 25, 1997, the Board exempted construction, by CSXT, of the Crestline connection track, subject to the condition that CSXT comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline connection track, are addressed in the present decision.

[56] We question CSXT's assertion that the Sub-No. 2 connection track will provide a direct link between CRC and CSXT tracks "and the parallel IHB line at Willow Creek," *see,* CSX/NS-22 at 106 (lines 16-17). Our review of CRC's timetable for its Porter Branch suggests that the link with IHB may be at Ivanhoe, not at Willow Creek.

[57] By decision served November 25, 1997, the Board exempted construction, by CSXT, of the Willow Creek connection track, subject to the condition that CSXT comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Willow Creek connection track, are addressed in the present decision.

193.1 on the CSXT line and approximately MP 54.1 on the CRC line. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT line and approximately MP 54.6 on the CRC line.[58]

In STB Finance Docket No. 33388 (Sub-No. 4), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to operate, at Sidney Junction, OH, a connection track in the southeast quadrant of the intersection between the CSXT line between Cincinnati, OH, and Toledo, OH, and the CRC line between Cleveland, OH, and Indianapolis, IN. The connection will extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT line and approximately MP 163.5 on the CRC line.[59]

In STB Finance Docket No. 33388 (Sub-No. 5), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to operate, at Sidney, IL, a connection track between the UPRR north-south line between Chicago, IL, and St. Louis, MO, and the NW east-west line between Decatur, IL, and Tilton, IL. The connection, which will be in the southwest quadrant of the intersection of the two lines, will be approximately 3,256 feet in length.[60]

In STB Finance Docket No. 33388 (Sub-No. 6), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to operate, at Alexandria, IN, a connection track between the CRC line between Anderson, IN, and Goshen, IN, and the NW line between Muncie, IN, and

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[58] By decision served November 25, 1997, the Board exempted construction, by CSXT, of the Greenwich connection tracks, subject to the condition that CSXT comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Greenwich connection tracks, are addressed in the present decision.

[59] By decision served November 25, 1997, the Board exempted construction, by CSXT, of the Sidney Junction connection track, subject to the condition that CSXT comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney Junction connection track, are addressed in the present decision.

[60] By decision served November 25, 1997, the Board exempted construction, by NW, of the Sidney connection track, subject to the condition that NW comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney connection track, are addressed in the present decision.

Frankfort, IN. The connection, which will be in the northeast quadrant of the intersection of the two lines, will be approximately 970 feet in length.[61]

In STB Finance Docket No. 33388 (Sub-No. 7), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to operate, at Bucyrus, OH, a connection track between NW's Bellevue, OH-Columbus, OH line and CRC's Fort Wayne, IN-Crestline, OH line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 2,467 feet in length.[62]

In STB Finance Docket No. 33388 (Sub-No. 8), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Little Ferry, NJ, two connection tracks between the CRC Selkirk-North Bergen line and the New York, Susquehanna and Western Railway (NYS&W) Paterson-Croxton line. The first connection will extend approximately 480 feet between approximately MP 5.75 on the CRC line and approximately MP 5.65 on the NYS&W line. The second connection will extend approximately 600 feet between approximately MP 4.04 on the CRC line and approximately MP 4.15 on the NYS&W line.

In STB Finance Docket No. 33388 (Sub-No. 9), CSXT and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSXT subsidiary) have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of 75th Street SW, Chicago, IL, in the southwest quadrant of the intersection of the lines of B&OCT and The Belt Railway Company of Chicago (BRC). The connection will extend approximately 1,640 feet between approximately MP DC-22.43 on B&OCT's North-South line between Cleveland and Brighton Park, and approximately MP 12.95 on BRC's East-West line between Bedford Park Yard and South Chicago Yard.

In STB Finance Docket No. 33388 (Sub-No. 10), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate a connection track in Exermont, IL, in the northwest

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[61] By decision served November 25, 1997, the Board exempted construction, by NW, of the Alexandria connection track, subject to the condition that NW comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Alexandria connection track, are addressed in the present decision.

[62] By decision served November 25, 1997, the Board exempted construction, by NW, of the Bucyrus connection track, subject to the condition that NW comply with certain specified environmental mitigation measures. The operational aspects of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Bucyrus connection track, are addressed in the present decision.

quadrant of the intersection between CSXT's Cincinnati-East St. Louis line and CRC's Cleveland-East St. Louis line. The connection will extend approximately 3,590 feet between approximately MP BC-327.9 on the CSXT line and approximately MP 231.4 on the CRC line.

In STB Finance Docket No. 33388 (Sub-No. 11), CSXT and B&OCT have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of Lincoln Avenue in Chicago, IL, in the northeast quadrant of the intersection of the lines of B&OCT and IHB. The connection will extend approximately 840 feet between approximately MP DC-9.5 on B&OCT's line between Cleveland and Barr Yard, and approximately MP 10.43 on IHB's line between Gibson Yard and Blue Island Jct.

In STB Finance Docket No. 33388 (Sub-No. 12), NSR has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Kankakee, IL, a connection track between the Illinois Central Railroad Company (IC) Chicago, IL-Gibson City, IL north-south line, over which NSR has trackage rights, and the CRC Streator, IL-Schneider, IN east-west line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 1,082 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 13), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolono, IL, in the southeast quadrant of the intersection of the IC line between Chicago, IL, and Centralia, IL, and the NW line between Decatur, IL, and Tilton, IL. The connection will be about 1,600 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 14), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Butler, IN, a connection track between NW's Detroit, MI-Fort Wayne, IN line and CRC's Elkhart, IN-Toledo, OH line. The connection, which will be in the northwest quadrant of the intersection of the two lines, will be approximately 1,750 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 15), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolleston, IN. This track, which will connect an NW line and a CRC line, will be about 930 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 16), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a double track connection at Hagerstown, MD. This track, which will connect an NW line and a CRC line, will be about 800 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 17), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Ecorse Junction (Detroit), MI. This track, which will connect an NW line and a CRC line, will be about 400 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 18), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Blasdell (Buffalo), NY, a connecting track approximately 2,500 feet in length between NW's Erie, PA-Buffalo, NY Line and CRC's Buffalo, NY-Harrisburg, PA Line.

In STB Finance Docket No. 33388 (Sub-No. 19), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Gardenville Junction (Buffalo), NY, a connecting track approximately 1,700 feet in length between CRC's Buffalo, NY-Harrisburg, PA Line and CRC's Ebenezer Secondary Track.

In STB Finance Docket No. 33388 (Sub-No. 20), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Columbus, OH, an NW-CRC connecting track approximately 1,423 feet in length. *See,* CSX/NS-22 at 315 (map).

In STB Finance Docket No. 33388 (Sub-No. 21), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Oak Harbor, OH, a connecting track approximately 4,965 feet in length between, and in the northwest quadrant of the intersection of, NW's Toledo, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 22), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Vermilion, OH, a connecting track approximately 5,398 feet in length between NW's Cleveland, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 23), NW has filed a notice of exemption under 49 CFR 1180.2(d)(5) regarding a joint project involving relocation of NW's rail line running down 19th Street in Erie, PA (a distance of approximately 6.1 miles, between approximately MP B-85.10 near Downing Avenue and approximately MP B-91.25 west of Pittsburgh Avenue) to a parallel railroad right-of-way currently owned and operated by CRC that will be allocated to CSXT in connection with the primary application.

In STB Finance Docket No. 33388 (Sub-No. 24), CRC and NW have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25 regarding the acquisition by CRC (or by NYC) of the Fort Wayne Line, between MP 441.8 at Fort Wayne, IN, and MP 319.2 at Tolleston (Gary), IN. *See*, CSX/NS-22 at 446 and 449 (indicating that the mileposts are as stated in the preceding sentence). *But see,* CSX/NS-22 at 461-62 (indicating that the mileposts are MP 441.8 at Tolleston and MP 319.2 at Fort Wayne).

In STB Finance Docket No. 33388 (Sub-No. 25), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over approximately 32.7 miles of a CSXT line between Lima, OH (Erie Junction), at or near CSXT MP BE-129.2, and Sidney, OH, at or near CSXT MP BE-96.5. The trackage rights to be acquired by NW include overhead trackage rights between Lima and Sidney and local trackage rights that will allow NW to serve 2-to-1 shippers at Sidney.

In STB Finance Docket No. 33388 (Sub-No. 26), CSXC, CSXT, and The Lakefront Dock and Railroad Terminal Company (LD&RT) have filed an application seeking approval and authorization under 49 U.S.C. 11323-25 for the acquisition and exercise by CSXC and CSXT of control of LD&RT, and the common control of LD&RT and CSXT and the other rail carriers controlled by CSXT and/or CSXC. LD&RT, a Class III railroad in which CSXT and CRC each currently owns a 50% voting stock interest, operates approximately 17 miles of yard tracks at Oregon, OH.

In STB Finance Docket No. 33388 (Sub-No. 27), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 5 to 6 miles of a CSXT line between Columbus, OH (Parsons Yard), at or near CSXT MP CJ 71.5, and Scioto, OH, at or near CSXT MP CK 2.5.

In STB Finance Docket No. 33388 (Sub-No. 28), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 2.02 miles of an NW line between Columbus, OH (Watkins Yard), at or near NW MP N-696.7, and Bannon, OH, at or near NW MP N-698.72.

In STB Finance Docket No. 33388 (Sub-No. 29), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 1.4 miles of an NW line between Erie Junction (Delray), MI, at or near MP D4.4, and Ecorse Junction, MI, at or near MP D5.8.

In STB Finance Docket No. 33388 (Sub-No. 30), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 1.7 miles of a CSXT line between the connection of two CSXT lines near Washington Street at or near MP 123.7, and the connection of two CSXT lines at Pine at or near MP 122.0, in Indianapolis, IN.

In STB Finance Docket No. 33388 (Sub-No. 31), CSXC and CSXT have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25, to the extent those provisions may apply, regarding the acquisition by CSXC and CSXT of control of Albany Port Railroad Corporation (APR). APR, which operates approximately 16.5 miles of track at the Port of Albany, NY, is owned in equal 50% shares by CRC and D&H (Delaware and Hudson Railway Company, Inc., an affiliate of Canadian Pacific Railway Company);[63] and, if the primary application is approved, CRC's 50% interest in APR will be allocated to CSXT in the Division.[64]

In STB Finance Docket No. 33388 (Sub-No. 32), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 10.8 miles of the IHB McCook Branch between the IHB/B&OCT connection at McCook, IL, at or near MP 28.5, and the IHB/CP connection at Franklin Park, IL, at MP 39.3.

In STB Finance Docket No. 33388 (Sub-No. 33), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over B&OCT's Barr Subdivision between the connection of the NSR Chicago Line and the B&OCT line at Pine Junction, IN (CP 497) and: (i) the connection with B&OCT's McCook Subdivision at Blue Island Junction, IL, at or near MP DC 14.9, a distance of approximately 14.9 miles; and beyond to (ii) the B&OCT/IHB connection at McCook, IL, at or near MP 28.5, a distance of approximately 13.6 miles.

In STB Finance Docket No. 33388 (Sub-No. 34), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 45.5 miles of an NW line between Bucyrus, OH, at or near NW MP S-63.0, and Sandusky, OH, at or near NW MP S-108.5. The trackage rights to be acquired by CSXT, although described as "overhead" trackage rights, will allow CSXT to access 2-to-1 shippers at Sandusky.

In STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), CRC and CSXT, respectively, have filed a notice of exemption under 49 CFR 1152.50 to abandon an approximately 29-mile portion of the Danville Secondary Track between MP 93.00± at Paris, IL, and MP 122.00± at Danville, IL, in

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[63] Canadian Pacific Railway Company (CPR), Delaware and Hudson Railway Company, Inc. (D&H), Soo Line Railroad Company (Soo), and St. Lawrence & Hudson Railway Company Limited (SL&H) are referred to collectively as CP.

[64] Implicit in the Sub-No. 31 docket is a request for a determination that acquisition by CSXC and CSXT of a 50% interest in APR will not enable CSXC and CSXT to "control" APR within the meaning of 49 U.S.C. 11323.

Edgar and Vermilion Counties, IL. The line, which is presently owned and operated by CRC, is proposed to be operated by CSXT pursuant to the authority sought in the primary application.[65]

In STB Docket No. AB-290 (Sub-No. 194X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon[66] a line between MP SK-2.5 near South Bend, IN, and MP SK-24.0 near Dillon Junction, IN, a distance of approximately 21.5 miles in St. Joseph and La Porte Counties, IN.[67]

In STB Docket No. AB-290 (Sub-No. 196X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP TM-5.0 in Toledo, OH, and MP TM-12.5 near Maumee, OH, a distance of approximately 7.5 miles in Lucas County, OH.[68]

In STB Docket No. AB-290 (Sub-No. 197X), NW has filed a notice of exemption under 49 CFR 1152.50 seeking authorization to discontinue operations over the Toledo Pivot Bridge extending between MP CS-2.8 and MP CS-3.0 near Toledo, OH, a distance of approximately 0.2 miles in Lucas County, OH.[69]

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[65] With respect to the Paris-Danville abandonment, the City of Georgetown, IL, has requested a 180-day public use condition and has also filed a Trails Act statement. CSX has indicated that it is willing to negotiate with the City of Georgetown, pursuant to Section 8(d) of the National Trails System Act, respecting interim trail use of the right-of-way involved in Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X). *See,* CSX/NS-176 at 801.

[66] NW initially sought, in Docket No. AB-290 (Sub-No. 194X), to abandon the South Bend-Dillon Junction line. *See,* CSX/NS-22 at 31. Applicants thereafter indicated, in their briefs, that NW was seeking, in Docket No. AB-290 (Sub-No. 194X), authorization for discontinuance. *See,* NS-62 at F-10 (line 11); CSX-140 at F-9 (line 15). Applicants, however, have since confirmed that, in fact, NW continues to seek to abandon the South Bend-Dillon Junction line. *See,* CSX/NS-203 (errata submission; filed April 9, 1998).

[67] With respect to the South Bend-Dillon Junction abandonment, the St. Joseph County Parks and Recreation Department has requested a 180-day public use condition and has also filed a Trails Act statement.

[68] NW (*i.e.*, NS) indicated, in its December 15, 1997, rebuttal filing, that it did not object to the STB Docket No. AB-290 (Sub-No. 196X) 180-day public use condition sought by the Toledo Metropolitan Area Council of Governments (TMACOG), as long as that condition did not interfere with arm's-length NW-TMACOG negotiations. *See,* CSX/NS-176 at 565. NW subsequently agreed that, upon obtaining authorization to abandon the Toledo-Maumee line: it will donate and quitclaim to TMACOG or TMACOG's designee NW's interest in the right-of-way; and it will retain its interest in the ties, rail, and metal material, and will remove these items from the line at an appropriate time following abandonment. *See,* TMACOG's pleading (not designated), filed February 23, 1998; the letter agreement NW entered into with TMACOG and the Toledo-Lucas County Port Authority (TLCPA), dated February 18, 1998, is attached thereto.

[69] NW initially sought authorization to abandon the Toledo Pivot Bridge. *See,* CSX/NS-22 at 84-93. Subsequently, in accordance with a settlement NW (*i.e.*, NS) reached with TLCPA and (continued...)

APPLICABLE STANDARDS

The applicable statutory provisions are codified at 49 U.S.C. 11321-26. Despite the several factors contained in those provisions, "The Act's single and essential standard of approval is that the [Board] find the [transaction] to be 'consistent with the public interest.'" *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 395 (5th Cir. 1980), *cert. denied*, 451 U.S. 1017 (1981). *Accord Penn-Central Merger and N & W Inclusion Cases*, 389 U.S. 486, 498-99 (1968). To determine the public interest, we balance the benefits of the merger against any harm to competition or to essential service(s) that cannot be mitigated by conditions.[70]

In making our public interest determination in proceedings such as this one involving the merger of at least two Class I railroads, section 11324(b) requires us to consider five factors: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

Section 11324(b)(1), requiring that we examine the effect of the transaction on the adequacy of transportation to the public, necessarily involves an examination of the public benefits of the transaction. These include efficiency gains such as cost reductions, cost savings, and service improvements permitting a railroad to provide the same rail services with fewer resources or improved rail services with the same resources. An integrated railroad can often realize certain of these benefits by achieving the economies of scale, scope, and density stemming from expanded operations. Cost savings may include elimination of interchanges, internal reroutes, more efficient movements between the merging

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[69](...continued)
TMACOG, NW advised that it now seeks authorization for discontinuance only. *See*, NS-63 (filed March 4, 1998).

[70] NYDOT, which characterizes our interpretation of this public interest standard as overly favorable to mergers, argues that Congress changed our statute in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) to make it hostile to mergers, and more favorable to preserving competition as the primary goal. That precise argument was rejected in *Southern Pac. Transp. Co. v. ICC*, 736 F.2d 708, 715-19 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985). The court affirmed our policy of balancing competitive and other public interest factors.

parties, reduced overhead, and elimination of redundant facilities. These benefits, in varying degrees depending on competitive conditions, have generally been passed on to most shippers as reduced rates and/or improved services.[71]

Competitive harm results from a merger to the extent that the merging parties gain sufficient market power to profit from raising rates or reducing service (or both).[72] In evaluating claims of competitive harm, our general practice is to distinguish harm caused by the transaction from disadvantages that other railroads, shippers, or communities may have already been experiencing. Wherever feasible, we impose conditions to ameliorate significant harm that is caused by the merger.

Our general policy statement on rail consolidations, codified at 49 CFR 1180.1,[73] recognizes that potential harm from a merger may occur from a reduction in competition, 49 CFR 1180.1(c)(2)(i), or from harm to a competing carrier's ability to provide essential services. 49 CFR 1180.1(c)(2)(ii).[74] Thus, we must evaluate whether opposing railroads will be financially and competitively able to withstand the projected loss of traffic to the consolidated system. In assessing the probable impacts and determining whether to impose conditions, our concern is the preservation of competition and essential services, not the survival of particular carriers. An essential service is defined as one for which there is a sufficient public need, but for which adequate alternative transportation is not available. 49 CFR 1180.1(c)(2)(ii).

Finally, because our statutory mandate requires a balancing of efficiency gains against competitive harm, the antitrust laws provide guidance, but are not determinative in our merger proceedings. As the Supreme Court noted in *McLean Trucking Co. v. United States*, 321 U.S. 67, 87-88 (1944):

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[71] In contrast, benefits to the combining carriers resulting from increased market power are exclusively private benefits that detract from any public benefits associated with a control transaction. *See, e.g., Rio Grande Industries, et al. — Control — SPT Co., et al.*, 4 I.C.C.2d 834, 875 (1988) (*DRGW/SP*).

[72] In making our competitive findings under section 11324(b)(5), we do not limit our consideration of competition to rail carriers alone, but examine the total transportation market(s). *See, Central Vermont Ry. v. ICC*, 711 F.2d 331, 335-37 (D.C. Cir. 1983).

[73] *See, Railroad Consolidation Procedures*, 363 I.C.C. 784, (1981).

[74] We are also guided by the rail transportation policy, 49 U.S.C. 10101, added by the Staggers Rail Act of 1980, and amended by the *ICC Termination Act of 1995* (*ICCTA* or Act). *See, Norfolk Southern Corp. — Control — Norfolk & W. Ry Co.*, 366 I.C.C. 171, 190 (1982) (*NS Control*). That policy emphasizes reliance on competition, not government regulation, to modernize railroad operations and to promote efficiency. H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 88 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4110, 4119.

In short, the [Board] must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operations, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy * * *. "The wisdom and experience of that [Board]," not of the courts, must determine whether the proposed consolidation is "consistent with the public interest."[75]

DISCUSSION AND CONCLUSIONS

OVERVIEW. After pursuing competing bids individually to acquire all of Conrail, CSX and NS reached an agreement to acquire Conrail jointly. The transaction they are proposing will result in a procompetitive restructuring of rail service throughout much of the Eastern United States. Before the transaction, CSX operated about 18,500 miles of track, NS about 14,300, and Conrail about 10,700. As proposed in this transaction, NS will control about 58% of Conrail's lines, while CSX will control about 42%,[76] at a total price of $9.895 billion, plus assumed liabilities and transaction fees. After the transaction is fully consummated, both CSX and NS will provide vigorous, balanced, and sustainable competition, each over approximately 20,000 miles of rail line in the East.

Before this transaction, Conrail faced no Class I rail competitor through much of its service area. This meant that Conrail was a "bottleneck" carrier for most through shipments moving to or from this area. Now, CSX and NS will directly compete with each other in important markets where Conrail did not compete with other major railroads before. These markets are the Northern New Jersey portion of the New York metropolitan area, Southern New Jersey/Philadelphia, Detroit, the area served by the Monongahela Railroad, and the Ashtabula Harbor. The total amount of rail traffic that will gain head-to-head

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[75] Under this standard, we may disapprove transactions that would not violate the antitrust laws and approve transactions even if they otherwise would violate the antitrust laws. *United States v. Interstate Commerce Comm'n*, 396 U.S. 491, 511-14 (1970) (*Northern Lines Merger Cases*). Moreover, because of our broad conditioning power and our continuing jurisdiction, we may approve transactions with conditions in cases where the antitrust enforcement agencies would either disapprove or approve only following substantial divestiture. *Accord Minneapolis & St. L. Ry. Co. v. United States*, 361 U.S. 173 (1959); *Bowman Transportation v. Arkansas-Best Freight*, 419 U.S. 281, 298 (1974); *Port of Portland v. United States*, 408 U.S. 811, 841 (1972); *Northern Lines Merger Cases*, 396 U.S. at 514; *Denver & R.G.W.R. Co. v. United States*, 387 U.S. 485 (1967).

[76] As detailed elsewhere in this decision, NS and CSX have not directly purchased Conrail assets. They have created intermediary corporations to acquire and hold those assets.

two railroad competition has been estimated by applicants at $700 million per year.[77]

With very minor exceptions, the combination of NS and Conrail and of CSX and Conrail lines will be end-to-end and not parallel. It has been our experience that end-to-end restructurings of this kind rarely result in a diminution of competition. We have adopted a presumption, known as the one-lump theory, that vertical combinations will not result in competitive harm. We have also established a test for parties to show that the theory does not apply in a particular circumstance. Although several parties have attempted to argue that we should not apply the one-lump theory to rail mergers, repeating arguments that have been raised and rejected in previous merger proceedings, no party has rebutted the application of the theory here. Our use of the one-lump theory has been judicially approved, and we will not go back over that ploughed ground here. *See, Western Resources, Inc. v. STB*, 109 F.3d 782 (D.C. Cir. 1997).

In only a handful of instances, the restructuring would, unless conditioned, result in a reduction from two to one of carriers serving a particular location. Applicants have agreed, and we will ensure, that wherever that would happen, applicants will provide one another sufficient trackage rights at reasonable rates, together with any other conditions that might be called for, to remedy the situation. Because the transaction as conditioned will result in no instances of significant competitive harm, and will significantly increase competition for many shippers, the clear impact of this transaction is to create a substantial increase in rail-to-rail competition, and not a reduction.

In addition, the transaction will permit both CSX and NS to compete more effectively with motor carrier service, which is the dominant mode of freight transportation for most commodities throughout the East. The division of Conrail's lines, roughly half to each carrier, permits both CSX and NS to offer new and efficient single-line service in competition with motor carriers and with each other to thousands of shippers that received only joint-line service before. The transaction should lead to improved service and reduced transit times for thousands of shippers throughout the Eastern United States. This will permit these two carriers to divert a significant amount of traffic from the nation's highways.

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[77] At many other locations, such as the Greater Buffalo area, enhanced competition that derives from the nearby operations of two strong carriers will act to limit the market power that had previously been sustained by Conrail's dominant presence.

Applicants project that expanded rail operations will result in removal of 1,027,000 truck trips a year from our nation's highways, with 438,000 of that total attributed to CSX and 589,000 to NS.[78] This diversion of traffic away from the highways will result in substantial net environmental benefits in terms of reduced air pollution and highway traffic congestion, and will reduce annual diesel fuel consumption by over 80 million gallons.[79]

These opportunities will also spur both CSX and NS to make substantial new investments in improving rail infrastructure. CSX plans to invest $488 million, while NS plans to invest $729 million in new rail property and equipment due to this transaction. Indeed, several line construction projects that we previously authorized are already well under way. These important public interest benefits of increased competition, new single-line routes, reduced highway traffic, and increased capital investment in needed facilities, are largely uncontested.

In addition, anticipated synergies will enable NS and CSX to reduce their cost of providing transportation by about $1 billion per year beginning in the third year following completion of the transaction. As we noted in *Union Pacific/Southern Pacific Merger,* 1 S.T.B. 233 (1996) (*UP/SP*),[80] the clear trend since 1980 has been that railroad efficiencies achieved through mergers or other means have been largely passed along to shippers in the form of lower rates and improved service.

Indeed, our monitoring of rail rates indicates that this downward trend has continued unabated since 1993, a time during which rail service in the West was totally restructured with two major rail mergers. We are mindful of the fact that the recent *UP/SP* merger was followed by serious service problems resulting from a variety of factors, a significant one being a rail infrastructure that is inadequate to meet the rapidly increasing demand for rail service in the West.[81] The railroads in the West, however, have been upgrading their infrastructure, as they indicated they would in the context of their merger proceedings, and we expect service to continue to improve as the infrastructure is upgraded.

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[78] These projections have been accepted by our Section of Environmental Analysis (SEA) in its assessment of the environmental impacts of the transaction. *See, Final Environmental Impact Statement* (Final EIS), Vol. 2, Chapter 4 at 4-48.

[79] SEA recalculated applicants' projection of a 120 million gallon reduction in diesel fuel to a net reduction of 80.1 million gallons in the Final EIS. *Id.* at 4-48.

[80] UPRR was authorized to take control of the "SP" rail carriers formerly controlled by the Southern Pacific Rail Corporation.

[81] *See, Joint Petition for Service Order*, 3 S.T.B. at 33-34.

Given the substantial savings predicted, which we have examined and have found generally to be reasonable projections,[82] neither NS nor CSX should have any difficulty financing the fixed charges resulting from the acquisition.[83] In fact, the transaction should ultimately result in improved financial ratios for the major eastern railroads.

Although the impacts of this transaction are chiefly positive, protests or responsive applications have been filed by about 160 parties. Given the magnitude of this undertaking, and the ongoing service problems in the West, it is not surprising that numerous parties would be anxious about the substantial changes in rail operations that are projected. Nevertheless, we believe that many of these concerns are either overstated or unwarranted. Where protestants have raised valid competitive or other concerns, however, we have addressed them with conditions wherever appropriate.

In imposing various conditions, it has been our aim not to undermine the strength and integrity of the proposal before us, which clearly benefits the public interest. In this regard, we have not altered the already procompetitive SAAs carefully negotiated by applicants. But, we have used our broad conditioning authority to preserve or enhance service and competitive opportunities for areas in the Northeast that lost significant competitive alternatives in the railroad bankruptcies that led to the formation of Conrail in the 1970s. We have either preserved competition or provided for new competition to and from New York City, Buffalo, and Rochester, NY. We have also provided conditions aimed at protecting the viability of small carriers such as the Ann Arbor Railroad, the Wheeling & Lake Erie Railroad, and the New England Central Railroad. These and other small carriers provide valuable services to shippers on a regional basis. We have preserved service or competitive opportunities for shippers such as Indianapolis Power & Light Company, Wyandot Dolomite, AK Steel Corporation, and Joseph Smith & Sons, Inc.

Finally, we are aware that throughout the course of this proceeding, applicants and various parties have worked diligently to negotiate settlement agreements. Those efforts have resulted in a number of important agreements that should improve competition and service quality for shippers of freight and rail passengers. Chief among these agreements are the NITL agreement (permitting important remedies relating to oversight, loss of single-line service, and reciprocal switching), and the agreements with two major unions, United Transportation Union and Brotherhood of Locomotive Engineers (together

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[82] *See*, "Details of Public Benefits" below.

[83] *See*, "Details of Financial Matters" below.

representing almost half of all railroad employees). Applicants have reached settlement agreements with the National Grain and Feed Association, and with a number of electric utility companies such as Potomac Electric Power Company, New York State Electric and Gas, Atlantic City Electric Company, Detroit Edison Company, and Delmarva Power & Light Company.

Applicants have also reached an important agreement with Amtrak permitting them to provide freight service over the Northeast Corridor. At the same time, Amtrak has gained an agreement to permit it to conduct certain express operations over the lines of NS. Applicants also reached important agreements with the Port Authority of New York and New Jersey, the New Jersey Department of Transportation, the City of Cleveland, the City of Indianapolis, and with over 25 railroads, including the Canadian National Railway, the Canadian Pacific Railway, and many smaller railroads. These agreements, taken as a whole, will do much to promote safe and adequate service, and improved competition, well into the twenty-first century.

GENERAL ISSUES

The NITL Settlement Agreement. CSX and NS have entered into a number of agreements with public agencies, shippers, and other railroads to improve efficiency and service, and to address safety and passenger concerns. Chief among these is the settlement with the National Industrial Transportation League (NITL), the nation's largest shipper trade association. The settlement covers a broad range of issues raised by NITL and other parties, although NITL has retained the right to pursue certain rate conditions.

Generally, the provisions of the NITL agreement are in the public interest, and we will impose them as conditions to our approval of this transaction. In certain areas touched on by that agreement, however, we believe that some additional general remedies are required. As explained in more detail below, we have modified that agreement in four basic ways. First, at the urging of many parties including the United States Department of Transportation, the Chemical Manufacturers Association, and others, we have extended the oversight period from 3 to 5 years. Second, we have extended the single-line to joint-line and reciprocal switching protections, which were crafted with NITL's shipper members in mind, to reach shortlines that connect with Conrail and the shippers that they serve. Third, we have revised the reciprocal switching provision so that it protects not just switching that has been provided by Conrail to CSX and

NS, but also switching that has been provided by CSX and NS to Conrail, where feasible. Fourth, we are revising applicants' plan for allocation of Conrail shipper contracts between NS and CSX, by permitting only a temporary override of antiassignment provisions and other similar provisions that would unduly impede the carrying out of the transaction.

The NITL agreement, as expanded by the Board, provides the following:

Consultation With Shipper Representatives. The settlement led to the creation of a "Conrail Transaction Council" consisting of representatives of the railroads, NITL, and other organizations representing affected rail users. CSX and NS are to discuss the implementation process with the Council, which may suggest mechanisms to address any perceived obstacles to the effective and efficient implementation of the transaction. Although the Council is not intended to supplant our oversight of implementation, it nonetheless furthers the public interest. If shippers and carriers have a forum for timely and efficient communication of information, problems are more likely to be resolved without requiring our intervention.

Additional Plans For The Shared Assets Areas. Under the agreement, applicants have already provided to the Council on February 1, 1998, a summary description of how operations will be conducted in each of the three Shared Assets Areas (SAAs), North Jersey, South Jersey/Philadelphia and Detroit. These summaries — describing the interrelationship of the two railroads, dispatching controls and the effects on individual shippers in these areas related to car ordering, car supply, and car location — have facilitated shipper planning, and have allowed more meaningful public comment on safety and operational issues.

Preparation For Separate Operations. The NITL agreement provides that, prior to the start of separate operations over the Conrail lines, CSX and NS will advise us that: (1) management information systems are in place for operations on the former Conrail system, within the SAAs, and at interchanges between the CSX/Conrail and NS/Conrail systems, including car tracing capabilities; and (2) they have obtained the necessary labor implementing agreements. If either CSX or NS requests that we take steps to initiate labor implementing agreements prior to the control date, NITL will support that request. CSX and NS will, consistent with safe and efficient implementation of the transaction, initiate their separate operations of the Conrail routes as soon as possible after control has been authorized. This condition will assure that the transaction is implemented in an orderly manner, and only when applicants have in place the two most important prerequisites for successful implementation: labor agreements and computerized information systems.

Board Oversight - Development of Measurable Standards. The agreement proposes that we require oversight of the transaction for a 3-year period. We believe, however, that a 5-year oversight period would be more appropriate. As part of that oversight, the parties suggest that we require quarterly reports from CSX and NS and an opportunity for comment by all interested shippers. CSX, NS and the Council have agreed jointly to develop and recommend to us objective, measurable standards to be used in the quarterly reports, with the baseline to be the current Conrail operations. Given the operational complexity and the broad scope of this transaction, we believe that continuing oversight is necessary.

To ensure that the Council continues to serve its intended purpose as an adjunct to our oversight of service implementation, we will require applicants to continue their participation in the Council process until the Council certifies to us that the service-related aspects of the transaction have been successfully implemented. The Council shall report to us, as necessary, any impediments to service implementation requiring exercise of our continuing oversight jurisdiction, with recommendations as to how that jurisdiction should be exercised.[84]

Conrail Rail Transportation Contracts. Applicants propose to allocate Conrail rail transportation contracts pursuant to section 2.2(c) of the transaction agreement. Under the NITL agreement, shippers that could have had their contracts allocated to either of the two carriers under section 2.2(c), and who become dissatisfied with the service they are receiving from the carrier to which their contract's performance is allocated, may, at any time after 6-months' experience, submit to arbitration on an expedited basis the issue as to whether there is just cause for the transfer of responsibility for service to the other carrier. With regard to the Conrail contracts distributed between CSX and NS, this provides a useful remedy for contract shippers that are unhappy with the performance of the carrier serving them.

As explained in more detail in the Shipper Contracts section below, we have modified applicants' proposal to permit an override of antiassignment and other

[84] The ongoing role of the Conrail Transaction Council, in combination with the extensive oversight and monitoring that we will be undertaking, is an appropriate response to parties such as E.I. DuPont de Nemours and Company, Inc., which has requested that we establish performance evaluation committees and require applicants to maintain adequate operating and supervisory personnel levels.

similar clauses in existing contracts, so that only a temporary override will be permitted. At the end of 180 days after Day One, the day on which Conrail assets are divided, shippers will be permitted freely to exercise whatever termination rights those contracts may contain, provided they have given 30 days' notice to the carrier of their intentions. Shippers in those circumstances will not need to make a showing that their service is inadequate in order to terminate the contract.

Interline Service. Because of the allocation of Conrail's routes, a number of shippers that currently have single-line service from Conrail on certain moves will no longer have single-line service available. Those shippers who have shipped at least 50 cars on an annual basis on the routes in question, if they request, may require CSX and NS to maintain the existing Conrail rates, subject to RCAF-U[85] increases. Applicants will also work with the shippers to provide fair and reasonable joint-line service, for a period of 3 years. An arbitration procedure is established for disputes concerning the routing or interchange points for these shippers. As discussed below, these provisions are a creative remedy for a problem that does not generally lend itself to easy solutions.

After examining the record in this case as it relates to shortline railroads, we have determined that these remedies should be extended to single-line to joint-line situations also involving a third carrier that is a Class III railroad. Shippers on Class III railroads in those circumstances would face the same degree of harm as do shippers that are losing single-line Conrail service through the transaction, and this slight expansion of the NITL agreement provides an appropriate remedy. In other words, where a Class III railroad could provide through service connecting solely with Conrail, but will now have to provide a three-carrier connecting service with both CSX and NS, the Class III carrier, at its option, will be able to invoke the single-line to joint-line protections set forth in the NITL agreement.

[85] The Rail Cost Adjustment Factor, or RCAF, was established in the Staggers Act to track quarterly changes in railroad costs. While its initial purpose was to protect from challenge on rate reasonableness grounds rail tariff rate increases that reflected no more than increased costs, it has come to be used by many railroads and shippers as an aide in setting contractual terms. The Board publishes several RCAF series. RCAF-U measures changes in the cost of railroad inputs, unadjusted for productivity change. RCAF-A is formed by adjusting the RCAF-U index to reflect changes in railroad productivity. *See,* 49 U.S.C. 10708.

Gateways. CSX and NS have agreed to keep open all major interchanges with other carriers as long as they are economically efficient. This comports fully with our statutory mandate to preserve efficient routings. *See, e.g., Chesapeake & O. Ry. v. United States*, 704 F.2d 373, 377 (7th Cir. 1983).

Reciprocal Switching. The NITL agreement enhances competition to the extent that it preserves for 10 years those arrangements under which Conrail made reciprocal switching available to NS and CSX. It also generally reduces Conrail's switching rates, which range up to $450 per car and tend to be around $390, to $250 per car, with an inflation adjustment, for the next 5 years. This aspect of the agreement is beneficial because, at least in some cases, the transaction may change the rail transportation map in ways that reduce the incentive of CSX and NS to grant reciprocal switching to each other at certain locations where Conrail granted such switching rights to one of them before the transaction. Reciprocal switching is generally a voluntary arrangement that carriers undertake when it is in their own best interest. Conrail, because of its very strong competitive position, has generally been unwilling to grant switching rights to other carriers without charging relatively high rates for that service.

CMA, SPI and certain other parties have argued that we should do more to preserve or to enhance existing reciprocal switching arrangements in this proceeding. Several parties have pointed out that the preservation of switching arrangements guaranteed by the NITL agreement works only in one direction. Switching granted by Conrail to NS and CSX would be preserved, while switching granted by NS and CSX would not be. It may be that there are considerably fewer situations where NS and CSX agreed to perform switching for Conrail, but there are situations where such arrangements did provide valuable competition. For example, ARCO Chemical Company operates a facility in South Charleston, WV, that is now served directly by CSX, and which is open to reciprocal switching to Conrail. NS will be obtaining the Conrail line. Under the NITL agreement, this switching would not be preserved.

We believe that it is appropriate for us to expand the NITL agreement to require, where feasible, preservation of switching agreements in both directions — NS and CSX over Conrail and Conrail over NS and CSX — under the same terms provided for in the NITL agreement. Applicants correctly point out that relief for cancellation of switching arrangements is available through 49 CFR 1144 under certain circumstances, but we see no reason to require shippers to use that process to remedy situations where switching disappears as the result of a merger or consolidation such as this one.

There are a limited number of circumstances in which shortline railroads now pay switching charges to Conrail. We believe that a similar logic compels preservation of these switching arrangements and rate accommodations to the same extent provided for in the NITL agreement when the switching only involves Conrail and CSX or NS. We caution that we do not intend by this provision to undo or override "blocking provisions" in contracts by which shortline railroads obtained their rail properties from Class I railroads.[86]

Finally, several parties have asked that we reduce the level of switching charges to $130 per car, roughly the level that UPRR agreed to charge BNSF in a settlement agreement that we imposed as a condition in the *UP/SP* merger. Other than this one comparison, these parties have presented no evidence to indicate that a $130 fee would be appropriate for these eastern carriers or that a $250 fee would not be appropriate. We have no reason to believe that the $250 fee that these two carriers have voluntarily negotiated[87] with NITL for services they provide for each other is unreasonable or should be reduced. One thing is quite certain: the $250 fee is in almost every case lower than the switching fees that Conrail charged before this transaction. Thus, the new fee facilitates rail-to-rail competition.

Facilities Within The Shared Assets Areas. During the term of the operating agreements for the Shared Assets Areas, all existing *and new* shipper-owned facilities within the areas may be served by both CSX and NS. This clarification promotes competition by giving shippers and both carriers the opportunity to invest in joint facilities or for the carriers to develop for their own use facilities that they will separately own or control in the area, such as transloading facilities or ramps for automotive traffic.

In sum, the NITL agreement, as expanded by us, provides significant benefits both to the parties and to the public. As outlined above, the agreement preserves interchanges and reciprocal switching arrangements, reduces many switching charges, and provides efficient joint-line service and fair pricing to Conrail shippers affected by the allocation of Conrail lines between CSX and NS. The benefits of the NITL agreement apply to all shippers meeting its terms; they are not restricted to NITL members only.

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[86] These and related issues are currently the subject of industry-wide negotiations between smaller railroads and the large railroads. *See, Review of Rail Access and Competition Issues*, 3 S.T.B. 92 (1998) (*Review of Rail Access*). We do not intend for any actions taken in this decision to undercut these private-sector negotiations.

[87] *See,* applicants' explanation of the derivation of the proposed switching charge in CSX/NS-18, Vol. I, V.S. McClellan at 46.

The terms of the agreement extend beyond traditional conditions that have been imposed by us or the Interstate Commerce Commission (ICC) in previous consolidation proceedings. The agreement carries out our direction that, whenever possible, disputes should be resolved by negotiated settlement between affected parties, rather than addressed by a resolution imposed by government decree. To this end, we commend applicants and NITL for entering into an agreement that addresses broad-based shipper concerns, without delaying the transaction and the public benefits it should bring.

Additional Broad Issues Raised By Various Shipper Trade Associations. Chemical Manufacturers Association (CMA), the Society of the Plastics Industry (SPI), and other shipper organizations raise numerous issues and request extensive conditions. Many of these issues and conditions have been advanced by others and are discussed elsewhere.[88] In light of the NITL agreement and the relief that we have accorded in other parts of this decision, none of these additional conditions is necessary or appropriate to avert merger related harm.

Request To Adopt Existing Rates. One condition CMA and SPI propose would require CSX and NS to adopt all existing Conrail tariffs and circulars that were in effect when the application was filed and to publish supplements incorporating any new routes. We agree with applicants that such a condition would not further competition. The proposal would result in CSX and NS being required to charge, at least as an initial matter, identical rates for movements that both could handle. This condition will not be imposed.

Service Concerns: Pre-Implementation Protocols. CMA and SPI seek conditions requiring CSX and NS to establish, prior to implementation of the transaction, management and operations protocols, safety and labor implementing agreements, and car tracking systems applicable to their respective portions of Conrail. All of these issues have been appropriately addressed by the NITL agreement. The CMA and SPI proposal and that of certain other parties, such as the National Mining Association, differ from the NITL agreement in calling for extensive additional regulatory procedures to be completed before applicants are permitted to implement their transaction.[89] Although we are well aware of the service problems that have been experienced

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[88] *See* our discussion regarding Shipper Contracts, The Acquisition Premium, and Requests To Be Served By Both CSX And NS.

[89] Prior to implementation, NS and CSX would be required under the CMA and SPI proposal to certify their compliance with the conditions we have imposed, serve the certifications on all parties of record who would have 15 days to comment, and provide a 30-day period in which we could accept or reject the certifications.

in the West, imposing a cumbersome regulatory process that would lead to substantial delays in the transaction and would unduly interfere with applicants' operational flexibility to respond to changing conditions could easily create, rather than inhibit, service problems.

Applicants have already submitted detailed operating plans and, at our direction, they have provided a comprehensive operating plan for the North Jersey SAA and three extensive Safety Integration Plans (SIPs). Moreover, as previously noted, applicants have reached an agreement with NITL that includes a significant number of pre-closing undertakings, which we believe are more than adequate to address the service concerns of CMA and SPI.

Alleged Harm To Chemical And Plastics Shippers. We also agree with applicants that CMA and SPI's claims that chemical and plastics shippers will be harmed by this transaction are highly inaccurate. Many of these shippers will receive a significant net benefit by receiving two-carrier service at facilities previously served by only one carrier. Moreover, the study used by CMA and SPI to buttress their claims of transaction-related harm is flawed because only Conrail traffic was considered and because it rests on economic theories that we have already rejected. We agree with applicants that CMA and SPI's errors result in understatement of the service and competitive benefits of the transaction, and overstatement of the negative effects on Conrail's chemicals and plastics traffic.

The study is mainly a calculation, based solely on the Conrail waybill, of the amount of traffic (1) that would lose single-line service; or (2) would supposedly suffer inferior service. As to the first issue, we have acknowledged that, as a general matter, single-line service is superior to joint-line service. As discussed below, in the section entitled Single-Line To Joint-Line Issues, this transaction will result in about six times as many shipments going from joint-line service to single-line service as from the reverse. Many of the chemical and plastics shippers who lose the opportunity to use single-line service at some locations will gain it at others. We find here that, on balance, shippers would suffer only relatively modest harm from losing single-line service, and that the NITL agreement is an appropriate remedy. With regard to the service issue, protestants seem to be saying that service will necessarily be worse whenever a SAA is involved. Having studied applicants' operating plans for the SAAs, we disagree with this premise.[90]

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[90] Nevertheless, the Board for monitoring purposes will be receiving significant information from the applicants regarding the operations within the SAAs, as discussed later in this decision.

CMA and SPI also contend that applicants, to extend their length of haul, will attempt to shift traffic away from the St. Louis and Illinois gateways to New Orleans and Memphis. They seem to concede that applicants will not choose to use inefficient gateways and routings because of the new opportunities made possible by this transaction. Nonetheless, they allege that these new routings will lead to higher rates and to reduced competition as western carriers insist on retaining their existing divisions and NS and CSX insist on higher divisions for their longer hauls. But there is no basis in fact or economic theory to support the contention that NS and CSX, in conjunction with the western railroads, will find it necessary, much less will gain the ability, to raise through rates if these shifts occur. If overall costs are reduced through creation of more efficient through routes, we would expect through rates to decrease, not increase.

The ICC carefully examined and rejected arguments similar to those made here in *Traffic Protective Conditions*, 366 I.C.C. 112 (1982), *aff'd in relevant part Detroit, T. & I.R.R. v. United States*, 725 F.2d 47 (6th Cir. 1984) (*DT&I*). As the ICC found there, the freezing of gateways and routes through regulatory decree has extremely anticompetitive consequences by precluding carriers from making efficiency and service improving routing changes and related rate reductions. We continue to believe that carriers involved in mergers and consolidations such as this one should be allowed the flexibility to determine what gateways and routings are most efficient given their newly restructured systems. Although not all connecting carriers benefit from this shifting of traffic, shippers do benefit from this process.

In any event, CMA and SPI's alleged harm to these shippers is greatly outweighed by applicants' showing that 73,200 carloads, or 21%, of chemicals and plastics traffic will benefit from enhanced competition, primarily because of the competition between the new NS and CSX systems for traffic moving to, from, or between SAAs. We have carefully scrutinized and rejected claims that the new procompetitive operations within SAAs are likely to lead to significant service failures. Applicants have also shown that no chemicals or plastics traffic would receive reduced competition by losing two-carrier service. The bottom line is that plastics and chemical shippers will be better off, not worse off, due to this transaction.

Transload, Build-out, And New Facilities Conditions. Clay Products Traffic Association (CPTA) and The Fertilizer Institute (TFI) ask us to impose the same transload, new facility, and build-out conditions that were imposed in *UP/SP*.[91] Although CPTA and TFI concede that the number of 2-to-1 points in this proceeding is very small, they argue that shippers whose competitive options are reduced as a result of the transaction should receive no less protection than was afforded shippers whose competitive options would otherwise have been restrained in *UP/SP*.[92]

Where shippers (such as Joseph Smith and Sons, as discussed below) have provided evidence that they would be losing a particular build-out option, we have imposed a condition to remedy that specific situation. But CPTA and TFI have not provided any particular evidence or other basis to support their requested generic conditions. The broad build-out, new facility, and transload conditions imposed in *UP/SP* were imposed in part to ensure sufficient traffic density for BNSF to operate effectively over thousands of miles of trackage rights granted to remedy widespread 2-to-1 effects in that merger. *UP/SP*, 1 S.T.B. at 419. More importantly, they were imposed to replicate indirect forms of competition that were lost because, before the merger, shippers solely served by just one of the two merging carriers could nevertheless transload shipments to, relocate on, or build out to, the nearby lines of the other carrier. *See, e.g., UP/SP*, 1 S.T.B. at 372. Without these conditions, the service provided by BNSF over trackage rights — limited as they were to service at 2-to-1 points — would not have replicated all of the lost competitive opportunities. And BNSF's own lines were often simply too far away to offer effective competitive safeguards to shippers contemplating build-outs or new facilities.

There is no record here of any comparable loss of competition because shippers that had nearby carriers to which they could transload or build-out before the transaction will continue to have those opportunities. Unlike the situation in *UP/SP*, the geographic areas and related remedial trackage rights are extremely limited, and the carriers' lines are relatively close together. Indeed, the SAAs created by this transaction actually expand competitive opportunities, and the NITL agreement ensures that new shipper-owned facilities within those areas can be served by both CSX and NS.

Other Issues. CMA and SPI raise an issue of potential congestion at Harrisburg, PA, which will be served by NS, but they offer no evidence to support this contention. Their conjecture is contradicted by the fact that NS will

[91] Terra Nitrogen Corporation also seeks a build-out and transload condition as was imposed in *UP/SP*.

[92] *See, UP/SP*, 1 S.T.B. at 419-20.

be investing $40 million to develop a new intermodal exchange facility east of Harrisburg to ensure that traffic in this area is handled efficiently.

CMA and SPI point to possible clearance problems on the Lehigh Line. The NS Operating Plan provides for various improvements on this line, including upgrading to permit doublestack clearance through the Musconetcong Tunnel at Pattenburg, NJ, at a cost of $31.7 million. CSX/NS-20, Vol. 3B at 201-202. This upgrading to permit double-stacking will allow more freight to be handled with fewer trains, thus alleviating concerns of congestion on this line.

Institute of Scrap Recycling Industries, Inc. (ISRI) requests that the SAAs be expanded to include the facilities of three members: Louis Padnos Iron & Metal, William Reisner Corporation, and Royal Green Corporation. The broad issue of requests to be served by both CSX and NS will be discussed below. Although ISRI claims that these facilities may be disadvantaged by having to compete with facilities that are in SAAs, there is no allegation or evidence that these shippers will suffer a reduction in rail competition. All three currently receive service from one rail carrier, a situation that will not be changed by the transaction.

The Acquisition Premium. Several protestants, including two large trade associations, NITL and CMA, have argued that the transaction is contrary to the public interest because CSX and NS have paid a large "acquisition premium" for the Conrail properties.[93] They have argued that both of these carriers will be forced to raise their rates to captive shippers in order to make up their revenue shortfall and finance this investment. Moreover, these parties argue that the addition of these Conrail properties to the CSX and NS investment bases will erode shippers' regulatory rate protections. They claim that inclusion of the new value of parts of Conrail in the investment bases of NS and CSX will both move the carriers further from meeting our revenue adequacy standards and increase the level of the jurisdictional threshold (below which rates are conclusively presumed to be reasonable). 49 U.S.C. 10707(d)(1)(A). Protestants claim that CSX and NS will now be able to charge higher maximum rates on captive traffic than Conrail was able to charge.

As a threshold matter, the basic premise of these parties — that CSX and NS will be unable to finance this investment without gouging shippers by taking

[93] When we use the term "acquisition premium," we refer to the difference between the book value and the purchase price of the Conrail properties. Some protestants have used the term in this way, while others have used it to describe the difference between the Conrail share price before the acquisition and at the time of the acquisition.

advantage of merger related changes in the investment base used for rate regulatory purposes — is simply not true. Applicants have provided ample evidence to demonstrate that they will have much more than a sufficient flow of funds to meet their financial obligations without having to raise rates to shippers at all.[94] Moreover, both CSX and NS should ultimately be financially stronger because of the synergies that the merger permits. And those two new systems together should be financially stronger, more efficient and more competitive than were the three carriers that previously provided service in the East.

Indeed, because the transaction significantly reduces rail market power in the East, and because relatively few shippers were captive to rail even before this transaction, CSX and NS could not successfully pursue a strategy of making up a revenue shortfall simply by increasing their rates to captive shippers. Protestants' suggestion that applicants would pay a multi-billion dollar "premium" based upon the expectation of extracting increased monopoly rents (because of adjustments in the regulatory rate base) from the very small number of shippers that are truly captive is not credible. *Compare, FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 601 (1944) (circularity problem where acquisition price based upon prospect of increased monopoly returns in utility merger). Given the fact that very few rail shippers are captive shippers whose rates ever require regulatory intervention, paying too much for a property in hopes of extracting increased rents would be a self-defeating strategy in the rail industry.

These same parties have asked us to change our basic accounting rules to disregard the increased valuation of the former Conrail assets based on their recent sales price when we make revenue adequacy and jurisdictional threshold determinations. That relief would be inappropriate, and will not be granted. The Board's Uniform System of Accounts (USOA), adopted in conformity with generally accepted accounting principles (GAAP), requires that the former Conrail assets be valued based on their recent acquisition cost, not upon Conrail's book value. Indeed, the ICC's decision to follow the recommendation of the Railroad Accounting Principles Board (RAPB) to use acquisition cost, not book value, in this precise context, supported by NITL and others, was judicially affirmed. *See, Association of American Railroads v. ICC*, 978 F.2d 737 (D.C. Cir. 1992).

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[94] DOT states that "it appears that each [applicant] will have sufficient resources to repay the acquisition debt even if they realize no traffic gains or operational cost savings and even if the projected rate compression [due to increased competition brought about by this transaction] takes place." DOT-6 at 39.

Petitioners have presented no valid grounds for reversing this policy now other than a strictly result-oriented one. Because the Conrail assets will now be assigned a higher value than they were before, the dollar amount represented by 180% of variable cost[95] would be somewhat higher. They also argue that these carriers will be further from revenue adequacy, thus undermining their opportunity to get rate relief. As explained in more detail below, in making these arguments, protestants ignore the fact that any increase in URCS variable cost due to transaction-related changes in the value of road property investment will be offset by reductions in URCS cost elements as the $1 billion in merger synergies flow through the costing system. Applicants' revenue adequacy will be aided by these savings and by additional traffic generated by the transaction.

1. *The Jurisdictional Threshold.* Although protestants give the impression that the acquisition premium will have a very large impact on the jurisdictional threshold, we do not agree with their analysis. Only IP&L witness Crowley attempted to measure the actual impact that application of purchase accounting rules to this transaction is likely to have on the jurisdictional threshold. Based on his study of one hypothetical 350-mile unit-train coal movement, Crowley asserts that URCS variable cost, and thus the jurisdictional threshold, would rise by about 15% on CSX and 24% on NS.[96]

Although applicants have shown numerous errors in Crowley's calculations,[97] they have not presented their own study. We have made calculations on a system-wide basis for both CSX and NS. Using the building blocks for URCS costing (the railroads' 1995 R-1 Forms) and applicants' statement of how they will allocate the purchase accounting write-up among various asset classes, we have allocated the acquisition premium based on applicants' planned 58/42% split of Conrail's assets. Our calculations, detailed

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[95] Variable cost is defined as the cost that varies with the level of traffic. The Uniform Railroad Costing System (URCS) variable cost, which is an intermediate, as opposed to a short-run variable cost, includes a return element for the 50% of road property investment that has been determined to be variable under URCS. The return element for this component of URCS variable cost is derived by multiplying half of the road property values by the current cost of capital, and a pro rata share of this cost is assigned to individual movements.

[96] ACE-18, V.S. Crowley at 33.

[97] *See*, CSX/NS-177, R.V.S. Whitehurst at 25-33, and Exhibit WWW-5. Most notably, Crowley ignored applicants' statement of how they would allocate the write-up among various asset classes. He simply allocated the total amount in proportion to the historical 1995 amounts on Conrail's books, even though applicants had already explained that most of the write-up would appear in fixed property accounts (which URCS treats as 50% variable) rather than equipment accounts (which URCS treats as 100% variable). Applicants' proposed allocation comports with the method carriers have used to allocate the purchase accounting write-up to recalibrate asset values after other recent mergers.

in Appendix N, show that the acquisition premium will lead to increases in URCS system-wide costs — and of the jurisdictional threshold for an average movement — of 4.9% for CSX and 7.26% for NS.

These numbers reflect a worst case basis, where *none* of the merger synergies are achieved. Even on this basis, the jurisdictional variable cost threshold will be only a slightly higher dollar number in particular cases.[98] Of course, we believe that it is likely that these merger efficiencies will be achieved, and that these and other efficiencies obtained by the railroads will continue to push the level of rates represented by this jurisdictional threshold down. The railroad industry has exhibited remarkable productivity growth since 1980, and these cost reductions have led to significant and continued declines in inflation-adjusted URCS variable cost — and thus in the jurisdictional threshold — over that entire period. For the period 1985 to 1997,[99] inflation-adjusted URCS variable cost has fallen by about 3% per year for every category of traffic examined.[100] These reductions have been so substantial that each category of traffic has experienced a reduction of 1.3 to 16.3% in its URCS variable cost over this period, even before adjusting for inflation. Accounting for inflation, these reductions are dramatic. The increases in the jurisdictional threshold brought about by the acquisition premium would amount to only 2 or 3 years of normal productivity growth that has flowed through to URCS costing over the last 17 years.

The statute specifically limits our rate regulation to situations where the rate exceeds 180% of the variable cost of service, and the statute also directs that we conduct our costing in accordance with GAAP to the maximum extent practicable. *See*, 49 U.S.C. 10707(d)(1)(A) and 49 U.S.C. 11161 (accounting). The relief that protestants are requesting would seem to contravene these specific statutory directives. Even if we were inclined to consider a basic change in our accounting rules, it would not be appropriate to do so for these applicant carriers alone in the context of this transaction.

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[98] Only a very small percentage of CSX's and NS' traffic would no longer be subject to our maximum reasonableness jurisdiction if the existing threshold were raised in dollar terms, by 4.9% and 7.3% respectively. In rare cases, the threshold has also acted as a floor for our prescription to remedy an unreasonably high rate.

[99] We could not compute URCS variable cost before 1985 because of the ICC's 1983 change from betterment to depreciation accounting and the need for 3 years of data to compute certain URCS accounts.

[100] We have separately computed a time series of URCS variable costs for single car, multiple car, and unit-train movements for varying lengths of haul and for western and eastern carriers. *See*, Appendix O.

2. *Revenue Adequacy.* Protestants also claim that the addition of the Conrail assets to the CSX and NS rate bases will preclude these two carriers from being found revenue adequate, which they argue will also hinder the ability of captive shippers to obtain rate relief, although they do not explain why this is so. Neither the Board nor the ICC has ever decided a maximum rate case based upon whether the defendant carrier or carriers was or was not revenue adequate. The fact that a carrier is revenue inadequate has never been used as a reason to deny or limit the scope of maximum rate relief.

Moreover, protestants have overstated the impact of recalibration of the Conrail property values in this transaction on the revenue adequacy status of NS and CSX. Protestants ignore altogether two important offsets, merger synergies and new traffic that will be developed because of the merger. Applicants have shown that when these elements are considered and put in place, the revenue adequacy status of CSX and NS will be largely unchanged.

In any event, the statute dictates that our regulation overall should give railroads the opportunity to earn the current cost of capital on their investments in rail property. 49 U.S.C. 10101(3), 10701(d)(2), 10704(a)(2). If we were to adopt a policy of using the predecessor book value of property obtained through a merger or consolidation for various regulatory purposes, then this could deter efficiency enhancing transactions such as this one. Stated another way, carriers cannot attract and retain capital unless they are given the opportunity to be compensated for the real value of the property, not just the book value.

3. *Fairness Of Purchase Price.* Implicit in protestants' arguments is the suggestion that the purchase price was excessive. Protestants have submitted no evidence to support the notion that the purchase price that was negotiated at arm's length for Conrail is not an accurate reflection of the worth of that property. Certainly it is a more accurate reflection of value than Conrail's historic book value. Book values reflect accounting estimates of depreciation, maintenance, and obsolescence. These estimates may vary significantly from the current economic value of the assets; applicants have presented substantial testimony to show that the book value of Conrail's assets, even without the merger, was understated.[101] More importantly, predecessor book value totally disregards merger synergies, which appear to be substantial here. In sum, the purchase price agreed to by these commercially sophisticated railroads represents by far the best evidence of the current market value of these properties.

[101] Those Conrail book values are based largely upon net liquidation values of the properties of distressed railroads that Conrail took over at its birth.

4. *Conditions Requested.* For essentially the same reasons, NITL, CPTA, TFI, and ISRI ask us to impose, for a minimum of 5 years, a rule establishing a presumption of market dominance for any CSX or NS shipper served by only one railroad if the shipper's rate is increased by an amount greater than the RCAF-U index, or in the case of TFI, the RCAF-A index. NITL and ISRI also seek to shift the burden of proof on rate reasonableness issues from the complaining shipper to the railroad in cases where the rate for a market dominant shipper has increased by an amount greater than the RCAF-U index.

These conditions would all be inconsistent with our maximum rate standards. Under the statute, a shipper challenging a rate as unreasonably high has the burden of proving market dominance. Moreover, section 10707(d)(1)(a) precludes us from making a finding of market dominance unless the rate exceeds the 180% of variable cost threshold. Thus, the broad changes protestants seek are directly inconsistent with the statute. In any event, these parties have not offered sufficient evidence to support the unprecedented relief of taking away from CSX and NS alone the rate flexibility afforded to all rail carriers under the Act.

NITL's argument that our present market dominance and maximum rate standards have become too costly and complex and should be simplified reveals that its proposed remedy is directed more to its general dissatisfaction with our rate standards than to actual competitive harms that would result from the transaction. We are dealing with those general concerns in other proceedings.[102]

Summary. Having looked at these issues in great detail, we are convinced that the remedies that various parties have proposed are unnecessary and extreme. Nevertheless, even though we do not believe it likely that their statutory rate protections will be substantially eroded by the economics of this major restructuring, we will continue carefully to assess the impact of this transaction on both the jurisdictional threshold and the revenue adequacy status of NS and CSX, and incorporate this within the oversight condition that we are imposing here.

Vertical Competition Issues. While a number of parties served exclusively by Conrail, such as Dekalb Agra and JStar Consolidated, Inc., have alleged that the end-to-end joining of CSX or NS with the Conrail line segments serving them will result in the loss of beneficial origin or destination competition between CSX and NS, only the verified statements of IP&L witnesses Crowley and Kahn/Dunbar attempt to provide any analytical basis or empirical evidence

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[102] *See, e.g., Market Dominance Determinations — Product and Geographic Competition,* STB Ex Parte No. 627 (STB served May 18, 1998).

to support that notion. IP&L uses this evidence to argue that, once NS and CSX vertically integrate with the Conrail lines assigned to them, they will be able to add to the market power of the destination monopoly railroad and proceed to use this to raise rates. As we explain below, applicants have successfully refuted this evidence.[103]

Both Crowley and Kahn/Dunbar examine patterns in coal transportation prices between 1991 and 1995 to Conrail destinations, concentrating on comparisons of rates originating on what was once the Monongahela Railway (MGA), but is now part of Conrail, with rates from other sources.

A key problem with these studies is that there is no "before" in what purport to be "before and after" comparisons. Crowley appears to have confused an October 1991 ICC decision approving the merger of MGA into Conrail[104] with an earlier August 1990 ICC decision approving the control of MGA by Conrail.[105] Because Conrail controlled MGA at all times covered by the study, the rate comparisons in these studies are of no benefit in assessing the vertical effects of a merger.

As correctly noted by applicants' witness Kalt, the changes reflected in those comparisons are explained by the evolution of eastern coal and rail transportation markets, not by any vertical merger. Coal produced in the Monongahela region has desirable characteristics that have led to a growing demand for this coal. The large mines in the area use longwall mining techniques that have resulted in low and falling costs of production. And passage of the Clean Air Act Amendments of 1990 forced many domestic electric utilities to reevaluate their coal supply decisions. The high-BTU, mid-sulphur, low cost coal from the Monongahela area experienced increases in demand both in coal export markets and for use in blending with low-sulphur, low-BTU coal to meet Clean Air Act compliance standards.

Consistent with this scenario, Crowley reports that coal originations on what were MGA lines increased by over 60% from 1991 to 1995. Crowley's study simply verifies that railroads have more flexibility to raise coal transportation rates for coals with rising demand and falling costs of production. Kalt has

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[103] The Crowley and Kahn/Dunbar statements appeared in the joint submissions of IP&L and ACE. ACE reached a settlement with applicants and dropped out as a party to this proceeding. And, perhaps because of the thorough manner in which applicants discredited these studies, IP&L chose not even to mention them in its brief.

[104] *Consolidated Rail Corp. — Merger — Monongahela Railway Co.*, Finance Docket No. 31875 (ICC served October 10, 1991).

[105] *Consolidated Rail Corp. — Control — Monongahela Railway Co.*, Finance Docket No. 31630 (ICC served August 16, 1990)(*MGA Control*).

shown that changes in coal transportation rates on the Conrail system have broadly tracked the changes in coal markets discussed above. Coal rates for movements originating in the Monongahela region have risen as demand for that coal has continued to grow, while average rates for certain other regions have fallen in sync with demand for and production of coal from those regions.

Kahn/Dunbar have performed additional tests aimed at measuring economic profits for carriers involved in single-line and joint-line coal movements. Kalt has shown that these tests are conceptually flawed, and filled with data, sampling, and calculation errors. CSX/NS 176, R.V.S. Kalt at 51-53. Kahn/Dunbar's conceptual errors involve the misinterpretation of the court-approved one-lump theory that we and the ICC have consistently applied for over 15 years to judge the vertical effects of railroad mergers. As the ICC summarized this theory in *Union Pacific — Control — Missouri Pacific; Western Pacific*, 366 I.C.C. 462, 538-39 (1982) (*UP/MP/WP*):

> A carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself by playing off the competing connecting carriers against one another in setting divisions * * *.
>
> We are not convinced either that a carrier with a destination monopoly for steam coal traffic will generally be unable to execute the described rate strategy or, *on the other hand, that a neutral destination carrier that is unable to execute the strategy would be significantly more capable of raising the through rate * * * after affiliation with an origin carrier* * * *. [emphasis added]
>
> Therefore, the market power faced by an existing utility is not created, or increased by, consolidation of a monopoly destination carrier with an origin carrier.

Kahn and Dunbar have focused on the relative contributions earned by Conrail vis-a-vis its connections. They emphasize that Conrail's connecting carriers were often able to achieve profitable returns even where they connected with Conrail as a bottleneck carrier. But, as emphasized above, the one-lump theory does not predict that bottleneck carriers will always be able to execute a perfect price squeeze; it merely predicts that vertical integration will not increase the bottleneck carrier's market power over shippers.[106] In the end, Kahn/Dunbar

[106] Kalt has correctly explained that Kahn/Dunbar are wrong in their assertions that the one-lump theory predicts: (1) that there be equal profits to the bottleneck carrier regardless of whether a movement is single-line or joint-line; (2) that there can be no profit earned by the origin carrier in a joint line movement with a destination monopolist; and (3) that origin competition has no effect on the size of the economic profit or the rail rate, relative to other routes.

have failed to show how the transaction would increase the market power of railroads over shippers.[107]

Finally, Kahn/Dunbar are simply wrong in asserting that the general applicability of the one-lump theory to mergers requires a set of explicit and rather implausible assumptions, and thus "the circumstances in which the pure one-lump theory is likely to hold represent an 'extreme example.'" They appear unaware that this very argument has been considered and rejected by the ICC, with the ICC's reasoning specifically affirmed by the court.[108] We conclude that the Crowley and Kahn/Dunbar testimony falls far short of providing a basis for altering our basic economic analysis of the vertical aspects of railroad mergers.

Requests To Be Served By Both CSX And NS. A large number of protestants are shippers or local communities that have argued that the transaction will harm them by creating new competitive rail service that will help their competitors or the competitors of shippers located in their communities. Accordingly, these shippers and communities have sought, bit by bit, what altogether would amount to thousands of miles of trackage rights or shared rail lines for the purpose of extending the benefits of joint service areas to them.[109] These parties in effect have said, "it would not harm the applicants very much to give this relief, which they have provided to others, to me as well."

The ICC and the Board have consistently declined to attempt to equalize the rail transportation options of shippers who receive merger benefits with all those who do not. For example, in *BNSF,* 10 I.C.C.2d at 782, the ICC denied relief to Bunge Corporation, which claimed that it would be harmed solely because the

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[107] Kalt has also shown that Kahn/Dunbar improperly included both bottleneck and non-bottleneck destinations in their sample. Over 24% of the observations supposedly used to measure the average contribution for bottleneck carriers actually involve competitive destinations. Further, Kalt has shown that Kahn/Dunbar have made no attempt to control for competitive factors that affect the size of the profit opportunities, or "lump," available to the railroads. There are additional problems related to the arbitrary process for estimating confidential contract rate information, including the inherent difficulty in adjusting for year-end discounts and rebates that are common in coal contracts but are not reflected in waybill data.

[108] "We do not think that the one-lump theory requires the series of perfect conditions that the utilities claim must be present for the theory accurately to represent the coal transportation markets at issue here." *Burlington Northern, et al. - - Merger - - Santa Fe Pacific et al. (BNSF)*, 10 I.C.C.2d at 751, *aff'd, Western Resources*, 109 F.3d at 788.

[109] At least one party, A.T. Massey, requests that we specifically retain authority, during an extended 10-year oversight period, to order additional rail access or other conditions to exclusively served shippers such as itself who might become disadvantaged by the new competition engendered by the transaction at other locations. The general oversight that we are imposing will monitor the overall competitive effect of the restructuring.

merger would aid a key competitor. The ICC explained that this is not the kind of harm that the agency rectifies under its conditioning power. Indeed, it is extremely unlikely that procompetitive applications such as this one would ever be forthcoming if we were to adopt a general, broad equalization policy as these protestants are suggesting.

Applicants have proposed a restructuring that makes sense for them as an economic and an operational matter, while at the same time creating new rail competition for several major cities and many hundreds of shippers. In creating this structure, applicants are not creating new market power and are willing to give up some of the existing monopoly power of the Conrail franchise. If we were to require trackage rights by a second carrier for every shipper or community that competes with shippers who benefitted by the transaction, it is possible, even likely, that this entire transaction would collapse.

And, if we were to grant these extensive conditions, there would inevitably be shippers and communities who compete with the shippers and communities to whom we give new competitive service who could claim that they too are competitively disadvantaged. As a practical matter, the line must be drawn somewhere. Under the statute, the railroads are given the initiative in making merger proposals, which we are to approve if they are in the public interest, as is this one.

Requests To Restore Competition That Existed Prior To Conrail. A number of parties have urged us to take this opportunity to restore something approaching the level of competition that existed in the Northeast prior to the formation of Conrail. These parties correctly point out that during this earlier period many shippers in the Northeast had available several rail carriers to provide service. The crucial point that these parties overlook is that none of these carriers providing alternative service proved to be economically sustainable. In large part, this was due to ever-increasing competition from motor carriers. Although there were many competing visions of how rail service might best be restructured in the Northeast, Congress, in adopting the Final System Plan, concluded that only one major railroad would be feasible in certain areas. For the most part, Conrail's structure before the merger, not the structure of its predecessors, generally provides the appropriate baseline for determining whether relief is warranted.[110] This transaction actually restores two-carrier

[110] As explained below, however, we have determined that additional competition on Conrail's east-of-the-Hudson line, running from Albany to New York City, is feasible, sustainable, and appropriate, and that this might also be the case for lines used by Conrail, but owned by other parties,

(continued...)

competition in some of the areas where Congress provided for only one railroad when it adopted the Final System Plan. While we are not averse to facilitating new competition, where possible, neither this transaction nor the Board should be charged with restoring the rail map as it existed prior to the bankruptcy of numerous railroads in the Northeast and the formation of Conrail.

Single-Line To Joint-Line Issues. Although about six times as many shipments will go from joint-line service to single-line as the reverse,[111] applicants concede that there are some shippers whose single-line service will be replaced by somewhat less efficient joint-line service as a result of the merger. As applicants note: "The creation of a limited number of joint-line movements is an unavoidable by-product of this transaction." We agree with applicants' assessment that shippers would be modestly harmed because they will receive somewhat less efficient joint-line service after the transaction, but that more shippers will benefit through newly available single-line service.[112] The net result is improved service in the public interest.

In most cases, it is difficult to devise a remedy for the relatively few shippers that have lost single-line service without fundamentally restructuring the transaction that applicants have proposed. We believe that the appropriate remedy for this limited harm is the creative solution that has been agreed to already by applicants and NITL in paragraph III(E) of the NITL agreement, "Interline Service." That provision, which, as explained above, we have extended to shippers served by a Class III railroad, assures the continuation of service at existing rates for 3 years for Conrail shippers that previously had single-line service but will have joint-line service after the transaction. It would unduly interfere with applicants' proposed operations and be a substantial overreach, however, for us to give either NS or CSX trackage rights to permit these shippers direct access to two carriers so that one of them could serve those particular shippers in single-line service.[113] Nevertheless, as part of our overall

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[110](...continued)
running from New York City to New Haven, CT. Additionally, we have imposed certain procompetitive conditions in Buffalo.

[111] CSX/NS 21, Vol. 1 at 491.

[112] Numerous shippers, such as International Paper Company (IP), have plants at locations that will lose single-line service at least at one location, but will gain single-line service at other locations. We do not find credible IP's argument that the harm it will experience from losing single-line service at one location will not be offset by the benefit of receiving new single-line service at other locations, and thus we will not grant the remedies it seeks.

[113] As explained below, in certain isolated instances, involving aggregate movements in Ohio, we have determined that the harm to particular shippers is significant enough to require a remedy, (continued...)

monitoring of the transaction, we will focus on ensuring that shippers affected by a loss of single-line service continue to receive adequate service.

Shipper Contracts. Applicants have agreed that either NS or CSX will continue to perform service under all of Conrail's existing rail transportation contracts with shippers. Additionally, applicants have asked us to approve a provision (section 2.2 of their Transaction Agreement) that would invoke our exemption authority under section 11321 to override any anti-assignment or other similar clauses contained in those contracts that would impede their plan for carrying out this transaction.

1. *Override Issues*. Applicants have argued that we need to override these clauses or else neither NS nor CSX will be able to plan adequately their operations immediately after the merger, and that this will prove particularly troublesome in the North Jersey SAA and other places with heavy movements of traffic. Eastman Kodak Company (Kodak), the U.S. Clay Producers Traffic Association, Inc. (CPTA), and APL Limited (APL)[114] have argued that, if a shipper has bargained for a nonassignable contract, then that bargain should not be undercut absent some very compelling reason. Although we generally agree with this argument, we are persuaded that there is a compelling reason for a limited 6-month override of these provisions. We believe that this relief is necessary to permit applicants to carry out their transaction in an orderly manner. We are fully aware that the first months following a major restructuring such as this one can involve operational problems, as the merging companies need to reorganize the service that they provide. We believe that the override provision is necessary to permit both NS and CSX to plan the services that they will provide at the outset, in the months immediately following Day One, the date when CSX and NS begin to integrate Conrail's assets into their systems. Services in the SAAs, those that are most affected by this override proposal, are particularly complicated, and will require substantial planning.

Applicants, however, have not demonstrated that a permanent override would be necessary to carry out this transaction. Accordingly, we will limit our override of antiassignment and other similar clauses to a 6-month period

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[113](...continued)
and in one other instance involving Rochester-area shippers served by the Livonia, Avon, and Lakeville Railroad, we have been able to devise a remedy that does not require NS or CSX operations over each other's track.

[114] APL has also raised arguments concerning the potential for discrimination against it by CSX, which controls subsidiaries that are major competitors to APL. These arguments are discussed below, in the section entitled APL Limited.

following Day One.[115] This will permit each of these carriers to compete for this traffic, where possible, after an initial adjustment period. After 180 days, if the contract has not expired already, the shipper may elect to continue the contract until its expiration under the same terms with the same carrier, or, without making any showing with regard to service, it may exercise any termination or renegotiation rights contained in the contract, provided the shipper has given 30 days' written notice to the carrier serving it.

In the period leading up to Day One, and in the 6 months thereafter, applicants should be able to obtain a much more precise reading of what portion of this traffic they will be handling, and plan accordingly, in the same way that they will determine what portion they will handle of other traffic that is not under contract. They will also have substantial time to negotiate new contracts or contract extensions with shippers. Moreover, in *Decision No. 87*, served June 11, 1998, we granted applicants' request for immediate access by CSX and NS to Conrail's shipper contracts to permit them immediately to begin the process of determining which carrier will serve each contract shipper in the SAAs or otherwise.

We disagree with those parties that have argued that such an override is beyond our authority to grant. Although DOT states that it "does not question the Board's statutory authority to override previously contracted-for non-assignment provisions," DOT-6 at 41, APL questions our authority to override any provisions of a shipper contract. APL points out that 49 U.S.C. 10709(c)(1) provides that:

> A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.

APL argues that, because section 11321, the provision that permits us to override other laws as necessary to carry out a transaction that we approve, is a provision of this part (Act), then we cannot use section 11321 to override any provision of a section 10709 shipper contract.

APL has read this language out of context. When read in context, section 10709 was clearly intended to subject shipper contracts to the same commercial rules that govern other contracts under applicable state and federal law. The

[115] Applicants will be required to give 14 days of prior notice to us and to the public of the date being designated as Day One. Notice to the public may be given through trade publications or newspapers.

statute makes plain that any disputes concerning such contracts are to be resolved by a court, and not by us. The statute also makes clear that when transportation is provided under contract, provisions of the Act relating to such issues as tariffs, maximum rates, and discrimination, and other issues, are not applicable. There is no indication, however, that section 10709 was intended to limit the agency from preempting contracts as necessary to carry out a merger or other transaction that we approve under section 11323-24.

2. *Requests To Invalidate SAA Contracts Or Give Shippers 'A Choice.* Many shippers who will now have service by both CSX and NS where they previously had service by Conrail alone are eager to take advantage of this new competition as soon as possible. These shippers have asked us to permit shippers an option to invalidate all Conrail contracts in the shared assets areas, regardless of whether or not they are assignable. We see no reason to invalidate contracts that were freely negotiated between Conrail and its shippers.

CSX and NS have proposed a division of Conrail contracts on a 42% to 58% basis, as they have divided other assets.[116] In contrast, CMA has urged that all former Conrail contract shippers in the shared assets areas be given the option of choosing to be served either by NS or CSX under the original terms of their contracts. CMA argues that contract shippers in the shared assets areas would be competitively disadvantaged vis-a-vis non-contract shippers, who would be able to take advantage of two carrier competition immediately. DOT has suggested that we should either decline to override antiassignment clauses or give shippers the choice of whether CSX or NS serves them.

Even if CMA's proposal were adopted, however, contract shippers would have to pick one railroad or the other, and the rate and other terms of the existing contract would still be binding. We see no reason to disrupt applicants' proposed allocation of Conrail contracts, which seems reasonable and fair overall, in order to address the transitional problem of who will carry out the Conrail contracts. Moreover, we note that this is likely to be a short term problem because our experience has been that most transportation contracts (other than coal supply contracts) tend to be short term. As DOT points out, "since the contracts are of such short duration, there is both an incentive to the serving railroad to earn the business of the shippers, and a near term opportunity for shippers freely to negotiate with other railroads in any event." DOT-6 at 42.

[116] As a general matter, the contracts of those shippers that will be solely served by CSX outside of the shared assets areas will be assigned to CSX, while contracts of shippers solely served by NS will be assigned to NS. The remaining shared assets area shippers will be assigned to round out the 58/42 split.

3. *Antitrust Immunity*. DOT has pointed out that, absent the umbrella of our antitrust immunity in approving the transaction, applicants' proposed division of contracts could present an arguable antitrust problem. Thus, we will specifically grant immunity for this division of Conrail contracts between CSX and NS, which we find to be necessary to carry out the transaction.

4. *NITL Agreement*. Finally, we note that the NITL agreement does provide an effective remedy for shippers in the shared assets areas who are dissatisfied with service rendered by CSX or NS under former Conrail contracts that have been delegated to them. The agreement provides a procedure under which those shippers could complain to an arbitration panel about their existing service, and obtain the right to use the other carrier in some circumstances. As we have previously noted, however, shippers seeking to terminate contracts with antiassignment or other similar clauses will not have to make any showing about inadequate service, and will be able freely to exercise whatever termination rights those contracts may contain after 180 days from Day One, provided they have given the railroad 30 days' notice.

5. *Summary*. Thus, with regard to contracts, the Board provides as follows. Prior to Day One, Conrail contracts will continue to be performed by Conrail. During the period following Day One, CSX and NS will divide up Conrail contracts as discussed previously, and operations under those contracts will proceed according to the terms of the contracts. If any of the contracts have antiassignment or other similar clauses, for a period of 180 days those clauses are overridden and these contracts are allocated between CSX and NS as previously discussed, and operations under these contracts will proceed according to the terms of the contracts.

Shortline Issues. The American Short Line Railroad Association (ASLRA) and Regional Railroads of America (RRA) claim that, because the transaction will result in significant changes in the relationship between shortlines and Class I carriers in the East, we should impose special conditions to protect the interests of the smaller carriers. In our merger decisions, including this one, we have given special consideration to shortline interests, generally providing protections similar to those afforded shippers. For example, if a merger would cause a shortline to lose one of its two Class I connections, it has been our practice to impose conditions, where feasible, to preserve a second connection. Similarly, if a shortline carrier has a build-out option to reach a second Class I carrier, we have attempted to preserve that option as well. We have also prevented contractual blocking provisions — that make it more costly for shortlines to route over Class I carriers other than those from which they have been spun off — from having greater force as the result of a merger.

We are keenly aware that the shortlines are an important part of the national rail transportation system. They provide a valuable service in gathering and distributing traffic that generally flows over the lines of the Class I carriers, and they are usually able to provide this type of service at a lower cost than the larger carriers can achieve. Because they provide valuable and efficient services, shortline carriers have generally been able to reach privately negotiated agreements with the larger carriers. There is no indication that this mutually beneficial process will suddenly terminate or be jeopardized because of this transaction. Nevertheless, where conditions are warranted to protect the interests of particular shortlines, or shortlines in general, from the adverse impacts of this transaction, we will impose them as appropriate.

1. *Freezing Agreements, Rates And Routes*. ASLRA and RRA ask that we require NS and CSX to adopt all of the existing agreements between Conrail and the various shortlines and apply them until there is mutual agreement that any change is required. Applicants have agreed to adopt Conrail's existing agreements for their duration, which we believe should satisfy the shortlines' concerns in this regard.[117] But, to the extent the shortlines would go beyond that, and have us require that existing gateways and rate relationships are maintained in perpetuity unless there is mutual agreement to change them, such relief would give the shortlines a veto power over any change in the existing agreements and relationships, making it unnecessarily cumbersome for these parties to revise them. Freezing agreements, rates, and routes would prevent efficiency enhancing changes that benefit shippers. The ICC once pursued a policy of freezing routings, gateways, and rate relationships, but this policy was not in the public interest, and we will not reinstitute it here. *See, DT&I.*

2. *Blocking Provisions*. ASLRA, RRA, and a number of shortline carriers, including the Reading Blue Mountain and Northern Railroad (RBMN), and at least one shipper, Union Camp Corporation, have raised issues about "blocking" provisions. These provisions are features of many contracts of sale or lease of rail lines of Class I carriers to shortline carriers that are imposed by sellers to ensure that the traffic originated by shortline carriers on these segments that used to be owned by Class I carriers continues to flow over the lines of the seller to the maximum extent possible. *See, BNSF*, 10 I.C.C.2d at 681, 776.

[117] This should also satisfy J.B. Hunt Transport, which asks us to require applicants to provide intermodal services in conjunction with Hunt and other motor carriers under terms and conditions no less favorable than the terms and conditions contained in Conrail's current contracts.

It is clear that Class I carriers have been willing to sell lines at lower prices with these conditions attached. We do not believe, however, that it would be appropriate for us to require a wholesale elimination of these freely negotiated contractual terms as part of this proceeding.[118] Nevertheless, we certainly will not permit a transaction such as this to unduly increase the effects of these blocking provisions. For example, RBMN is concerned that the blocking provision in its contract will make it prohibitively expensive for it to connect with another carrier to reach all points that could be served by NS, which is taking over the Conrail lines that now connect with RBMN. We will grant the relief RBMN seeks by restricting the blocking provision to destinations on NS that were formerly Conrail destinations. That is, as the ICC did in *BNSF*, 10 I.C.C.2d at 776, with regard to Grainbelt Corporation, we will preclude existing blocking provisions from being interpreted in such a way that the transaction would expand their reach.

3. *Oversight.* ASLRA and RRA ask that we perform 5 years of continuing oversight concerning shortline issues they have raised here. We will adopt that proposal, and invite these shortline associations and their members to participate in the oversight that we will be conducting.

INDIVIDUAL CONDITIONS SOUGHT

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. Because conditions generally tend to reduce the benefits of a consolidation, they will be imposed only where certain criteria are met. 49 CFR 1180.1(d); *Grainbelt Corporation and Farmrail Corporation v. STB*, 109 F.3d 794, 796 (D.C. Cir. 1997). Conditions will generally not be imposed unless the merger produces effects harmful to the public interest that a condition will ameliorate or eliminate. The principal harms for which conditions are appropriate are a significant loss of competition or the loss by another rail carrier

[118] As previously noted, the shortlines and the Class I railroads have been engaged in industry-wide discussions regarding these very issues consistent with our decision in *Review of Rail Access*, supra.

of the ability to provide essential services. Essential services are those for which there is no adequate transportation alternative.[119]

A condition must be operationally feasible, and produce net public benefits. We are disinclined to impose conditions that would broadly restructure the competitive balance among railroads with unpredictable effects. *See, e.g., SF/SP*, 2 I.C.C.2d at 827, 3 I.C.C.2d at 928; and *UP/MKT*, 4 I.C.C.2d at 437. A condition must address an effect of the transaction, and will generally not be imposed "to ameliorate longstanding problems which were not created by the merger."[120] Finally, a condition should also be tailored to remedy adverse effects of a transaction, and should not be designed simply to put its proponent in a better position than it occupied before the consolidation.[121]

Because there are so many parties requesting conditions, we will not discuss each one here. Many of the conditions requested have been denied because they are addressed to a preexisting problem. Other conditions are addressed to allegations concerning such issues as vertical effects of the transaction, the acquisition premium, increased rail options of shippers' competitors, and the shift of some traffic from single-line to joint-line service. These broad issues have been discussed above. All requests for conditions not specifically discussed and approved in this decision should be considered denied. We note also, however, that we have taken into account many of the concerns expressed by parties that are not specifically being discussed in this decision in imposing other broad conditions, including our expanded oversight condition. Moreover, we emphasize that many of the settlement arrangements applicants have entered into with some of the parties serve to address concerns expressed by other parties as well.

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[119] We also impose conditions as appropriate to carry out our obligations under the National Environmental Policy Act (NEPA) and other environmental statutes, and these are discussed in a later section.

[120] *Burlington Northern, Inc. — Control & Merger — St. L.*, 360 I.C.C. 788, 952 (footnote omitted) (*BN/Frisco*); *see also, UP/CNW*, at 97.

[121] *See, UP/CNW*, at 97; *Milwaukee — Reorganization — Acquisition by GTC*, 2 I.C.C.2d 427, 455 (1985) (*Soo/Milwaukee II*). If, for example, the harm to be remedied consists of the loss of a rail option, any conditions should be confined, where possible, to restoring that option rather than creating new ones. *See, Soo/Milwaukee II*, 2 I.C.C.2d at 455; *UP/MP/WP*, 366 I.C.C. at 564. Moreover, conditions are not warranted to indemnify competitors for revenue losses absent a showing that essential service would be impaired. *BN/Frisco*, 360 I.C.C. at 951.

NORTHEAST

East Of The Hudson. NYDOT and the New York City Economic Development Corporation (NYCEDC), and Congressman Nadler and 23 of his Congressional colleagues (Nadler Delegation), protest that, while shippers in the North Jersey SAA west of the Hudson will gain direct rail competition between CSX and NS after the transaction, shippers east of the Hudson will continue to have access to only one Class I carrier, with CSX replacing Conrail. Protestants would enlarge the North Jersey SAA to include New York City and Long Island, or would introduce another carrier to operate over trackage rights between Selkirk, NY (near Albany), and Fresh Pond, NY (in Queens), on the Conrail line being allocated to CSX.

The Nadler Delegation asks for a condition requiring a joint facility east of the Hudson River that would be connected to New Jersey and Long Island via existing passenger railroad tunnels through midtown Manhattan and over the New York Cross Harbor Railroad's (NYCH)[122] cross-harbor float operation. Under their plan, Conrail Shared Asset Operator (CSAO) would be required to acquire and operate the cross-harbor float, and a core system of rail lines and terminals east of the Hudson, connecting at Fresh Pond. The Nadler Delegation also points out that this general area experiences severe motor vehicle traffic congestion and related air pollution. They allege that the transaction will aggravate these problems, but that better cross-harbor transportation will improve them. Included in the joint facility they propose would be the Bay Ridge Line, operated by the New York and Atlantic Railway (NYAR) under concession from the LIRR. NYAR strongly opposes the Nadler Delegation's proposal to conscript its facilities for this use by CSAO, and it also contends that the Bay Ridge Line lacks the physical capacity to carry additional freight traffic.

The New York parties argue that it is unfair that the transaction benefits shippers west of the Hudson with new two-carrier service, but does not confer similar advantages on shippers east of the Hudson. Even though, as explained below, we are inclined to make an exception to our general policy of not attempting to significantly enhance parties' pre-merger competitive alternatives, here, not all of the relief that protestants seek is feasible or necessary.

The City. There are some serious operational problems with introduction of any additional rail service in the New York metropolitan area east of the Hudson. One of these problems is the low density of rail freight traffic. As

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[122] NYCH strongly opposes this forced acquisition, although, as discussed below, it would like us to impose a condition protecting a flow of traffic using its facilities to cross the Hudson River.

applicants have pointed out, only about 5% of the rail freight revenues in the Greater New York City area are derived from shipments originating at or destined to points east of the Hudson. Over 97% of New York metropolitan area freight traffic east of the Hudson moves in or out of the city by truck. Thus, Conrail only provides Albany-to-New York City freight service through a single round-trip train 5 days a week.[123] Any additional operations would require adequate density to provide effective and efficient service, and there is no indication that such traffic will be forthcoming.[124]

An even more difficult problem is the extremely limited amount of excess rail infrastructure, and the severe physical limitations that the densely built city imposes on any efforts to increase that capacity. Many of the lines over which these parties would impose trackage rights are heavily traveled passenger lines. Some of the segments operated by Metro North carry as many as 332 passenger trains a day. CSX/NS-176, R.V.S. Orrison at 123. In addition, applicants assert that existing freight yards lack the capacity to accommodate additional carriers, and it is difficult to find commercial space to accommodate yards for a second Class I carrier coming into New York City. *Id.*

Moreover, it appears that existing passenger railroad tunnels through midtown Manhattan may have difficulty accommodating currently available equipment. Applicants claim that neither RoadRailers nor standard boxcars could move through those tunnels (CSX/NS-176, R.V.S. Carey at 5; R.V.S. Orrison at 125), although protestants dispute this claim with regard to RoadRailers. Applicants also note that, because standard intermodal equipment requires clearances ranging up to 20'6" for high cube double stack containers, intermodal trains could not clear the tunnel either.

Even if special equipment were obtained, operations through the tunnels might be difficult given the level of passenger traffic present over this route. Scheduling additional freight traffic could increase substantially the risk of delay and the possibility of disrupting passenger service. CSX/NS-176, R.V.S. Orrison at 126. Operating these trains at night might not be a solution if it interferes with Amtrak's maintenance operations on the rights of way through Penn Station. Given the limited capacities of its route to and through Penn Station, Amtrak

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[123] A second daily train operates in local service from NYC's Oak Point Yard as far north as Hastings-on-Hudson, and another local operates 2-3 days per week between Poughkeepsie and Peekskill. NYS-11, V.S. Nelson at 7.

[124] Although protestants posit an additional train each way on the line east of and parallel to the Hudson River 5 days a week, the only inbound traffic volume that they identify was estimated at approximately 50 carloads, with a 100% empty return. NYC-13 at 5; NYS-15 at 7; CSX/NS-177, R.V.S. Orrison at 124.

must reconcile maximum safe passenger use with a maintenance program ensuring adequate repair.[125] Given these problems, it is not surprising that Conrail has never negotiated any operating protocols with Amtrak permitting use of these tunnels. CSX/NS-176, R.V.S. Carey at 6.

Whether CSX or NS will be able to negotiate such agreements in the future is uncertain. We believe it would be unwise for us to mandate such use given the operational and safety problems it could entail. We will, however, impose a condition requiring CSX to cooperate with the New York interests in studying the feasibility of upgrading cross harbor float and tunnel facilities that may alleviate traffic congestion and consequent air pollution in New York City.[126] We will not require CSX to purchase, rehabilitate or operate these facilities. We assume that, if these facilities would improve the efficiency of its operations, CSX will use them, if they are available, for through movements over its own lines or joint movements with NS. We will specifically oversee the impact of this condition under our 5-year monitoring program.

In addition to being very difficult to execute, and likely being outside of our authority to grant vis-à-vis use of the rail property of nonapplicant railroads NYCH and NYAR, additional ameliorative conditions to create additional or enhanced direct rail connections with the North Jersey SAA are unnecessary because the transaction should fundamentally improve, rather than harm, competition in the New York metropolitan area. There is now only one Class I rail carrier east of the Hudson, Conrail. Following the transaction, CSX will take its place. The introduction of two strong competitive rail carriers, NS and CSX, in the North Jersey SAA, will make rail competition in the city stronger. The nearby presence of NS will force CSX to pay close attention to the shippers in the city, to ensure that they do not resort to drayage across the river where they will have an NS option. Many of these shippers now dray their shipments to Northern New Jersey for subsequent rail transport. Although Conrail has been indifferent to the use of drayage across the Hudson because it has no rail competition on either side, CSX points out that "CSX, in its own interests, will seek to minimize any such drayage." *See,* CSX/NS-176 at 14. This should moderate somewhat the increase in cross-river drayage that we expect will be generated by the new, competitive intermodal staging areas in the North Jersey SAA, at the same time that it increases competition in the region.

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[125] Amtrak has not commented on this issue.

[126] Specifically, they should participate in New York City's Cross Harbor Freight Movement Major Investment Study set forth in applicants' June 6, 1998 list of proffered conditions.

The Nadler Delegation is concerned about the impacts on air quality of additional drayage across the George Washington Bridge. They have suggested that over 1,000 truck movements a day will shift from the relatively uncongested Tappanzee Bridge to the George Washington Bridge to take advantage of the new intermodal staging areas in the North Jersey SAA. We believe, however, that the number should be no higher than 253. *See,* Final EIS, Volume 6B, Appendix H, at H-15. These additional trucks would amount to a negligible 1% increase in the daily truck traffic on the George Washington Bridge.[127]

Nevertheless, because of the potential adverse environmental effects that would result from an unexpectedly large merger-related increase in truck traffic through the city and over the George Washington Bridge, we will impose a condition requiring applicants immediately to begin monitoring origins, destinations, and routings for motor carrier traffic at their intermodal terminals in Northern New Jersey and in Massachusetts. The purpose of the study is to permit us to determine the accuracy of our assessment that the transaction will not result in substantially increased truck traffic over the George Washington Bridge. Applicants should report their results on a quarterly basis, and this matter will be specifically included in the 5-year oversight condition that we are imposing.

Beyond The City. The settlement agreements reached with Canadian National Railway Company (CN) and Canadian Pacific Railway (CP)[128] will increase rail transport options for shippers. These agreements — giving CN and CP the opportunity to offer transportation services to shippers in New York City and Long Island for general merchandise traffic via haulage rights — have been specifically designed to attract truck-competitive freight business off the roads and on to rail. These agreements will now permit many area shippers to solicit independent competitive bids from at least two railroads. This is new competition. As we have noted, the significant traffic problems east of the Hudson predate this transaction. Overall, the transaction, with the CN and CP/D&H agreements that are designed to capture traffic previously handled by motor carriers, should ameliorate somewhat this longstanding problem.

Nonetheless, NYDOT and NYCEDC have cogently explained why the separate and confidential settlement agreements reached by CSX with CP/D&H and CN are, as presently configured, not sufficient to satisfy the needs of east-of-the-Hudson shippers. *See* NYS-24, confidential version. One deficiency in

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[127] The George Washington Bridge carries about 265,000 vehicles a day, and about 20,000 of those are trucks. Final EIS, Volume 6, Appendix H, at H-17.

[128] This agreement also includes CP's affiliate, the Delaware and Hudson Railway Company.

the CSX-CP haulage agreement may be the revenue factor CSX is to receive for this service, which the New York parties assert is considerably above their calculations of Conrail's URCS variable cost or fully allocated cost for existing movements along the Hudson Line.[129] More importantly, numerous other restrictions significantly limit the movements to which this privately negotiated haulage agreement would apply.

We have carefully balanced the needs of the competing parties here, and strongly believe that we must forcefully use this opportunity to restore a modicum of the competition that was lost in the financial crisis that led to the formation of Conrail. It appears that there will soon be sufficient capacity on the Hudson Line for safe service from a second freight operator.[130]

Therefore, we will impose a condition requiring CSX to negotiate an agreement with CP to permit either haulage rights, not restricted as to commodity or geographic scope, or similarly unrestricted trackage rights, over the east-of-the-Hudson line from Fresh Pond to Selkirk (near Albany), under terms agreeable to the parties, taking into account the investment that continues to be required for the line. If these parties have not reached agreement within 60 days of the effective date of this decision, we will initiate a proceeding to determine just how the needs of the New York parties are to be addressed. Moreover, CSX should offer to the City of New York to establish a committee for the development of rail traffic to and from the City, with particular emphasis on the Hudson Line.

Similarly, as a step toward allowing more rail competition into and out of the city, CSX should discuss with Providence & Worcester Railroad Company (P&W) the possibility of expanded P&W service over trackage or haulage rights from Fresh Pond to New Haven, CT, focusing on operational and ownership

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[129] Under the terms of Administrative Law Judge Jacob Leventhal's production order, only outside counsel for NYDOT and NYCEDC were granted access to the east-of-the-Hudson revenue factor. *See*, NYS-25/NYC-18 at 30 nn.26 - 27. All other parties, including those represented by counsel on the Restricted Service List, were denied access. While we cannot be certain, it appears to us that Crowley's estimates (on behalf of the New York Parties) of URCS variable cost and fully allocated cost do not properly take into account the significantly unbalanced traffic flows on the line.

[130] Metro-North President Nelson has testified that his company's portion of the Hudson Line could easily and safely accommodate a second freight operator moving an additional 6-8 scheduled trains each day, and that completion of the state-funded Oak Point Link by early 1999 will eliminate the most serious conflict between freight and passenger operations on the remainder of the Hudson Line. NYS-12, V.S. Nelson at 7-8. And CSX has conceded that freight traffic on the Hudson Line could be increased significantly. Orrison Dep. Tr. at 51-52, contained in NYS-25, Appendix.

impediments related to additional freight service over the line.[131] We will continue to follow the progress of these negotiations as part of the oversight process.

New York Cross Harbor Railroad (NYCH). NYCH has also submitted comments, asking for the imposition of certain conditions relating to traffic between Long Island and points in Southern New England and adjacent New York, on the one hand, and points in the Mid-Atlantic States and the South and Southwest, on the other. NYCH claims this traffic should travel via what NYCH describes as its "Greenville Gateway." NYCH-3 at 8. It appears that NYCH's requested conditions relate to allegations it is now pursuing in a pending lawsuit against Conrail wherein NYCH alleges that Conrail has failed to honor shipper directions to route traffic moving between Long Island-Southern New England and the Southeastern and Southwestern regions of the country over its supposedly efficient float operation connecting Brooklyn and North Jersey waterfronts that were discussed in the preceding section.[132]

The issues in this court case are irrelevant to future operations of Conrail lines by CSX and NS. Insofar as the transaction is concerned, NYCH will now have access to both NS and CSX via the Greenville Yard, and NYCH is not adversely affected by the transaction. Even if NYCH had difficulties in the past in its dealing with Conrail, there has been no showing that CSX or NS would not use NYCH's Greenville Gateway if it represented the most efficient and most economical routing, which has not been shown. Therefore, we are denying NYCH's request for conditions.

Buffalo/Niagara Falls. The primary focus of the parties representing the Buffalo/Niagara Falls area (Erie Niagara Chautauqua Rail Steering Committee

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[131] Portions of this segment of the NEC require a third rail to obtain electric power for passenger trains. Third rail operations require special equipment. CSX/NS 176, R.V.S. Orrison at 126. No study or analysis has been presented of the commercial practicability of such a routing. We note that Conrail has never operated freight trains from Newark to New Haven. CSX/NS 176, R.V.S. Carey at 6.

P&W now operates over the New Haven-to-Fresh Pond line via overhead trackage rights that are restricted to the movement of construction aggregates. It notes that the line is heavily used by Amtrak, Metro North, Conrail, and itself, and that expanded service by freight carriers other than itself, as suggested by the Nadler delegation, would raise significant concerns about the availability of adequate operating windows. P&W has also explained that the relevant properties are owned by the Connecticut Department of Transportation ("CDOT"), the New York Metropolitan Transportation Authority, Amtrak and Conrail.

[132] United States District Court for the Eastern District of New York, Civil Action No. 97 Civ. 3296.

(ENRSC),[133] NYDOT, General Mills,[134] and others) is to obtain SAA status for Buffalo, which they contend is necessary for area shippers to remain competitive with shippers in the Detroit SAA and elsewhere that have gained service of an additional carrier through this transaction. They also argue that we should take this opportunity to restore the level of rail competition that preceded the formation of Conrail.[135] Congressman Jack Quinn and Congressman John J. LaFalce pointed out at oral argument that, before the adoption of the Final System Plan, the United States Railway Association (USRA) proposed two-railroad service for Buffalo, and they urged the Board to take this opportunity to create that competition now. They also noted that Conrail's reciprocal switching rates in Buffalo are some of the highest in the nation.

The transaction plan does call for two carriers to serve the Buffalo area. CSX will acquire the former New York Central line, while NS will acquire the former Erie Lackawanna line reaching Buffalo from the east, as well as the former Penn Central line reaching Buffalo from the south, and overhead service over what remains of the Erie Lackawanna line reaching Buffalo from the north that connects with Canadian carriers at Niagara Falls. Although it is true that this arrangement will not create direct two-railroad service for all shippers in the Buffalo area, it will greatly improve local competition. This is so because local shippers served directly by either CSX or NS will now be able to take advantage of the nearby presence of the other carrier through drayage, and in some cases through build-outs.[136] More importantly, new shippers contemplating locating in the Buffalo area or expanding operations there may have the option of locating on lines of either of these two major carriers, and can lock in the benefits of this competition through a long-term contract.

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[133] ENRSC is an ad hoc committee representing businesses located in the New York State counties of Erie and Niagara, and the northwest portion of Chautauqua. It refers to this as the Niagara Frontier region. We will use this term, as well as the Greater Buffalo area, interchangeably. One member of ENRSC, Niagara Mohawk Power Corporation (NIMO), has requested a condition specific to itself if we choose not to impose the broader conditions requested by ENRSC. This request by NIMO is discussed below, in a separate section.

[134] General Mills is also concerned about a $450 switching charge it now pays to Conrail at Buffalo, which it believes that applicants will maintain. The conditions that we have imposed expanding the NITL Settlement Agreement will ensure that switching charges are limited to $250 per car, with an inflation adjustment. General Mills has not justified its request to lower switching charges to $130 per car or to expand the Buffalo switching district.

[135] The Buffalo/Niagara Falls interests are particularly critical of Conrail's pre-transaction market power in the area. Conrail's reciprocal switching charge within the Buffalo switching district is $450; at other points in the Niagara Frontier area it is $390.

[136] As we explained in *UP/SP*, 1 S.T.B. at 372, the potential for exercising such options gives shippers competitive leverage in their negotiations with carriers.

In addition, the NITL agreement, with its provisions for reduced reciprocal switching charges, will help many shippers who have complained about the very high reciprocal switching charges formerly assessed by Conrail. Many Buffalo shippers — applicants estimate 50%, while some area protestants estimate 20-30% — will have access to both NS and CSX through reciprocal switching. It is clear that the conditions we are imposing will preserve existing switching agreements for 10 years while limiting switching rates to $250 per car for 5 years. This is a sharp drop from the prevailing level of $390-450 for switching fees about which protestants have complained. Moreover, we will require CSX to carry through on its agreements with CN and CP, providing for lower switching fees in the Buffalo area.

Against these competitive and other benefits, protestants raise limited specific allegations of loss of rail competition by these parties relating to (1) Conrail's switching cancellations at Buffalo in November 1996, (2) Conrail's cancellation of switching at Niagara Falls in April 1996, and (3) reduction of competition at the Buffalo waterfront.[137] As detailed below, we find that the latter two of these allegations have merit, and we will impose conditions addressing these situations.

1. Protestants allege that Conrail's cancellation of switching for 89 shippers in Buffalo in November 1996, a month after Conrail's and CSX's initial agreement to merge, was in anticipation of this transaction, which eventually superseded the Conrail/CSX agreement. ENRSC and others would have the definition of 2-to-1 points receiving access to a second carrier through trackage rights conditions extended to cover those points that lost reciprocal switching through these cancellations.

These allegations, if true, would be cause for concern. The record, however, does not support the inference that the Buffalo switching cancellations were taken in anticipation of this transaction, but indicates that they were part of a routine tariff updating process for shippers that were no longer present or no longer desiring rail service. The dispositive fact here is that the cancellation process itself allows for immediate reinstatement of reciprocal switching for any shipper coming forward to request it. Opponents could have settled this issue clearly and conclusively had they simply produced specific shippers to testify to having been wrongly identified as missing or inactive; no shipper has done so. We are left to conclude that there are no such shippers.

[137] We need not address ENRSC's request to make the Niagara Frontier Food Terminal a protected 2-to-1 point because applicants have agreed to give it that status, a commitment to which we will hold them.

2. A more serious charge of switching cancellations leading to competitive harm from this transaction involves the April 1996 cancellation by Conrail of switching for CSX movements into the Niagara Falls area for traffic using one of the two nearby rail bridges connecting the United States with Canada. In 1995, CSX changed the way it served this traffic, from using trackage rights in Canada over CN and a Conrail switch at Suspension Bridge to and from shippers in Niagara Falls, to a haulage agreement in which CN carried this CSX traffic across International Bridge at Fort Erie, through Buffalo and into Conrail's Frontier Yard. Under this arrangement, Conrail took the CSX traffic to and from the yard, and Conrail received its compensation in the form of a division of a line haul rate, rather than a switching charge. Applicants concede that more recent arrangements CSX has made with the Canadian roads may cause this traffic to move via Suspension Bridge or Frontier Yard, but state that, in either case, Conrail will pick up the traffic and take it to Niagara Falls as part of the line-haul movement.[138]

We find these arrangements whereby Conrail receives compensation for the short pick-up and delivery component of International or Suspension Bridge movements into and out of the Niagara Falls area via a division of a line haul rate to be no different in substance from its prior compensation arrangement, when its compensation was termed a switching charge. If Suspension Bridge were to have become the point of entry again, as applicants suggest, the Conrail movements under the joint rate with CSX would have been identical to the earlier Conrail movements under the switch.

In their settlement with NITL, CSX and NS have agreed to mitigate the market power they will inherit from Conrail at exclusively served points where Conrail performs switching services. We find that the terms of that agreement, as they apply to reciprocal switching, should be applied to those points in the Niagara Falls area where Conrail recently replaced its switching charges with equivalent "line-haul" charges, and to those movements to which the switches and line-haul rates applied (*i.e.*, movements using International Bridge or Suspension Bridge). This directive will bring the compensation under the procompetitive and beneficial terms of the NITL agreement.

3. Finally, ENRSC charges that, by taking over Conrail's 5.66-mile Buffalo waterfront line (the Buffalo Creek line), CSX would reduce existing competition between Conrail and its own trackage rights access over that line. As applicants point out, CSX transferred one set of trackage rights to operate over that line to Buffalo and Pittsburgh Railroad (BPRR) when it sold all its rail property in

[138] *See,* CSX/NS-176 at 66.

Buffalo to that carrier in 1988. Nevertheless, CSX has retained, but has not used, a separate set of rights over that Conrail line. As discussed below in relation to PSI Energy, in spite of arrangements that may have been made with Conrail or BPRR, trackage rights may not be canceled unless we grant authority for their discontinuance. *Thompson v. Texas Mexican Ry.*, 328 U.S. 134 (1946). To ensure that shippers on the Buffalo Creek line would not inadvertently lose one of their two Class I rail connections as a result of the transaction, we will require that the CSX trackage rights over Conrail on the Buffalo Creek line be transferred to NS.[139]

Other Remedies. Following a request made by Chairman Morgan at the close of oral argument, CSX proffered a number of additional conditions and representations that it agreed could be imposed to accommodate concerns raised by parties in the Buffalo area. Even though we do not think that these proferred conditions and representations in and of themselves would be adequate to address the concerns of the Buffalo parties, they are clearly beneficial and complement the procompetitive conditions we are imposing for Buffalo.

1. As discussed previously, we will require CSX to adhere to the agreements it has separately reached with CN and CP/D&H providing both lower switching fees in the Greater Buffalo area and increased access to these carriers for cross-border, truck-competitive traffic.

2. We will also require CSX to meet with regional and local authorities in the Buffalo area to establish a committee to promote the growth of rail traffic to and from the Greater Buffalo area. The committee will meet periodically to address the region's industrial and economic development goals and opportunities for diversion of truck traffic to rail, as consistent with safe, efficient, and profitable rail service.

3. We will hold CSX to all of its representations related to the Buffalo area, most notably those regarding its plans for investment in new connections and upgraded facilities in the Buffalo area, including: (1) upgrading Conrail's existing computer technology and fueling facilities at Buffalo; (2) maintaining or increasing current employment levels in the Buffalo area; (3) providing overhead trackage rights to NS through Buffalo to Suspension Bridge; (4) working with NS and other carriers operating in the Buffalo area to schedule switching and through movements within the area's rail network so as to reduce congestion at points such as CP Draw; and (5) investing substantial funds in network improvements to reduce shipping time and enhance service reliability for rail shippers in the Greater Buffalo area.

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[139] *See,* CSX/NS-178, Vol. 3A of 3, at 359.

Finally, while we believe the competitive and other benefits resulting from our approval of this transaction will reduce rates and enhance service for rail shippers in the Buffalo area, we have decided to take the additional step of initiating a 3-year rate study to assess whether our assessment proves to be correct, or whether Buffalo-area shippers will be subjected to higher rates because of this transaction.

Rochester. The Genesee Transportation Council (GTC), and Rochester Gas & Electric Company (RG&E) have raised concerns about the impact of the transaction in the Rochester area. We concur with applicants that the majority of the issues raised by these parties relate to existing conditions, not to any harm caused by the merger. If anything, the transaction will enhance rail competition and service in and around Rochester. Enhanced service will derive from, for example, the proposed expansion of Frontier Yard, which will improve classification of local and regional traffic and reduce transit times. New competition will derive from the fact that the Rochester and Southern Railroad, Inc. (R&S) now connects with NS on the Southern Tier route in competition with CSX, which inherits the bulk of Conrail's lines and operations in the Rochester area.

RG&E's main objection is that its primary coal burning generating station will retain service from a single railroad while certain other utility companies are obtaining two-carrier service both at their generating plants and at Monongahela coal mines. As discussed in detail above, this does not provide a basis for relief. RG&E also calls for a steep reduction of Conrail's $390 switching charge as part of the transaction, arguing that the charge dampens competition. But the transaction will improve, not worsen, RG&E's situation by limiting switching fees to $250 per car. RG&E also calls for us to increase our scrutiny of the reasonableness of switching charges in general, but this issue has no nexus to this transaction.

GTC acknowledges applicants' proposal for NS to form an alliance with R&S to compete for Rochester traffic, but calls for us to ensure that this alliance is forged. We fully expect that NS will have every incentive on its own to form the alliance with R&S. And, as noted below, the relief we are granting to Livonia, Avon, and Lakeville Railroad Corporation should significantly increase NS' interest in forging an alliance with R&S, and should further benefit the Rochester area.

GTC also wants applicants to set up intermodal terminals at specified locations and to improve routings between Rochester and the Southeast. Again, these are matters for negotiation between Rochester interests and applicants. This proceeding is not the proper forum for pursuing these goals.

Delaware Department of Transportation (*DEDOT*). DEDOT is primarily interested in expansion of the South Jersey SAA to include the Port of Wilmington. The port is currently served by a single Class I railroad, Conrail, and after the transaction it will be served solely by NS. Thus, it appears that the transaction will have no adverse impact on the port. DEDOT has also asked that we impose a condition requiring NS to permit passenger service upon request by a rail passenger carrier anywhere on its entire system. As discussed in greater detail in our section concerning passenger railroads, we believe that these issues are best left to negotiation between the freight railroad and the passenger railroad.[140] Moreover, DEDOT has not shown any particular connection between this transaction and the condition that it seeks. Finally, DEDOT has asked that we grant local operating rights for shortline railroads over the Delmarva Secondary line. No justification has been presented for this relief.[141]

DEDOT stated at oral argument that it was concerned with high switching charges at the Port of Wilmington. The original NITL agreement does not technically apply to reduce switching charges between Conrail and carriers other than NS and CSX, but, as discussed above, we have extended this component of the agreement to incorporate Class III railroads. Because we do not have sufficient information on the situation at the Port of Wilmington to determine whether we should impose a remedy and, if so, what that remedy would be, we are directing applicants to discuss with the Port any problems concerning switching service and charges, and report back to us within 60 days of July 23, 1998. We will then determine whether any further action is appropriate concerning this limited issue.

MIDWEST

Chicago Switching District. Several conditions are sought by various railroads and others to require a restructuring of operations, beyond that proposed by applicants, in and through the Chicago switching area. Wisconsin Central Ltd. (WCL) seeks, in (Sub-No. 59),[142] a forced sale by CSX to it of a

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[140] Of course, Amtrak has special statutory provisions permitting it to obtain access to whatever lines it needs for its operations.

[141] We note that NS has agreed already to grant limited overhead rights over this line to the Maryland and Delaware Railroad.

[142] When we refer to (Sub-No. 59), we are referring to the responsive application in STB Finance Docket No. 33388 (Sub-No. 59). Throughout this decision, we are using the shorthand

(continued...)

7.6-mile portion of The Baltimore & Ohio Chicago Terminal Railroad Company's (B&OCT) Altenheim Subdivision, a condition precluding CSX from allowing its affiliate B&OCT to charge a separate switching fee for its services, and neutral dispatching over Indiana Harbor Belt Railroad Company (IHB). I&M Rail Link, LLC (I&M) seeks in (Sub-No. 36) to acquire Conrail's 51% interest in IHB,[143] while Northern Indiana Public Service Company (NIPS) urges us to prohibit CSX and NS from jointly acquiring that interest. NIPS and A.E. Staley Manufacturing Company (Staley) also seek "nondiscriminatory" dispatch of rail traffic over IHB, and the Indiana Port Commission (IPC) supports divestiture of Conrail's interest in that switching line to a neutral carrier or group of carriers. Prairie Group, while supporting the primary transaction, has expressed concern about its effect on IHB, and in particular upon IHB's local on-line shippers. Applicants oppose all of these requests as competitively unjustified.[144]

As a preliminary matter, WCL's request to preclude separate charges by B&OCT has no nexus to this transaction. This relief appears to have been sought merely to permit WCL to achieve its longstanding goal of avoiding B&OCT's switching charges for traffic routed WCL-B&OCT-CSX, a matter wholly unrelated to the transaction before us.[145] Similarly, WCL's bid to acquire a 7.6-mile portion of B&OCT's Altenheim Subdivision, purportedly to resolve possible service quality issues, has not been justified either. For a number of years, WCL has been interested in acquiring this property, but it has evidently been unwilling to pay the asking price. It has not provided any competitive or other justification for that extraordinary relief here.

The basic question we must consider when evaluating these proposed conditions is whether the transaction would cause any significant competitive harm or unduly disrupt essential service in this area; we conclude that it would not. Responsive applicants and others maintain that the transaction would limit independent routing options in and around Chicago, increase the leverage of

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[142](...continued)
reference to just the sub-number in many instances when addressing the sub-docket numbers that correspond to responsive applications or to related proceedings initiated by applicants.

[143] Elgin, Joliet and Eastern Railway Company (EJ&E) was originally a party to this condition request, but has now entered a settlement agreement with applicants and has withdrawn from this proceeding.

[144] The I&M responsive application is also opposed by Inland Steel Company (Inland) because it would allegedly undermine Inland's competitive alternatives at its Indiana Harbor Works facility, which now enjoys head-to-head competition between EJ&E and IHB. Inland's opposition appears to have been mooted when, late in this proceeding, EJ&E withdrew from this proceeding.

[145] It also appears that this issue has been resolved against WCL by a court.

CSX and NS to control this traffic, and diminish the ability of other carriers to compete for traffic in the area. A review of the situation, however, reveals that the transaction will not result in any significant change in the concentration of ownership of the relevant switching carriers, and thus will not impair rail competition in the region.

There are now three switching carriers in the Chicago Terminal area: B&OCT, which is entirely owned by CSX; IHB, which is owned 51% by Conrail and 49% by Soo Line Railroad Company (Soo); and The Belt Railway of Chicago (BRC), which is 50% owned by western railroads and 50% owned by eastern railroads, with CSX currently holding 25%, NS 8.33%, and Conrail 16.67%. After the transaction, B&OCT will continue to be a wholly owned CSX subsidiary; NS and CSX will each hold 25% of BRC; and NS and CSX will hold 29.58 and 21.42% interests in IHB, respectively,[146] with Soo continuing to hold a 49% share.

Responsive applicants rely on the notion that NS and CSX will jointly control BRC; that is not the case. NS and CSX will not jointly control, and have not been authorized to jointly control, this carrier. Nor do these two eastern carriers have identical interests. NS and CSX will each have an incentive to ensure that BRC is operated to facilitate interchange of its own traffic. The same was true before the transaction, except that there were three carriers in the mix. By the same token, the western carriers still retain a 50% interest here, and they will ensure that BRC is managed in a way that keeps their routing options open.

With regard to IHB, NS and CSX would acquire Conrail's interest, while Soo would continue to hold a 49% share. Applicants have represented that IHB will continue to be managed as a neutral switching carrier, just as it was managed by Conrail before this transaction. We will hold applicants to that representation. Responsive applicants have failed to justify the extreme divestiture remedies that they have sought. They have failed to show that the interchange options of any carriers are likely to be disadvantaged by the changed ownership of IHB, which, with Conrail's shares controlled by NS and CSX, is less concentrated than previously. Given applicants' assurances about the management of IHB, we conclude that no further relief for this situation is warranted. Indeed, this type of intrusive solution for problems we believe are unlikely to occur raises additional competitive and service concerns that have not been adequately addressed by responsive applicants.

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[146] They would own these shares through their ownership of the Conrail intermediary.

As part of our 5-year oversight, we will monitor for problems in the Chicago Switching District, and IHB's management as a neutral switching carrier. If problems do arise after approval and consummation of the transaction, our monitoring and oversight conditions should provide a fully effective mechanism for identifying and resolving them.

In sum, we have no basis for imposing the other conditions relating to the Chicago area sought by I&M, IPC, NIPS, Prairie Group and others. The conditions sought, most of which would mandate service levels or require specific ownership, care, or use of switching carrier assets in the region, are extraordinary and unjustified measures that would hamper applicants' efforts to manage their operations efficiently following consummation of this transaction.[147]

Illinois International Port District (*The Port of Chicago*). The Port of Chicago at Calumet Harbor, Lake Calumet, IL, is the largest port on the Great Lakes. The Port is divided into separate eastern and western sides, and trackage to both sides is owned by NS or related companies. On the western side, various other trunk and switching carriers have trackage rights over NS to serve the Port and its tenants. On the east, NS service is exclusive. The Port of Chicago contends that applicants' proposed Operating Plan demonstrates that service will be further reduced, and thus that the transaction will aggravate the already poor competitive and service situation along the eastern side of Calumet Harbor. It argues that, to remedy delays and poor service to customers on the eastern side, to increase intermodal competition, and to increase competition with other ports, we should require that NS provide CSX and local switching carriers (Chicago, South Shore and South Bend Railroad Company, and Chicago Rail Link) rights to serve customers over NS trackage on the east side of Lake Calumet.

We view the problems presented here as pre-existing. As we have explained, we will not impose conditions to remedy pre-existing conditions that are unlikely to be exacerbated by the transaction. At this point, the Port of Chicago's fears that its rail service will be further reduced is speculative. Nevertheless, we will carefully monitor the situation under the 5-year general oversight condition being imposed in this proceeding.

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[147] As for IPC's concerns regarding IHB's gondola fleet, there is nothing in the record suggesting that a change in ownership of the cars is contemplated. As for ensuring that the cars are returned empty at the junction points where they were delivered under load, all of the cars are AAR mechanical designations GBS, GBR, or GBSR, and, as such, can be controlled by IHB using the rail industry's Car Service Directive No. 145, which provides that empty cars must be handled according to the owner's instructions, or returned empty to the shipper or agent at the loading point in reverse of loaded movement.

Indianapolis. CSX and Conrail are the only Class I railroads now serving Indianapolis, and this city contains by far the largest number of shippers that would be 2-to-1 shippers but for the trackage rights agreed upon between CSX and NS.[148] Under the proposed transaction, CSX is taking over Conrail's lines, while NS will be given trackage and other rights permitting it to serve all of the 2-to-1 shippers. Although The City of Indianapolis originally had concerns about this arrangement, it has reached a settlement agreement with applicants that satisfies those concerns.

Under that settlement agreement, CSX has agreed to allow greater access to NS and to shortlines in the area. NS will have switching rights to any new as well as existing industries on the former Indianapolis Union Belt Railroad. The various Indianapolis shortlines will be allowed to connect with each other for local traffic moving between points on those carriers under switching rates the carriers have negotiated under a 10-year agreement. CSX has also committed to permit NS to build its own track in Hawthorne Yard. CSX has agreed to timely and nondiscriminatory handling of NS' cars to and from that yard.

Nevertheless, Indiana Southern Railroad, Inc. (ISRR), supported by the United States Department of Agriculture (USDA), argues that the transaction, even with the additional remedies proposed by applicants, will result in added market power in and around Indianapolis.[149]

ISRR contends that the transaction places CSX in a more dominant position than Conrail is in now and places NS in a weaker position than was CSX. ISRR argues that it should be given rights to reach three locations surrounding Indianapolis: Shelbyville, Muncie, and Crawfordsville. ISRR claims that, following the transaction, NS, unlike CSX, will not have its own tracks, facilities or perhaps even employees on site.[150] It claims that NS will be restricted in its use of Hawthorne Yard, where it will receive or deliver Indianapolis traffic for the numerous 2-to-1 shippers in the area. CSX will control dispatching, will provide access to 2-to-1 shippers via switching, and will collect switching charges and trackage rights fees. Some parties, including USDA, argue that, under those circumstances, NS will not be an effective competitive replacement for CSX in this market.

We disagree with this analysis, and believe that NS will be able to replace the competition formerly provided by CSX, which now serves shippers in this

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[148] CSX/NS-18, Vol. I. V.S. McClellan at 46.

[149] Shell Oil Company asked that Indianapolis be made a shared assets area, but it presented no substantial evidence or argument to support this relief.

[150] This concern has been partially alleviated by the settlement agreement with the City of Indianapolis.

area primarily under similar switching and trackage rights arrangements. Applicants will reduce the prevailing Conrail switching charge of $390 to no more than $250 per car for at least 5 years and guarantee maintenance of reciprocal switching rights for 10 years, which should make NS more competitive than was CSX. We have thoroughly examined the 29 cents per car-mile trackage rights fee that CSX and NS will charge where they will operate over each other's lines as a result of this transaction. As discussed in detail below, that fee is reasonable and will permit the trackage rights tenant to replace competition that would otherwise be lost through this transaction.[151]

The proposed NS and CSX routings from Indianapolis to the Chicago and St. Louis gateways should be just as competitive as the current ones formed by Conrail and CSX. CSX will take over Conrail's direct route to St. Louis, but there will now be a new single-line NS routing option, less direct than CSX's new route but corresponding to the way NS and CSX could connect pre-transaction in joint-line service in competition with Conrail. We anticipate NS developing and taking advantage of this new Indianapolis-to-St. Louis route. As for Indianapolis-Chicago, CSX's route is more direct; NS picks up Conrail's existing, less direct route.

Crawfordsville, in particular, has a number of 2-to-1 shippers, but these will have very comparable service to what they had before. Currently, CSX and Conrail maintain service over a route through Crawfordsville from Indianapolis to Chicago that is shared through alternating trackage rights over each other's lines. The same will be the case between CSX and NS. Similarly, we see no substantial change affecting shippers at Muncie.

As to Conrail's role as a "neutral" gateway for shippers it exclusively serves in the Indianapolis area, the evidence does not overcome our well-established and judicially approved presumption that the merger of a bottleneck carrier with one of its connections will not unduly increase rail market power. ISRR has simply presented no convincing evidence or argument that CSX will have any more incentive than did Conrail to foreclose the use of ISRR's lines to provide

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[151] IP&L objects to what it considers inefficient handling being imposed on NS to access shippers in Indianapolis, resulting in both switching charges and trackage rights fees. As explained below in the section entitled Indianapolis Power and Light, the condition we are imposing on traffic to IP&L's Stout plant will result in availability of direct NS service presumably free of CSX switching charges. As for other NS service to the 2-to-1 shippers in Indianapolis, the combination of handling and associated charges is similar to what CSX currently is subject to in accessing traffic on Conrail's lines.

efficient interline service.[152] Moreover, the new connection with NS at milepost 6 resulting from the condition we are imposing in response to IP&L's concerns should preserve ISRR's ability to compete for participation in coal movements to IP&L's Stout and Perry K plants.

Finally, the $1.5 million ISRR expects to lose of its $9 million in annual total revenue is overstated, since that estimate includes traffic already diverted, in 1996, to INRD at Stout. It strains credulity that ISRR would give up its ability to compete for this coal traffic or that it would sever its only link to Indianapolis. In sum, ISRR has not demonstrated serious financial harm to it, much less that this harm would hinder its ability to provide essential services.

PASSENGER RAILROADS

National Railroad Passenger Corporation (Amtrak). The Northeast Corridor: Amtrak's main concern has been applicants' request that we override the agreement between Amtrak and Conrail so as to permit multiple carriers to operate over important parts of Amtrak's Northeast Corridor (NEC). The NEC, a high-speed, high-density line connecting Boston, MA, New York City and Washington, D.C., is crucial both to Amtrak's operations and to rail freight operations in the East. Conrail conveyed the line to Amtrak in 1976, retaining a freight service easement that is governed by the NEC Agreement. Applicants and Amtrak have recently entered a comprehensive agreement with regard to this and other issues. We applaud the parties for reaching an agreement on this difficult issue without our intervention.

The Oversight Condition: Amtrak has also requested a condition to guard against any transaction-related deterioration of Amtrak's on-time passenger operations. Applicants now support such a condition as part of their settlement agreement. DOT supports a more general 5-year oversight condition during which we would monitor developments regarding the interface between freight and passenger service. We will incorporate Amtrak's and DOT's requests as part of the 5-year oversight that we are imposing.

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[152] Further, we share applicants' concerns that interference with efficient operations would occur if ISRR were granted the substantial expansion of its operations that it seeks. ISRR service to Shelbyville would add an interchange and delay traffic by at least 1 day. The small town of Crawfordsville will already be served by CSX and NS, it is on an Amtrak route, and it is not signaled. Adding ISRR would increase the number of trains at crossings. The line to Muncie will become CSX's mainline between Cleveland and St. Louis; any shortline operations over the line would increase interference for both through freight and local operations (CSX/NS-177, R.V.S. Orrison at 519-520).

Regional Passenger Railroads. A number of passenger railroads and agencies with an interest in passenger issues have asked for conditions concerning the relationship between applicants and passenger railroads in the Eastern United States.[153] We agree with DOT that rail passenger transportation is an important national resource that contributes substantially to reducing air pollution and roadway congestion. We also concur that the transaction has at least the potential to affect significantly intercity and commuter rail passenger service, particularly in the Northeastern United States. DOT-6 at 22. To ensure the continuation of reliable rail passenger service, DOT recommends that we impose a 5-year oversight condition on the transaction, with periodic reports to provide sufficient information to monitor developments. *Id.* As noted above, we think DOT's suggestion that we retain jurisdiction to ensure that reliable passenger operations are continued is a good one, and we will impose a rail passenger monitoring condition, as part of the overall 5-year monitoring condition that we are adopting for this transaction.[154]

On review of specific requests for relief, however, it is apparent that most of the particular conditions sought by the passenger railroads are not directly related to effects of the transaction. Rather, these parties seek material changes to, or extensions of, existing contracts, or to compel new contractual commitments or property sales by NS or CSX.[155] We are reluctant to use our conditioning power to compel resolution of differences between freight railroads and passenger agencies with respect to operating, dispatching, and compensation matters.[156] And before imposing any such conditions, we would have to study thoroughly the effect of the requested conditions on applicants' freight

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[153] These include the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission (co-owners of Virginia Railway Express), Metro-North Commuter Railroad Company, the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois (Chicago Metra), the METRO Regional Transit Authority (Northeast Ohio METRO), and the American Public Transit Association.

[154] In this regard, we think New York State's request for a 10-year monitoring condition focusing on commuter and intercity passenger operations is unwarranted.

[155] One exception is Chicago Metra, which merely asks that we note its agreement with applicants with regard to the Forest Hill interlocking and related matters; we note that agreement and expect the parties to comply with it.

[156] Aside from our broad-based merger conditioning power, our subject matter jurisdiction over regional rail passenger transportation is extremely limited. Under section 10501(c)(2), our jurisdiction over mass transportation provided by a local governmental authority is limited to authorizing joint use of terminal facilities, switch connections, and tracks under 49 U.S.C. 11102 and 11103. We can require a railroad to share its terminal facilities with another rail carrier only if we find "that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities * * * to handle its own business." 49 U.S.C. 11102(a).

operations, an issue that the passenger railroads and agencies appearing here have generally not adequately addressed.

CSX and NS have agreed to step into Conrail's shoes and to honor Conrail's existing contracts with passenger railroads and agencies. Similarly, the transaction will have no effect on the contracts CSX and NS entered into with the passenger entities before the transaction. A number of passenger agencies have requested that we void, extend, or amend in various ways their existing contracts with CSX, NS and/or Conrail. These contracts set forth the rights and remedies available to the parties with respect to the matters about which they now complain. As explained below, no adequate basis has been presented for us to amend these voluntary private contracts here.

On the whole, the requested conditions do not arise out of operational or economic impacts attributable to the transaction. Rather, they appear to be an effort to use our approval process to obtain concessions, revisions or extensions that the passenger entities have apparently been unable to work out through the normal process of commercial negotiation. Applicants maintain that they have worked in good faith with passenger railroads and agencies in the past and that they will continue to do so after the transaction is consummated.

As the record here makes abundantly clear, such contracts frequently require the freight and passenger railroads to work out intricate details concerning rail operations, capital expenditures, and compensation. The freight railroads need to assure themselves that they can share their tracks with passenger traffic without disrupting their freight operations. This may require extensive planning and additional capital expenditures, or may not be possible at all in some circumstances where existing capacity cannot be sufficiently expanded. By the same token, passenger operators need to ensure that they can provide timely and expeditious service. We think that, ordinarily, this delicate balance can best be achieved by negotiation between the parties. And applicants have represented that they will continue to work with regional passenger railroads on issues of mutual importance. Neither a basis nor a need has yet been presented for departing from this overall approach, although we will continue to monitor the situation.

OTHER FREIGHT RAILROADS

Ann Arbor Railroad Company (AA). AA, a Class III railroad operating a 46-mile line from Toledo, OH, north to Ann Arbor, MI, claims that the transaction will divert more than $3 million per year, or 42% of its annual revenues, thereby undermining its ability to provide essential services to eight shippers on its system who do not have direct access to another rail carrier. AA-8 at 22-23. AA also claims that the transaction, unless conditioned, will reduce competition in the Toledo-Chicago corridor. It asserts there are only three efficient routes, one over NS and two over Conrail, and that, after the transaction, NS will control all three of these routes.

AA seeks a condition giving it approximately 220 miles of trackage rights over NS from Toledo to Chicago. It also seeks a condition permitting it to interchange traffic with CP at Ann Arbor to provide an additional source of revenue to offset its claimed losses. Finally, on brief, AA asks for "DT&I" type rate conditions to preserve efficient routes of Class III carriers. AA-8 at 26.

AA's argument that the transaction will harm competition on the Toledo-Chicago corridor is without merit. Traffic can now move over three feasible routes, two Conrail routes and an NS route. After the transaction, NS will take over the most direct Conrail route, and CSX will also maintain a route that is only slightly longer. AA objects that the CSX routing would be more circuitous and would entail operational difficulties, making it inappropriate for the time-sensitive automotive traffic that AA interchanges at Toledo. Assuming AA's evidence to be correct, only one of the existing routes, the most direct Conrail route between Toledo and Chicago via Elkhart, IN, would be adequate for the time-sensitive automotive traffic with which AA is most concerned. As noted, that route will be operated by NS. CSX will provide service over an alternative routing that appears to be at least as competitive as the routing that NS previously relied upon.[157] Indeed, CSX has committed itself to investing $200 million to upgrade this line to compete with NS. We conclude that the transaction will not impair competition for traffic moving between Toledo and Chicago, but will preserve or improve options for these movements.

In any event, the extensive trackage rights remedy sought by AA would undermine, not improve, efficient service. Conrail now combines the automotive traffic it receives from AA with a large amount of other traffic. This permits it to operate high-volume, run-through trains connecting with the major western railroads at Chicago, a service that NS will continue after the transaction. AA would be unable to match this volume, and it would have to use one of the switching carriers in the Chicago area to complete its movements.

AA's request for authority to interchange with CP at Ann Arbor will also be denied. CP performs no operations at or through Ann Arbor. CP has entered a

[157] Prior to the transaction, NS' best route between Toledo and Chicago was circuitous. Traffic moved southeast from Toledo for 47 miles to Bellevue, OH, before heading west to Fort Wayne and Chicago.

voluntary haulage rights agreement with NS, which operates over a Conrail line passing through Ann Arbor. (NS will acquire the line through the transaction.) Under the haulage rights agreement, NS moves CP trains from Detroit to Chicago. This agreement is for overhead traffic only. AA has not demonstrated that permitting its traffic to be picked up by NS for CP at Ann Arbor is either necessary or practical. In addition, CP's traffic moving over these haulage rights is time-sensitive traffic that would be disrupted by the intermediate interchange required to pick up AA's traffic at Ann Arbor.

Finally, AA is concerned that CSX and NS may undercut AA's ability to participate in through movements serving AA's automotive customers. Ordinarily, we would expect that, if AA provides an efficient route and desirable service, which appears to be the case, connecting Class I carriers will have a strong economic incentive to use that carrier. AA has just obtained a significant contract for some new automotive business with Chrysler Corporation, which will be opening a new plant next to AA's Ottawa yard in Toledo. AA concedes that this contract will increase its revenues, and offset somewhat the traffic diversion that it anticipates from the transaction.

Nevertheless, because of the apparent importance of this contract service to both Chrysler and AA, and due to the fact that AA's viability could be threatened by a loss of this customer, we will impose a condition to ensure that quality interline service is continued, and that this contract is not undermined. Both this condition and the condition we are imposing allowing AA to connect with the W&LE at Toledo, as discussed below, should help to improve AA's financial prospects. We will also monitor this and other situations involving the relationship between shortlines and Class I railroads as part of our oversight process. It would not be in the public interest, however, for us to impose the rate equalization conditions that AA has sought.

Durham Transport, Inc. (Durham). Durham, a Class III railroad, operates over 12 miles of rail line within the Raritan Center Industrial Park (Raritan Center) in Edison, NJ, close by the North Jersey SAA. Durham suggests that the Conrail Shared Asset Operator (CSAO) plans to operate out of Metuchen Yard over a track segment, the GSA Lead, that extends into Raritan Center. Durham asserts that joint use of the GSA Lead within Raritan Center is not addressed in any agreement between Durham and Conrail, and requests that we condition approval of the transaction upon the negotiation by applicants and Durham of a satisfactory agreement for the joint use of the GSA Lead. Applicants have not responded in this record to Durham's request.

Durham has conceded that it has an existing interchange agreement with Conrail, and that applicants have informed it that this agreement would be honored by them.[158] Thus, it appears that there is presently a satisfactory interchange agreement between Conrail and Durham, and that the terms of this agreement will continue beyond the transaction. But, it is not clear to us whether applicants intend to operate over that segment of the GSA Lead within Raritan Center or, if they do, whether a new joint use agreement with Durham would be required. However, Durham has not presented any reason for us to think that this transaction will undermine this carrier's ability to negotiate a satisfactory agreement for interchange of its traffic. Remedies are available under the Act to ensure interchange in the unlikely event that our intervention becomes necessary.

Gateway Western Railway and Gateway Eastern Railway (*Gateway*). We concur with Gateway that applicants have not demonstrated that an override of the assignment restrictions in Gateway's Cahokia/Willows trackage rights agreements is necessary under section 11321(a) to enable applicants, in particular CSX, to carry out the transaction. Gateway insists that, because it can perform any terminal or interchange switching in the area, CSX does not need to assume Conrail's Cahokia/Willows trackage rights. Gateway also maintains that, in the absence of an application or petition for exemption with respect to terminal trackage rights under section 11102, the unilateral assignment of Conrail's trackage rights to CSX will not yield increased efficiency, enhanced safety, or any other transportation benefit. Applicants, on the other hand, have not adduced specific evidence or argument to rebut Gateway's showing that an override is unnecessary.

Under 49 U.S.C. 11102, we may require terminal facilities[159] owned by one railroad to be used by another if the use is "practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities * * * to handle its own business." In approving the merger in *UP/SP*, we found that, in a similar assumption of terminal trackage rights, our exercise of override authority was unnecessary in view of the availability of relief under section 11102. *See, UP/SP*, 1 S.T.B. at 450. The applicants in *UP/SP* sought a similar override under the immunity provision of section 11321(a), but they had also filed, in an embraced proceeding, a separate application for terminal trackage rights. Here, although an application or petition under section 11102 is not an absolute prerequisite, additional evidence of a need to override the

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[158] While a letter from CSX and NS to Durham making this representation was referred to as Exhibit A to Durham's Brief, it was not attached to that document.

[159] Gateway concedes that its Cahokia and Willows segments are "terminal facilities" for the purposes of section 11102. *See,* GWWR-3 at 10 ("CSX in reality is seeking new terminal trackage rights over Gateway's facilities.").

antiassignment provisions in Gateway's Cahokia/Willows trackage rights agreements would be necessary before that relief could be granted. Applicants may file a separate application or petition under section 11102 if they believe that relief under that section is warranted.

Housatonic Railroad Company (*HRRC*). HRRC is a small Class III railroad operating in Massachusetts, Connecticut, and New York. It currently connects only with Conrail, and after the transaction it will connect only with CSX. HRRC's request for a condition granting trackage rights to permit HRRC to improve its situation by being able also to reach NS, CP and B&M has not been justified. HRRC has also asked that its existing divisions and rate agreements with Conrail be preserved. CSX has agreed to continue these agreements for their duration. To the extent that HRRC's pleading can be read as a request to perpetuate such agreements beyond that time, no justification has been presented. Applicants represented at oral argument that they would deal fairly with this small carrier, and we will require that applicants do so.

Finally, HRRC seeks a remedy for the loss by some of its shippers of HRRC/Conrail routings that will now become HRRC/CSX/NS routings. We have already granted a remedy directly responsive to this and other analogous situations by extending the NITL agreement single-line to joint-line protections to cover them, at the option of the Class III carrier. We assume that HRRC will invoke this option.

Illinois Central Railroad Company (*IC*). IC asks that we impose two conditions, divestiture of a short but strategic CSX line (Sub-No. 62) and a competitive routing condition. IC requests that we order CSX to sell it about 2 miles of CSX mainline, the "Leewood-Aulon Line," near Memphis, TN, an important link for IC's north-south traffic. As an alternative to divestiture, IC suggests that we impose a condition requiring joint dispatching of that line.

With regard to the first condition, IC states that, because CSX owns and dispatches this line, it has a direct effect on IC's operations in Memphis and systemwide, which it claims will be harmed by the transaction. The transaction will allow CSX to compete directly with IC for the large volumes of traffic currently moving in IC-Conrail joint-line service, and thus may place more CSX traffic on the line over which IC has trackage rights. Applicants admit that IC's trains have experienced delays through Memphis, but assert that CSX is working to avoid the delays. Because these delays are an existing problem, and not an effect of the transaction, applicants state that they are not a proper basis for relief. CSX and its predecessors have owned and controlled dispatching over the line for IC and its predecessors for more than 90 years.

Moreover, applicants state that divestiture could cause severe problems for CSX because the Leewood-Aulon line is part of a CSX mainline that carries substantial traffic in interchange with BNSF and UPRR. Divestiture could interfere with CSX's use of the Memphis gateway. Applicants also indicate that IC's proper remedy is that contained in the trackage rights agreement, which requires CSX to be reasonable, fair, and nondiscriminatory to all parties using the line, and provides for mandatory arbitration of disputes.

We are denying IC's request that CSX divest ownership and control of the Leewood-Aulon line to IC. No justification has been presented for this extreme remedy that could result in serious harm to CSX's ability to provide service. Nevertheless, we believe that the public interest requires us to do what we can to prevent carrier disputes such as this one from impairing the service that the carriers provide to their shippers. Accordingly, we will impose a condition requiring CSX to meet with IC to attempt to resolve this dispute concerning Memphis dispatching, and to report back to us on the results of this discussion within 30 days of August 22, 1998.

IC's second request is for a condition to preserve its existing routings with Conrail. Because it has been unable to reach an agreement with CSX, IC argues that CSX will favor what IC contends are less efficient IC/CSX joint-line routings via New Orleans and Memphis over what IC contends are more efficient IC/CSX joint-line routings via Chicago, East St. Louis, and Effingham, IL. Under IC's proposed condition, CSX would be required to enter into joint rates with IC for the movement of traffic to or from former Conrail points via its Illinois gateways that would provide CSX with the same revenue per mile as CSX would receive over its long-haul route between the same origin and destination. IC contends that this requirement would prevent CSX from denying a shipper access to existing service options via those gateways by commercially closing the route.

We are denying IC's request for the imposition of a routing condition. As applicants correctly note: "IC's proposal goes well beyond even the repudiated *DT&I* conditions * * * in asking the Board to impose a formula to cap CSX's divisions." *See, Traffic Protective Conditions*, 366 I.C.C. at 115-26. IC sought similar relief, including the same formula for setting divisions, which the ICC denied in *BNSF*, 10 I.C.C.2d at 679-80 & 775-76. We continue to believe that conditions of this type are inefficient, anticompetitive, and contrary to the public interest.

Livonia, Avon, and Lakeville Railroad Corporation (*LAL*). LAL is a Class III Rochester-based railroad that now connects only with Conrail; after the transaction it will connect only with CSX. LAL's primary concern is the removal of the "firewall" that prevents it from crossing the Genesee Junction

Yard to connect directly with Rochester and Southern Railroad, Inc. (R&S). This connection, which is supported by the Genesee Transportation Council (GTC), would permit it to reach NS, which is acquiring Conrail's Southern Tier Line, and CP. Dating back to the Final System Plan, LAL's predecessors have been unable to connect with R&S' predecessors. Thus, LAL's responsive application to overcome this barrier (Sub-No. 39) might appear to be unrelated to any harm caused by this transaction. But, LAL also argues that a significant number of its shippers who now use LAL/Conrail service will be forced to shift to inefficient, three-carrier LAL/CSX/NS service. This allegation is backed by strong supporting statements of a number of shippers on its lines, who document how this change in service will harm their businesses.[160] LAL has explained that certain grain shipments it originates to what are now Conrail points on the Delmarva Peninsula and in Pennsylvania will be particularly affected, depriving Western New York farmers of an important outlet for their products.

Applicants assert that the new, three-carrier move that LAL and its shippers have requested, LAL/R&S/NS, is no less cumbersome than the three-carrier move it is intended to replace. We disagree. Shortline carriers like LAL and R&S have shown themselves capable of providing seamless service in conjunction with their Class I connections. And, LAL has explained that it expects no problems coordinating activities with R&S within Genesee Junction Yard. LAL has noted that its management can reach R&S headquarters for any needed face-to-face meeting with a 25-minute drive from Lakeville or a 5-minute drive from Genesee Junction Yard. Thus, within 60 days of service of July 23, 1998, we will require CSX to negotiate an agreement with LAL that permits that carrier to operate over the approximately 1 route mile of track within Genesee Junction Yard necessary to reach a connection with R&S. If the parties are unable to reach an agreement within that time frame, they may submit their separate proposals to us.

Finally, we note that, as explained above, we have been generally unwilling to grant the relief requested by numerous other shippers whose single-line service will become joint-line service, since that relief would have unduly burdened the transaction by granting CSX and NS trackage rights over each

[160] The shippers include High Point Mills - blends and packages fertilizer; Genesee Reserve Supply, Inc. - distributes lumber and business supply products; King Cole Bean Co. - cleans dry, edible beans for processors and exporters; Kraft Foods - delivery of raw materials for Oscar Mayer and Cool Whip products (only domestic Cool Whip plant); Matthews & Fields Lumber - retail lumber and plywood; J. MacKenzie Ltd. - converts and then distributes rolls of printing paper into sheets; and Hillside Crop Service - dry and liquid fertilizers.

other's lines. That is not the case here. The relief we are granting to LAL and its shippers, which only requires LAL operations over a little-used, 1-mile segment of Conrail track, should not noticeably interfere with applicants' planned operations.

New England Central Railroad, Inc. (NECR). NECR is a Class III railroad operating a primarily north-south rail line from East Alburg, VT, south to New London, CT. NECR complains that the transaction will not give New England shippers two-carrier service, and will eliminate Conrail's role as a "neutral" carrier.[161] In addition, NECR insists that the transaction will result in NECR's losing traffic to the extent that it might threaten NECR's survival. To offset these losses, NECR seeks approximately 256 miles of trackage rights from Palmer, MA, to the North Jersey SAA.

The State of Vermont is concerned about the possible adverse impact of this transaction on NECR, whose lines are used by Amtrak for the *Vermonter* service. Vermont has provided financial support for this particular Amtrak service. Vermont states that the financial failure of NECR would terminate that carrier's ability to make available quality trackage between Palmer, MA, and St. Albans, VT, to Amtrak. Amtrak would then seek to pass along additional costs to the state.

Applicants argue, however, that NECR will be in the same position after the transaction as it is now, with its current connection with Conrail at Palmer, MA, being replaced by a connection there with CSX. Applicants also insist there will not be any loss of essential rail services supplied by NECR, and that the trackage rights NECR seeks over CSX would create severe operational problems.

NECR's claims that harm will result from Conrail's disappearance as an allegedly "neutral" connection to CSX and NS, and that CSX will be a more dominant carrier than Conrail has been, are baseless. CSX and NS have no incentive to foreclose efficient through routes following the division of Conrail. To the contrary, applicants have expressed their intention to maintain efficient routings, and any failure to do so could result in challenges under the Board's competitive access rules. Further, CSX has agreed to assume Conrail's agreements with NECR.

Even though we agree with applicants that NECR's diversion estimate of $8.0 million is overstated, we think that NECR will suffer some financial harm from this transaction. Applicants' diversion estimate of $1.6 million per year of its gross revenue of about $16-17 million per year seems more reliable. In

[161] These issues have already been thoroughly addressed above in the section entitled Vertical Competition Issues.

coming up with its $8 million figure, NECR assumed that all of its movements of paper and wood products received from Canadian origins would be diverted. The record shows that these products are moved south over NECR and are transloaded to motor carriers for delivery over a broad area that already includes numerous points served by CSX and NS. NECR has failed to demonstrate that these movements from nearby Canadian origins will be replaced by single-line movements from CSX or NS southeastern origins. These two carriers have the capacity to provide single-line service of forest products from many origins to these destinations now, but they have not captured this business, perhaps because the particular forest products moving from Canada have no exact substitute in the Southeast. There is no reason to believe that this traffic will now all be diverted simply because CSX and NS have extended their routes into the Northeast.

NECR points out two shippers of northbound lumber that it characterizes as "being susceptible to immediate diversion." NECR notes that these two companies receive southern yellow pine lumber originating on applicants' lines in the Southeast. NECR argues that, if the transaction is approved, CSX will be able to provide single-line service as opposed to joint-line service with NECR, and that CSX will attract this business through new truck transloading facilities that it will establish. NECR fails to explain why CSX would be any more likely to pursue such a strategy than Conrail is now. If NECR forms an efficient part of a through route, its services will continue to be used.

Despite the fact that its diversion evidence is flawed, NECR has shown that it will be financially harmed by this transaction. Moreover, it is clear that NECR provides important services both for its shippers and for Amtrak. Accordingly, to ensure NECR's continued ability to provide these services, we will require applicants to grant NECR trackage rights as sought between Palmer, MA, and Springfield, MA. These trackage rights will facilitate through movements with NECR's affiliate, Connecticut Southern Railroad. We will require applicants to attempt to negotiate the details of these trackage rights arrangements with NECR. If the negotiations prove unsuccessful, the parties may submit separate proposals to us within 30 days of August 22, 1998.

North Shore Railroad Company (NSHR) and affiliates. NSHR and its affiliates — Juniata Valley Railroad Company (JVRR), Nittany & Bald Eagle Railroad Company (NBER), Lycoming Valley Railroad Company (LVRR), Shamokin Valley Railroad Company (SVRR), and Union County Industrial Railroad Company (UCIR) — ask that we "note for the record" the settlement agreement they have entered into with NS. As we have noted elsewhere in this decision, we are requiring applicants to adhere to any representations made to parties in this case.

Philadelphia Belt Line Railroad Company (PBL). PBL is a small Class III railroad in Philadelphia. Although its lines are now composed of three discrete segments totaling about 16 miles, PBL claims that its original 1889 charter was intended to allow it to function as a continuous "belt" railway serving Philadelphia. PBL's goal of achieving that status is a longstanding one that has no nexus to this transaction.[162] To the extent that PBL's "beltline principle" may have any valid contractual basis, we will grant the relief that PBL seeks by ruling that any such contracts are not intended to be preempted by our approval of this transaction.

Providence and Worcester Railroad Company (P&W). P&W is a regional freight railroad operating in Massachusetts, Rhode Island, Connecticut, and New York. It supports the primary application.[163] Nonetheless, it has advised us that, under an Order of the Special Court (Order) dated April 13, 1982, P&W has the right to acquire the terminal properties known as New Haven Station "if Conrail elects to withdraw from or abandon or discontinue freight service obligations" at that location. P&W has sought an interpretation of the Order and a declaration of its rights from the statutory successor to the Special Court, the United States District Court for the District of Columbia. On January 22, 1998, that court ruled that this matter was not yet ripe for adjudication, since the Conrail control proceeding was still pending before us.

It appears to us that our approval and the eventual consummation of this transaction will not trigger P&W's rights under the 1982 Order because Conrail will continue to own New Haven Station and will therefore not withdraw from, abandon, or discontinue freight service there. This view is apparently shared by the FRA Chief Counsel. CSX/NS-177, Vol. 2A at 22-23. But these views may not represent what would be the ultimate determination of the District Court, which would have primary jurisdiction in interpreting the Order. Nor need we, because of our ultimate disposition of the issue, adjudicate applicants' claim that, "because P&W has, for a valuable consideration, agreed to support the transaction contemplated by the Application, it is accordingly estopped from denying CSX the quiet enjoyment of New Haven Station."

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[162] PBL's "belt line principle" issues were discussed in detail, and its complaint seeking to establish connections with additional carriers dismissed, in *Philadelphia Belt Line Railroad Company v. Consolidated Rail Corporation, CP Rail System, and CSX Transportation, Inc.*, Finance Docket No. 32802 (STB served July 2, 1996).

[163] P&W's concerns with respect to the proposal of the Nadler Delegation have been discussed above, in the section entitled East Of The Hudson, where we required CSX to discuss with P&W the possibility of expanded P&W service from Fresh Pond to New Haven, CT.

Rather, we will specifically find that applicants' continued ownership and use of New Haven station is an integral and necessary part of the underlying transaction before us, and that any rights that P&W might otherwise have been found to have under the Order, must therefore be preempted under 49 U.S.C. 11321(a). As applicants have explained, a core purpose of that immunity provision is that a successor carrier must be allowed to operate property acquired through a Board-approved transaction.

R.J. Corman Western (*RJCW*). RJCW filed a responsive application (Sub-No. 63) requesting trackage rights on, or ownership of, 2 miles of Conrail line in Lima, OH. RJCW is a Class III railroad, operating between Glenmore, OH, and the Indiana/Ohio border via Lima. RJCW's only rail connection is at Lima, with Conrail. Traffic moving to or from the Glenmore-Lima line is now switched by Conrail to CSX and NS over the 2.3 miles of line that RJCW seeks to operate over. RJCW has attempted unsuccessfully to obtain this line from Conrail in the past. CSX will now obtain this segment through the transaction.

RJCW claims that CSX will prefer to switch RJCW's traffic to its own lines, and will increase the very low existing switching charge of $60 per car for RJCW's traffic to reach NS. It also argues that CSX will raise its line-haul rates and/or diminish the level and frequency of interchange if it controls the switch movement. RJCW has offered no basis upon which to conclude that CSX will not maintain reasonable reciprocal switching rates or that CSX will have an economic incentive to restrict the movement of RJCW's traffic. The presumption under our precedent and economic theory is to the contrary. Moreover, the NITL agreement preserves existing switching charges for 5 years, with an annual inflation adjustment, making further relief concerning this issue unnecessary.

RJCW essentially seeks to improve its position by obtaining a strategic piece of rail line that would give it direct access to two Class I carriers. RJCW's post-transaction competitive position will be unchanged. CSX will simply step into Conrail's shoes at Lima; RJCW will still have one connection, CSX instead of Conrail, and will be able to move traffic to interchange with NS through a switch movement, just as it does today. In sum, RJCW has provided no grounds for this additional relief, and the oversight condition we are imposing will permit us to continue to monitor the situation.

The Elk River Railroad, Incorporated (*TERRI*). TERRI is a small Class III railroad originating coal in South Central West Virginia. Although its sole Class I connection is now with CSX, before the transaction it had been pursuing a build-out option that would, if successful, have permitted it to interchange with Conrail. The relevant Conrail line is being acquired by NS, which, TERRI claims, will not have the same interest in handling this coal traffic because it handles other competing coal traffic.

TERRI's situation will remain largely the same as it was before the transaction. It will continue to have access to one Class I carrier, with a possible build-out option that may entail considerable expense. NS has stated that it is willing to work with TERRI to establish an appropriate interchange if TERRI completes its proposed build-out. It is also willing to discuss the issue of rehabilitating or selling to TERRI the line between Falling Rock and Charleston. Given these representations, which we expect to be adhered to, and the fact that TERRI's situation is not substantially changed, we see no need to require any of the good faith bargaining conditions that TERRI seeks.

Wheeling & Lake Erie Railway Company (*W&LE*). W&LE has filed a responsive application and has requested numerous conditions that it claims are necessary to alleviate merger related harm.[164] Senator Mike DeWine, Congressman Ralph S. Regula, Stark Development Board (SDB), the Ohio Attorney General, Ohio Rail Development Commission (ORDC), ISRI, and others have supported W&LE in this regard.[165] Although W&LE has made some general assertions about the competitive impact of the merger, it does not propose its conditions as a competitive solution to offset the diminution of competition experienced by any shipper or group of shippers.[166] Rather, the conditions W&LE seeks are offered to offset the adverse financial impact of the transaction on W&LE. W&LE claims that the transaction will divert between $12.7 and $15 million of traffic per year from its lines. W&LE maintains that, because it is a highly leveraged carrier, its balance sheet will not permit it to weather such an impact and still provide "essential services." W&LE claims that its proposed conditions will generate about $11 million per year in

[164] W&LE has not provided the kind of information that we would need to consider an inclusion application, particularly the competitive impacts of inclusion, that is, the merger of W&LE back into NS. Thus, we will not consider this issue further. Nor will we consider W&LE's arguments about what would be the adverse competitive impacts if it were forced to seek inclusion. By no means has W&LE demonstrated that an inclusion petition would likely be granted if one were sought.

[165] ISRI supports the conditions requested by W&LE to the extent those conditions will alleviate harm to ISRI members.

[166] To buttress its claim that it would provide an important competitive safeguard following consummation of the transaction, W&LE has noted that DOJ suggested divestiture of certain lines that overlap with the W&LE lines when these lines were a part of NS and NS proposed to acquire all of Conrail's lines in 1985. That does not support the relief that W&LE seeks here. NS is not proposing to acquire all of Conrail, nor is it proposing to reacquire the W&LE lines. The competitive circumstances now as opposed to 1985 are totally different.

additional traffic to offset its losses. Revenue losses could make it difficult for W&LE to continue to provide service to the numerous shippers, including the NEOMODAL Terminal, that have testified that they value the W&LE service, and that it serves as a spur to competition.

Although W&LE's projections of a $12.7 to $15 million yearly gross traffic revenue loss are overstated, it does appear that W&LE would lose substantial revenue due to this transaction. Applicants' estimate of $1.4 million may be somewhat understated. They correctly note that much of W&LE's traffic both originates and terminates on its system, and none of that traffic is at risk. Many of the losses included in W&LE's $15 million figure represent reductions from a baseline that includes a substantial projected traffic increase; we think those projections are overly optimistic and unwarranted. About $3.6 million of the traffic losses included in the lower $12.7 million figure relate to the "phantom train" issue. This refers to traffic generated by a run-through train that was operated for about 6 weeks in 1997, but no longer operates. It is inappropriate to attribute to the merger traffic losses that have already occurred. Moreover, it is inaccurate to assume, as W&LE uniformly does here, that NS single-line service will always replace a joint NS/W&LE service. If the W&LE routing and service is more efficient, as W&LE contends, then it is likely that NS would continue to use that service.

Even with these adjustments, however, it is apparent that a substantial amount of traffic, probably between $1.4 and $3.0 million, could be diverted from W&LE because of this transaction. Much of the traffic loss claimed by W&LE is due to new, more efficient routings afforded applicants by the transaction rather than to any enhancement of applicants' market power. Nevertheless, we think that the combination of W&LE's precarious financial situation and these rather heavy losses calls out for a remedy to preserve essential services and an important competitive presence here. W&LE not only provides valuable competitive service to shippers, but it also provides a transportation network that could be important to shippers if the major carriers have difficulty providing service.

That being said, we recognize that the extensive conditions W&LE is seeking are a substantial overreach both in terms of geographic scope and financial impact. Certainly, W&LE has not justified $11 million of new traffic as relief, nor has it justified such intrusive conditions as permitting it to extend its operations over applicants' lines all the way to Chicago.

We will require applicants to provide certain remedies to W&LE to prevent further erosion of W&LE's financial viability due to this transaction. We will require applicants to provide: (a) overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railroad and other railroads there; (b) an extension of W&LE's lease for the Huron Docks and trackage rights access to the Huron Docks over NS' Huron Branch; (c) overhead haulage or trackage rights to Lima, OH, including a connection to the Indiana and Ohio Railroad. Further, we will require that applicants negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV. If these parties are unable to agree on a solution with regards to items (a), (b), and (c) within 90 days of July 23, 1998, we will institute expedited proceedings to resolve these matters. Finally, we expect the parties to inform us of any mutually beneficial arrangements that they have reached.

SHIPPERS AND OTHER PROTESTANTS

Aggregate Shippers. A number of aggregate shippers (*i.e.*, National Lime and Stone Company (NL&S), Wyandot Dolomite, and Redland Ohio) separately have expressed concern over the potential impact on their businesses resulting from the loss of Conrail single-line service, and each has sought specific conditions. Martin Marietta Materials (MMM), which also raised similar concerns, has reached a settlement agreement with applicants resolving its concerns. These shippers claim that aggregate sales are extremely sensitive to even slight changes in freight rates, and that they will suffer significant harm that is distinguishable from the harm to other freight shippers when their Conrail single-line service is replaced with CSX/NS joint-line service. These shippers argue that they are particularly dependent upon efficient rail service because shipping aggregate materials by motor carrier or barge is usually not a viable option.

As MMM points out, applicants' witnesses have acknowledged that going from single-line service to joint-line service is less efficient and tends to be more costly. MMM-3 at 8-10 and 19-21 (citing to Snow Dep. Tr. at 169-170, and Gaskins Dep. Tr. at 15-16). Applicants explain that "[c]harging a single-line rate for a joint-line service, where obvious extra handling (to effect the interchange) is involved, is clearly apt to be uneconomic for the participating railroads." CSX/NS-190 at 26. Applicants argue, however, that aggregate shippers do not show any harm to competition or essential rail service. Nevertheless, these shippers claim that aggregates rarely, if ever, move in two-railroad, joint-line service, and seek conditions "designed to correct certain new inefficiencies that would otherwise be introduced into the movement of [their] product post-Transaction." *See*, Wyandot-5 at 3-4.

These conditions fall into the following categories: (1) recreating single-line service;[167] (2) extending the NITL single-line to joint-line rate freeze to 5 years;[168] (3) guaranteeing future rail service by NS or its successor;[169] and (4) guaranteeing future rail service by W&LE or its successor.[170]

As applicants acknowledge, "compared to lime, stone aggregates generally move at a lower rate per ton and thus generally do not move in a joint-line rail service as frequently as lime." CSX/NS-176, R.V.S. Moon at 6. Because we find that lime often moves in joint-line service, we will limit relief to the movement of stone aggregate, particularly for those movements over 75 miles. NL&S concedes, as applicants point out, that NL&S ships a significant quantity of its product by truck, but NL&S insists that the characteristics of aggregates and crushed rock are such that, beyond very short distances, truck transport is simply not a viable option. NL&S states that, for large volume (more than 1,000 tons) and long-distance shipments (more than 75 miles), rail transportation is essential, and there is no practical substitute for rail. In addition, Wyandot points out (Wyandot-5 at 8-9) that the ICC had described the economics of aggregate transport in a prior case where it said:

> [For aggregates], truck transport is prohibitively expensive for the long haul; crushed stone is a high-bulk, heavy loading commodity, for which motor carriers are effective for distances of less than 75 to 100 miles.[171]

We note that the relief for run-through operations and the handling of blocked cars that applicants have offered appears to be operationally feasible and should mitigate the service concerns of these protestants. Moreover, at oral

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[167] Specific requests include (a) requiring reciprocal trackage rights between CSX and NS to recreate single-line service, while preserving existing rates or (b) requiring that, if 60 or more 100-ton hopper cars at any one time are tendered for transportation to stations on NS, CSX must cooperate with NS in the operation of run-through trains to stations on NS and, for blocks of 10-60 cars, pre-blocking.

[168] Specific requests include requiring CSX and NS to freeze joint rates for aggregate shippers at the existing level for 5 years, subject to adjustments reflecting 85% of RCAF-U increases.

[169] Specific requests include (a) imposing upon NS a common carrier obligation to provide service under remedial trackage rights gained in this transaction, or (b) requiring that, if NS proves unwilling or unable to provide service upon reasonable request, or if NS abandons certain routes, this proceeding will be reopened and another rail carrier of shipper's choosing will be substituted.

[170] Specific requests include (a) requiring applicants to provide to W&LE, upon reasonable terms and conditions, either trackage or haulage rights over certain existing NS lines, or (b) requiring that, if control over W&LE or its facilities were to change, a railroad other than W&LE's successor be granted trackage rights over W&LE's tracks.

[171] *Union Pacific Corp. et al. — Control — MO-KS-TX Co. et al.*, 4 I.C.C.2d 409, 464 (1988) (*UP/MKT*).

argument, applicants offered to provide each other trackage rights to permit single-line service by either CSX or NS for existing aggregate movements.

Wyandot and NL&S have filed letters objecting that the relief proffered by applicants is inadequate because it seems to be limited to certain existing aggregate movements, but does not cover all of them. Further, they claim that they may have other customers at some time in the future that applicants will not be able to serve in single-line service.

We will require applicants to provide single-line service for all existing movements of aggregates as offered at oral argument, provided they are tendered in unit-trains or blocks of 40 or more cars.[172] In other circumstances including new movements, we will require applicants and aggregate shippers to work out run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars) for shipments moving at least 75 miles.

We disagree with the analysis of Wyandot and NL&S that this provides an insufficient remedy for possible future movements. The harm of losing single-line service is very modest, and the future harm that Wyandot and NL&S claim is speculative. The agreement to provide run-through operations is more than adequate to address these concerns about future traffic patterns.

In addition, under the NITL agreement, applicants will retain in effect for 3 years the existing Conrail rate (subject to RCAF-U increases), and applicants will "work with [single-line to joint-line shippers] to provide fair and reasonable joint line service." Also, applicants indicate that they will honor Conrail contracts until their expiration. In addition, as discussed previously, applicants are directed to negotiate with W&LE regarding service to aggregate shippers. In light of the operational relief we have granted, we do not believe that it is necessary to extend the rate freeze to 5 years as these shippers have requested.

Agricultural Shipper Interests. National Grain and Feed Association asks that we appoint a Conrail Acquisition Advisory Council to develop standards and performance measurements, as well as specific reporting measures, that will provide an accurate portrayal of implementation by CSX and NS. The American Farm Bureau Federation, the American Feed Industry Association, the National Cattlemen's Beef Association, the National Corn Growers Association, and the National Pork Producers Council request a strong oversight with periodic public hearings and requirement of an annual report that evaluates how well the transition is proceeding, especially as it relates to agriculture. USDA, which

[172] We recognize that what was offered at oral argument is somewhat broader than what was offered in writing in the proffers dated June 6, 1998.

neither supports nor opposes the transaction, suggests, in light of service problems that have attended recent Class I rail mergers, that we adopt a "go slow" approach to implementation.[173] Cargill, which is engaged in the merchandising and handling of agricultural commodities, supports the transaction, which it believes will add to the competitive balance in the Eastern United States and will provide more efficient routings for rail freight. Cargill requests that we ensure that labor implementing agreements are in place on or shortly after the effective date of this decision, and that CSX and NS management have sufficient time after our approval to plan for the break-up of Conrail.

We believe that these parties' concerns are adequately and appropriately addressed by our imposition of the NITL agreement, as we have expanded upon and extended it, including the ongoing rôle of the Conrail Transaction Council, and by the extensive oversight and monitoring we will be undertaking.

AK Steel Corporation (AK Steel). AK Steel's main interest in this proceeding is to assure that it has access to both NS and CSX to handle its shipments of iron ore moving through the Toledo Docks. Although there has been some confusion on this issue, applicants have assured us that service from both carriers will be available. We will hold applicants to that representation. Other relief sought by AK Steel in an effort to ensure this result is thus unnecessary, and will be denied.

American Electric Power Corporation (AEPCO). AEPCO operates a coal-fired, electric plant, the Cardinal Plant, on the Ohio River. AEPCO is now rail served by W&LE, and apparently also by Conrail, made possible through a trackage rights agreement not yet filed with the Board, over a small segment of W&LE. AEPCO acknowledges that NS, which will acquire the trackage rights at issue, would purchase the small segment necessary to serve its plant if W&LE were to fail. AEPCO's main concern is that the demise of the W&LE as a result of this transaction would reduce its rail options from two to one. In light of the substantial relief that we have accorded to ensure W&LE's continued viability

[173] USDA's concerns with respect to rail competition in the Indianapolis area, and its support for certain conditions proposed by Indiana Southern Railroad, Inc., are discussed above in the section entitled Indianapolis.

in this proceeding, we do not believe that the conditions that AEPCO proposes are necessary.[174]

American Trucking Associations (*ATA*). ATA has raised issues relating to equipment used in intermodal service, grade crossings, and certain railroad practices it claims are discriminatory. None of these issues has any nexus to this transaction. Moreover, issues concerning general problems related to grade crossings and equipment used in highway service would best be addressed to DOT. The conditions requested by ATA will be denied.

ASHTA Chemicals (*ASHTA*). ASHTA is a chemicals shipper located on Lake Erie in Ashtabula, OH. It admits that it is currently solely served to Conrail. After the transaction, it will be served solely by CSX. It claims generally that it will be placed at a disadvantage vis-a-vis other shippers that will receive better or more competitive service as a result of the transaction. It seeks a competitive access remedy or a merger condition to permit service by a second Class I carrier, NS, by imposition of a reciprocal switching arrangement. ASHTA has provided no basis for the imposition of such a remedy because it has shown no merger related harm. Nor has it provided a basis for relief under section 11102, because it has done little more than to indicate a preference for two-carrier service.

ASHTA also raises issues about the current routing by Conrail of its hazardous chemicals traffic via Buffalo, which it claims is unnecessarily circuitous and unsafe. CSX stated at oral argument that it is willing to work with ASHTA to arrange routing and classification more to ASHTA's preference. We will hold CSX to that representation.

APL Limited (*APL*). APL has requested numerous conditions, most of which relate to its opposition to applicants' request that we override any antiassignment or other similar clauses in shippers' contracts with Conrail that is discussed above. As noted there, we have partially granted the relief that APL seeks by limiting the override of antiassignment and other similar clauses to 180 days from Day One. After that time, APL will have the right to exercise all of its contractual rights and, if they permit, contract with both NS and CSX in this region.

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[174] Moreover, we would note that AEPCO has not detailed its reliance on either of its two existing rail options to move coal. No coal has yet moved over Conrail. Over 90% of its coal is moved by barge, and much of the remaining coal is moved by truck.

APL has also raised arguments concerning potential discrimination against it by CSX. CSX has explained that its intermodal subsidiary, CSX Intermodal (CSXI), regularly deals with third party service providers, including those affiliated with ocean shipping companies, and that 40% of CSXI's intermodal business comes from international ocean shipping customers, excluding CSX's Sea-Land subsidiary. Further, allegations concerning the likelihood of CSX using its ownership of barge lines to discriminate against or competitively disadvantage other water carriers were raised and rejected in *CSX Corp. — Control — American Commercial Lines, Inc.*, 2 I.C.C.2d 490 (1984); *aff'd, Crounse Corp. v. ICC*, 781 F.2d 1176, 1193 (6th Cir. 1986), *cert. denied* 479 U.S. 890 (1986) (*Crounse*); *Water Transport Assoc. v. ICC*, 715 F.2d 581 (D.C. Cir. 1983). The arguments APL raises here are not materially different from the arguments that were rejected in those cases.[175] While we understand APL's concern, we think that the prospect of such unlawful practices remains relatively slight even after this transaction. Nevertheless, our general oversight of the transaction can address any issues that arise in this regard.

Finally, the confidentiality provisions that we have imposed should prevent any access by CSX's water and intermodal affiliates to confidential contract information about APL. *See, Decision No. 87* in this proceeding.

Centerior Energy Corporation (*Centerior*). Centerior is a coal burning public utility company. It claims that a settlement agreement between applicants and one of Centerior's major suppliers, The Ohio Valley Coal Company (Ohio Valley), will not remedy the harms to Centerior from the transaction. Centerior also claims that the settlement agreement is itself anticompetitive, and asks that we nullify it. Applicants respond that Centerior's argument is based on a misunderstanding of the agreement, which allegedly preserves the status quo relating to Centerior's freight rates for a number of years, eliminating the basis for conditions Centerior seeks.

Applicants have not asked us to approve the Ohio Valley agreement as a condition to the transaction, and we are not approving it. Thus, no antitrust immunity attaches to this agreement. In any event, applicants have convinced us — with confidential material submitted under seal and provided to Centerior's counsel — that the settlement agreement will not be anticompetitive or inconsistent with Centerior's interests. If anything, it should benefit Centerior, rather than harm it.

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[175] CSX recently has sold its controlling interest in American Commercial Lines, although it still controls CSXI and Sea-Land, major competitors to APL.

Centerior also seeks two-carrier access to its Eastlake, Ashtabula, and Lake Shore plants.[176] This relief, which would markedly improve Centerior's current one-carrier access, has not been justified. Centerior also raises single-line to joint-line concerns, and this issue has been discussed in a previous section.

Consumers Energy Company (Consumers). Consumers, an electric and gas utility company serving customers in Michigan, operates five coal-fired plants. Its main power plant is Campbell Station, near West Olive, MI, which burns 70% of the coal used by Consumers. Campbell is now served exclusively by CSX, and most of its coal is received from CSX origins. Nevertheless, Consumers claims that it will be unable to take advantage of Monongahela coal now served by Conrail, and that the transaction will actually increase CSX's market power over Consumers by concentrating CSX's dominance over appropriate coal sources.

Consumers has failed to make its case in this regard. As a threshold matter, it has not shown that it is currently able to take advantage of any appropriate Conrail coal origins that would now be CSX origins. In any event, Consumers has not even attempted to overcome our presumption by showing that the one-lump theory does not apply to its particular circumstances. Accordingly, its request for a second Class I carrier to serve Campbell must be denied. Consumers has also raised acquisition premium arguments and related requests for relief. This relief will be denied for the reasons set forth in the "Acquisition Premium" section.

Eighty-Four Mining Company (EFMC). EFMC operates Mine 84, which is a Pittsburgh Seam mine that is not on the MGA lines that are to be served by both NS and CSX. Mine 84 is on a line running north from West Brownsville, PA, that would be served only by NS. The MGA lines, which run south from West Brownsville into Southern Pennsylvania and Northern West Virginia, include 6 mines that produce coal that is very similar to that produced at Mine 84, and that is generally used by the same customers. EFMC would like two-carrier access to be extended to Mine 84.

EFMC has not provided adequate justification for us to make an exception to our usual rule that we will not equalize merger benefits among competing shippers. Mine 84 is on a different rail line than these other mines that are receiving two-railroad service as a result of this transaction. Moreover, applicants noted at oral argument that Mine 84 was recently purchased by

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[176] Ohi-Rail Corporation, a small Class III railroad serving certain West Virginia coalfields, supports Centerior's effort to obtain service of a second Class I carrier at Eastlake.

CONSOL, Inc. (CONSOL),[177] which also owns several of the MGA mines that will be receiving new two-railroad service. Thus, some of these MGA mines are Mine 84's competitors, while others are its affiliates. We cannot say that CONSOL or Mine 84 will be substantially harmed by this transaction.

Fort Orange Paper Company (FOPC). FOPC manufactures clay-coated recycled box board at Castleton-on-Hudson, NY, near Albany. This plant is exclusively served by Conrail along a segment of its east-of-the-Hudson line that is used primarily for passenger traffic, and is just north of the bridge where most Conrail traffic now crosses the Hudson River to reach Selkirk Yard. FOPC now uses rail for about 50 carloads of (inbound) raw material, and the majority of these (clay and waste paper) are exempt from regulation.

CSX will take over operations on Conrail's east-of-the-Hudson line. While FOPC is concerned that CSX may subject it to unreasonable future rate increases or other actions, it no longer opposes the application because it "cannot establish that it will certainly suffer harm as a result of the Transaction." FOPC-6 at 3. It supports NYDOT's responsive application, and requests that we impose oversight for at least 5 years. FOPC intends to participate in the Board's oversight process as necessary to protect its interests.

As explained above in the section entitled East Of The Hudson, we have imposed a condition that may help FOPC, requiring CSX to negotiate an agreement with CP to permit either haulage or trackage rights, not restricted as to commodity or geographic scope, over the east-of-the-Hudson line from Fresh Pond to Selkirk (near Albany). Furthermore, the extensive 5-year oversight and monitoring process that we will be undertaking is responsive to FOPC's concerns.

GPU Generation, Inc. (GPU). GPU operates 87 electric generation units. Its interest in this proceeding is focused on Portland and Titus Stations. These two coal-burning units in Pennsylvania are now exclusively served by Conrail and, after the transaction, will be exclusively served by NS. GPU asserts that the acquisition premium NS and CSX have agreed to pay for Conrail will place significant new pressures on NS to raise rates to captive shippers such as itself, and that its opportunity for future maximum rate relief will be curtailed by the manner in which the acquisition premium will flow into the regulatory investment base and into calculations of URCS variable cost. GPU opposes the transaction, and requests that, if it is approved, we impose a condition designed to exclude, for regulatory costing purposes, the acquisition premium from applicants' net investment bases in order to protect GPU and other captive

[177] CONSOL is 50% owned by E.I. DuPont de Nemours and Company, Inc.

shippers from being forced to subsidize the premium through higher rates. GPU's concerns, and our reasons for denying the relief it has requested, are discussed above, in the section entitled The Acquisition Premium.

Indianapolis Power and Light (*IP&L*). IP&L alleges competitive harm to two of its plants: Perry K and Stout; DOJ alleges harm to the latter plant only. Perry K is served solely by Conrail, which switches coal shipments from either ISRR or INRD, the latter being 89% owned by CSX. IP&L argues that it will lose rail competition at Perry K because a supposedly neutral Conrail link will be turned into a CSX bottleneck monopoly. As applicants correctly note, however, Conrail is already a bottleneck carrier controlling rail access to this plant. Thus, the transaction will not create new market power. Further, under applicants' proposal, NS will permanently have access via cost-based switching to the plant, a benefit the plant did not enjoy before.[178] We conclude that no remedy is required at Perry K.

Stout, on the other hand, does require a competitive remedy. That plant, located on INRD, has had available a routing involving coal originations on ISRR, and an interline with Conrail, reaching the plant via a switch performed by INRD. Applicants have agreed to continue the current switching arrangement, which IP&L agrees is favorable, but only for the immediate future.

Whether IP&L would continue to be able to obtain favorable switching terms after the transaction is disputed. Applicants insist that the threat of truck competition and the ability of IP&L to shift production to its more efficient Petersburg plant — competitive restraints that will continue — led to these favorable terms. IP&L and ISRR, however, argue that truck competition and plant shifting are ineffective at Stout, and that only the threat to build out to nearby Conrail lines brought INRD and CSX to terms. Although a substantial amount of Indiana coal is trucked, Stout, unlike other IP&L plants that use trucks, is in a city, which makes truck transport less practical. We agree with DOJ and IP&L that the most likely primary cause of competitive pressure at Stout today is the threat of a build-out to Conrail, which appears feasible.[179]

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[178] DOJ expressed concern that NS' lines may not provide a direct and efficient route to nearby Indiana coal sources. NS does reach several Indiana coal sources — at Francisco, Enosville, Hawthorne, and Yankeetown Dock — and it also reaches numerous coal sources in other nearby states. And, as explained below, a new connection with ISRR will permit NS efficient access to additional nearby coal sources.

[179] Of course, our consistent position has been that the ultimate test of feasibility of a build-out is whether the line is built.

To remedy IP&L's potential loss of rail competition, we will allow the Stout plant to be served directly by NS (rather than restricting NS to accessing Stout via CSX switching at Hawthorne Yard) or INRD switching at Stout, as selected by IP&L.[180] Further, to approximate more closely pre-transaction market conditions, applicants shall amend their agreements to permit NS to interchange with ISRR at its existing milepost 6 for movements to Stout and Perry K.[181]

Joseph Smith & Sons (JS&S). JS&S is a scrap dealer currently served by Conrail and that can be served by CSX, through a switch over Conrail. After the transaction, it will be served by CSX, which will allow NS also to serve through reciprocal switching. JS&S claims that switching is temporary under the NITL agreement, but that it is losing the ability to effectuate a more permanent solution through a build-out. It has been our policy to preserve the competitive advantages made possible by build-outs. After the transaction, JS&S will retain the opportunity to build out to reach NS, including NS service over Amtrak's nearby Northeast Corridor (NEC), since applicants have reached a successful agreement with Amtrak for service over the NEC. We clarify that, if JS&S does build out to any NS connection, NS will be required to provide service.

JStar Consolidated, Inc. (JStar). JStar, a unit of Jacobs Industries, Ltd., provides logistics services at a location near Toledo, OH, served exclusively by Conrail that, post-transaction, will be served exclusively by CSX. JStar asserts that, at Toledo, Conrail has played the role of a "large, neutral switching carrier" when it passes off traffic beyond the Conrail system, but that CSX will favor its own routings and traffic sources. JStar further asserts that the proximity of its Toledo location to the Detroit SAA will disadvantage its operations relative to those of its competitors who will enjoy new two-carrier competition.

We will deny JStar's request for direct access to NS, for the reasons discussed above in the sections entitled Vertical Competition Issues and Requests To Be Served By Both CSX and NS. Further, to the extent that Conrail now provides switching services that permit other carriers to access

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[180] Further, we will preserve the build-out option that IP&L now has to IBRT. If a build-out is constructed, we will permit NS or ISRR to serve IP&L. If ISRR is selected, it would receive trackage rights from its current connection with Conrail at milepost 6 to the build-out point on IBRT.

[181] Regarding IP&L's arguments concerning possible harm to future prospects for competition for western coal movements to IP&L, we find that even if such movements were economically feasible (which is unclear), there is no substantial change in the effectiveness of the various routings to Indianapolis over gateways with the western carriers, as discussed above.

IP&L's concerns with respect to trackage rights compensation are discussed below, in the section entitled Trackage Rights Compensation Is Reasonable.

JStar's movements, these have been preserved under the reciprocal switching provisions of the NITL agreement that we are imposing here.

Millennium Petrochemicals Inc. (now known as Equistar Chemicals, LP). Equistar is a chemical company with facilities throughout the United States, but its concern here is its facility at Finderne, NJ. Conrail now exclusively serves that facility. Finderne is close to, but not in, the North Jersey SAA. Equistar is concerned that, after the transaction, CSX and NS will have to cooperate with each other in order to switch cars into and out of its facility. Equistar claims that the operating plans do not adequately explain how this will be accomplished.[182] Accordingly, it asks that the North Jersey SAA be expanded approximately 6 miles to embrace its facilities.

We have required, and applicants have submitted, detailed operating plans for the North Jersey SAA, including the facilities that Equistar is concerned about. *See,* CSX/NS-119. We have carefully studied those plans, and they appear to permit safe, efficient, and adequate operations in this area. Of course, we will continue to monitor situations such as these to ensure adequate service. In sum, provided that applicants are required to carry through on their representations regarding service arrangements at Finderne, Equistar is not likely to experience any transaction related harm.

New York/New Jersey Foreign Freight Forwarders & Brokers Association (NYNJFFF&BA). NYNJFFF&BA is an association of over 100 freight forwarders and customhouse brokers that provide a variety of ocean and intermodal transportation services in the New York/New Jersey port area. It is concerned with the potential for post-transaction service problems within the North Jersey SAA, and has requested that we require applicants to publicly disclose details of their proposed management and operating plans for the SAA. We have requested, and applicants already have provided, appropriate details of their plans for operating the North Jersey SAA.

In addition, NYNJFFF&BA's concerns are adequately and appropriately addressed by our imposition of the NITL agreement, as we have expanded upon and extended it, including the ongoing role of the Conrail Transaction Council, the requirement that all necessary labor implementing agreements and management information systems be in place prior to the start of separate

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[182] Equistar is also concerned that the allocation of Conrail's nearby Manville Yard to CSX will harm the rail service NS is slated to provide at the Finderne facility. We will hold applicants to their representation that, to the extent NS needs to use Manville Yard to support operations to Equistar, CSX will make trackage space available, and switching services will be provided in the same manner Conrail provides them today. *See,* CSX/NS-176 at 164.

operations over the Conrail lines, and the extensive oversight and monitoring that we will be undertaking.

Niagara Mohawk Power Corporation (NIMO).[183] NIMO is an electric utility company serving upstate New York. Its main concern is with coal-fired generating plants at Tonawanda and Dunkirk, NY. These two stations are now served exclusively by Conrail, and will be exclusively served by CSX after the transaction. These plants burn Pittsburgh Seam[184] coal that now originates on Conrail, much of which will be served by both NS and CSX after the transaction. NIMO nonetheless claims that its wholesale energy sales will be harmed in competition with other utility companies in the Detroit and South Jersey SAAs. As explained above, we do not generally attempt to equalize merger benefits among competing parties, and NIMO has presented no particularly compelling reason to do so here. Its request for relief in terms of access by a second carrier to its Tonawanda and Dunkirk plants will be denied.

Orange and Rockland Utilities (O&R). O&R is an electric utility company whose chief concern is service to its Lovett Plant at Tompkins Cove, NY. This plant is now served exclusively by Conrail, and after the transaction it will be served exclusively by CSX. O&R states that 90% of its coal now originates on NS, and O&R is concerned that, after the transaction, CSX will foreclose its access to this coal. It has been our experience, and that of the ICC, that rail carriers that have exclusive rights to serve a particular shipper at destination are extremely unlikely to deprive a shipper of access to efficient rail routings to reach the products they need, even if those routings involve joint-line service with another carrier. Such bottleneck destination carriers can ordinarily extract the same return, regardless of whether they handle the entire movement. In any event, if CSX refuses to permit such a movement, competitive access remedies are available from us.

O&R's other concerns relate to the quality of service. It claims that Conrail's service has not been good, and is generally concerned that CSX's service might be worse. Accordingly, it asks for an oversight condition. That condition is subsumed within our general 5-year oversight.

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[183] NIMO is a member of the Erie Niagara Chautauqua Rail Steering Committee (ENRSC). It supports ENRSC's request that we require applicants to create a new SAA encompassing the Greater Buffalo area or order broad-based terminal trackage rights or reciprocal switching to benefit all shippers in that area. It requests that we impose a condition specific to itself only if we do not grant the broader ENRSC requests. These ENRSC requests are discussed above, in the section entitled Buffalo/Niagara Falls.

[184] MGA coal is part of the Pittsburgh Seam.

PSI Energy (*PSI*). One of three areas where DOJ alleges that applicants failed adequately to address post-merger 2-to-1 situations is PSI's Gibson plant at Carol, IN, to which NS transports from Keensburg a small portion of the coal that the station consumes each year.[185] *See,* DOJ-2, V.S. Woodward at 6. DOJ mentions that Conrail has trackage rights over a very short segment from Keensburg into Gibson, making it a competitive alternative to NS for coal originating at a nearby Cyprus-Amax mine,[186] and that, as late as December 1994, Conrail actually delivered coal using those trackage rights.

Applicants respond that use of Conrail's trackage rights agreement from the Cyprus-Amax mine at Keensburg to PSI's Gibson plant was terminated on October 24, 1996, when NS accepted Conrail's August 29, 1996 proposal to end it. Applicants note correctly that Conrail's operation under these rights was disadvantaged because the Keensburg-Carol segment is entirely separate from other parts of Conrail's system.

DOJ concedes that, if the NS-Conrail termination agreement is valid, then the Gibson plant would not be a 2-to-1 point, and that it would not continue to press for an alternative remedy at Gibson. DOJ-2 at 23. Although we presume that the cancellation was valid as a contractual matter, under existing precedent, trackage rights cannot be canceled unless we grant authority for their discontinuance. *Thompson v. Texas Mexican Ry.*, 328 U.S. 134 (1946). Accordingly, we think that the proper remedy here would be for these unused rights to be transferred to CSX rather than NS. CSX's potential service to this plant, like Conrail's service before it, would be an "island" operation, and may not prove to be practical or efficient, in which case a discontinuance might ultimately prove to be justified. Nevertheless, we need not address that issue here.

Potomac Electric Power Company (*PEPCO*). PEPCO has reached a settlement agreement, and has withdrawn from this proceeding. Nevertheless, the representative of DOJ, when questioned at oral argument, stated that he believed that PEPCO might nonetheless be harmed, depending on the nature of the agreement. As explained below, we find that, even absent the settlement, the

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[185] The record does not reveal where the rest of the coal burned at Gibson comes from or what carrier transports it. We note that PSI obtained authority to construct a connection to CSX in 1992 in *PSI Railroad, Inc. — Construction Exemption — Gibson County, IN*, Finance Docket No. 32010 (ICC served February 24, 1992), although the record does not indicate that the line has ever been constructed.

[186] PSI is a subsidiary of Cinergy Corporation, a utility serving customers in Indiana, Ohio, and Kentucky. Neither PSI, Cinergy, nor Cyprus-Amax is a party to this proceeding.

competitive harm here would have been quite limited, and that, in light of the settlement, no additional remedy is required.

PEPCO owns and operates four coal-fired electricity generating facilities: Chalk Point, Morgantown, Dickerson, and Potomac River.[187] Conrail currently provides exclusive destination service to both Chalk Point and Morgantown, as does CSX to Dickerson, and NS to Potomac River.[188] The transaction involves the transfer of the Conrail line serving PEPCO's two largest coal-fired plants, Chalk Point and Morgantown, to CSX, making CSX the sole rail carrier serving PEPCO's three most efficient, coal-fired plants.

DOJ argues that PEPCO can sometimes substitute power between Morgantown and Dickerson, a competitive constraint that would allegedly be lost with this transaction. DOJ contends that we should therefore require NS rather than CSX to acquire the entire Conrail line serving Morgantown and Chalk Point or give NS trackage rights over CSX to serve those plants.

PEPCO is a member of the Pennsylvania-New Jersey-Maryland (PJM) power pool, which dispatches the power of all of the member utilities' generating facilities as a single system. Thus, in meeting its own energy demands, PEPCO does not itself determine which plants within its own system will be used, or their degree of use. Rather, PJM dispatches power based on the relative operating costs of each generating facility.[189] According to PEPCO, during certain "shoulder" periods, such as late night hours in the Spring and Fall, when both PEPCO and the PJM system have excess capacity,[190] Dickerson, Chalk Point and Morgantown, and thus CSX and Conrail, compete, and this benefit for PEPCO will be curtailed due to the transaction.

As applicants point out, each PEPCO plant will continue to be served by a single rail carrier, and PEPCO has asserted (in rate litigation that had been pending at this agency but was subsumed within the recent settlement with applicants) that its plants are largely independent of each other from the standpoint of rail ratemaking. Applicants contend that DOJ has given

[187] PEPCO has several other non-coal generating plants as well.

[188] Morgantown and Dickerson are relatively efficient, baseload plants, normally operating at a high percentage of their available generation capacity.

[189] PEPCO often meets its energy needs with power generated by other non-PEPCO PJM plants, even when its own generating facilities are operating below full capacity. Conversely, PEPCO is called upon to supply power for the PJM market when its plants can provide the power at the lowest incremental cost.

[190] During periods of low demand, all PJM plants can supply power to one another, and the railroads supplying coal to all of these stations compete, a situation that will continue after the transaction. During peak demand, surplus economical power will generally be unavailable and only very limited plant shifting is possible before or after the transaction.

unwarranted weight to the competitive importance of shifting among only PEPCO's plants here, and they note correctly that the transaction will actually increase overall rail competition to the PJM power pool because certain plants now served by Conrail will be served by both CSX and NS. Applicants note correctly that PEPCO has admitted that all three of these plants are relatively insensitive to changes in rail rates or delivered fuel costs.[191]

We agree with DOJ that a utility company with several generating plants may gain competitive leverage during shoulder periods by shifting power production among plants. Here, however, decisions about which plants to emphasize are made by PJM, not PEPCO, and the three efficient coal-fired PEPCO plants are not the only PJM plants competing for load during "shoulder" periods.[192] We carefully examined this issue in conjunction with the recently settled Dickerson rate complaint, and we conclude that even during the shoulder demand periods, significant rail rate increases will have only a limited impact on the degree of coal use at a particular PEPCO plant.[193]

We conclude that the remedies proposed by DOJ are unnecessary in light of the confidential settlement agreement that PEPCO has reached, which apparently satisfies its concerns. We are extremely reluctant to second guess PEPCO's assessment of its own best interests. Moreover, the remedies DOJ seeks are out of proportion to any limited harm that would have resulted to PEPCO from the transaction even without the settlement agreement.

PPG Industries. PPG has asked for a second railroad to be able to serve its facility at Natrium, WV, which is now served exclusively by CSX. PPG has made vague, general allegations about its loss of geographic competition through this transaction, but it has not explained how this could be so. PPG has not demonstrated that it will be harmed by the transaction, and we will deny the relief sought. Further, as discussed in the section entitled Wheeling & Lake Erie Railway Company, PPG would benefit from any mutually beneficial arrangements agreed to by W&LE and CSX that would permit W&LE to serve

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[191] PEPC-4 at 3. Even during so-called "shoulder" periods, these plants "still operate at a significant percentage of capacity due to various operational factors." *Id*. Moreover, to the extent that PEPCO's claim of harm is limited to "shoulder" periods, DOJ observes that in periods of low demand the relevant geographic market may be the entire electrical interconnection network, not the plants of a single utility. DOJ-1, V.S. Woodward at 12.

[192] As PEPCO notes, certain of these plants now served by Conrail will be served by both CSX and NS. PEPC-8 at 18.

[193] CSX's recent 20% rail increase to Dickerson apparently has not caused a significant reduction in coal transported to Dickerson or an increase in coal transported to Morgantown or Chalk Point. As DOJ acknowledges, plant shifting is less important where demand has been shown to be inelastic. DOJ-1, V.S. Woodward at 23, n.53.

shippers, such as PPG, with facilities located along CSX's line from Benwood to Brooklyn Junction, WV.

Resources Warehousing & Consolidation Services (RWCS). RWCS is a freight forwarder that operates out of warehouse and terminal facilities located in North Bergen, NJ, that are, and will continue to be, exclusively served by the New York Susquehanna & Western Railroad (NYS&W), owned by the Delaware Otsego Corporation. In response to RWCS' request that it be afforded equal access to CSX and NS, applicants have stated that RWCS "will be able to connect to NS via Passaic Junction off the Southern Tier on the Conrail lines to be allocated to NS; and to CSX via a connection to be built from North Bergen to Little Ferry."[194] CSX/NS-176 at 168. On brief, RWCS indicates that, while it accepts applicants' statement that it will be provided the dual access it seeks, it is nonetheless concerned that CSX and NS "have in fact purchased NYS&W and are the co-owners."[195] RWCS-4 at 4. RCWS requests that we impose a condition to ensure that the North Bergen-Little Ferry connection is built and that applicants take no steps to restrict its opportunity for access to each of their systems. We will require applicants to hold to the representations they have made to RWCS.

Shell Oil Company and Shell Chemical Company (Shell). Shell is concerned that the transaction will lead to a deterioration in rail service, acceleration of rate increases, and a continued decrease in rail competition. To satisfy its concerns in these areas, Shell asks that applicants be required to establish baseline safety and service measurements for each operating territory, that we should change the manner in which we regulate rates to lessen the impact of future rate increases, and that an open reciprocal switching system such as the Canadian interswitching system be implemented. As previously discussed, we believe that the NITL agreement, with the existence of the Conrail Transaction Council, appropriately addresses Shell's operational concerns. Moreover, we are adopting a 5-year oversight period in this proceeding, the same as sought by Shell. We will not adopt Shell's other conditions for the reasons expressed herein. See the following discussion regarding Westlake.

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[194] The North Bergen-Little Ferry connection referenced by applicants appears to be the connection proposed in STB Finance Docket No. 33388 (Sub-No. 8), which we have authorized elsewhere in this decision.

[195] Applicants assert that "[e]ven after the management buyout of Delaware Otsego Corporation, CSX and NS will not have [a] controlling interest in either Delaware Otsego Corporation or NYS&W." CSX/NS-176 at 567.

Transportation Intermediaries Association (*TIA*). TIA's Intermodal Conference, representing intermodal marketing companies, has experienced certain negative effects from the ongoing rail service problems in the Western United States, and is concerned that this transaction may result in additional adverse competitive consequences with respect to the rail intermodal services used by its members. TIA is specifically concerned that the transaction may lead to a reduction in existing rail intermodal service lanes and terminals, increases in contract volume requirements, changes in rail contract credit terms, rate increases, and shortages of containers and trailers, and that its members may become liable for liquidated damages from resulting contractual volume shortfalls.

As we have explained elsewhere, this transaction will significantly expand rail intermodal service offerings in the Eastern United States, and enhance the already substantial level of rail/truck competition for this important transportation service. We have projected that applicants will divert over one million truck movements from the nation's highways. We see no need to impose the conditions TIA has requested, but we will be monitoring the service provided post-acquisition as part of our 5-year oversight.

Westlake Group of Companies. (*Westlake*) Westlake, a petrochemical and plastics manufacturer, asks that we ensure that an economically viable rail transportation system will be sustained after the transaction. It asks for us to impose a condition protecting shippers from merger-related rate increases and giving shippers the right to choose interchange points for their shipments across the post-transaction Conrail property. It also asks that applicants be required to reimburse them for any substantiated service deficiency claims for a period of up to 5 years after the transaction.

We see no basis here for imposing these intrusive solutions given Westlake's failure to show any particular harm to it from the transaction. Under the statute, carriers have the initiative in determining which routes they will maintain for through service with other carriers. There are appropriate remedies for shippers under the statute and our regulations if carriers for some reason refuse to make available efficient routings or charge unreasonable rates. Further, if service problems do arise after approval and consummation of the transaction, our monitoring and oversight conditions should provide an appropriate mechanism for identifying and resolving them.

LABOR IMPACTS. Our public interest analysis includes consideration of the interests of carrier employees affected by the proposed transaction. 49 U.S.C. 11324(b)(4); *Norfolk & Western v. ATDA*, 499 U.S. 117, 120 (1991). Applicants, acknowledging that the transaction will have certain adverse consequences for employees, project (based on calendar year 1996 data, the last full year for which average monthly employment levels were available) a net loss of 2,670 jobs, or 3.6% of the combined workforce. In addition, 2,323 jobs will be transferred. Two major unions, the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE), representing about 43% of the contract employees of the affected railroads, have entered settlement agreements with applicants, and support the transaction.[196]

As DOT and Transportation-Communications International Union (TCU) note, the majority of job losses will be from the ranks of non-operating crafts: clerical employees (843), carmen (338), and maintenance-of-way employees (405). It is unfortunate that these job losses may occur. The public interest analysis, however, requires this Board to weigh the impact upon carrier employees against the other public benefits that should result from the transaction. Having done so, we conclude that on balance the impact on these employees does not require this Board to deny approval of the transaction. This is particularly clear when our mitigation of these impacts with the labor protective conditions we are imposing is taken into account.

Specifically, the basic framework for mitigating the labor impacts of rail consolidations is embodied in the *New York Dock* conditions, and other very similar conditions imposed with regards to various other aspects of the transaction.[197] They provide both substantive benefits for affected employees (up to 6 years of full wages, moving allowances, preferential hiring, and other benefits) and procedures (negotiation, or, if necessary, arbitration) for resolving disputes regarding implementation of particular transactions. *New York Dock*, 360 I.C.C. at 84-90. We may tailor employee protective conditions to the special circumstances of a particular case. This is done, however, only if it has been shown that unusual circumstances require more stringent protection than the level mandated in our usual conditions.

1. *The Implementing Agreement Process*. A number of parties have raised questions about the *New York Dock* implementing agreement process. Under *New York Dock*, the carriers and employees must arrive at an implementing

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[196] UTU states that this support is contingent upon applicants' agreement, among other things, automatically to certify certain employees as affected by the transaction, and to use best efforts to reach implementing agreements before the voting conference of June 8, 1998. UTU asks that their agreement with applicants be made a condition to our approval, which we have done. We expect applicants to adhere to their agreements. The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB) and National Council of Firemen and Oilers have also entered into settlement agreements with applicants. Various Chairmen of the United Railway Supervisors Association have also settled.

[197] *See* our discussion in footnote 34.

agreement before a transaction such as this is carried out. If prompt agreement cannot be reached, these matters are subject to binding arbitration. As part of this process, collective bargaining agreement (CBA) terms may be modified as necessary to carry out a transaction in the public interest. *Norfolk & W. Ry. v. American Train Dispatchers Ass'n*, 499 U.S. 117 (1991).

DOT and several unions urge that our approval of this transaction not be deemed to be approval of all CBA modifications that are mentioned by applicants in their application and operating plans. These parties are concerned that, because numerous details of applicants' plans to restructure their CBAs with the various unions are included in the application, approval of the application will be deemed by arbitrators to amount to a finding that restructuring the CBAs as proposed is "necessary" to carry out the transaction. DOT asks that we make a clear statement that these issues are not prejudged to "ensure that traditional rights under *New York Dock* will not be eroded." The Allied Rail Unions (ARU)[198] and TCU have gone further, suggesting that we make findings in this decision that the CBA changes described by applicants are *not* deemed by us to be necessary to carry out the transaction.

We adopt the approach suggested by DOT. In approving a rail merger or consolidation such as this, we have never made specific findings in the first instance regarding any CBA changes that might be necessary to carry out a transaction, and we will not do so here. Those details are best left to the process of negotiation and, if necessary, arbitration under the *New York Dock* procedures. For us to make determinations on those issues now would be premature. *Railway Labor Exec. Ass'n v. ICC*, 883 F.2d 1079 (D.C. Cir.

[198] ARU also seeks to revive numerous arguments about the supposed primacy of the Railway Labor Act (RLA) over the *New York Dock* process, the immutability of rates of pay, rules, and working conditions, and other related issues that have been consistently rejected by the ICC, the Board, and the courts. We see no reason to revisit those issues here. In this regard, the courts have made clear that, under what is now 49 U.S.C. 11321(a), agency approval of a rail merger confers self-executing immunity on all material terms of the transaction from all other laws to the extent necessary to permit implementation of the transaction. The United States Supreme Court has held that this immunity extends to the rail carrier's obligations under a collective bargaining agreement (CBA), and for decades, under the implementing agreement process, arbitrators have made modifications to CBA provisions as necessary to implement the approval of a particular transaction. One ARU member, the Brotherhood of Railway Signalmen, has tried to invoke the RLA bargaining process. The union was enjoined from seeking this relief, however, by the United States District Court for the Western District of Virginia in *Norfolk & Western Ry. et al. v. Brotherhood of Railroad Signalmen, et al.*, No. 97-740-R (1998).

1989).[199] We will resolve them only as a last resort, giving deference to the arbitrator. Specifically, this means that our approval of this transaction does not indicate approval or disapproval of any of the CBA overrides that applicants have argued are necessary to carry out the transaction; the arbitrators are free to make whatever findings and conclusions they deem appropriate with respect to CBA overrides under the law.

2. *Request To Impose Pre-Implementation Labor Protection.* ARU filed a petition for declaratory order requesting us to declare that the voting trust agreement used by applicants was a sham and that, as a consequence, CSX and NS were already in effective control of Conrail. *See,* ARU-6 filed July 18, 1997. To remedy the situation, ARU requested that we order divestiture of Conrail stock or impose pre-authorization labor protective benefits on the proposed transaction. ARU's petition will be denied. Applicants' voting trust agreement conforms to our regulations as well as long-standing Board and ICC precedent recognizing that beneficial ownership can be separated from control by an appropriate voting trust instrument. *See, Water Transp. Ass'n. — Petition for Declaratory Order — American Commercial Lines Voting Trust,* 367 I.C.C. 559, 567-58 (1983), *aff'd sub nom. Water Transp. Ass'n v. Interstate Commerce Commission,* 715 F.2d 581 (D.C. Cir. 1983). In any event, it is unnecessary to impose labor protection prior to our approval of the transaction to protect employees from actions taken in anticipation of our approval because it is well settled that the labor protection that we impose extends to such matters.

3. *Retiree Issues.* Nine Conrail retirees have sought protection of their rights under the Conrail Supplemental Pension Plan, a matter that appears to be governed by contract, and to have little connection to our approval of this transaction. To the extent that this plan could ultimately be touched upon by implementing agreements relating to this transaction, we note that vested pension benefits have been determined by the ICC, with court approval, to be included among the "rights, privileges and benefits" protected by section I(2) of our conditions from modification under section I(4). *United Transportation Union v. STB,* 108 F.3d 1425 (D.C. Cir. 1997).

4. *Requests To Expand New York Dock.* TCU has argued that we should expand the *New York Dock* protections to provide "attrition protection" and that we should waive the basic requirement under *New York Dock* that employees

[199] The NITL agreement provides that NS and CSX will implement the transaction as soon after the control date as possible, but only after obtaining the necessary labor implementing agreements. NITL has requested that we authorize applicants to initiate the implementing agreement process immediately after the voting conference. That process can be started at any time, but the *New York Dock* timetable for compulsory arbitration can only be triggered by this final decision.

must accept assignment at a new location that requires them to move their residence, or else forfeit their entitlement to protection allowances. DOT supports the latter request on the ground that this transaction, because of its extremely broad scope, requires certain employees to move unusually long distances.

TCU argues that attrition protection is justified by the fact that Conrail TCU employees have made sacrifices to build a strong and profitable Conrail. The Board understands and appreciates the sacrifices that rail labor has made throughout the period of downsizing and restructuring in the rail industry, and *New York Dock* was developed to compensate employees for those sacrifices. The ICC stated in *Railroad Consolidation Procedures*, 363 I.C.C. at 793, that, unless it can be shown that, because of unusual circumstances more stringent protection is necessary, it would provide the protections mandated by section 11347 (now section 11326). The ICC and the Board have consistently rejected requests to impose attrition conditions in prior merger cases.[200] Here, we will follow the precedent already established.

TCU and DOT have not demonstrated that the basic protections of *New York Dock* should be altered so that an employee does not have to accept a job that requires him or her to move, or else forfeit the monetary payments. A basic part of the bargain embodied in the Washington Job Protection Agreement upon which the *New York Dock* conditions are based is that rail carriers are permitted to move employees around in order to achieve the benefits of a merger transaction in return for up to 6 years of income protection and various other benefits, such as retraining and moving allowances. Such displacements do result in hardships for employees whenever they are required to move their place of residence, whether the move is a relatively short one or a longer one. In either case, however, *New York Dock* compensates the employee for the cost of the move and provides for up to 6 years of income protection. Labor's proposal would alter the *New York Dock* conditions to provide that monetary allowances are paid to employees who are offered continued employment, but refuse to take advantage of it, a result not envisioned under the *New York Dock* conditions.

Issues relating to attrition protection and separation allowances should be negotiated in the implementing agreement process. TCU cited negotiations implementing the *BNSF* and *UP/SP* mergers, which resulted in separation

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[200] *See, e.g., UP/CNW*, at 94-96; *DRGW/SP*, 4 I.C.C.2d at 951-58; *UP/MKT*, 4 I.C.C.2d at 511-14; *UP/MP/WP*, 366 I.C.C. at 618-22; *NS Control*, 366 I.C.C. at 229-31; and *CSX Control*, 363 I.C.C. at 588-92.

allowances being provided to its members. We believe that those issues should again be resolved as part of the implementation negotiation process.

We wish to clarify, however, that under *New York Dock*, once an employee has been dismissed, that employee may not be required to report to a work station that requires that employee to move his or her place of residence or else suffer the loss of dismissal payments. Applicants may not accomplish that result by a transfer of seniority rosters for clerical workers to Jacksonville or other points that would require dismissed employees, upon recall, to move their place of residence or forfeit their dismissal payments.

5. *Protection For Nonapplicant Employees*. UTU has asked us to extend labor protection by applicants to the employees of a nonapplicant carrier, the Delaware and Hudson Railway Company (D&H), because NS will be operating over a former Conrail line as to which D&H has trackage rights. There is nothing unusual about this situation, as lines over which other railroads have trackage rights have frequently been transferred in ICC and STB merger proceedings. Moreover, there is no reason to believe that D&H employees will have less work where NS is the owner than they did where Conrail was the owner. At oral argument, Mr. Nasca for the New York UTU argued that we should impose labor protection for D&H employees on CSX and NS because the D&H interchanges with CSX and NS. That is not an unusual situation or one warranting labor protection either.

In numerous decisions, the ICC, the Board, and the courts have consistently ruled that the employees of a nonapplicant carrier, or a carrier not directly involved in a transaction governed by 49 U.S.C. 11323, are not entitled to labor protection under 49 U.S.C. 11326.[201] In sum, no valid reason has been presented to depart from that consistent practice here.

6. *Safety*. ARU and the International Association of Machinists and Aerospace Workers (IAM) argue that the transaction should be denied because it cannot be implemented safely. These unions claim that the operating plans submitted by applicants cannot be carried out safely with the number of employees that the carriers plan to retain. As noted in greater detail in the environmental portion of this decision and as detailed in the Final Environmental Impact Statement (Final EIS) issued on May 22, 1998, the carriers have worked closely with Federal Railroad Administration (FRA), the

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[201] *Crounse*, 781 F.2d at 1192-93; *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 410-12 (5th Cir. 1980), *cert. denied*, 451 U.S. 1017 (1981); *Lamoille Valley R. Co. v. ICC*, 711 F.2d 295, 323-24 (D.C. Cir. 1983); *Southern Pacific Transp. Co. v. ICC*, 736 F.2d 708, 725 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985); and *Railway Labor Executives' Ass'n v. ICC*, 914 F.2d 276, 280-81 (D.C. Cir. 1990).

agency responsible for enforcement of rail safety regulations, to prepare and submit detailed Safety Integration Plans (SIPs) that have been scrutinized by both FRA and by our Section of Environmental Analysis (SEA). DOT notes: "Applicants have addressed all of the safety concerns identified by FRA." DOT-6 at 14. DOT also states that "in our view safety is no longer an issue with which the Board need be concerned." DOT-6 at 12. SEA reached precisely the same conclusion in its extremely thorough DEIS. Finally, the Board, and FRA, with DOT's concurrence, have recently entered a Memorandum of Understanding for monitoring the safe implementation of this transaction. In light of the success of this cooperative effort between applicants and FRA, we must reject rail labor's safety arguments.

7. *Labor-Management Task Forces*. UTU has suggested that labor and applicants form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues. We will direct applicants to go forward with this process.

DETAILS OF PUBLIC BENEFITS. The most important public benefit resulting from the transaction will be a substantial increase in competition by allowing both CSX and NS to serve where only Conrail served before. This will bring new competition to shippers in such markets as Southern New Jersey/ Philadelphia, Northern New Jersey, Detroit, Ashtabula, and the Monongahela coalfields. Applicants estimate that $700 million worth of traffic per year will receive new two-carrier competition. In addition, the expansion of the NS and CSX systems will enable them to provide more competitive single-line service over more direct routes, to render improved service, and to use equipment more efficiently.

These features of the transaction will improve operating efficiency, reduce transit times and terminal delays, and provide logistics savings associated with single-line service that will make these companies more competitive with trucking and should, within 4 years of the transaction, shift over $400 million worth of traffic each year from highways to rail lines. Using 1995 data, applicants have demonstrated that they should be able to achieve quantifiable public benefits, including operating cost savings, logistics savings, avoided highway maintenance costs, and other public benefits, of approximately $1 billion annually within that same period.

Other benefits include favorable safety and environmental consequences, and the improvement in the rail system in the Eastern United States that will result from the substantial additional investment that NS and CSX will make to take advantage of opportunities available on their newly restructured systems. These transportation benefits will also assist in creating new economic development opportunities and in helping industries served by the new systems to be more competitive in the global marketplace.

Quantifiable Public Benefits. As noted, applicants project that the acquisition of Conrail will yield almost $1 billion in quantifiable public benefits during a normal year.[202] These include $562.6 million in operating efficiencies and cost savings, $340.1 million in shipper logistics savings and competitive pricing benefits, and $95.5 million in highway maintenance benefits resulting from fewer trucks being operated over public highways.

These benefits do not include an additional $445.4 million in private benefits in terms of anticipated revenue gains ($299.5 million for NS and $145.9 million for CSX) from increased traffic volume, but not from any projected rate increases. Revenue gains, while a benefit to the carriers, are not deemed to be a quantifiable public interest benefit.[203] They do undercut, however, arguments raised by various parties that applicants will have to raise their rates to pay the acquisition price for the Conrail properties, as discussed earlier in this decision. These anticipated revenue gains have not been challenged.

Various parties, including several shortline railroads, shippers, and municipalities, have questioned the public benefits to be realized as a result of the acquisition. While none of these parties has presented alternative calculations or any detailed analysis, several note that the recent *UP/SP* merger has resulted in severe difficulties with the movement of traffic in the West, and this has resulted in significant hardship for many shippers, with few or no benefits yet being realized as a result of that merger. Applicants here have properly recognized that benefits are not all realized at once and have, in our opinion, developed realistic projections showing that for the first 2 years following the acquisition, there will be significantly fewer benefits (or even temporary losses) resulting from that acquisition. The long-range (*i.e.*, normal year) figures, however, show that, after the initial shake-out costs occur, the acquisition should produce substantial yearly public benefits.

Moreover, serious infrastructure deficiencies were a significant factor related to the problems in the West. UPRR took over an SP system with well known and serious problems of deferred maintenance and delayed capital improvements. Both UPRR and SP had experienced tremendous traffic growth over the last 10 years that was straining existing capacity. In contrast, as

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[202] "Normal year" means a year of operations after the third full year following the completion of the acquisition.

[203] The shift in traffic from highways to rail that generate these revenue gains do lead directly to positive, though unquantifiable, safety and environmental gains, in addition to reducing public highway maintenance costs by $95.5 million.

applicants note, they will be taking over a Conrail system that is in much better condition than was SP. The Conrail system also has a greater percentage of double track than does any railroad in the country. None of the carriers in the East has experienced the remarkable traffic growth that took place in the West. As discussed elsewhere in this decision, applicants have, with the assistance of FRA, prepared and submitted detailed operating plans that demonstrate that they should be able to operate without the safety and other problems recently experienced by UPRR.

Applicants have already completed or are in the process of completing, numerous construction projects necessary to allow traffic to flow freely over their newly structured systems. This construction, together with applicants' firm commitment not to attempt to implement this transaction before they have in place appropriate labor agreements and information technology necessary to provide efficient and reliable service, should ensure that the *UP/SP* situation is not repeated. Additionally, operational monitoring to be conducted by the Conrail Transaction Council and by the Board will help ensure a smooth transition.

Our findings concerning quantifiable benefits in a normal year and in the 3 years immediately following the transaction are summarized in the following tables:

STB's Restatement of
Applicants' Projected Annual Efficiencies
and Cost Savings for Years 1-3
(in $ millions)

	NS	CSX	Total
		Year 1	
Operating Benefits to Carriers	($105.7)	($264.0)	($369.7)
Shipper Logistics Benefits	27.6	166.0	$193.6
Competitive Pricing Benefits	24.6	0.0	$24.6
Highway Maintenance Benefits	13.7	50.0	$63.7
Total Benefits	($39.8)	($48.0)	($87.8)
		Year 2	
Operating Benefits to Carriers	($11.5)	$106.7	$95.2
Shipper Logistics Benefits	73.7	166.0	$239.7
Competitive Pricing Benefits	65.6	0.0	$65.6
Highway Maintenance Benefits	36.4	50.0	$86.4
Total Benefits	$164.2	$322.7	$486.9
		Year 3	
Operating Benefits to Carriers	$208.0	$283.1	$491.1
Shipper Logistics Benefits	92.1	166.0	$258.1
Competitive Pricing Benefits	82.0	0.0	$82.0
Highway Maintenance Benefits	45.5	50.0	$95.5
Total Benefits	$427.6	$499.1	$926.7

STB's Restatement of
Applicants' Projected Annual Efficiencies
and Cost Savings (Normal Year)
(in $ millions)

	NS	CSX	Total
BENEFITS TO CARRIERS			
Operating Savings	252.1	289.9	542.0
Capital Expenditure Savings	20.6	0.0	20.6
Subtotal (Benefits to Carriers)	272.7	289.9	562.6
OTHER BENEFITS			
Shipper Logistics Benefits	92.1	166.0	258.1
Competitive Pricing Benefits	82.0	0.0	82.0
Highway Maintenance Benefits	45.5	50.0	95.5
Subtotal (Other benefits)	219.6	216.0	435.6
TOTAL PUBLIC BENEFITS	$492.3	$505.9	$998.2

Unquantifiable Benefits. The transaction will create competitive railroad options at many locations currently served only by Conrail. New rail-to-rail competition will benefit shippers in the South Jersey/Philadelphia, North Jersey, and Detroit SAAs, at the Ashtabula docks in Ohio, and in the Monongahela coal fields in Southwestern Pennsylvania and Northern West Virginia. Applicants have estimated that more than $700 million in annual freight movements that are now rail-served solely by Conrail at origin or destination will now have two independent and competitive alternatives.

The transaction will also increase competition between railroads and other modes due to the expansion of single-line service throughout the new NS and CSX systems. CSX's traffic studies project annual truck-to-rail diversions that will eliminate 438,000 truck trips per year, and NS has predicted that its expanded operations will remove an additional 589,000 truck trips. Together, applicants estimate that they will divert sufficient truck traffic to remove a million line-haul truck trips per year from our nation's highways.

The operating efficiency gains and diversion of traffic from highways to rail lines will yield substantial environmental benefits, as recognized in the Final EIS. Trucks on average require at least three times the amount of fuel as trains to move the same amount of freight the same distance. Therefore, the diversion of traffic from the highways will reduce diesel fuel consumption by 80 million gallons per year. This will materially improve air quality.

The transaction should also yield safety benefits. Among all Class I railroads, NS and CSX had the lowest accident rates for the period 1994-1996. Although FRA noted some problems with the corporate safety culture of CSX in a report issued in October of 1997, our record shows that the problems mentioned in that report have now been resolved. In response to the concerns of FRA and others, we issued a decision in November of 1997 requiring each applicant to provide us with a detailed Safety Implementation Plan (SIP). Those SIPs were prepared in conjunction with FRA, which now has approved these plans, and the safety programs for each applicant that they include. The SIPs were submitted to us in December of 1997, and have been examined by SEA in the Final EIS, as explained in detail later in the decision. We agree with SEA's and FRA's assessment that the SIPs adequately address safety issues.

Achieving the lower accident rates of NS and CSX on the new lines would significantly reduce future rail accidents. Moreover, the diversion of traffic from motor carriers to railroads will reduce highway accidents and related personal injuries and loss of lives. Because trucks have more hazardous materials incidents per ton-mile of freight moved than do railroads, the diversion of hazardous materials from truck to rail will make the handling of these materials safer. Applicants' commitment to safety is reflected in their good safety records and in the SIPs they developed in close consultation with FRA.

The competitive benefits, operating efficiency gains, and environmental and safety benefits will be achieved with no significant adverse competitive effects. The existing NS and CSX systems connect largely end-to-end with the portions of Conrail that each acquiring applicant will operate. In those few areas where shippers' rail options would have declined from two to one, applicants' transaction agreement largely preserves two-carrier service, through trackage rights or other arrangements, and we have imposed additional conditions that appropriately address all remaining competitive issues. The benefits will also be achieved with minimal line abandonments, totaling only about 58 miles. These are lines with little or no local traffic and where overhead traffic can be routed more efficiently over other lines.

These substantial public benefits from the transaction are largely undisputed. While a number of parties have claimed that the transaction will have various adverse effects on them, none has seriously challenged applicants' projections of public benefits or has raised significant questions about the overall competitive, environmental, and safety benefits to be derived from the transaction.

DETAILS OF FINANCIAL MATTERS. The evidence demonstrates that, after acquiring the Conrail properties, NS and CSX will remain financially sound, that NS' and CSX's assumption of the payment of Conrail's fixed charges will be consistent with the public interest, that the terms of the acquisition agreements and transactions are just and reasonable, and that the assumption by CSX and NS of the liabilities of Conrail will neither impair the acquiring carriers' ability to maintain viable plant investments and to provide service, nor force them to raise rates to captive shippers to finance the acquisition.

Financial Condition. We believe that, despite expenditures of approximately $4.2 billion and $5.8 billion, by CSX and NS, respectively, for Conrail's stock,[204] the financial condition of each of the acquiring companies should be favorable because considerable gains in earnings should result from increased revenues and cost savings attributable to implementation of the post-acquisition operating plans submitted by CSX and NS.

Applicants submitted pro forma financial statements showing consolidated data for both CSX and NS after acquisition of Conrail, for a base year using 1995 data and for each of the first 3 years after completion of the acquisition. These statements reflect the anticipated benefits that will be achieved by each party from the acquisition and operation of Conrail's assets and the resulting changes in various revenue and expense accounts. Applicants also submitted financial statements for a "normal" year (a year after the third post-acquisition year) depicting the total benefits to be achieved from the acquisition and any normalized additional debt and interest expenses that will be incurred.

1. *Financial Condition Of CSX.* CSX expects the acquisition to produce annual benefits in a normal year, giving effect to full implementation of its operating plan, of $435.8 million, consisting of $289.9 million in operating

[204] The agreement calls for equity ownership of Conrail to be split between CSX and NS on a 42%/58% basis. CSX has spent or will spend approximately $4.2 billion, and NS has spent or will spend approximately $5.8 billion to acquire the shares of Conrail. All shares have or will be purchased for cash, with no exchange of stock. The total consideration to be paid for Conrail will be the sum total of the stock purchase price and the liabilities to be assumed by CSX and NS upon acquisition of control of Conrail's lines. According to the Form 10-K's filed with the Securities and Exchange Commission (SEC) by CSX and NS for the third quarter, 1997, Conrail had approximately $1.23 billion in current liabilities and $4.33 billion in long-term liabilities as of September 30, 1997. The actual amount of Conrail liabilities that will ultimately be assumed by CSX and NS cannot be determined until the closing date.

efficiencies and cost savings and $145.9 million in operating revenue gains.[205] Net revenue gains to CSX are expected to total $58.1 million in the first year of the acquisition, growing to $108.4 million in the second year, and reaching $145.9 million in the third year. After adjusting for various expenses incurred during the first 3 years that are associated with the acquisition, we have computed annual operating benefits (from revenue gains and operating efficiencies) for each of these years.[206] Almost all (over 98%) of the anticipated normalized annual operating benefits of $435.8 million are expected to be realized by the end of the third year following the acquisition.

Table 1 in Appendix P shows various financial data for CSX on a post-acquisition basis. These data include balance sheet and income statement figures from CSX's pro forma financial statements and selected financial ratios developed from these data. These data incorporate the base year (1995 data), each of the first 3 years after the acquisition, and a normal year. We have reached the following conclusions based on an analysis of these data.

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[205] Additional public benefits are forecast by CSX as a result of shipper logistics benefits ($166 million) and highway maintenance benefits ($50 million). These benefits, however, do not flow back to CSX.

[206] These net figures consider various benefits and costs associated with the acquisition, set forth as follows:

Benefit Computations - CSX/Conrail
($ in Millions)

Category	Year 1	Year 2	Year 3	Normal Year
Net Revenue Gains	$58.1	$108.4	$145.9	$145.9
Positive Operating Benefits	121.4	209.2	283.4	289.9
Acquisition-Related Operating Costs	(366.2)	(164.7)	(71.3)	0.0
Non-Recurring Expenditures Avoided, Less Employee Separation and Relocation Expenses	(19.2)	62.2	71.0	0.0
Total Benefits to CSX	($205.9)	$215.1	$429.0	$435.8
Percent of Normal Year	0.0%	49.4%	98.4%	100.0%

The consolidated pro forma income before fixed charges exceed fixed charges (interest payments for long-term debt) by margins that gradually rise from a low of 2.9 times during the first year after the acquisition to 3.4 times during the third year. The fixed charge coverage for the base year was 5.2 times, and for the normal year is projected to be 3.7 times. Thus, it would appear that CSX, on a post-acquisition basis, will generate sufficient income to cover payment of fixed charges, including interest associated with all debt issued to purchase Conrail stock plus debt assumed in the transfer of Conrail's assets.

The pro forma cash throw-off-to-debt ratios, which measure the ability to generate sufficient cash flows from operations to repay long-term debt maturing during the year, are favorable. During the base year, cash flow from operations exceeded maturing long-term debt by 3.4 times. The pro forma ratios show a steady improvement from 3.3 times during the first year to 3.6 times by the third year (and 3.7 for the normal year).

The operating ratio (the ratio of operating expenses to operating revenues) for the consolidated company is projected to improve (favorably decline) each year, moving from 85.5% during the base year to 83.7% for the third year and 83.5% for the normal year. This signifies a steady, gradual improvement in operating efficiency as a result of the acquisition.

CSX's net income is projected to increase from $753 million during the first year to $961 million for the normal year. Because a large portion of this net income is being placed in retained earnings, shareholders' equity is projected to increase by a higher percentage than is net income. This results in a decline in return on equity, despite the increase in net income, from 15.4% for the first year to 13.7% for the normal year. The increase in net income, coupled with the increase in equity and repayment of long-term debt, results in the ratio of long-term debt to debt plus shareholders' equity being projected to improve from almost 60% in the first year to less than 46% by the normal year.

The pro forma data indicate that CSX, after acquisition of 42% of Conrail, will possess considerable financial strength. Furthermore, these results may be understated because they do not take into account other economic forces unrelated to the merger such as growth in the overall economy, which would have a positive impact. We conclude that the surviving company will be financially sound.

2. *Financial Condition Of Norfolk Southern.* NS expects the acquisition to produce annual benefits in a normal year, giving effect to full implementation of its operating plan, of $572.19 million, consisting of $272.67 million in operating efficiencies and cost savings and $299.52 million in operating revenue

gains.[207] These amounts are higher than those projected for CSX, due largely to the fact that NS will operate approximately 58% of Conrail, while CSX will operate 42%. Net revenue gains to NS are expected to total $43.44 million in the first year of the acquisition, rising sharply to $226.41 million in the second year, and reaching $299.6 million in the third year. After adjusting for various expenses incurred during the first 3 years that are associated with the acquisition, we have computed annual operating benefits (from revenue gains and operating efficiencies) for each of these years.[208]

Table 2 in Appendix P shows various financial data for NS on a post-acquisition basis. These data include balance sheet and income statement figures from NS' pro forma financial statements and selected financial ratios developed from these data. These data incorporate the base year (1995 data), each of the first 3 years after the acquisition, and a normal year. We have reached the following conclusions based on an analysis of these data.

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[207] Additional public benefits are forecast by NS as a result of shipper logistics benefits ($92.1 million), competitive pricing benefits ($82.0 million), and highway maintenance benefits ($45.5 million). These benefits, however, do not flow back to NS.

[208] These net figures consider various benefits and costs associated with the acquisition, set forth as follows:

Benefit Computations - NS/Conrail ($ in Millions)

Category	Year 1	Year 2	Year 3	Normal Year
Net Revenue Gains	$43.4	$226.4	$299.6	$299.5
Positive Operating Benefits	68.7	123.8	171.5	171.9
Acquisition-Related Operating (Costs) or Benefits	(220.3)	(208.1)	(42.3)	20.6
Labor Cost Savings, Less Labor Protection/Separation Expenses	45.9	72.8	78.8	80.2
Total Benefits to NS	($62.3)	$214.9	$507.6	$572.2
Percent of Normal Year	0.0%	37.6%	88.7%	100.0%

The consolidated pro forma income before fixed charges exceed fixed charges (interest payments for long-term debt) by margins that slowly rise from a low of 2.9 times during the first year after the acquisition to 3.8 times during the third year and 4.1 times for a normal year. The fixed charge coverage for the base year was 8.0 times (due to the fact that NS had very little debt prior to the acquisition). The pro forma fixed charge coverages are more than adequate. Again, as with CSX, it would appear that NS will generate sufficient income to cover payment of fixed charges, including interest associated with all debt issued to purchase Conrail stock and debt assumed in the transfer of Conrail's assets.

The pro forma cash throw-off-to-debt ratios, which measure the ability to generate sufficient cash flows from operations to repay long-term debt maturing during the year, are extremely favorable. During the base year, cash flow from operations exceeded maturing long-term debt by 8.9 times. The pro forma ratios show a steady improvement from 8.3 times during the first year to 9.6 times by the third year (and 9.7 for the normal year).

The operating ratio for the consolidated company is projected to improve (favorably decline) each year, moving from 77.5% during the base year to 73.6% for the third year, as well as for the normal year. This signifies a steady, gradual improvement in operating efficiency as a result of the acquisition.

NS' net income is projected to increase from $746 million during the first year to $1,038 million for the normal year. As is true for CSX, because a large portion of this net income is expected to be retained and not paid out as dividends, shareholders' equity is projected to increase by a higher percentage than is net income. This results in slightly lower return on equity, despite the increase in net income, from 14.0% for the first year to 13.8% for the normal year. Again, as is true for CSX, NS' increase in net income, coupled with the increase in equity and repayment of long-term debt, results in the ratio of long-term debt to debt plus shareholders' equity being projected to improve from slightly over 61% in the first year to 48% by the normal year.

The pro forma data indicate that NS, after acquisition of 58% of Conrail, will possess considerable financial strength. Furthermore, these results may be understated because they do not take into account economic factors extraneous to the merger such as growth in the economy as a whole and other positive financial impacts. We conclude that the surviving company will be financially sound.

Fixed Charges. We are required to consider the total fixed charges resulting from the acquisition, 49 U.S.C. 11324(b)(3), as well as any assumption of payment of fixed charges and any increase in fixed charges, 49 U.S.C. 11324(c). There will be significant acquisition-related increases in fixed charges for both

NS and CSX due to the issuance of additional debt and the assumption of Conrail liabilities. As previously discussed, however, the evidence demonstrates that these increases will not undermine the financial soundness of either carrier. The financial soundness of the surviving entities supports a finding that the new fixed charges that will result, as well as CSX's and NS' assumption of Conrail's fixed charges, will be consistent with the public interest.

Fairness Determination. Section 11324(c) directs us to approve any transaction referred to in 49 U.S.C. 11323 when we find that the transaction is consistent with the public interest. In *Schwabacher v. United States*, 334 U.S. 182 (1948) (*Schwabacher*), the Supreme Court held that under its plenary authority to approve mergers, the ICC was required to determine the value of minority shares when shareholders are forced to surrender those shares in a merger. The court's decision in that case relied upon certain language in the statute requiring the ICC to ensure that various merger conditions are "just and reasonable." Although that particular language was removed from the statute in the 1978 recodification of the Interstate Commerce Act, the requirement of making a fairness determination, as interpreted in *Schwabacher*, remains. The recodification by its own clear statutory terms "may not be construed as making a substantive change in the laws replaced." Act of October 17, 1978, section 3(a), Pub. L. No. 95-473, 92 Stat 1337, 1446.

Applicants' financial advisors, Wasserstein Perella & Co., Inc. (for the CSX shareholders), Merrill Lynch and J.P. Morgan (for the NS shareholders), and Lazard Freres & Co. LLC and Morgan Stanley & Co. (for the Conrail shareholders) used various valuation techniques to demonstrate the fairness of the terms of the stock purchase to the respective shareholders. All these investment firms rendered opinions that the consideration paid by NS and CSX was fair to their shareholders and to those of Conrail from a financial point of view. We find the arguments and conclusions of these investment firms, who have substantial expertise in the valuation of businesses and securities in connection with mergers and acquisitions, to be persuasive. The cash consideration payable for Conrail stock has been approved by the respective boards of directors and substantial majorities of stockholders of all companies.

All factors considered, the unrebutted evidence submitted by applicants supports a finding that the terms of the acquisition agreement are just and reasonable to all shareholders of CSX, NS, and Conrail.

Trackage Rights Compensation Is Reasonable. Applicants have entered into trackage rights agreements providing CSX and NS the opportunity to operate over each other's track for through movements and to access certain shippers' facilities. These agreements provide that the tenant carrier (NS or CSX) will pay the landlord carrier (CSX or NS) trackage rights compensation of 29 cents per car-mile anywhere on their respective systems where trackage rights are proposed.

The only objection to applicants' proposal is by Indianapolis Power & Light Company (IP&L), which argues that a trackage rights fee of 16 cents per car-mile (based on its assessment of the relevant combined CSX/Conrail 1995 URCS costs) should be established for NS when it provides service to one of its plants.

We have examined the issue of trackage rights compensation as a general matter and as it relates specifically to IP&L, and find that the agreed upon level of compensation will allow the carriers receiving trackage rights to compete effectively, replacing competition that would otherwise be lost through this transaction, as contemplated by 49 U.S.C. 11324(c).

1. *IP&L's Computation Of Relevant Costs Is Invalid.* In *SSW Compensation*,[209] we determined that trackage rights fees should be based upon three component costs: (1) the variable costs to the landlord resulting from the tenant's use of the track;[210] (2) a portion of total annual maintenance costs for the relevant rail properties based on a pro-rata usage of those properties by the landlord and the tenant; and (3) a return element on the value of relevant rail properties used, again based on a pro-rata usage.

Applicants note, however, that IP&L's calculations do not take into account the *total* costs of line-haul trackage rights as required in *SSW Compensation*.[211] Using IP&L witness Crowley's method, with appropriate adjustments, and using combined CSX/Conrail 1995 URCS cost, applicants restated the total costs for trackage right compensation to be 32.45 cents per car-mile. IP&L failed to include any of the variable costs of operating trains over the trackage rights segment, and it included only the variable portions of both total annual track maintenance costs and return on road property investment.[212] In addition, IP&L failed to include all cost elements associated with the return on road property investment in its calculations.[213] As we have explained in detail before, the total cost associated with developing trackage rights fees, not just the variable cost

[209] *St. Louis Southwestern Railway Company — Trackage Rights Over Missouri Pacific Railroad Company — Kansas City To St. Louis*, 1 I.C.C.2d 776 (1985) (*SSW Compensation*).

[210] *See, SSW Compensation* at 791. Variable operating cost consists of, for example, switching and mechanical services.

[211] *See*, CSX/NS-177, V.S. Whitehurst at 34-38, and Exhibit WWW-9.

[212] Applicants note that Crowley never actually states that he is using only variable costs and that this was discovered by examining the URCS worktable locations used by Crowley and Crowley's deposition dated December 5, 1997 (Exhibit WWW-10, at 6).

[213] Crowley omitted URCS return on investment for roadway machines and work equipment.

portion, must be included to allow the owning railroad to recover its total cost for the line.[214] Otherwise, the owning carrier would be placed at a competitive disadvantage. Therefore, IP&L's proposal to limit the trackage rights fee to 16 cents per car-mile must be rejected as invalid.

2. *The Trackage Rights Fees Are Reasonable As A General Matter.* Applicants do not explain how they developed their agreed upon level of 29 cents per car-mile; they note only that the fee is based on existing trackage rights fees negotiated between NS and CSX. We obtained a similar result (of 29 cents) using the method employed by applicants in restating IP&L's 16 cent proposal and applying CSX's 1995 URCS total costs. Further, using the same method, we developed Conrail and NS costs of 46 cents and 40 cents per car-mile, respectively.[215]

The broadly applicable trackage rights fee of 29 cents is consistent with the relevant costs of CSX, the lowest costs of the three railroads at 29 cents per car-mile. This means that CSX would pay no more to NS for operating over its lines than it currently costs to operate over its own lines, while NS would actually pay less for operating over CSX lines than it costs to operate over its own. Therefore, neither carrier would have a disincentive to operate over the trackage rights granted by the other carrier, since in no case would the trackage rights compensation be higher than the cost of using the carrier's own track.[216] Thus, we find that the trackage rights compensation applicants have agreed to pay will permit each carrier to provide effective competition through trackage rights, replacing competition that would otherwise be lost.

EMBRACED CASES AND RELATED MATTERS. We are exempting or, where appropriate, granting approval for transactions proposed in 37 proceedings embraced in the application. These related filings include 10 notices of exemption and 12 petitions for exemption relating to construction projects; a notice of exemption for a joint relocation project; a petition for exemption for the transfer of a line; an application for control of terminal railroads; 8 notices of exemption for trackage rights; and authorization to abandon, or to discontinue operations over, four line segments. We are dismissing an exemption petition

[214] *See, UP/SP,* 1 S.T.B. at 414-15.

[215] We note that these numbers all understate the fees that would be derived under the *SSW Compensation* method, which uses replacement cost of track to develop a rate of return factor, while the 29 cents, 46 cents, and 40 cents per mile numbers all reflect only the lower URCS book value.

[216] We caution that, because applicants' method is based on 1995 CSX total system costs divided by total 1995 CSX system car-miles, it results in a relatively static annual trackage rights fee, changing only with inflation. A significant shift in either total costs or total car miles could require that the fee be adjusted.

for control of a terminal railroad on the ground that the proposed transaction will not constitute control within the meaning of 49 U.S.C. 11324(d).

Construction Projects. By decision served November 25, 1997, we exempted, subject to certain specified environmental mitigation measures, the construction aspect of the connection tracks proposed in the related filings in STB Finance Docket No. 33388 (Sub-Nos. 1 through 7).[217] Operations over the connection tracks involved in the related filings in Sub-Nos. 1 through 7 are addressed in the present decision. We are exempting applicants' remaining construction projects proposed in Sub-Nos. 8 through 22 because they are integral to the competitive service that CSX and NS will provide under the primary transaction, and because they otherwise satisfy our exemption criteria under 49 U.S.C. 10502 and 49 CFR 1150.36.[218]

Notices of Exemption. As noted, with respect to construction projects, applicants filed 10 notices of exemption under the class exemption provided at 49 CFR 1150.36.[219] This class exemption applies to proceedings under 49 U.S.C. 10901 involving the construction and operation of connecting lines of railroad within existing rail rights-of-way, or on land owned by connecting railroads.

No individual findings under 49 U.S.C. 10502 are necessary as to the notices because the exemption criteria have been met and thus the proposals fall within the class exemption provided at 49 CFR 1150.36. Applicants indicate that the construction and operations covered by their notices will not be implemented until after August 22, 1998.

These exemptions are effective on August 22, 1998, unless stayed. Petitions to stay the effective date of any of these notices must be filed by July 31, 1998. Petitions for reconsideration must be filed by August 12, 1998. Environmental mitigating conditions are discussed elsewhere in this decision.

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[217] In the Sub-No. 1 docket, we served on July 11, 1997, and published at 62 Fed. Reg. 37,331(1997), CSX's notice of exemption to construct the proposed connection track at Crestline, OH. In the Sub-Nos. 2 through 7 dockets, we served on July 23, 1997, and published at 62 Fed. Reg. 39,591-602 (1997), notices of the petitions for exemption to construct and operate six other proposed connection tracks.

[218] Because sufficient notice of these related filings was provided in the notice of acceptance of the primary application published at 62 Fed. Reg. 39,577 (1997), we will not publish separate *Federal Register* notices of the Sub-Nos. 8 through 22 exemption notices or petitions. Nor will we publish notice of the remaining sub-numbered filings by applicants.

[219] The construction notices of exemption were filed under the following dockets: Sub-Nos. 1, 8, 9, 11, 13, 15, 16, 17, 19, and 20.

Petitions for Exemption. Because the remaining construction projects do not qualify under the class exemption, applicants filed 12 petitions for exemption.[220] Under 49 U.S.C. 10901(a), a rail line may not be constructed or operated without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction from regulation when we find that: (1) application of the statutory provision is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction is of limited scope, or (b) the application of the statutory provision is not needed to protect shippers from the abuse of market power.

Detailed scrutiny is not necessary to carry out the rail transportation policy. The proposed exemptions will allow competition and the demand for services to establish reasonable rates for rail transportation, 49 U.S.C. 10101(1), will minimize the need for regulatory control, 49 U.S.C. 10101(2), will ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers, 49 U.S.C. 10101(4), and will ensure effective competition between rail carriers, 49 U.S.C. 10101(5); and other aspects of the rail transportation policy will not be adversely affected. Regulation is not necessary to protect shippers from the abuse of market power. The very purpose of the construction projects is to create additional competitive alternatives and to improve rail service for shippers throughout applicants' substantially expanded systems.

These exemptions are effective on August 22, 1998, unless stayed. Petitions to stay the effective date of any of these notices must be filed by July 31, 1998. Petitions for reconsideration must be filed by August 12, 1998. Environmental mitigating conditions are discussed elsewhere in this decision.

Trackage Rights (Notices of Exemption). Applicants filed eight notices of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition of trackage rights.[221] Our pertinent class exemption exempts the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier that are: (i) based on written agreements; and (ii) not filed or sought in responsive applications in rail consolidation proceedings.

No individual findings under 49 U.S.C. 10502 are necessary as to the trackage rights notices because the transactions fall within the class exemption provided at 49 CFR 1180.2(d)(7). Applicants state that their exemption notices

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[220] Petitions for exemption for construction projects were filed in: Sub-Nos. 2, 3, 4, 5, 6, 7, 10, 12, 14, 18, 21, and 22.

[221] The trackage rights notices of exemption were filed in: Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34.

meet these criteria and that the acquisitions will not be implemented until after August 22, 1998. The effective date of these notices is August 22, 1998. Labor conditions are discussed elsewhere in this decision.

Joint Relocation Project. In STB Finance Docket No. 33388 (Sub-No. 23), NW filed a notice of exemption under 49 CFR 1180.2(d)(5) regarding a joint project involving relocation of NW's rail line running down 19th Street in Erie, PA (a distance of approximately 6.1 miles), to a parallel railroad right-of-way owned and operated by CRC that will be allocated to CSXT under applicants' transaction agreement. NW's joint proposal involves the relocation of a line of railroad which does not disrupt service to shippers. It therefore complies with 49 CFR 1180.2(d)(5). Because the project is contingent upon approval of the primary application, it will not be implemented until after August 22, 1998.

Line Transfer. We are exempting, in the STB Finance Docket No. 33388 Sub-No. 24 docket, the acquisition by CRC of NW's Fort Wayne Line. CRC and NW state in their petition that this line transfer will not be effected until immediately prior to Day One of the CSX/NS/CR transaction, when the Fort Wayne Line will be allocated to CSX. This line sale would ordinarily require approval under 49 U.S.C. 11323-25; but, under 49 U.S.C. 10502, we must exempt a transaction from regulation when we find that: (1) application of the statutory provision is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction is of limited scope, or (b) the application of the statutory provision is not needed to protect shippers from the abuse of market power. Detailed scrutiny is not necessary to carry out the rail transportation policy. The proposed exemption will minimize the need for regulatory control, 49 U.S.C. 10101(2), will ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers, 49 U.S.C. 10101(4), and will ensure effective competition between rail carriers, 49 U.S.C. 10101(5); and other aspects of the rail transportation policy will not be adversely affected. Regulation is also not necessary to protect shippers from the abuse of market power. No shipper will lose service as a result of the transfer. The purpose of the transfer is to effect a like-kind exchange of rail routes in accordance with applicants' transaction agreement. Labor conditions are discussed elsewhere in this decision.

Terminal Railroad Control Transaction.

Application. We are granting the application in STB Finance Docket No. 33388 (Sub-No. 26) where CSXC, CSXT, and The Lakefront Dock and Railroad Terminal Company (LD&RT) seek approval under 49 U.S.C. 11323-25 for the acquisition and exercise by CSXC and CSXT of control of LD&RT, and the common control of LD&RT and CSXT and the other rail carriers controlled by CSXT and/or CSXC. LD&RT, a Class III railroad in which CSXT and CRC each currently owns a 50% voting stock interest, operates approximately 17 miles of yard tracks at Oregon, OH.

The LD&RT control transactions are minor transactions under 49 CFR 1180.2. LD&RT provides facilities for the transfer of iron ore pellets from lake vessels to rail cars. LD&RT does not have any employees; its operations are performed entirely by CSXT employees and, to a limited extent, CRC employees. Control and operation of LD&RT by CSXT will not have regional or national transportation significance because CSXT is already responsible for all of LD&RT's business and there will be no significant changes in carrier operations.

The LD&RT control transactions are directly related to the CSX/NS/CR transaction that, subject to conditions, we have found will offer substantial competitive benefits. Approval of the primary transaction will permit CSXT to offer more competitive service, including the use of LD&RT's facilities. The applicants in the Sub-No. 26 proceeding have shown that the LD&RT control transactions will not have any adverse effect on competition among rail carriers or with other modes, nor will the transactions cause any lessening of competition or create any monopoly or restraint of trade. Accordingly, the criteria in 49 U.S.C. 11324(d) have been met. Labor conditions are discussed elsewhere in this decision.

Petition for Exemption. We are dismissing the exemption proceeding in STB Finance Docket No. 33388 (Sub-No. 31) because the acquisition by CSXC and CSXT of a 50% interest in Albany Port Railroad Corporation (APR) will not enable CSXC and CSXT to control APR within the meaning of 49 U.S.C. 11323-25. *See, Burlington Northern, Inc. — Control & Merger*, 366 I.C.C. 862, 866 (1983), *aff'd sub nom. Brotherhood of Ry. & Airline Clerks v. Burlington Northern, Inc.*, 722 F.2d 380 (8th Cir. 1989). APR, which operates approximately 16.5 miles of track at the Port of Albany, NY, is owned in equal 50% shares by CRC and Delaware and Hudson Railway Company, Inc. (D&H), an affiliate of Canadian Pacific Railway Company. If the primary application is approved, CRC's 50% interest in APR will be allocated to CSXT. Currently, CRC and D&H each has two representatives on a four-member board of directors. Neither owner alone can control that board or APR's operations.[222] APR operates in the interest of both of its owners. Petitioners state that the proposed control of CRC and allocation of CRC's interest to CSXT will not affect APR's operations. D&H will continue to participate in APR's management, and D&H's ability to obtain service from APR on a neutral and impartial basis will not be impaired.

Abandonments And Discontinuances. Applicants have filed a petition for exemption under 49 U.S.C. 10502 and three notices of exemption under 49 CFR 1152.50 to abandon, or in one proceeding, to discontinue operations over, four line segments that total 58.2 miles of track in Illinois, Indiana, and Ohio. Public notice was properly given and, in *Decision No. 12,* served July 23, 1997, and published at 62 Fed. Reg. 39,577 (1997), we accepted the abandonment and discontinuance requests for consideration. Because the abandonment proposals were conditioned on consummation of the primary transaction, we stated in *Decision No. 12* that the abandonment requests would be processed in accordance with the overall procedural schedule, rather than the deadlines established in section 10904 and in our regulations governing abandonments. *Decision No. 12* at 21. The record is now complete and we will consider the merits of each proposal under the applicable standards. Labor and environmental conditions are discussed elsewhere in the decision.

Notices of Exemption. As noted, applicants have filed three abandonment or discontinuance notices of exemption[223] under 49 CFR 1152 Subpart F. The notices seek to invoke the 2-year out-of-service class exemption codified at 49 CFR 1152.50, pursuant to which an abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least 2 years, that any overhead traffic on the line can be rerouted over other lines, and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the

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[222] In 1990, the ICC granted D&H's petition to exempt its acquisition of 50% of the outstanding stock of APR. *See, Canadian Pacific Ltd. — Pur. & Trackage — D&H Ry. Co.*, 7 I.C.C.2d 95, 116-17 (1990). The ICC found that, as a result of the transaction, APR will be controlled jointly by D&H and Conrail. *Id.* at 101.

[223] CRC and CSXT, respectively, have filed a notice of exemption in STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X) (Paris-Danville, IL). NW has filed two notices of exemption: STB Docket No. AB-290 (Sub-No. 194X) (South Bend-Dillon Junction, IN) and AB-290 (Sub-No. 197X) (Toledo Pivot Bridge in Lucas County, OH). Notice of applicants' three abandonment notices of exemption was published at 62 Fed. Reg. 39,587 (1997). We note, however, that in STB Docket No. AB-290 (Sub-No. 197X), NW now proposes only discontinuance and not abandonment.

Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period.

No individual findings under 49 U.S.C. 10502 are necessary as to the three notices because these lines fall within the class of lines exempted by 49 CFR 1152 Subpart F. According to applicants, there has been no local traffic on the lines for 2 years and any overhead traffic on the line can be rerouted over other lines.

These exemptions will be effective on Day One (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 31, 1998, and petitions to reopen must be filed by August 12, 1998.

Petition for Exemption. As noted, NW filed a petition for exemption in STB Docket No. AB-290 (Sub-No. 196X) to abandon a 7.5-mile line between Toledo and Maumee, OH.[224] Under 49 U.S.C. 10903-05, a rail line may not be abandoned without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction from regulation when we find that: (1) application of the statutory abandonment provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the particular abandonment or discontinuance is of limited scope, or (b) the application of the statutory abandonment provisions is not needed to protect shippers from the abuse of market power.

Detailed scrutiny is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of filing an abandonment application, the exemption will expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. 10101(2) and (7). By allowing NW to avoid the expense of retaining and maintaining the Toledo-Maumee line that generates marginal traffic and to apply the assets more productively elsewhere on the system, the exemption will foster sound economic conditions and encourage efficient management. 49 U.S.C. 10101(3), (5), and (10). Other aspects of the rail transportation policy are not affected adversely.

Regulation is not necessary to protect shippers from an abuse of market power because all overhead traffic will be rerouted to more efficient former Conrail lines, and local traffic will have viable alternative transportation available. No shipper opposes the abandonment petition.

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[224] Notice of NW's exemption petition in STB Docket No. AB-290 (Sub-No. 196X) was published at 62 Fed. Reg. 39,587 (1997).

Given our findings regarding the probable effect of the transaction on market power, we need not determine whether the transaction is of limited scope. Nevertheless, we note that the proposed abandonment involves only 7.5 miles of rail line in a single state with little local traffic.

This exemption will be effective on Day One (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(1) must be filed by July 31, 1998, and petitions to reopen must be filed by August 12, 1998.

Trail Use And Public Use Conditions.

Trail Use. The City of Georgetown, IL (City), requests issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), with respect to the Paris-Danville abandonment in STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X). The City has submitted a statement of willingness to assume financial responsibility for the rights-of-way and acknowledged that use of the rights-of-way are subject to future reactivation for rail service in compliance with 49 CFR 1152.29. CSX and Conrail have indicated their willingness to negotiate trail use agreements. *See,* CSX/NS-176 at 801.

Because the City's request complies with the requirements of 49 CFR 1152.29 and applicants are willing to enter into negotiations, a NITU will be issued in the STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X) proceeding as part of this decision. The parties may negotiate an agreement during the prescribed 180-day period, as discussed further below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, applicants may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. *See,* 49 CFR 1152.29(d)(2).

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in *Rail Abandonments — Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 608 (1986) (*Trails*), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this proceeding may be postponed beyond the effective date indicated here. *See,* 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. *See,* 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the notice of exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

Public Use. The City also seeks a public use condition under 49 U.S.C. 10905 with respect to the Paris-Danville abandonment. The St. Joseph County Parks and Recreation Department (Department) seeks a similar condition with respect to NW's notice of exemption in STB Docket No. AB-290 (Sub-No. 194X).[225] They have met the criteria for imposing a public use condition by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the time period. 49 CFR 1152.28(a)(2). Accordingly, 180-day public use conditions will be imposed in STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), and in STB Docket No. AB-290 (Sub-No. 194X).

In issuing the NITU and imposing the public use conditions, we will follow our usual practice and have the 180-day Trails Act period run from the service date of the decision (July 23, 1998), while the public use condition will run from the effective date of the decision.[226]

Persons may file for both trail use and public use conditions. If a trail use agreement is reached on a portion of the right-of-way, applicants must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, applicants are not required to deal exclusively with parties who have filed requests, but may engage in negotiations with other interested persons. Additional public use requests are unnecessary where the full 180-day period has been imposed.

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[225] Although the Department also sought a trail use condition, NW has not agreed to negotiate with the Department with regard to trail use. Accordingly, a NITU cannot be imposed in the STB Docket No. AB-290 (Sub-No. 194X) proceeding.

[226] The Toledo Metropolitan Area Council of Governments (TMACOG) sought a 180-day public use condition in the STB Docket No. AB-290 (Sub-No. 194X) proceeding. TMACOG subsequently indicated that it reached an agreement with NW where, upon obtaining authority to abandon the Toledo-Maumee line, NW will donate and quitclaim to TMACOG or TMACOG's designee NW's interest in the right-of-way, while retaining salvage rights to track material. Because an agreement has been reached for disposition of the right-of-way, a public use condition will not be imposed in this docket.

ENVIRONMENTAL MATTERS. The National Environmental Policy Act (NEPA) requires that we take environmental considerations into account in our decisionmaking. We must consider significant potential beneficial and adverse environmental impacts in deciding whether to approve the transaction as proposed, deny the proposal, or grant it with conditions, including environmental conditions.[227] Accordingly, SEA has conducted a detailed review evaluating the potential environmental impacts of this transaction. SEA has prepared an Environmental Impact Statement (EIS)[228] addressing a broad range of environmental issues and has obtained extensive public input.

Based on its review, SEA recommended that we impose 65 environmental conditions to reduce or eliminate potential environmental impacts of the transaction. We have thoroughly reviewed the EIS and, as discussed below, we concur in SEA's analysis and recommendations and will impose SEA's recommended conditions with only minor modifications.[229] Our final environmental conditions are attached at Appendix Q.[230] We will continue appropriate monitoring of these environmental conditions until the end of our overall oversight of the transaction.

Overview Of The Environmental Review Process. After issuing a notice of intent to prepare an EIS, SEA proposed, and sought comments on, a draft scope for the EIS. SEA then published a final scope. The Draft EIS issued in December 1997 included an analysis of the potential environmental impacts of

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[227] As the Supreme Court has made clear, the requirements of NEPA are essentially procedural. *See, Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). Accordingly, if we have taken a "hard look" at the environmental consequences, we are not constrained by NEPA from deciding that other values outweigh the environmental cost. *Robertson v. Methow*, 490 U.S. 342, 350-51 (1989).

[228] Under NEPA, an EIS need only be prepared for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C). Under our regulations, an EIS normally is not required for merger and acquisition cases; a more limited Environmental Assessment generally will be sufficient because there are not usually significant environmental impacts from the change in ownership or operation of existing rail lines. 49 CFR 1105.6(b)(4). In this case, however, a full EIS was prepared in view of the nature and scope of the environmental issues, which involve 44,000 miles of rail line in 24 states and the District of Columbia and include issues relating to passenger transportation and hazardous materials transport.

[229] For the most part, our modifications reflect new agreements negotiated after issuance of the Final Environmental Impact Statement (Final EIS) and technical modifications to SEA's final recommended conditions primarily based on requests for clarification of the conditions set out in the Final EIS.

[230] As explained in the Final EIS, any party wishing to challenge the conclusions of the Final EIS, and/or the environmental conditions in this decision, may file an administrative appeal of this decision as provided for in the Board's rules. The deadline for filing an administrative appeal is August 12, 1998.

the transaction on particular communities and regions. SEA also made preliminary recommendations for local, as well as regional or general (system-wide) mitigation. The Draft EIS was widely distributed to interested parties, including communities, elected officials, and appropriate state and local agencies and organizations.

The public was encouraged to raise environmental concerns with SEA, or to request information about the proposal, throughout the environmental review process. In addition, SEA provided 45 days for comments on the Draft EIS and an additional 45 days for comments concerning refined hazardous materials, noise, and environmental justice data. More than 250 comments were received from federal, state, and local agencies, communities, elected officials, businesses, associations, commuter services, and the general public, raising over 1000 different issues.

In preparing its Final EIS, SEA conducted further analysis (which included site visits to affected communities), reviewed all the public comments, and consulted with federal, state, and local agencies. As a result, SEA changed a number of the recommendations of the Draft EIS to reflect the concerns of the commentors and to update and refine the information in the Draft EIS. The Final EIS was issued on May 22, 1998, prior to the oral argument, at which we heard the viewpoints of interested parties on all issues, including environmental issues.[231]

Finally, in the Final EIS, SEA analyzed the effects of NS' proposed Cloggsville alternative routing of up to 11 trains per day away from East Cleveland and the West Shore suburbs of Cleveland, which NS offered as a method to mitigate environmental concerns a month before the Final EIS was issued. SEA also recommended mitigation in the Final EIS to address significant environmental impacts of this proposed routing change. Nevertheless, SEA provided an additional comment period ending June 28, 1998, for those affected by that proposed rerouting. SEA invited interested persons to bring their

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[231] Throughout the process, SEA sought input from agencies, tribal governments, elected officials, and affected communities regarding this transaction. SEA maintained a telephone hot line and Internet web site to help the public understand and participate in the environmental review process. SEA also conducted an extensive public outreach process to alert affected communities and individuals of SEA's environmental review and encourage their comments. SEA's public outreach included placing announcements in the *Federal Register* and local newspapers, an extensive mail notification process, and radio public service announcements, some of which were in Spanish. SEA also conducted focused public outreach activities for low-income and minority populations potentially affected by the transaction.

concerns to our attention by then, or alternatively through an administrative appeal of this decision.[232]

Environmental Impacts. In the EIS, SEA considered a broad range of environmental issues potentially affecting a large number of communities on a general (or system-wide), regional, and local level. SEA focused on the potential environmental impacts resulting from changes in activity levels on existing lines and rail facilities. SEA also examined the potential environmental impacts from related construction and abandonment activities. Our general practice has been to mitigate only impacts resulting directly from a proposed transaction, and not to require mitigation for existing conditions and existing railroad operations.

We concur in SEA's analysis that, on a system-wide basis, the transaction will bring important environmental benefits resulting from overall improvements and operating efficiencies, without significant adverse environmental impacts.[233] As SEA explained, on a regional basis and a local or site-specific basis, the transaction will result in both benefits and potential significant adverse environmental impacts resulting from shifts in rail activity as the rail carriers take advantage of the reconfigured rail system. For many regions and communities, this shift will reduce rail traffic along certain rail lines and activities at certain rail yards and intermodal facilities and result in environmental benefits.[234] But for others, the shift will increase rail activity, which could cause potential significant adverse effects.[235] These potential impacts include safety impacts related to hazardous materials transport and freight and passenger operations along certain rail corridors. Additionally, as SEA concluded, the transaction will result in community and local impacts

[232] SEA received one comment from the City of Elyria, OH. SEA has reviewed those comments, and it indicates to us that it believes that the mitigation in the Final EIS is still appropriate. Therefore we are adopting SEA's proposed mitigation for the communities affected by the Cloggsville alternative.

[233] The environmental benefits include the substantial truck diversion that is anticipated. This should lead to reduced air pollution emissions and reduced energy consumption, reduced likelihood of accidents involving hazardous materials, and decreases in highway accidents due to reduced truck traffic on interstate highways in the various areas affected by the transaction.

[234] These benefits include reduced noise impacts and improvements in safety and traffic delay at highway/rail at-grade crossings.

[235] Of the 1,022 rail line segments SEA evaluated, 201 would experience reduced train traffic and 532 rail line segments would experience no change in train traffic. The remaining 289 rail line segments would face increased traffic.

related to noise, highway/rail at-grade crossing safety and delay, and emergency response vehicle delay, among others.[236]

Finally, as SEA determined, there are potential environmental impacts that, unless mitigated as applicants have agreed to do, would be disproportionately high and adverse for minority and low-income populations in certain cities.

Negotiated Agreements. During the environmental review process, applicants consulted with certain affected communities and negotiated a number of mutually acceptable agreements with local governments and organizations, addressing specific local environmental concerns.[237] SEA has reviewed these agreements and recommends that we impose them as conditions, and we will do so.[238] Also, applicants proposed voluntary mitigation options addressing environmental concerns of affected communities, which SEA considered in developing final mitigation recommendations in the Final EIS.[239] We encourage the railroads and communities to negotiate private solutions to environmental issues. Generally, these agreements are more effective, and in some cases, more far-reaching, than environmental mitigation options we could impose unilaterally.

Therefore, even if agreements are reached after SEA has made, and we have adopted, "final" environmental mitigation recommendations, agreements will be deemed to be an acceptable alternative to the specific local mitigation for a particular community that we have imposed.[240] Thus, we have modified SEA's recommended environmental conditions to eliminate the site-specific and other local mitigation for communities where applicants have reached agreements

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[236] The transaction will have no significant adverse impacts in other areas including hazardous waste sites, passenger rail capacity, roadway systems, navigation, and land use.

[237] Eighteen separate agreements had been negotiated by the time the Final EIS was issued. Thereafter, additional private agreements were reached, including agreements for Cleveland and Berea, Ohio, with both CSX and NS. A list of all agreements entered into to date is included in Condition No. 51.

[238] After issuance of the Final EIS, we advised that both parties to an agreement could notify us that they did not want us to condition our approval of the transaction on applicants' compliance with the agreement. CSX and Chicago Metra both advised us that they did not want their agreement as a condition and, therefore, we have not included it.

[239] For example, in the Four Cities area, CSX agreed to make operational improvements and offered to reroute trains away from a rail line segment between Pine Junction and Barr Yard, through East Chicago. This will result in less than a two-train per day increase, which is a small increase based on the 30 trains a day that currently go through the area. This voluntary mitigation will be in addition to the mitigation we are imposing for the Four Cities area to address grade crossing traffic delay and safety concerns.

[240] Because these agreements are privately negotiated, they have no precedential value.

following issuance of the Final EIS (See Appendix Q).[241] Moreover, to give effect to privately negotiated solutions whenever possible, we clarify that negotiated agreements will remain available as an alternative to the local and site-specific mitigation imposed here (for example, specific grade crossing upgrade mitigation, real time monitoring for emergency response delay, or noise mitigation).[242]

Environmental Mitigation. For the communities that could not reach agreement, SEA has recommended reasonable, feasible environmental mitigation conditions addressing potential significant adverse impacts of the acquisition-related increase in rail traffic at multiple levels (general, regional, and local). Most of these address railroad operating safety concerns, such as hazardous materials transport, and the interaction between rail passenger and freight operations.

Additionally, for the first time, we are imposing conditions relating to safety integration issues resulting from combining these railroads. Our conditions also address community impacts, such as noise and highway/rail at-grade crossing safety, for those communities that would be most affected by the transaction. We have also addressed potential disproportionate impacts on minority and low-income populations. With the recommended mitigation, we believe the transaction will not have, and cannot be viewed as having, a disproportionately high and adverse impact on minority and low-income areas.

Many of our conditions extend to a number of states, while others are specific to individual communities and local needs. They would affect numerous communities in 19 states and the District of Columbia. With the exception of the Cloggsville alternative routing of train traffic in the Greater Cleveland area that NS itself developed and submitted to us, none of our conditions requires any change in applicants' operating plans.

Safety. As previously noted, more than half of our environmental conditions address safety concerns. For example, for certain rail line segments that would face a significant increase in movement of hazardous materials, applicants will be required to implement various measures such as installing train defect detectors, developing and distributing local hazardous material emergency response plans, conducting required train inspections, and conducting simulated emergency response drills with local emergency response organizations. To address the increased safety risks at hundreds of highway/rail at-grade crossings

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[241] Regional and general mitigation for those communities will remain applicable.

[242] These negotiated agreements would substitute for, and supersede, local environmental mitigation.

resulting from transaction-related train increases, applicants will be required to install notification signs warning motorists about an imminent increase in the number of trains over that crossing, and to install upgraded warning devices, such as flashing lights or gates at particular crossings. To mitigate the potential safety risk from increased freight operations on appropriate rail line segments, applicants will be required to inspect the tracks on a usage basis rather than annually. To provide for safer passenger rail operations on certain rail line segments, CSX must consult with three passenger service agencies (Amtrak, VRE, and Maryland's commuter rail service (MARC)) to develop operational strategies and apply technology improvements to ensure that the safety of passenger train operations is maintained.[243]

Other Community Mitigation. Our conditions also address other local concerns, including noise, emergency vehicle response delay, cultural resources, and natural resources conditions for those communities that would be most affected by the transaction and could not negotiate an agreement. To address these concerns, SEA recommended, and we have imposed, measures such as building sound insulation or noise barriers, real-time train location monitors, and requiring best management practices.

For a limited number of locations with identified significant adverse environmental impacts, mitigation conditions are not reasonable or feasible. Therefore, even with all the recommended mitigation, there may be significant adverse environmental impacts in certain communities. But these effects are by no means so severe that they warrant denying the application, which has many beneficial transportation and environmental impacts, and furthers the public interest.

Safety Integration. As noted previously, we have considered safety integration issues here for the first time in a major consolidation. At the suggestion of FRA and rail labor interests, we required applicants to file detailed Safety Integration Plans (SIPs).[244] We have entered into a Memorandum of Understanding (MOU) with FRA, to establish an ongoing monitoring process during implementation of the transaction, in which DOT has concurred. The MOU clarifies the actions that FRA and the Board will take to ensure the successful implementation of the SIPs. Under the terms of that MOU, FRA will

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[243] We and SEA understand that passenger train preference is given only to Amtrak and not to VRE. Our analysis of issues related to VRE is not dependent upon the assumption that VRE was entitled to passenger train preference.

[244] SEA included those SIPs in the Draft EIS, and it encouraged FRA and the public to review and comment on these plans. SEA also independently reviewed the plans for comprehensiveness and reasonableness. The Final EIS includes SEA's responses to public comments on the SIPs.

monitor, evaluate, and review applicants' progress until FRA advises us in writing that the proposed integration is complete.[245] In short, we have given safety unprecedented consideration in addressing the transaction, and the SIPs will be monitored until the transaction has been safely implemented.

EPA Comments. We have received a written comment from the United States Environmental Protection Agency (EPA) concerning the Final EIS. EPA raises concerns about air quality, noise, environmental justice, and wetlands that we will address here.

1. EPA concurs with SEA's view that the air quality impacts of the transaction will be insignificant. Specifically, EPA agrees with SEA's analysis that the increase in nitrogen oxide emissions resulting from the increase in train traffic will be mitigated by a reduction in truck traffic and the use of new equipment meeting EPA's new locomotive emission standards. It disagrees, however, with SEA's position that the Clean Air Act General Conformity Rules (40 CFR 93, Subpart B) do not apply to this transaction. Nevertheless, EPA concludes that the issue of applicability is moot, since there are no significant air quality impacts.[246] EPA states: "Since the STB predicts an overall [nitrogen oxide] emissions reduction * * * we believe that they have met the de minimis test for the general conformity regulations and, thus, a determination is not necessary."[247] We continue to agree with SEA on this issue, and in any event the issue need not be considered further since, as EPA acknowledges, the adverse air impacts of this transaction are de minimis.[248]

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[245] The Final EIS, Chapter 6, "Summary of Safety Integration Plan Comments, Responses, and Analysis" contains more information regarding the MOU.

[246] If EPA's General Conformity Rules apply, the rules require a determination that a federal action conforms to the requirements of a Clean Air Act State Implementation Plan where "the total direct or indirect emissions in a nonattainment or maintenance area caused by a federal action" exceed certain thresholds. 40 CFR 51.583(b). EPA's guidelines leave it to individual agencies to determine if the General Conformity Rules apply.

[247] The Virginia Department of Environmental Quality (VDEQ) also submitted a written comment addressing air quality issues. VDEQ is concerned about the applicability of the General Conformity Rules and potential regional and local air quality impacts in Virginia. We agree with EPA's assessment that the issue of applicability of the General Conformity Rules is moot here. VDEQ's concerns about regional and local air quality impacts also are addressed by the EPA comments. As noted, EPA specifically concurred with SEA's conclusion that any regional or local increase in locomotive emissions will be mitigated by the diversion of truck traffic and the implementation of EPA's new locomotive emissions standards. *(See also,* pages 4-50 to 4-52 of the Final EIS.)

[248] We agree with SEA that the General Conformity Rules do not apply to this transaction. Those rules would apply if we exercised ongoing program control over railroad operations, which clearly we do not. As explained in detail in Chapter 4 of the Final EIS, train traffic emissions are (continued...)

2. EPA suggests that the level SEA established for mitigation of noise impacts (70 decibel (dBA) with an increase of at least 5 dBA) is inconsistent with levels that have been used by some other federal agencies (65 or 67 dBA). EPA also notes that, in determining where mitigation is warranted, SEA may not have understood that smaller numerical decibel increases in noise at higher existing levels generally have more impact. Thus, EPA suggests that SEA did not adequately disclose to the public the severity of the noise impacts that would be incurred from increased train traffic.

We believe that the level SEA established for requiring mitigation of noise impacts in this case is reasonable and appropriate, given the magnitude of this project, the fact that we are addressing impacts of increased traffic over existing rail line segments, and the estimated half-billion dollar cost of applying a mitigation standard of, for example, 65 dBA with an increase of 3 dBA. As the Draft EIS and Final EIS show, SEA recognized that other agencies have implemented different noise mitigation criteria. Nonetheless, we agree with SEA that using similar mitigation criteria for this transaction could have substantially increased the number of mitigation sites in a project of such broad geographic scope, and thus would have placed an unrealistic and unreasonable burden on applicants. Moreover, contrary to EPA's claim, SEA's environmental documentation adequately disclosed the severity of potential noise impacts. The Final EIS made it clear to us and to the public that, even with SEA's recommended noise mitigation, a number of locations would experience adverse noise impacts above our threshold for noise analysis (65 dBA with an increase of at least 3 dBA) and below the level for mitigation (70 dBA with an increase of 5 dBA). In short, SEA's approach to noise mitigation is reasonable and appropriate for this transaction.

3. EPA raises concerns that some minority and low-income populations may have been excluded from mitigation because of SEA's methods of statistical analysis to determine disproportionate impacts for environmental justice populations.[249] We disagree. As explained in the Final EIS, SEA did an

[248](...continued)
products of the market forces that affect the flow of goods and materials. The railroads decide on a continuous and ongoing basis which routes are most efficient to customer needs. For railroad mergers and acquisitions, our decisions approving a transaction do not require the applicants to transport more freight or transport existing freight by any specific route. In short, railroad operations and the routing of train traffic are subject to the sole ongoing control of the railroad, and are not controlled by us.

[249] Exec. Order No. 12898 of 1994 directs federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their programs, (continued...)

extensive and reasonable statistical analysis to identify environmental justice populations that could experience high and adverse impacts, regardless of whether the impacts would be disproportionate. To inform and involve these environmental justice populations in the environmental review process, SEA conducted an extensive public outreach effort. Even if another statistical approach had been used, all of the potential environmental justice populations had the opportunity to participate in the environmental review and development of mitigation. Furthermore, our final mitigation addresses those communities (including environmental justice populations) that would experience significant potential environmental impacts.[250] Therefore, SEA's analysis of potential impacts on environmental justice populations was fully adequate and provided full opportunities for minority and low-income populations to participate. Moreover, the recommended mitigation we are imposing adequately mitigates the impacts on those populations.

4. Finally, EPA raises concerns about SEA's documentation of wetlands losses for construction and abandonment activities in Illinois, Indiana, and Ohio. The Draft EIS and the Final EIS, however, sufficiently document potential impacts to wetlands, including graphic representation of the approximate location of wetlands. SEA also conducted site visits to each construction and abandonment site to assess and verify the location of wetlands. (*See,* Appendix I of Draft EIS and Appendix L of the Final EIS.) To ensure protection of wetlands and water resources, we are imposing an environmental condition (No. 45) requiring applicants to obtain all necessary federal, state, and local permits related to alteration of wetlands, which would include an exact determination of wetlands impacts, with appropriate mitigation, as required for a permit under Section 404 of the Clean Water Act.[251]

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[249](...continued)
policies, and activities on minority and low-income populations in the United States. Exec. Order No. 12898 also calls for public notification for environmental justice populations, as well as meaningful public participation of environmental justice populations.

[250] For example, we have imposed noise mitigation, hazardous materials transport safety mitigation, and other safety mitigation for communities that include environmental justice populations. In addition, we have focused mitigation that requires applicants to tailor their emergency response plans to ensure that they reflect the unique needs of certain environmental justice populations.

[251] VDEQ also commented about potential wetlands and stormwater quality impacts resulting from construction and abandonment activities in Virginia, but there are no planned transaction-related construction or abandonment activities in Virginia.

Subsequent Developments. As noted, in developing final environmental conditions, we have made minor changes to SEA's recommended mitigation, primarily to reflect the new negotiated agreements with the Cities of Cleveland and Berea, requests for clarification of certain environmental conditions by applicants and others, and some requests for additional conditions. We will briefly discuss the changes we have made.[252]

Specifically, the Ohio Department of Transportation (Ohio DOT) requests that we provide a 120-day period for negotiations with applicants on 29 highway/rail at-grade crossing upgrades based on a corridor approach. We find this request reasonable and consistent with our intent to allow flexibility for applicants to work with states and local communities to develop mutually acceptable alternative safety mitigation. Therefore, an appropriate condition has been imposed. In addition, we encourage other states to continue to negotiate with applicants on crossing warning device issues during the 2-year time frame we have allowed for installation of these devices.

Applicants request clarification of SEA's recommended noise mitigation. In response, we have modified SEA's recommended noise condition to clarify that we do not necessarily prefer sound barriers to other noise mitigation measures. Rather, the noise mitigation condition is intended to establish a performance standard giving applicants flexibility to work with communities to achieve noise reduction through any mutually agreeable means.[253] The goal is a reduction of 10 dBA, with a minimum of at least a 5 dBA reduction.

In response to applicants' request for clarification of SEA's recommended condition requiring signs with toll-free numbers and crossing identification numbers (Condition 1(A)), our condition clarifies that applicants will have 3 months from Day One to implement it. Applicants raised a number of logistical concerns about implementing this condition by Day One, and thus we are permitting more time to complete this important effort.

Our condition concerning advisory signs to address crossing safety (Condition 1(B)) clarifies that (1) the format and lettering of temporary signs advising of upcoming increased traffic should comply with the Federal Highway Administration's Manual on Uniform Traffic Control Devices, and (2) the signs

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[252] Any request for changes in the conclusions or recommended mitigation in the Final EIS that are not addressed here will be considered only if renewed in a timely filed administrative appeal of this decision. As noted, the deadline for filing an administratively appeal is August 12, 1998.

[253] For example, noise reduction can be achieved through building sound insulation.

should be placed on railroad property, and thus should not require approval from state or local agencies.[254]

Applicants request that they be allowed to negotiate alternative crossing protection with relevant state departments of transportation and communities. We reiterate that negotiated agreements are always acceptable as alternatives to our environmental conditions.

With respect to a request that we direct applicants to consult with Wellington and North Ridgeville, OH, regarding their environmental concerns, we will require applicants to do so and report back to us on these negotiations within 6 months of August 22, 1998.

SEA's proposed cultural and historic resource condition regarding the 75th Street Interlocking in Chicago has been refined to reflect an agreement with the Illinois State Historic Preservation Officer (SHPO) regarding procedures for completion of consultation with the SHPO.

Finally, CSX filed an engineering report addressing certain environmental conditions. The Four Cities responded to those requests that would affect operations in the Four Cities area and sought certain additional environmental conditions. We have granted in part CSX's request that we clarify SEA's recommended Condition 38(C) because of concerns about engineering and operational feasibility. Our Condition 26(C) provides CSX limited flexibility in locating train defect detection devices for one CSX rail line segment in the Greater Cleveland Area, which will in no way affect the level of protection afforded by this condition. All other changes requested by CSX are requests for modification, not clarification, including the ones that would affect the Four Cities. If CSX desires to pursue these requests, it should file an administrative appeal. Similarly, the request for conditions by the Four Cities, to which CSX replied, are requests for modification, which must be pursued in an administrative appeal.

In sum, the Draft EIS and Final EIS plainly show that we have taken the requisite "hard look" at environmental issues in this case. With the exception of the minor modifications discussed above, we concur in SEA's detailed analysis and recommendations and believe that our final environmental mitigation conditions are reasonable and feasible measures to reduce or eliminate potential adverse environmental impacts of the transaction. They

[254] Applicants had argued against the requirement that these signs to be in place for no fewer than 30 days before and 6 months after actual transaction-related increases. We are adopting SEA's recommended time frames because of the need to advise the public in advance of anticipated train traffic increases and the fact that there should be no need to seek prior approval from state or local authorities for signs placed on railroad property.

provide appropriate safeguards to ensure that applicants maintain safe operations and protect the environment and the quality of life in affected communities to the extent practicable following consolidation of the three rail systems into two systems.[255]

OVERSIGHT CONDITION. We are establishing oversight for 5 years so that we may assess the progress of implementation of the CSX/NS/Conrail transaction and the workings of the various conditions we have imposed, and we are retaining jurisdiction to impose additional conditions if, and to the extent, we determine that additional conditions are necessary to address unforseen harms caused by the transaction.[256] Although the NITL settlement agreement proposes that we require oversight of the transaction for a 3-year period, we believe that a 5-year oversight period would be more appropriate, given the operational complexity and broad scope of this transaction.[257]

Our oversight process will be broadly based. As part of that process, we will monitor situations involving the relationship of shortline railroads to their Class I connections and to other Class I railroads.[258] This will include oversight of the conditions we have imposed to ensure that quality interline service and connections are in place to maintain the viability of certain shortline railroads

[255] Whether our conditions are imposed based on agreements or as a result of SEA's recommendations in the Final EIS, the Board or a court is available to take appropriate action if questions arise regarding a carrier's compliance. In this regard, in enforcing negotiated agreements, the Board does not intend to, and will not, go beyond its jurisdiction. *See also,* Environmental Condition No. 50 relating to our continued monitoring and enforcement.

[256] Parties requesting that we impose an oversight condition include AFBF, AFIA, Amtrak, APL, ASLRA, CPTA, CMA, Commonwealth of Massachusetts, Delaware River Port Interests, DOT, ESPA, FOPC, Four Cities, GTC, IP&L, Massey, NCBA, NCGA, NITL, NPPC, NYDOT, OAG, ORDC, OxyChem, PPG, PUCO, RIDOT, RRA, Shell, SPI, TCU, TFI, TSTC, USDA, W&LE, and WVSRA.

[257] In our discussion of the NITL settlement agreement, we have noted that the Conrail Transaction Council is not intended to supplant our oversight of implementation. Rather, the intended purpose of the Council is to act as an adjunct to our oversight of service implementation. As we have discussed elsewhere in this decision, the Council shall report to us, as necessary, any impediments to service implementation requiring exercise of our continuing oversight jurisdiction, with recommendations as to how that jurisdiction should be exercised. The ongoing role of the Conrail Transaction Council, in combination with the extensive oversight and monitoring that we will be undertaking, is an appropriate response to the requests of various agricultural parties and such parties as E.I. DuPont de Nemours and Company, Inc., which has requested that we establish performance evaluation committees and require applicants to maintain adequate operating and supervisory personnel levels.

[258] As we discuss under the section entitled Shortline Issues, ASLRA and RRA ask that we perform 5 years of continuing oversight concerning shortline issues they have raised here. We will adopt that proposal, and invite these shortline associations and their members to participate in the oversight that we will be conducting.

(such as AA and W&LE); to ensure that the transaction does not result in shortline railroads (such as RBMN) suffering from the expansion of any existing blocking provisions; and to ensure that the single-line to joint-line and reciprocal switching protections of the NITL agreement are appropriately extended to shortline railroads. Our oversight will also include assessing the effect of the acquisition premium on the jurisdictional threshold applicable to rate reasonableness cases and to the Board's revenue adequacy determinations; transaction-related impacts on Amtrak passenger operations and regional rail passenger operations; and transaction-related impacts within the Chicago Switching District, including the effect of IHB's management change on its role as a neutral switching carrier. If problems do arise after approval and consummation of the transaction, involving these and other matters, our oversight condition should provide a fully effective mechanism for quickly identifying and resolving them. Also, under our oversight process, we will continue appropriate monitoring of the environmental mitigating conditions being imposed, as listed in Appendix Q.

Our oversight will also encompass ensuring applicants' adherence to the various representations that they have made on the record during the course of this proceeding. This includes ensuring that applicants adhere to their representation that, although NS will have operational control of Conrail's MGA lines, CSX will have equal access to all current and future facilities located on or accessed from such lines. In addition to our operational monitoring, we will be closely monitoring the competitive activities in this important joint access area. Our oversight will also enable us to ensure that CSX adheres to its representation regarding investment in new connections and upgraded facilities in the Buffalo area, to monitor the studies of the feasibility of upgrading cross harbor float and tunnel operations for the purpose of alleviating motor vehicle traffic congestion and air pollution in New York City, and to monitor the routings for truck traffic at applicants' intermodal terminals in Northern New Jersey and in the Commonwealth of Massachusetts, which could affect trucks traffic moving over the George Washington Bridge.

Finally, we note that our 5-year oversight is separate from our operational monitoring, which is discussed in detail in its own section of this decision. In that section we have explained that, as a result of our ongoing experience or changed circumstances, particular aspects of the operational monitoring may be changed or eliminated. Operational monitoring could be phased out upon successful implementation of the transaction, which should take place in advance of completion of the 5-year oversight period.

OPERATIONAL MONITORING. Because we believe that the scope and complexity of the operational aspects of this transaction are unprecedented, we will require transitional operational monitoring from the start. Certain aspects of the operational monitoring will begin with the effective date of the decision, August 23, 1998, and certain aspects will begin with Day One.

The purpose of the monitoring is to provide us with information that will allow a timely evaluation of, and response to, any issues that arise during implementation of various operational aspects of the transaction. While this monitoring will require periodic status and progress reports from applicants, we do not believe that it will be unduly burdensome. As noted, this monitoring will include activities ongoing prior to Day One. For these areas — Labor Implementing Agreements, Construction And Other Capital Projects, Information Technology, and Customer Service — monitoring will begin on August 23, 1998. For other operational categories — Division of Power and Rolling Stock, Car Management, Crew Management and Dispatching, SAAs, the Monongahela Coal Area, Cleveland Operations, Chicago Gateway Operations, and Yard and Terminal Operations — applicants must begin reporting on Day One.

Finally, we will require reporting on certain of applicants' own initiatives, such as the Conrail Transaction Council (Transaction Council) and Labor Task Forces. This reporting will provide us timely information for implementing measures that may directly affect operations.

We recognize that, under the NITL agreement, the Transaction Council will recommend to us measurable standards for quarterly reporting. That process has just begun; nonetheless, we need to begin monitoring certain operational issues immediately. The information we are requiring should also be useful to applicants in their preparation of the recommended standards and reports to carry out the NITL agreement.

This informational monitoring is separate from our 5-year oversight of the transaction. It may turn out that, as a result of our experience, or of changed circumstances, particular aspects of this monitoring will be changed or eliminated. Further, operational monitoring could be phased out upon successful implementation of the transaction, which should take place in advance of completion of the 5-year oversight period.

Our specific reporting requirements are set forth below:

1. *Labor Implementing Agreements*. Beginning August 23, applicants must provide monthly reports about the status of each of their labor implementing agreements, and affected area (geographical or technical), until all of the agreements are complete.

2. *Construction And Other Capital Projects*. Beginning August 23, CSX and NS must report monthly on their respective projects, including any planned for the SAAs, whether or not specifically approved by us. Applicants also must report on their progress in implementing other planned infrastructure investments, such as in Cleveland, the Chicago Terminal area, and the Monongahela Coal area.

3. *Information Technology*. To ensure timely integration of applicants' information systems, and the training of personnel using the new computer systems, applicants must report monthly beginning August 23, as to the progress of systems integration and personnel training. These reports must identify the principal systems, affected operating areas, implementation schedules, and training schedules and completion, and must note any delays, either in planned implementation or training.

4. *Customer Service*. To achieve and maintain customer confidence in the transaction, and to ensure the integration of Conrail lines into the Centralized Customer Service Centers of CSX and NS, applicants must report monthly beginning August 23, on that transition, along with staffing and training of personnel. Reporting must also include information as to efforts to familiarize customers with any new processes that they may encounter in using the systems.

5. *Power And Rolling Stock*. As soon as possible after the effective date of the decision, but no later than Day One, applicants must report on the apportionment of the Conrail locomotive and freight car fleets. This report must categorize the freight and locomotive equipment by type, and must indicate the number of each type assumed by each applicant.

6. *Car Management, Crew Management And Dispatching*. Critical to an efficient and safe operational transition are the areas of car management, crew management and train dispatching. These areas include consolidation of the car management functions into the respective operating systems, crew training to familiarize employees with new operating territories and with different locomotives and other equipment, and employee time keeping. Also critical is complete familiarization with any new train and traffic control systems. Applicants will be required to certify, to the extent transition has occurred as of Day One, that all affected employees have been fully trained and qualified to operate over the territories they will be assigned (either Conrail, CSX, or NS); that assigned employees are qualified to access and operate the information management systems related to crew management, time keeping, and train dispatching; and that train, traffic control and car management systems are in place, fully operational, and fully staffed.

7. *Shared Assets Areas*. The proposed operating arrangements for the SAAs, North Jersey, South Jersey/Philadelphia, and Detroit, present many unique situations requiring close scrutiny. Applicants will be required, beginning Day One, to detail the operations for all three SAAs as follows:

- Provide, each Monday, daily status reports for each of the three SAAs for the previous 5-day period (Monday - Friday). For each respective SAA, and each yard in each SAA where appropriate, reports are to include (1) fluid yard capacity; (2) cars on hand loaded and empty; (3) cars handled per day; (4) average daily dwell time for cars handled; and (5) daily train origination information, as measured against current schedules for trains originating in the respective SAA. Significant areas of delay must be discussed in the transmittal of the weekly report, and the reason for the delay or late origination must be noted, *e.g.*, (C) held for crews; (P) held for power.

8. *Monongahela Coal Area*. While this area does not contain the operating complexity of an SAA, it is nonetheless an important area subject to special arrangements in that NS will operate and maintain the area subject to a joint use agreement with CSX. Therefore, we will ask the Transaction Council to report to us any operating or service problems brought to the Council's attention. In addition, CSX has indicated that it plans to increase the capacity of Newell Yard, within the Monongahela Coal Area, to accommodate new coal traffic that it will move after the transaction. Therefore, we will require CSX to include Newell Yard with its reporting of Construction And Other Capital Projects.

9. *Cleveland Operations*. The Cleveland area presents a mix of yards and belt and main line trackage in industrialized and heavily populated areas with numerous at-grade crossings. CSX and NS have modified their original operating plans to address concerns regarding operating density in the greater Cleveland area, and we will monitor the Cleveland area to ensure the success of these commitments. Construction projects that will be monitored include the Cloggsville Connection, the Rockport Yard realignment, and the construction of connections and crossovers in the Coen Road area in Vermilion, OH, which are critical to the NS Cleveland operation. Progress reports for these projects must be included in the monthly Construction And Other Capital Projects reporting.

10. *Chicago Gateway Operations*. Beginning Day One, applicants will be required to report weekly on the number and on time delivery of run through trains delivered to western carriers via the Chicago gateway, including Streator, IL, by major commodity group. These reports shall indicate whether the

connections were on time within two hours, based on the current schedules. Significant areas of delay must be discussed in the transmittal of the weekly report.

11. *Yards And Terminals*. Beginning Day One, applicants will report on the activity of their respective major yard facilities, identified in Appendix R. This shall include a daily status report for each yard listed in the Appendix, for 1 day, Wednesday, to be submitted with other required reporting each Monday. These reports must include those informational items requested for the SAAs, with one exception: the terminal on-time performance for origination times must be reflected instead by the information contained in the reporting element covering on time performance. Because Manifest trains typically require more yard or terminal handling than other types of through-movement trains, there is a greater likelihood for Manifest trains to be adversely affected by yard congestion and delays. Therefore, applicants, in their major corridor on time performance report, must pay close attention to the movement of these trains through the reporting yards and terminals and the reasons for any delays. In addition, applicants will require the Indiana Harbor Belt Railroad Company (IHB) to file similar information on the operations of its yards in the Chicago area noted in Appendix R.

12. *On Time Performance*. Beginning Day One, applicants will select and report on the performance of their trains in 12 major corridors (6 CSX and 6 NS). The trains reported on must be identified by the following commodity groups: (I) Intermodal, (M) Manifest, (U) Unit, and (A) Automobile (parts and finished) if identified separately from Manifest. Significant areas of delay must be discussed in the transmittal of the weekly report, and the reason for the delays must be noted, *e.g.*, (C) held for crews; (P) held for power, (D) delayed at connection.

13. *The Conrail Transaction Council*. Beginning August 23, the Transaction Council will be asked to report monthly on its meetings, and on specific elements of the transaction that were the subject of discussion or that are of concern. This is particularly the case for the areas of information technology, shared assets, and customer service.

14. *Labor Task Forces*. We will require monthly reporting, beginning August 23, on the establishment of labor task forces by applicants, along with an explanation of their objectives and initiatives.

15. *Data Requirements And Handling*. The data contained in the required reporting for review by our staff must be submitted to us in computer-ready format wherever possible. While we do not plan to make all of the reporting information publicly available, unless a proceeding is instituted concerning

alleged service failure, we will place reports filed pursuant to reporting elements 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, and 14, in the docket as they are filed, along with the transmittal letter for the weekly reporting describing significant delays noted in elements 10 and 12. We are making these reports available to the public because they are informative but do not contain commercially sensitive information. Moreover, we would expect applicants to share the monitoring information with the Transaction Council and, as appropriate, with the Labor Task Forces. All reporting will be made directly to the Director, Office of Compliance and Enforcement (OCE), Suite 780, at the Board's headquarters. The Director of OCE is authorized to change or supplement these data requirements, after consultation with the Board.

FINDINGS

In STB Finance Docket No. 33388, we find: (a) that the acquisition and exercise of control of CRR and CRC by CSX and NS, and the resulting joint and common control of CRR, CRC, NYC, and PRR, through the proposed transaction, as conditioned herein, is within the scope of 49 U.S.C. 11323 and is consistent with the public interest; (b) that the proposed transaction will not adversely affect the adequacy of transportation to the public; (c) that no other railroad in the area involved in the proposed transaction has requested inclusion in the transaction, and that failure to include other railroads will not adversely affect the public interest; (d) that the proposed transaction will not result in any guarantee or assumption of payment of dividends or any increase in fixed charges except such as are consistent with the public interest; (e) that the interests of employees affected by the proposed transaction do not make such transaction inconsistent with the public interest, and any adverse effect will be adequately addressed by the conditions imposed herein; (f) that the proposed transaction, as conditioned herein, will not significantly reduce competition in any region or in the national rail system; and (g) that the terms of the proposed transaction, including the terms of the acquisition of CRR stock, are just, fair, and reasonable to the stockholders of CRR, CSXC, and NSC. We further find that the conditions imposed in STB Finance Docket No. 33388, including but not limited to the various competitive conditions and the oversight and operational monitoring conditions, are consistent with the public interest. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in STB Finance Docket No. 33388, and any rail employees of the carriers involved in the trackage rights arrangements imposed as conditions in STB Finance Docket No. 33388, should be protected by the conditions set forth in the labor protective conditions set forth in

New York Dock, *Mendocino Coast*, *Norfolk and Western*, and *Oregon Short Line*, as appropriate,[259] unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized in STB Finance Docket No. 33388, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

The foregoing findings specifically extend to the following elements of the transaction authorized in STB Finance Docket No. 33388: (a) the joint acquisition of control of CRR and CRC by CSX and NS; (b) the assignment of certain assets of CRC (including, without limitation, trackage and other rights) to NYC to be operated as part of CSXT's rail system and the assignment of certain assets of CRC (including, without limitation, trackage and other rights) to PRR to be operated as part of NSR's rail system (collectively, the NYC/PRR assignments), with NYC and PRR having, except to the extent limited in this decision, such right, title, interest in and other use of such assets as CRC itself had; (c) the entry by CSXT into the CSXT Operating Agreement and the operation by CSXT of the assets held by NYC; the entry by NSR into the NSR Operating Agreement and the operation by NSR of the assets held by PRR; and the entry by CSXT, NSR, and CRC into the Shared Assets Areas Operating

[259] As respects the transaction authorized in STB Finance Docket No. 33388 and the trackage rights arrangements imposed as conditions in STB Finance Docket No. 33388: the conditions set forth in *New York Dock Ry. — Control — Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979), *aff'd sub nom. New York Dock Ry. v. United States,* 609 F.2d 83 (2d Cir. 1979) (*New York Dock*), will apply to (1) the acquisition and exercise by CSX and NS of control, joint control, and common control of CRR, CRC, NYC, and PRR, (2) the NYC/PRR assignments, (3) the entry into and performance of operating agreements for Allocated Assets and Shared Assets, and (4) the transfer of the Streator Line to NS; the conditions set forth in *Mendocino Coast Ry., Inc. — Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980) (*Mendocino Coast*), will apply to the operation by CSX and NS of track leases with other rail carriers to which Conrail is a party; the conditions set forth in *Norfolk and Western Ry. Co. — Trackage Rights — BN*, 354 I.C.C. 605, 610-15 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653, 664 (1980) (*Norfolk and Western*), will apply to (1) the trackage rights authorizations provided for in the lead docket, and (2) the trackage rights arrangements imposed as conditions in STB Finance Docket No. 33388; and the conditions set forth in *Oregon Short Line R. Co. — Abandonment — Goshen*, 360 I.C.C. 91, 98-103 (1979) (*Oregon Short Line*), will apply to the one discontinuance authorization provided for in the lead docket. The *New York Dock* conditions, on the one hand, and the *Mendocino Coast, Norfolk and Western and Oregon Short Line* conditions, on the other hand, provide differing levels of protection, but, as respects affected employees of applicants and their rail carrier affiliates, these differences will be of no consequence: affected employees of applicants and their rail carrier affiliates covered by the *Mendocino Coast, Norfolk and Western* and/or *Oregon Short Line* conditions will also be covered by, and will therefore be entitled to the protections of, the *New York Dock* conditions.

Agreements and the operation by CSXT, NSR, and CRC thereunder of assets held by CRC, with CSXT and NSR respectively acquiring the right to operate and use the Allocated Assets and the Shared Assets, subject to the terms of the Allocated Assets Operating Agreements, the Shared Assets Areas Operating Agreements, and other Ancillary Agreements, as fully as CRC itself had possessed the right to use them, except to the extent limited in this decision; (d) the continued control by CSX, NS, and CRR of NYC and PRR, subsequent to the transfer of CRC assets to NYC and PRR, and the common control by CSXC, CSXT, NSC, NSR, CRR, and CRC of NYC and PRR, and the carriers each of them controls; (e) the acquisition by CSXT and NSR of the trackage rights listed in items 1.B and 1.A, respectively, of Schedule 4 of the Transaction Agreement; the acquisition by CSXT and NSR of the rights with respect to the NEC listed in Item 1.C of that schedule;[260] and the acquisition by CSXT of the rights provided for by the Monongahela Usage Agreement; (f) the acquisition by CRC from CSXT and NSR, and by CSXT and NSR from each other, of certain incidental trackage rights over certain line segments, as identified in Section 3(c) of each of the three Shared Assets Areas Operating Agreements; and (g) the transfer of CRC's Streator Line to NS.

We further find that, upon consummation of the authorized control and the NYC/PRR assignments, it is consistent with the public interest and necessary for applicants to carry out the transaction authorized in STB Finance Docket No. 33388 that, except to the extent limited in this decision, NYC and PRR shall have all of such right, title, interest in and other use of such assets as CRC itself had, notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's unilateral transfer or assignment of such assets to another person or persons, or purporting to affect those rights, titles, interests, and uses in the case of a change in control.

We further find that, upon consummation of the authorized control and the CSXT Operating Agreement, the NSR Operating Agreement, and the Shared Assets Areas Operating Agreements, it is consistent with the public interest and necessary for applicants to carry out the transaction authorized in STB Finance Docket No. 33388 that, except to the extent limited in this decision, CSXT and NSR shall have the right to operate and use the Allocated Assets allocated to each of them and the Shared Assets, including those presently operated by CRC under trackage rights or leases (including but not limited to those listed in

[260] *See,* CSX/NS-25, Volume 8B at 110-21.

Appendix L to the application),[261] subject to the terms of the Allocated Assets Operating Agreements, the Shared Assets Areas Operating Agreements, and other Ancillary Agreements as fully as CRC itself had possessed the right to use them, notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's unilateral assignment of its operating rights to another person or persons, or purporting to affect those rights in the case of a change in control.

We further find, with respect to the Allocated Assets and the assets in Shared Assets Areas consisting of assets other than routes (including, without limitation, the CRC Existing Transportation Contracts), that it is consistent with the public interest and necessary for applicants to carry out the transaction authorized in STB Finance Docket No. 33388 that, except to the extent limited in this decision, CSXT and NSR shall have the right to use, operate, perform, and enjoy such assets to the same extent as CRC itself could, notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's assignment of its rights to use, operate, perform, and enjoy such assets to another person or persons, or purporting to affect those rights in the case of a change in control.

We further find that the NYC/PRR assignments are not within the scope of 49 U.S.C. 10901.

We further find that, after the Closing Date, CRC will remain a "rail carrier" as defined at 49 U.S.C. 10102(5).

We further find that, subject to the modifications made in this decision, the terms of the NITL agreement are consistent with the public interest.

We further find that, to the extent that the ownership interests and control by CSX and NS over CRR, CRC, NYC, or PRR, or any other matter provided for in the Transaction Agreement or the Ancillary Agreements referred to therein may be deemed to be a pooling or division by CSX and NS of traffic or services or any part of earnings by CSX, NS, or Conrail within the scope of 49 U.S.C. 11322, such pooling or division will be in the interest of better service to the public or of economy of operation, or both, and will not unreasonably restrain competition.

We further find that the discontinuance of the temporary trackage rights to be granted to NSR on the CRC line between Bound Brook, NJ, and Woodbourne, PA (to be assigned to NYC and operated by CSXT), at the time and on the terms provided for in the Transaction Agreement and the Ancillary Agreements referred to therein, is required or permitted by the present or future

[261] *See,* CSX/NS-18 at 216-24.

public convenience and necessity and will not have a serious, adverse impact on rural and community development.

In STB Finance Docket No. 33388 (Sub-No. 1), we find that the proposed operation of a connection track is exempt from prior review and approval pursuant to 49 CFR 1150.36.

In STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7), we find that the proposed operation of connection tracks are exempt from prior review and approval pursuant to 49 U.S.C. 10502 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101 and regulation is not needed to protect shippers from the abuse of market power.

In STB Finance Docket No. 33388 (Sub-Nos. 8, 9, 11, 13, 15, 16, 17, 19, and 20), we find that the proposed construction and operation of connection tracks are exempt from prior review and approval pursuant to 49 CFR 1150.36.

In STB Finance Docket No. 33388 (Sub-Nos. 10, 12, 14, 18, 21, and 22), we find that the proposed construction and operation of connection tracks are exempt from prior review and approval pursuant to 49 U.S.C. 10502 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101 and regulation is not needed to protect shippers from the abuse of market power.

In STB Finance Docket No. 33388 (Sub-No. 23), we find that the relocation of NW's rail line at Erie, PA, is exempt from prior review and approval pursuant to 49 CFR 1180.2(d)(5). We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in STB Finance Docket No. 33388 (Sub-No. 23) should be protected by the conditions set forth in *Oregon Short Line*, unless different conditions are provided for in a labor agreement entered into prior to consummation of that transaction, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In STB Finance Docket No. 33388 (Sub-No. 24), we find that the transfer of NW's rail line between Fort Wayne, IN, and Tolleston (Gary), IN, to CRC is exempt from prior review and approval pursuant to 49 U.S.C. 10502 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101 and regulation is not needed to protect shippers from the abuse of market power. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in STB Finance Docket No. 33388 (Sub-No. 24) should be protected by the conditions set forth in *New York Dock*, unless different conditions are provided for in a labor agreement entered into prior to consummation of that transaction, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34), we find that the acquisitions of trackage rights by applicants are exempt from prior review and approval pursuant to 49 CFR 1180.2(d)(7). We further find that any rail employees of applicants or their rail carrier affiliates affected by the transactions authorized in STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34) should be protected by the conditions set forth in *Norfolk and Western*, unless, with respect to any such transaction, different conditions are provided for in a labor agreement entered into prior to consummation of such transaction, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In STB Finance Docket No. 33388 (Sub-No. 26), we find that the acquisition and exercise of control of LD&RT by CSXC and CSXT, and the common control of LD&RT, CSXT, and other rail carriers controlled by CSXT and/or CSXC, is within the scope of 49 U.S.C. 11323 and will not substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in STB Finance Docket No. 33388 (Sub-No. 26) should be protected by the conditions set forth in *New York Dock*, unless different conditions are provided for in a labor agreement entered into prior to consummation of that transaction, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In STB Finance Docket No. 33388 (Sub-No. 31), we find that the acquisition, by CSX, of a 50% interest in APR will not result in an acquisition of control within the scope of 49 U.S.C. 11323.

In STB Finance Docket No. 33388 (Sub-No. 36), we find that the responsive application filed by I & M Rail Link, LLC, is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 39), we find that the responsive application filed by Livonia, Avon & Lakeville Railroad Corporation is consistent with the public interest to enable LAL to cross Conrail's Genesee Junction Yard to connect directly with the Rochester & Southern Railroad, permitting LAL to reach NS. In all other respects, we find that the responsive application filed by LAL is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 59), we find that the responsive application filed by Wisconsin Central Ltd. is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 62), we find that the responsive application filed by Illinois Central Railroad Company is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 63), we find that the responsive application filed by R.J. Corman Railroad Company/Western Ohio Line is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 69), we find that the responsive application filed jointly by the State of New York, acting by and through its Department of Transportation, and the New York City Economic Development Corporation, acting on behalf of the City of New York, is consistent with the public interest to the extent it seeks to require CSX to cooperate in developing intramodal rail service in the area east of the Hudson River, as discussed in this decision. In all other respects, we find that the responsive application filed by NYDOT and NYCEDC is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 75), we find that the responsive application filed by New England Central Railroad, Inc., is consistent with the public interest to the extent it seeks to require applicants to grant it trackage rights between Palmer and Springfield, MA. In all other respects, we find that the responsive application filed by NECR is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 76), we find that the responsive application filed by Indiana Southern Railroad, Inc., is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 78), we find that the responsive application filed by Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad is not consistent with the public interest.

In STB Finance Docket No. 33388 (Sub-No. 80), we find that the responsive application filed by Wheeling & Lake Erie Railway Company is consistent with the public interest to the extent it seeks: overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railroad and other railroads at Toledo; an extension of W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie; and overhead haulage or trackage rights to Lima, OH, with a connection to the Indiana & Ohio Railway Company at Lima. We further find that the responsive application filed by W&LE is consistent with the public interest to the extent it seeks to require applicants to negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregates shippers or to serve shippers along CSX's line between Benwood and Brooklyn

Junction, WV. In all other respects, we find that the responsive application filed by W&LE is not consistent with the public interest.

In STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), we find that the abandonment by CRC and CSXT, respectively, of an approximately 29-mile portion of the Danville Secondary Track between MP 93.00± at Paris, IL, and MP 122.00± at Danville, IL, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In STB Docket No. AB-290 (Sub-No. 194X), we find that the abandonment by NW of an approximately 21.5-mile line between MP SK-2.5 near South Bend, IN, and MP SK-24.0 near Dillon Junction, IN, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In STB Docket No. AB-290 (Sub-No. 196X), we find that the abandonment by NW of an approximately 7.5-mile line between MP TM-5.0 in Toledo, OH, and MP TM-12.5 near Maumee, OH, is exempt from prior review and approval pursuant to 49 U.S.C. 10502 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101 and regulation is not needed to protect shippers from the abuse of market power.

In STB Docket No. AB-290 (Sub-No. 197X), we find that the discontinuance by NW of operations over the Toledo Pivot Bridge extending between MP CS-2.8 and MP CS-3.0 near Toledo, OH, a distance of approximately 0.2 miles, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X, 196X, and 197X), we further find that any employees affected by the abandonments and/or discontinuance authorized therein should be protected by the conditions set forth in *Oregon Short Line*, unless different conditions are provided for in a labor agreement entered into prior to consummation of the relevant abandonment or discontinuance, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

We further find, on the basis of the final Environmental Impact Statement issued in this proceeding, that this action, as conditioned by the environmental mitigation conditions set forth in Appendix Q, will not result in any significant adverse environmental impacts on a systemwide basis and that its approval will result in environmental benefits, including reduced air pollutant emissions and the conservation of energy resources, on a systemwide basis.

We further find that changes in traffic levels resulting from this action will cause beneficial environmental effects on a regional and local basis, and will cause adverse environmental effects in regional and local areas, depending on whether traffic levels are decreasing or increasing. We find that, with the environmental mitigation conditions set forth in Appendix Q, the adverse regional and local environmental effects do not outweigh the beneficial transportation and systemwide, regional, and local environmental effects of the transactions authorized in the STB Finance Docket No. 33388 proceeding and the embraced proceedings.

We further find that, to the extent that there are significant adverse local environmental impacts resulting from the transactions authorized in the STB Finance Docket No. 33388 proceeding and the embraced proceedings, mitigation of these impacts is warranted only where the costs and burdens of that mitigation would not impair the implementation of these transactions or significantly reduce the operational efficiencies and other public interest benefits justifying our approval of these transactions.

We further find that the conditions set forth in Appendix Q with respect to environmental mitigation are consistent with the public interest and with the National Environmental Policy Act.

We further find that the proposed construction projects and abandonments, as conditioned by the environmental mitigation conditions set forth in Appendix Q, will not significantly affect the quality of the human environment or the conservation of energy resources.

We further find that all other conditions requested by any party to the STB Finance Docket No. 33388 proceeding or any of the embraced proceedings but not specifically approved in this decision are not in the public interest and should not be imposed.

CHAIRMAN MORGAN, commenting:

Our job in assessing rail mergers is to balance a variety of factors and issue a decision that advances the public interest. The decision we are issuing today, which approves with conditions the Conrail merger application, will advance the public interest in many important ways. The application promotes competition, and our decision applies the authority of the Board to enhance competition even further.

The Strength of the Merger Application. The merger application we are approving today, as enhanced by the many conditions we are imposing, will result in a procompetitive restructuring of railroad service throughout much of the Eastern United States. When the hard work is done, and this complex transaction is fully consummated, both CSX and NS will provide vigorous, balanced, and sustainable competition, each over approximately 20,000 miles of rail line in the East.

Most notably, CSX and NS are prepared to aggressively compete with each other in many important markets where Conrail now faces limited or no competition from other major railroads. Shippers will benefit from new head-to-head rail competition within shared assets areas and joint access areas. And this merger will enhance competition for many localities outside of these areas as well. In Buffalo, for example, while not every shipper will have direct service by two carriers, the transaction will create a two-carrier presence that will benefit shippers; and CSX's activities in the New York City area will face more competitive discipline than Conrail's do now, from the nearby presence of the New Jersey shared assets area. Finally, this transaction will enable both CSX and NS to compete more effectively with motor carrier service, which is a dominant mode of freight transportation throughout the East.

In short, shippers throughout the East will have more transportation options than they have had in decades. And they will have more competitive service, at reasonable rates, than they have ever had before.

Additionally, the transaction, when it is fully in place, will have a broad positive economic effect. It will produce an impressive $1 billion annually in quantifiable public benefits and numerous other benefits. The capital that will be invested in expanded rail infrastructure will benefit all shippers, not just those that are served by the applicants, and it will create new jobs both on and off of the rail system. The support of more than 2,200 shippers from a broad spectrum of commodity groups, 350 public officials, 80 railroads, many state and local government interests throughout the East, and various rail labor employees attests to the overall strength of the proposal.

This merger will promote competitive balance throughout an entire region of the country. And it will create a strong rail network in the East that can handle the transportation needs of an expanding economy and advance important economic growth and development in the region. These benefits clearly and significantly advance the public interest.

Preservation of the Fundamental Integrity of the Transaction. Our decision, while imposing important additional procompetitive conditions, recognizes the operational and competitive integrity of the proposal and the importance of preserving and promoting privately negotiated agreements. Government should not be in the business of fundamentally restructuring private-sector initiatives that are inherently sound, and the conditions that we are imposing add value, but not in a way that undermines the transaction itself. They reflect a respect for the carefully crafted structural soundness of the merger proposal, including its shared assets and joint access areas, and for the numerous settlement agreements that we encouraged and that the applicants and the other parties have worked hard to reach — agreements like the National Industrial Transportation League

(NITL) settlement, the United Transportation Union (UTU) and Brotherhood of Locomotive Engineers settlements, the Cleveland area environmental settlements, and so many more. These private-sector agreements have clearly added value to the transaction that was initially proposed, from a competitive perspective and in other ways, and the parties are to be commended for furthering the public interest in this way. There is a strong public interest in encouraging private parties to negotiate procompetitive transactions such as this one, and government action that discourages such private-sector initiative is not in the public interest.

The Procompetitive Use of the Board's Authority. While our decision preserves the strength and integrity of the proposal, it also applies the Board's authority fully and reasonably to further promote competition to the benefit of many geographic regions. The additional conditions, which go beyond the already regionally procompetitive effect of the original transaction and the further procompetitive effect of the many settlements, enhance the railroad alternatives for areas in New York State and New England that had lost carrier options through the creation of Conrail.

Our decision also applies the Board's authority to further enhance the positions of many users. Our decision imposes the NITL settlement and expands in a logical way the procompetitive aspects of that settlement. By giving shippers the opportunity to exercise any antiassignment clauses or other similar provisions in their existing contracts after 6 months following the division of Conrail's assets, our decision preserves the operational integrity of the transaction, but still gives those shippers, including many chemical, coal, and intermodal shippers, the opportunity to use the contract terms they have bargained for to take advantage of their new competitive options sooner rather than later. By preserving the settlements of many railroads and shippers such as coal and utility shippers, while imposing conditions to assist others such as aggregates shippers, and smaller railroads that provide important services, our decision ensures that, overall, shippers will be better off after the merger than they were before, and that none will have less service than they had before.

In this regard, our decision recognizes the important role of smaller railroads in providing essential and competitive services in various regions affected by this transaction. By assuring that smaller railroads that provide essential services in such areas as the Ohio region and New England will remain viable and will continue to be able to compete, the conditions promote important competitive options and further regional economic development.

Operational and Implementation Success. Our decision, with its significant operational reporting and monitoring, recognizes the operational challenges that the transaction presents. Its monitoring elements will provide the Board with the tools to further a smooth implementation of the merger in a way that utilizes the Conrail Transaction Council and the Labor Task Forces and does not unduly burden the parties. And it appropriately focuses on specific areas of concern, such as the shared assets areas and the Chicago gateway. Having been given the personal commitment of the Chief Executive Officers of both applicant railroads to make the merger work, I am confident that this merger will be implemented smoothly and will result in overall service improvements in relatively short order. The conditions we are imposing, however, will make sure that we are on top of the situation in case it does not.

Protection of the Environment. Our decision appropriately protects the environment. The transaction has many environmental benefits, including the anticipated removal of over 1 million truck trips a year from our Nation's highways. At the same time, the proposal raised environmental concerns. In response, for the first time ever in a merger, the Board issued a full environmental impact statement. We also have encouraged the railroads and local communities to meet and attempt to address issues privately, and several have been able to successfully resolve their concerns. In Cleveland, for example, a key traffic center for this merger, the parties, after months of discussion, have reached mutually acceptable agreements that preserve the operational integrity of the transaction while addressing important community life concerns. I am pleased that we are able to give effect to win-win settlements such as this one, and others in the area surrounding Cleveland and in so many other places. At the same time, for the communities that could not reach agreement with the carriers, our decision does provide necessary and appropriate conditions pertaining to grade-crossing safety, hazardous materials, traffic delay and noise, among others. And, with the recommended mitigation that the applicants have agreed to carry out, the transaction will not have, and cannot be viewed as having, a disproportionately high and adverse impact on minority and low-income areas.

The Promotion of Safety. Our decision clearly promotes safety. More than half of the environmental conditions involve safety. For the first time ever in a merger, the applicants were required to submit safety integration plans. And, as part of the merger implementation oversight, the implementation of these plans will be carefully monitored through a memorandum of understanding between the Board and the Department of Transportation, which clearly represents a cooperative governmental initiative in the public interest.

Recognition of Employee Interests. As previously discussed, the proposal before us will mean more jobs overall in the long run. And, by adopting the UTU proposal in mandating the creation of Labor Task Forces to focus on issues such as safety and operations, our decision will help promote safety and quality of life for employees. Also, our decision provides the protections of *New York Dock*, and it reaffirms the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights. Thus, the Board has made clear in its decision, as requested by rail labor, that the Board's approval of the application *does not* indicate approval or disapproval of any of the involved CBA overrides that the applicants have argued are necessary.

Overall Benefits. The package we are approving should clearly promote the public interest. The original transaction, with its subsequently negotiated agreements, and with the conditions we are imposing, will provide many benefits to many people. The extensive oversight and monitoring will help us to ensure that these benefits will materialize, and the private mechanisms in place for oversight will provide a vehicle by which the important and constructive private-sector dialogue, initiated prior to the Board's decision today among the applicants, other railroads, shippers, employees, and affected communities, can continue.

Our decision promotes private-sector initiatives that are in the public interest and represents good, common sense government. It provides a resolution that is best for the national interest at large, and for the East in particular. Approval of this merger as conditioned is an historic moment for the Board, for transportation, and for the Nation as a whole.

VICE-CHAIRMAN OWEN, commenting:

Since 1920, it has been the public policy of this nation to encourage railroad mergers that are in the public interest. The "public interest" — just what does that expression mean? We are instructed, via the statute, agency precedent, and the courts, that in the context of a proposed merger, that expression should mean competition and improved rail service for shippers. For railroads, it should mean growth, better returns on investments, more efficient use of assets, and infrastructure improvements. For labor, it should mean fair working conditions and wages, and enhanced job security. And last, but not least, for impacted communities, it should mean fair and equitable arrangements affecting the environment and the quality of life.

I find that, in the context of this proposed merger and in view of the quality of the arguments and evidence, this is indeed a proposed merger in the public interest. I vote to approve it.

In my opinion, this merger, as approved and conditioned, reasonably approximates what was envisioned, as far back as the Final System Plan, as viable two-carrier competition in the East. Overall, as approved, this transaction will have substantial procompetitive results.

I believe that the public overall should be pleased as a result of what we do here today. Conrail has been replaced by two viable, efficient, and quality carriers, who promise to compete vigorously. Such competition cannot help but enure to the public benefit and interests. Concomitantly, the nation's communities and highways will benefit from the removal of many thousands of trucks from the nation's highways.

Is it a perfect plan? Perhaps not. Will there be *some* competitive harm, or dislocation? Maybe, but only time will tell. I find on balance, however, the evidence compelling that the approval of this merger, as conditioned by the Board's decision, will ease, and in some cases completely eliminate the harm of a competitive imbalance in many parts of the East that has gone on for far too long.

I am thankful that the debate consisted of many diverse views. But I believe that what we do here today will in the long run achieve the greatest good with a minimum amount of harm. In this regard, I would commend the applicants and the National Industrial Transportation League, and the United Transportation Union, among others, for sitting down at the table in advance of these proceedings, pursuing meaningful dialogue, and reaching exceptional and novel resolutions. That was truly an example of the private market place regulating itself better than any governmental body could do.

I would also commend the role of other federal agencies, such as the FRA in matters of safety, and DOT and DOJ for their valuable input regarding some of the competitive and operational issues, in advancement of the process.

We prescribe here today carefully crafted economic, operational, and environmental conditions designed, on balance, not only to enhance further the competitive and public benefits of this merger, but also to enhance the Board's ability to recognize and cure potential problems in the merger's future implementation.

Accordingly, let me stress to the skeptics, that this agency intends on being an alert watch dog. The Board will not hesitate for a moment to exercise its authority to impose additional competitive, operational, and environmental relief when necessary. As such, I will hold the applicants to their promises and commitments.

Lastly, I would be remiss if I did not take a moment here to thank the Board's Staff. I must admit, I came here from the private sector 3 years ago with some of the same negative stereotypical perceptions of civil servants shared by others. However, I am here to tell you that the civil servants here at the STB, at least, are some of the most dedicated, talented, and committed found anywhere in the federal workforce. This agency possesses some of the finest and competent transportation specialists in the world. I thank them all — the merger team, the Chairman and her staff, and, last but not least, my staff, for fulfilling their responsibilities in the highest tradition of excellence.

It is ordered:

1. In STB Finance Docket No. 33388, the application filed by CSXC, CSXT, NSC, NSR, CRR, and CRC is approved, subject to the imposition of the conditions discussed in this decision. The Board expressly reserves jurisdiction over the STB Finance Docket No. 33388 proceeding and all embraced proceedings in order to implement the 5-year oversight condition imposed in this decision and, if necessary, to impose additional conditions and/or to take other action if, and to the extent, we determine it is necessary to impose additional conditions and/or to take other action to address harms caused by the CSX/NS/CR transaction.[262]

2. If CSXC, CSXT, NSC, and NSR assume control over CRR and CRC, they shall confirm in writing to the Board, within 15 days after such assumption of control, the date of such assumption. Applicants shall submit to the Board three copies of the journal entries, if any, recording such assumption of control.

3. Applicants shall give 14 days' prior notice to the Board and to the public of the date that will be designated as Day One.[263]

4. If applicants effect the Division, they shall confirm in writing to the Board, within 15 days after Day One, the date on which the Division was effected (*i.e.*, the date that was Day One). Applicants shall submit to the Board three copies of the journal entries, if any, recording the Division.

5. All notices to the Board as a result of any authorization shall refer to this decision by service date and docket number.

6. No change or modification shall be made in the terms and conditions approved in the authorized application without the prior approval of the Board.

7. Except as otherwise provided in this decision, the approval granted herein expressly includes, without limitation, the following elements of the transaction as provided for in the application and in the Transaction Agreement

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[262] We intend to monitor implementation of the CSX/NS/CR transaction and the workings of the conditions imposed in this decision with respect to a variety of matters, including but by no means limited to the following matters: applicants' adherence to the various representations made during the course of this proceeding; problems in the Chicago switching district; the effect of the acquisition premium on the rate reasonableness jurisdictional threshold and on revenue adequacy determinations; and transaction-related impacts on Amtrak passenger operations and regional rail passenger operations.

[263] Day One, also known as the Closing Date, is the date on which applicants will effect the Division (the division between CSX and NS of the operation and use of the assets of Conrail).

and the Ancillary Agreements referred to therein: (a) the joint acquisition of control of CRR and CRC by CSX and NS; (b) the NYC/PRR assignments; (c) the entry by CSXT into the CSXT Operating Agreement and the operation by CSXT of the assets held by NYC; (d) the entry by NSR into the NSR Operating Agreement and the operation by NSR of the assets held by PRR; (e) the entry by CSXT, NSR, and CRC into the Shared Assets Areas Operating Agreements and the operation by CSXT, NSR, and CRC thereunder of assets held by CRC; (f) the continued control by CSX, NS, and CRR of NYC and PRR, subsequent to the transfer of CRC assets to NYC and PRR, and the common control by CSXC, CSXT, NSC, NSR, CRR, and CRC of NYC and PRR, and the carriers each of them controls; (g) the acquisition by CSXT and NSR of the trackage rights listed in Items 1.B and 1.A, respectively, of Schedule 4 of the Transaction Agreement; (h) the acquisition by CSXT and NSR of the rights with respect to the NEC listed in Item 1.C of that Schedule; (i) the acquisition by CSXT of the rights provided for by the Monongahela Usage Agreement; (j) the acquisition by CRC from CSXT and NSR, and by CSXT and NSR from each other, of certain incidental trackage rights over certain line segments, as identified in Section 3(c) of each of the three Shared Assets Areas Operating Agreements; and (k) the transfer of CRC's Streator Line to NS.

8. Except as otherwise provided in this decision, NYC and PRR shall have, upon consummation of the authorized control and the NYC/PRR assignments, all of such right, title, interest in and other use of such assets as CRC itself had, notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's unilateral transfer or assignment of such assets to another person or persons, or purporting to affect those rights, titles, interests, and uses in the case of a change of control.

9. Except as otherwise provided in this decision, CSXT and NSR may conduct, pursuant to 49 U.S.C. 11321, operations over the routes of Conrail as provided for in the application, including those presently operated by CRC under trackage rights or leases (including but not limited to those listed in Appendix L to the application), as fully and to the same extent as CRC itself could, notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's unilateral assignment of its operating rights to another person or persons, or purporting to affect those rights in the case of a change in control.

10. Except as otherwise provided in this decision, CSXT and NSR may use, operate, perform, and enjoy the Allocated Assets and the assets in Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts), as provided for in the application and pursuant to 49 U.S.C. 11321, to the same extent as CRC itself could,

notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's assignment of its rights to use, operate, perform, and enjoy such assets to another person or persons, or purporting to affect those rights in the case of a change in control. As respects any CRC Existing Transportation Contract (*i.e.*, any CRC transportation contract in effect as of Day One) that contains an antiassignment or other similar clause: at the end of the 180-day period beginning on Day One, a shipper with such a contract may elect either (a) to continue the contract until the expiration thereof under the same terms with the same carrier that has provided service during the 180-day period, or (b) to exercise whatever termination rights exist under the contract, provided the shipper gives 30 days' written notice to the serving carrier.

11. To the extent that the ownership interests and control by CSX and NS over CRR, CRC, NYC, or PRR, or any other matter provided for in the Transaction Agreement or in the Ancillary Agreements referred to therein, may be deemed to be a pooling or division by CSX and NS of traffic or services or any part of earnings by CSX, NS, or Conrail within the scope of 49 U.S.C. 11322, such pooling or division is approved pursuant to 49 U.S.C. 11321 and 11322.

12. Discontinuance of the temporary trackage rights to be granted to NSR on the CRC line between Bound Brook, NJ, and Woodbourne, PA (to be assigned to NYC and operated by CSXT), at the time and on the terms provided for in the Transaction Agreement, is approved.

13. The terms of the acquisition of CRR stock by CSXC, NSC, Tender Sub, and Merger Sub are fair and reasonable to the stockholders of CRR, CSXC, and NSC.

14. The NYC/PRR assignments are not within the scope of 49 U.S.C. 10901.

15. CRC will continue to be, after the Closing Date, a "rail carrier" as defined at 49 U.S.C. 10102(5).

16. Applicants must comply with all of the conditions imposed in this decision, whether or not such conditions are specifically referenced in these ordering paragraphs.

17. Applicants must comply with the environmental mitigation conditions set forth in Appendix Q.

18. Applicants must comply with the operational monitoring condition imposed in this decision, and, in connection therewith, must file periodic status reports and progress reports, as indicated in this decision.

19. Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision.

20. Applicants must adhere to all of the terms of the NITL agreement, subject to the modifications made in this decision.[264]

21. Applicants must adhere to the terms of the settlement agreements that were entered into with Amtrak, ESPA, STWRB, the City of Indianapolis, and UTU.

22. Applicants must monitor origins, destinations, and routings for the truck traffic at their intermodal terminals in Northern New Jersey and in the Commonwealth of Massachusetts in a manner that will allow us to determine whether the CSX/NS/CR transaction has led to substantially increased truck traffic over the George Washington Bridge. Applicants should report their results on a quarterly basis.

23. Applicants: must allow IP&L to choose between having its Stout plant served by NS directly or via switching by INRD; must allow for the creation of an NS/ISRR interchange at MP 6.0 on ISRR's Petersburg Subdivision for traffic moving to/from either the Stout plant or the Perry K plant; and must provide conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line.

24. Applicants must consult with ASHTA concerning the routing of its hazardous materials shipments.

25. Applicants and the Port of Wilmington must enter into discussions respecting any problems concerning switching services and charges, and must advise us, no later than September 21, 1998, of the status of these discussions.

26. Applicants must adhere to their representation that, although NS will have operational control of Conrail's MGA lines, CSX will have equal access to all current and future facilities located on or accessed from such lines.

27. Applicants should meet with labor representatives and attempt to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues.

28. CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and

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[264] The modifications made in this decision include, but are not limited to, the following: (a) the extension of the oversight period from 3 to 5 years; (b) the extension of the single-line to joint-line and reciprocal switching protections to reach shortlines that connect with Conrail and the shippers served by such shortlines; (c) the extension of the reciprocal switching provision to switching heretofore provided by CSX and NS to Conrail, where feasible; and (d) the revision of the plan for allocation of Conrail shipper contracts between CSX and NS to permit only a temporary override of antiassignment and other similar provisions that would unduly impede the carrying out of the transaction.

geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line. If CSX and CP have not reached an agreement by October 21, 1998, we will initiate a proceeding addressing this matter. CSX and CP should advise us, no later than October 21, 1998, whether they have or have not reached an agreement.

29. CSX must make, by October 21, 1998, an offer to the City of New York to establish a committee intended to develop ways to promote the development of rail traffic to and from the City, with particular emphasis on Conrail's Hudson Line, as well as ways to address the City's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient, and profitable rail freight service.

30. CSX must cooperate with the New York interests in studying the feasibility of upgrading cross-harbor float and tunnel facilities to facilitate cross-harbor rail movements, and, in particular, must participate in New York City's Cross Harbor Freight Movement Major Investment Study.

31. CSX must discuss with P&W the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh Pond, NY, and New Haven, CT, focusing on operational and ownership impediments related to service over that line.

32. CSX must adhere to its agreements with CN and CP that provide for lower switching fees in the Buffalo area and increased access to these carriers for cross-border, truck-competitive traffic.

33. CSX must meet with regional and local authorities in the Buffalo area to establish a committee to promote the growth of rail traffic to and from the Greater Buffalo area.

34. CSX must transfer to NS the trackage rights now held by CSX over the Conrail line that was formerly a Buffalo Creek Railroad line.

35. CSX must adhere to its representation regarding investment in new connections and upgraded facilities in the Buffalo area.

36. CSX must attempt to negotiate, with IC, a resolution of the CSX/IC dispute regarding dispatching of the Leewood-Aulon line in Memphis. CSX and IC must advise us, no later than September 21, 1998, of the status of their negotiations.

37. The $250 maximum reciprocal switching charge provided for in the NITL agreement must be applied to certain points in the Niagara Falls area for traffic using International Bridge and Suspension Bridge, for which Conrail recently replaced its switching charges with so-called "line haul" charges.

38. A 3-year rate study will be initiated to assess whether Buffalo-area shippers will be subjected to higher rates because of the CSX/NS/CR transaction.

39. As respects any shortline, such as RBMN, that operates over lines formerly operated over by CSX, NS, or Conrail (or any of their predecessors), and that, in connection with such operations, is subject to a "blocking" provision: CSX and NS, as appropriate, must enter into an arrangement that has the effect of providing that the reach of such blocking provision is not expanded as a result of the CSX/NS/CR transaction.

40. As respects AA's new contract with Chrysler, CSX and NS must take no action that would undermine, or interfere with AA's ability to provide quality interline service under, this contract.

41. The Belt Line Principle advocated by PBL will continue to have, after implementation of the CSX/NS/CR transaction, the effect, if any, that it presently has. Nothing in this decision should be taken to preempt that principle in any way.

42. Conrail's trackage rights on the NS line between Keensburg, IL, and Carol, IN, must be transferred to CSX.

43. As respects Wyandot and NL&S, CSX and NS: must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit-trains or blocks of 40 or more cars; and in other circumstances including new movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars).

44. NS will have access to any new line constructed by JS&S or NS, or by any entity other than CSX, between the JS&S facility at Capital Heights, MD, and any line over which NS has trackage rights.

45. In STB Finance Docket No. 33388 (Sub-No. 1), the notice, to the extent not previously made effective, is accepted.

46. In STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7), the petitions, to the extent not previously granted, are granted.

47. In STB Finance Docket No. 33388 (Sub-Nos. 8, 9, 11, 13, 15, 16, 17, 19 and 20), the notices are accepted.

48. In STB Finance Docket No. 33388 (Sub-Nos. 10, 12, 14, 18, 21 and 22), the petitions are granted.

49. In STB Finance Docket No. 33388 (Sub-No. 23), the notice is accepted.

50. In STB Finance Docket No. 33388 (Sub-No. 24), the petition is granted.

51. In STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34), the notices are accepted.

52. In STB Finance Docket No. 33388 (Sub-No. 26), the application is approved.

53. In STB Finance Docket No. 33388 (Sub-No. 31), the petition is dismissed.

54. In STB Finance Docket No. 33388 (Sub-No. 35), the responsive application filed by New York State Electric and Gas Corporation is dismissed.

55. In STB Finance Docket No. 33388 (Sub-No. 36), the responsive application filed by I&M is denied.

56. In STB Finance Docket No. 33388 (Sub-No. 39), the responsive application filed by LAL: is granted to the extent necessary to permit LAL to operate across Conrail's Genesee Junction Yard to reach a connection with R&S; and, otherwise, is denied. CSX and LAL: must attempt to negotiate the details of such operations; and, if negotiations are not fully successful, may submit separate proposals no later than September 21, 1998.

57. STB Finance Docket No. 33388 (Sub-No. 54) is discontinued.

58. In STB Finance Docket No. 33388 (Sub-No. 59), the responsive application filed by WCL is denied.

59. In STB Finance Docket No. 33388 (Sub-No. 61), the responsive application filed by B&LE is dismissed.

60. In STB Finance Docket No. 33388 (Sub-No. 62), the responsive application filed by IC is denied.

61. In STB Finance Docket No. 33388 (Sub-No. 63), the responsive application filed by RJCW is denied.

62. In STB Finance Docket No. 33388 (Sub-No. 69), the responsive application filed by NYDOT and NYCEDC is granted in part and denied in part, as indicated in this decision.

63. In STB Finance Docket No. 33388 (Sub-No. 72), the responsive application filed by Belvidere & Delaware River Railway and the Black River & Western Railroad is dismissed.

64. In STB Finance Docket No. 33388 (Sub-No. 75), the responsive application filed by NECR: is granted insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA, and West Springfield, MA; and, otherwise, is denied. CSX and NECR: must attempt to negotiate the details of such trackage rights; and, if negotiations are not fully successful, may submit separate proposals no later than September 21, 1998.

65. In STB Finance Docket No. 33388 (Sub-No. 76), the responsive application filed by ISRR is denied.

66. In STB Finance Docket No. 33388 (Sub-No. 77), the responsive application filed by IORY is dismissed.

67. In STB Finance Docket No. 33388 (Sub-No. 78), the responsive application filed by AA is denied.

68. In STB Finance Docket No. 33388 (Sub-No. 80), the responsive application filed by W&LE is granted in part and denied in part. As indicated in this decision, applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to AA and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to IORY at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998. Further, applicants and W&LE must attempt to negotiate an agreement concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregates shippers or to serve shippers along CSX's line between Benwood and Brooklyn Junction, WV, and inform us of any such arrangements reached.

69. In STB Finance Docket No. 33388 (Sub-No. 81), the responsive application filed by CNR and GTW is dismissed.

70. In STB Finance Docket No. 33388 (Sub-No. 83), the notice filed by GTW is dismissed.

71. In STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X and 197X), the notices are accepted.

72. In STB Docket No. AB-290 (Sub-No. 196X), the petition is granted.

73. In STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), the notice of exemption is modified to implement interim trail use/rail banking for 180 days commencing from July 23, 1998. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way. If interim trail use is implemented, and subsequently the user intends to terminate trail use, the user must (i) send the Board a copy of the cover page of this decision and the page(s) containing this ordering paragraph, and (ii) request that this ordering paragraph be vacated on a specified date. If any agreement for interim trail use/rail banking is reached within 180 days of July 23, 1998, interim trail use may be implemented. If no

agreement is reached by that time, CRC or CSXT (as appropriate) may fully abandon the line, on or after Day One.[265]

74. In STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-No. 194X), the requests for public use conditions are granted, and each exempted abandonment is subject to the condition that the appropriate railroad (CRC, CSXT, or NW, as appropriate) leave intact all of the rights-of-way underlying the tracks, including bridges, trestles, culverts, and tunnels (but not tracks, ties, and signal equipment), for a period of 180 days from August 22, 1998, to enable any State or local government agency, or other interested person, to negotiate the acquisition of the lines for public use.[266]

75. In STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X, 196X, and 197X): a formal expression of intent to file an OFA under 49 CFR 1152.27(c)(1) or (c)(2), as appropriate, to allow rail service to continue must be received by the appropriate railroad(s) and the Board by July 31, 1998; and the OFA must be received by the appropriate railroad(s) and the Board by August 21, 1998, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C) or (c)(2)(ii)(C), as appropriate. The offeror must comply with 49 U.S.C. 10904 and must also comply with 49 CFR 1152.27(c)(1) or (c)(2), as appropriate. Each OFA must be accompanied by a $1,000 filing fee. *See*, 49 CFR 1002.2(f)(25). OFAs and related correspondence to the Board must refer to the appropriate proceeding by docket number, and the following notation must be typed in bold face on the lower left-hand corner of the envelope: "*Office of Proceedings, AB-OFA*". Provided no OFA has been received, the exemptions in STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X, 196X, and 197X) will be effective on Day One (unless stayed pending reconsideration). Petitions to stay the exemptions in STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X, 196X, and 197X) must be filed by July 31, 1998, and petitions to reopen must be filed by August 12, 1998.

[265] Because offers of financial assistance (OFAs) take precedence over trail use, if an OFA is filed by August 21, 1998, trail use negotiations will have to await the completion of the OFA process. If an OFA results in the continuation of rail service, the trail use condition will have no effect.

[266] Because OFAs also take precedence over public use, if an OFA is filed by August 21, 1998, public use negotiations will have to await the completion of the OFA process. If an OFA results in the continuation of rail service, the public use condition will have no effect.

76. With respect to each abandonment exempted in STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X and 196X), the appropriate railroad (CRC, CSXT, or NW, as appropriate) shall file, pursuant to the provisions of 49 CFR 1152.29(e)(2), a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by the filing of a notice of consummation by July 24, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the 1-year period that begins on July 23, 1998, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.[267]

77. The labor protective conditions set forth in *New York Dock Ry. — Control — Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979), will apply to: (1) the authority granted in STB Finance Docket No. 33388 for (a) the acquisition and exercise by CSX and NS of control, joint control, and common control of CRR, CRC, NYC, and PRR, (b) the NYC/PRR assignments, (c) the entry into and performance of operating agreements for Allocated Assets and Shared Assets, and (d) the transfer of the Streator Line to NS; (2) the line transfer exempted in STB Finance Docket No. 33388 (Sub-No. 24); and (3) the control transaction approved in STB Finance Docket No. 33388 (Sub-No. 26).

78. The labor protective conditions set forth in *Mendocino Coast Ry., Inc. — Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980), will apply to the authority granted in STB Finance Docket No. 33388 for the operation by CSX and NS of track leases with other rail carriers to which Conrail is a party.

79. The labor protective conditions set forth in *Norfolk and Western Ry. Co. — Trackage Rights — BN*, 354 I.C.C. 605, 610-15 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653, 664 (1980), will apply to: (1) the trackage rights authorizations provided for in STB Finance Docket No. 33388; (2) the trackage rights exempted in STB Finance Docket No.

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[267] Because the exemptions in STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X and 196X) will not be effective until Day One, we point out that, as indicated in 49 CFR 1152.29(e)(2), the appropriate railroad (CRC, CSXT, or NW, as appropriate) may file a request for an extension of time to file a notice of consummation so long as it does so sufficiently in advance of the deadline for notifying the Board of consummation to allow for timely processing.

33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34); and (3) the trackage rights arrangements imposed as conditions in STB Finance Docket No. 33388.[268]

80. The labor protective conditions set forth in *Oregon Short Line R. Co. — Abandonment — Goshen*, 360 I.C.C. 91, 98-103 (1979), will apply to: (1) the one discontinuance approved in STB Finance Docket No. 33388; (2) the relocation exempted in STB Finance Docket No. 33388 (Sub-No. 23); and (3) the abandonments and one discontinuance exempted in STB Docket Nos. AB-167 (Sub-No. 1181X), AB-55 (Sub-No. 551X), and AB-290 (Sub-Nos. 194X, 196X, and 197X).[269]

81. All conditions that were requested by any party in the STB Finance Docket No. 33388 proceeding and/or in the various embraced proceedings but that have not been specifically approved in this decision are denied.

82. As respects certain procedural matters not previously addressed: (a) the ARU-6 petition filed July 18, 1997, by ARU is denied; (b) the CDB-1 comments filed October 22, 1997, by Charles D. Bolam are accepted for filing and made part of the record; (c) the comments filed November 26, 1997, by Durham, respecting the North Jersey SAA operating plan, are accepted for filing and made part of the record; (d) the NITL-10 motion filed January 13, 1998, by NITL is granted, and the NITL-11 pleading (also filed January 13, 1998) is accepted for filing and made part of the record; (e) the RWCS-5 motion filed February 26, 1998, by RWCS is granted, and the RWCS-4 brief (also filed February 26, 1998) is accepted for filing and made part of the record; (f) the STW-5 motion filed February 26, 1998, by STWRB is granted, and the STW-4 brief (also filed February 26, 1998) is accepted for filing and made part of the record; (g) the NYAR No. 4 motion filed March 19, 1998, by NYAR is granted, and the NYAR No. 4 reply is accepted for filing and made part of the record; (h) the CE-12 motion filed May 26, 1998, by Consumers is denied, and the verified statement attached thereto is rejected; (i) the GWWR-5 motion filed May 28, 1998, by Gateway is denied; (j) the letter filed May 29, 1998, by NYCH is denied in part (insofar as it amounts to a request for leave to file a reply to the

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[268] As respects the *Norfolk and Western* conditions, the trackage rights arrangements imposed as conditions in STB Finance Docket No. 33388 include, but are not necessarily limited to, any trackage rights granted in STB Finance Docket No. 33388 (Sub-Nos. 39, 69, 75, and 80).

[269] The *New York Dock* conditions, on the one hand, and the *Mendocino Coast, Norfolk and Western*, and *Oregon Short Line* conditions, on the other hand, provide differing levels of protection, but, as respects affected employees of applicants and their rail carrier affiliates, these differences will be of no consequence: affected employees of applicants and their rail carrier affiliates covered by the *Mendocino Coast, Norfolk and Western*, and/or *Oregon Short Line* conditions will also be covered by, and will therefore be entitled to the protections of, the *New York Dock* conditions.

brief filed February 23, 1998, by the Nadler Delegation) and is rejected in part (insofar as it amounts to a reply to the brief filed February 23, 1998, by the Nadler Delegation); and (k) the Wyandot-6 pleading filed June 16, 1998, by Wyandot is denied, insofar as that pleading constitutes a motion to strike.

83. This decision shall be effective on August 22, 1998.[270]

By the Board, Chairman Morgan and Vice Chairman Owen. Chairman Morgan and Vice Chairman Owen commented with separate expressions.

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[270] As respects operational matters, the conditions we have imposed to ameliorate the consequences of the division of Conrail's assets between CSX and NS (*e.g.*, the NECR trackage rights) are intended to be effective on Day One.

APPENDIX A: EMBRACED PROCEEDINGS

This decision covers both the STB Finance Docket No. 33388 lead proceeding and the following embraced proceedings: STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc. — Construction and Operation Exemption — Connection Track at Crestline, OH*; STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc. — Construction and Operation Exemption — Connection Track at Willow Creek, IN*; STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc. — Construction and Operation Exemption — Connection Tracks at Greenwich, OH*; STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc. — Construction and Operation Exemption — Connection Track at Sidney Junction, OH*; STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Union Pacific Railroad Company at Sidney, IL*; STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Alexandria, IN*; STB Finance Docket No. 33388 (Sub-No. 7), Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Bucyrus, OH; STB Finance Docket No. 33388 (Sub-No. 8), *CSX Transportation, Inc. — Construction and Operation Exemption — Connection Track at Little Ferry, NJ*; STB Finance Docket No. 33388 (Sub-No. 9), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company — Construction and Operation Exemption — Connection Track at 75th Street SW, Chicago, IL*; STB Finance Docket No. 33388 (Sub-No. 10), *CSX Transportation, Inc. — Construction and Operation Exemption — Connection Track at Exermont, IL*; STB Finance Docket No. 33388 (Sub-No. 11), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company — Construction and Operation Exemption — Connection Track at Lincoln Avenue, Chicago, IL*; STB Finance Docket No. 33388 (Sub-No. 12), *Norfolk Southern Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Kankakee, IL*; STB Finance Docket No. 33388 (Sub-No. 13), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Illinois Central Railroad Company at Tolono, IL*; STB Finance Docket No. 33388 (Sub-No. 14), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Butler, IN*; STB Finance Docket No. 33388 (Sub-No. 15), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Tolleston, IN*; STB Finance Docket No. 33388 (Sub-No. 16), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Hagerstown, MD*; STB Finance Docket No. 33388 (Sub-No. 17), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Ecorse Junction (Detroit), MI*; STB Finance Docket No. 33388 (Sub-No. 18), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Blasdell (Buffalo), NY*; STB Finance Docket No. 33388 (Sub-No. 19), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Gardenville Junction (Buffalo), NY*; STB Finance Docket No. 33388 (Sub-No. 20), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Columbus, OH*; STB Finance Docket No. 33388 (Sub-No. 21), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Oak Harbor, OH*; STB Finance Docket No. 33388 (Sub-No. 22), *Norfolk and Western Railway Company — Construction and Operation Exemption — Connecting Track With Consolidated Rail Corporation at Vermilion, OH*; STB Finance Docket No. 33388 (Sub-No. 23), *Norfolk and Western Railway Company — Joint Relocation Project*

Exemption--Over CSX Transportation, Inc. (Currently Consolidated Rail Corporation) at Erie, PA; STB Finance Docket No. 33388 (Sub-No. 24), *Consolidated Rail Corporation — Acquisition Exemption — Line Between Fort Wayne, IN, and Tolleston (Gary), IN*; STB Finance Docket No. 33388 (Sub-No. 25), *Norfolk and Western Railway Company — Trackage Rights Exemption — CSX Transportation, Inc.*; STB Finance Docket No. 33388 (Sub-No. 26), *CSX Corporation and CSX Transportation, Inc. — Control — The Lakefront Dock and Railroad Terminal Company*; STB Finance Docket No. 33388 (Sub-No. 27), *Norfolk and Western Railway Company — Trackage Rights Exemption — CSX Transportation, Inc.*; STB Finance Docket No. 33388 (Sub-No. 28), *CSX Transportation, Inc. — Trackage Rights Exemption — Norfolk and Western Railway Company;* STB Finance Docket No. 33388 (Sub-No. 29), *CSX Transportation, Inc. — Trackage Rights Exemption — Norfolk and Western Railway Company*; STB Finance Docket No. 33388 (Sub-No. 30), *Norfolk and Western Railway Company — Trackage Rights Exemption — CSX Transportation, Inc.*; STB Finance Docket No. 33388 (Sub-No. 31), *CSX Corporation and CSX Transportation, Inc. — Control Exemption — Albany Port Railroad Corporation*; STB Finance Docket No. 33388 (Sub-No. 32), *Norfolk and Western Railway Company — Trackage Rights Exemption — The Baltimore and Ohio Chicago Terminal Railroad Company*; STB Finance Docket No. 33388 (Sub-No. 33), *Norfolk and Western Railway Company — Trackage Rights Exemption — The Baltimore and Ohio Chicago Terminal Railroad Company*; STB Finance Docket No. 33388 (Sub-No. 34), *CSX Transportation, Inc. — Trackage Rights Exemption — Norfolk and Western Railway Company*; STB Docket No. AB-167 (Sub-No. 1181X), *Consolidated Rail Corporation — Abandonment Exemption — In Edgar and Vermilion Counties, IL*; STB Docket No. AB-55 (Sub-No. 551X), *CSX Transportation, Inc. — Abandonment Exemption — In Edgar and Vermilion Counties, IL*; STB Docket No. AB-290 (Sub-No. 194X), *Norfolk and Western Railway Company — Abandonment Exemption — Between South Bend and Dillon Junction in St. Joseph and La Porte Counties, IN*; STB Docket No. AB-290 (Sub-No. 196X), *Norfolk and Western Railway Company — Abandonment Exemption — Between Toledo and Maumee in Lucas County, OH*; STB Docket No. AB-290 (Sub-No. 197X), *Norfolk and Western Railway Company — Discontinuance Exemption — Toledo Pivot Bridge in Lucas County, OH*;[271] STB Finance Docket No. 33388 (Sub-No. 35), *Responsive Application — New York State Electric and Gas Corporation*;[272] STB Finance Docket No. 33388 (Sub-No. 36), *Responsive Application — I & M Rail Link, LLC*;[273] STB Finance Docket No. 33388 (Sub-No. 39), *Responsive Application — Livonia, Avon & Lakeville Railroad Corporation*; STB Finance Docket No. 33388 (Sub-No. 59), *Responsive Application — Wisconsin Central Ltd.*; STB Finance Docket No. 33388 (Sub-No. 61), *Responsive Application — Bessemer and Lake Erie Railroad Company*;[274] STB Finance Docket No. 33388 (Sub-No. 62), *Responsive Application — Illinois Central Railroad Company*; STB Finance Docket No. 33388 (Sub-No. 63), *Responsive Application — R.J. Corman Railroad Company/Western Ohio Line*; STB Finance Docket No. 33388 (Sub-No. 69), *Responsive*

[271] NW initially sought authorization to abandon the Toledo Pivot Bridge, but subsequently advised that it seeks authorization for discontinuance only. *See,* NS-63 (filed March 4, 1998). The STB Docket No. AB-290 (Sub-No. 197X) embraced proceeding has been reentitled to reflect that only discontinuance is sought.

[272] By pleading dated February 23, 1998, New York State Electric and Gas Corporation withdrew its Sub-No. 35 responsive application.

[273] The STB Finance Docket No. 33388 (Sub-No. 36) responsive application was initially filed by three parties: I&M, EJ&E, and Transtar. In view of the withdrawal of EJ&E and Transtar, the STB Finance Docket No. 33388 (Sub-No. 36) embraced proceeding has been reentitled accordingly.

[274] B&LE announced at the oral argument (on June 3, 1998) that it was withdrawing its Sub-No. 61 responsive application.

Application — State of New York, by and through its Department of Transportation, and the New York City Economic Development Corporation;[275] STB Finance Docket No. 33388 (Sub-No. 72), *Responsive Application — The Belvidere & Delaware River Railway and the Black River & Western Railroad*;[276] STB Finance Docket No. 33388 (Sub-No. 75), *Responsive Application — New England Central Railroad, Inc.*; STB Finance Docket No. 33388 (Sub-No. 76), *Responsive Application — Indiana Southern Railroad, Inc.*; STB Finance Docket No. 33388 (Sub-No. 77), *Responsive Application — Indiana & Ohio Railway Company*;[277] STB Finance Docket No. 33388 (Sub-No. 78), *Responsive Application — Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad*; STB Finance Docket No. 33388 (Sub-No. 80), *Responsive Application — Wheeling & Lake Erie Railway Company*; STB Finance Docket No. 33388 (Sub-No. 81), *Responsive Application — Canadian National Railway Company and Grand Trunk Western Railroad Incorporated*;[278] and STB Finance Docket No. 33388 (Sub-No. 83), *Grand Trunk Western Railroad Incorporated — Construction and Operation Exemption — Connecting Tracks at Trenton, MI*.[279]

[275] The single responsive application filed jointly by (i) the State of New York, acting by and through its Department of Transportation (NYDOT), and (ii) the New York City Economic Development Corporation (NYCEDC), purports to be filed both in STB Finance Docket No. 33388 (Sub-No. 69) (the sub-number docket reserved by NYDOT) and in STB Finance Docket No. 33388 (Sub-No. 54) (the sub-number docket reserved by NYCEDC). We have previously noted, however, that this single responsive application will be treated as if it had been filed in STB Finance Docket No. 33388 (Sub-No. 69) only. *See, Decision No. 54*, at 3 n.2 (noting that there are two responsive applicants but only one responsive application).

[276] By letter dated November 25, 1997, Belvidere & Delaware River Railway and the Black River & Western Railroad withdrew their Sub-No. 72 responsive application.

[277] By pleading dated February 25, 1998, Indiana & Ohio Railway Company withdrew its Sub-No. 77 responsive application.

[278] By pleading dated February 23, 1998, Canadian National Railway Company and Grand Trunk Western Railroad Incorporated withdrew their Sub-No. 81 responsive application.

[279] By pleading dated February 23, 1998, Grand Trunk Western Railroad Incorporated withdrew its Sub-No. 83 exemption notice.

APPENDIX B: ABBREVIATIONS

A&S	The Alton & Southern Railway Company
AA	Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad
AEP	American Electric Power Service Corporation
AFBF	American Farm Bureau Federation
AFIA	American Feed Industry Association
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AK Steel	AK Steel Corporation
APL	APL Limited
APR	Albany Port Railroad Corporation
APTA	American Public Transit Association
ARASA	American Railway and Airway Supervisors Association
ARU	Allied Rail Unions
ASHTA	ASHTA Chemicals Inc.
ASLRA	American Short Line Railroad Association
ATA	American Trucking Associations
B&LE	Bessemer and Lake Erie Railroad
B&M or Guilford	B&MC, ST, and MC
B&MC	Boston and Maine Corporation
B&OCT	The Baltimore and Ohio Chicago Terminal Railroad Company
BATA	Baltimore Area Transit Association
BCNYS	Business Council of New York State, Inc.
BLE	Brotherhood of Locomotive Engineers
BNSF	The Burlington Northern and Santa Fe Railway Company
Board	Surface Transportation Board
BRC	The Belt Railway Company of Chicago
BPRR	Buffalo & Pittsburgh Railroad, Inc.
BRL Cities	Cities of Bay Village, Rocky River, and Lakewood, OH
CAC	Citizens Advisory Committee for the Baltimore region
Cargill	Cargill, Incorporated
CBA	collective bargaining agreement
Centerior	Centerior Energy Corporation (now known as FirstEnergy Corporation)
Chicago Metra or Metra	Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois
CLF	Conservation Law Foundation
CMA	Chemical Manufacturers Association
CMW	Chicago, Missouri & Western Railroad Company
CN	CNR, GTC, and GTW
CNEG	Coalition of Northeastern Governors
CNR	Canadian National Railway Company
COFC	Container-on-flatcar
CONSOL	CONSOL, Inc.
Consumers	Consumers Energy Company
CP	Control Point
CP	CPR, D&H, Soo, and SL&H
CPR	Canadian Pacific Railway Company

CPTA	U.S. Clay Producers Traffic Association, Inc.
CR or Conrail	CRR and CRC, and also their wholly owned subsidiaries other than NYC and PRR
CRC	Consolidated Rail Corporation
CRR	Conrail Inc.
CSAO	Conrail Shared Asset Operator
CSO	Connecticut Southern Railroad, Inc.
CSX	CSXC and CSXT and their wholly owned subsidiaries, and also NYC
CSXC	CSX Corporation
CSXI	CSX Intermodal
CSXT	CSX Transportation, Inc.
CTDOT	Connecticut Department of Transportation
D&H	Delaware and Hudson Railway Company, Inc.
dBA	decibel
DEDOT	State of Delaware Department of Transportation
DeKalb Agra	DeKalb Agra, Inc.
Delaware River Port Interests	PRPA, SJPC, DRPA, and PPC
DOJ	United States Department of Justice
DOT	United States Department of Transportation
DRPA	The Delaware River Port Authority
DuPont	E.I. DuPont de Nemours and Company, Inc.
Durham	Durham Transport, Inc.
DVRPC	Delaware Valley Regional Planning Commission
EIS	Environmental Impact Statement
EFMC	Eighty-Four Mining Company
EJ&E	Elgin, Joliet & Eastern Railway Company
EL&PC	Environmental Law & Policy Center of the Midwest
Engelhart Retirees	Nine retirees: Paul J. Engelhart, William J. McIlfatrick, H. C. Kohout, Thomas F. Meehan, Jr., Lawrence Cirillo, Charles D. Nester, Jacqueline A. Mace, Donald E. Kraft, and Robert E. Graham.
ENRSC	Erie-Niagara Rail Steering Committee
EPA	Environmental Protection Agency
ERISA	Employee Retirement Income Security Act of 1974
ESPA	Empire State Passengers Association
ESRPG	Eight State Rail Preservation Group
FGLK or FL	The Finger Lakes Railway
Fina	Fina Oil and Chemical Company
FOPC	Fort Orange Paper Company
Four Cities or FCC	Four City Consortium, an association of the Cities of East Chicago, Hammond, Gary, and Whiting, IN
FRA	Federal Railroad Administration
GAAP	generally accepted accounting principles
Gateway	GWWR and GWER
General Mills	General Mills, Inc.
GPU	GPU Generation, Inc.
GTC	Grand Trunk Corporation
GTC	Genesee Transportation Council
GTW	Grand Trunk Western Railroad Incorporated

GWER	Gateway Eastern Railway Company
GWWR	Gateway Western Railway Company
HRRC	Housatonic Railroad Company, Inc.
Hunt	J.B. Hunt Transport, Inc.
I&M	I & M Rail Link, LLC
IAM	International Association of Machinists and Aerospace Workers
IC	Illinois Central Railroad Company
ICC	Interstate Commerce Commission
ICCTA or Act	ICC Termination Act of 1995
IHB	Indiana Harbor Belt Railway
ILDOT	Illinois Department of Transportation
INRD	Indiana Rail Road Company
IORY	Indiana & Ohio Railway Company
IP	The International Paper Company
IP&L	Indianapolis Power & Light Company
IPC	Indiana Port Commission
ISC	Inland Steel Company
ISRI	Institute of Scrap Recycling Industries, Inc.
ISSR	Indiana Southern Railroad, Inc.
JS&S	Joseph Smith & Sons, Inc.
JStar	JStar Consolidated, Inc., division of Jacobs Industries Ltd.
JVRR	Juniata Valley Railroad Company
Kodak	Eastman Kodak Company
LAL	Livonia, Avon & Lakeville Railroad Corporation
LIRR	Long Island Rail Road
LVRR	Lycoming Valley Railroad Company
MARC	Maryland Rail Commuter Service
Massey	A. T. Massey Coal Company, Inc.
MC	Maine Central Railroad Company
MEDOT	Maine Department of Transportation
Merger Sub	Green Merger Corp.
MGA	Monongahela Railway
Millennium or Equistar	Millennium Petrochemicals Inc. (now Equistar Chemicals, LP)
MM	Maryland Midlan
MMM	Martin Marietta Materials
MNCR	Metro-North Commuter Railroad Company
MOU	Memorandum of Understanding
MP	Milepost
Nadler Delegation	United States Representative Jerrold Nadler and 23 other Members of the United States House of Representatives (at the time of the filing of the Nadler Delegation's intervention petition): the Honorable Christopher Shays, the Honorable Charles Rangel, the Honorable Ben Gilman, the Honorable Barbara Kennelly, the Honorable Nancy Johnson, the Honorable Charles Schumer, the Honorable Rosa DeLauro, the Honorable Michael Forbes, the Honorable Sam Gejdenson, the Honorable Nita Lowey, the Honorable Major Owens, the Honorable Thomas Manton, the Honorable Maurice Hinchey, the Honorable Ed Towns, the Honorable Carolyn Maloney, the Honorable Nydia Velazquez, the Honorable Floyd Flake, the

	Honorable Gary Ackerman, the Honorable Eliot Engel, the Honorable Louise Slaughter, the Honorable John LaFalce, the Honorable Michael McNulty, and the Honorable James Maloney
NBER	Nittany & Bald Eagle Railroad Company
NCBA	National Cattlemen's Beef Association
NCGA	National Corn Growers Association
NEC	Amtrak's Northeast Corridor
NECR	New England Central Railroad, Inc.
NEFCO	Northeast Ohio Four County Regional Planning and Development Organization
NEPA	National Environmental Policy Act
NGFA	National Grain and Feed Association
NIMO	Niagara Mohawk Power Corporation
NIPS	Northern Indiana Public Service Company
NITL	The National Industrial Transportation League
NITU	Notice of Interim Trail Use
NL&S	National Lime and Stone Company
NMA	National Mining Association
NMB	National Mediation Board
Northeast Ohio METRO	The METRO Regional Transit Authority (or METRO)
NPPC	National Pork Producers Council
NRPC or Amtrak	National Railroad Passenger Corporation
NS	NSC and NSR and their wholly owned subsidiaries, and also PRR
NSC	Norfolk Southern Corporation
NSHR	North Shore Railroad Company
NSR	Norfolk Southern Railway Company
NVTC	Northern Virginia Transportation Commission
NWPRA	Northwest Pennsylvania Rail Authority
NY&LE	New York & Lake Erie Railroad Company
NYAR	New York & Atlantic Railway
NYC	New York Central Lines LLC
NYCEDC	New York City Economic Development Corporation, acting on behalf of the City of New York
NYCH	New York Cross Harbor Railroad
NYDOT	State of New York and the New York Department of Transportation
NYDR	New York Dock Railway
NYNJFFF&BA	New York/New Jersey Foreign Freight Forwarders and Brokers Association
NYS&W	New York, Susquehanna and Western Railway
O&R	Orange and Rockland Utilities, Inc.
OAG	Ohio Attorney General
Ohi-Rail	Ohi-Rail Corporation
OHDOT	Ohio Department of Transportation
ORDC	Ohio Rail Development Commission
OxyChem	Occidental Chemical Corporation
P&RTC	Potomac and Rappahannock Transportation Commission
P&W	Providence and Worcester Railroad Company

PADOT	Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and the Pennsylvania Department of Transportation, collectively
PBL	Philadelphia Belt Line Railroad Company
Pennsylvania Transportation Committees	Pennsylvania House and Senate Transportation Committees
PEPCO	Potomac Electric Power Company
PIDC	City of Philadelphia and the Philadelphia Industrial Development Corporation
Port of Chicago	Illinois International Port District
PPC	The Port of Philadelphia and Camden, Inc.
PPG	PPG Industries, Inc.
Prairie Group	Prairie Material Sales, Inc.
PRPA	Philadelphia Regional Port Authority
PRR	Pennsylvania Lines LLC
PUCO	Public Utilities Commission of Ohio
R&S	Rochester & Southern Railroad
R/VC ratio	Revenue to Variable Cost ratio
RAPB	Railroad Accounting Principles Board
RBMN	Reading Blue Mountain & Northern Railroad Company
RCAF	Rail Cost Adjustment Factor
Redland	Redland Ohio, Inc.
RG&E	Rochester Gas and Electric Corporation
RIDOT	Rhode Island Department of Transportation
RJCW	R.J. Corman Railroad Company/Western Ohio Line
RLA	Railway Labor Act
ROI	Return on Investment
RRA	Regional Railroads of America
RWCS	Resources Warehousing & Consolidation Services, Inc.
SAA	Shared Assets Area
SCPA	Summit County Port Authority
SDB	Stark Development Board, Inc.
SEA	Section of Environmental Analysis
Shell	Shell Oil Company and Shell Chemical Company
SIPs	Safety Integration Plans
SJPC	South Jersey Port Corporation
SJTPO	South Jersey Transportation Planning Organization
SL&H	St. Lawrence & Hudson Railway Company Limited
Soo	Soo Line Railroad Company
SP	Rail carriers formerly controlled by Southern Pacific Rail Corporation
SPI	The Society of the Plastics Industry, Inc.
SPRPC	Southwestern Pennsylvania Regional Planning Commission
SSO	Conrail's System Support Operations
ST	Springfield Terminal Railway Company
Staley	A.E. Staley Manufacturing Company
STWRB	Southern Tier West Regional Planning and Development Board
SVRR	Shamokin Valley Railroad Company
TCU	Transportation•Communications International Union
Tender Sub	Green Acquisition Corp.
TERRI	The Elk River Railroad, Incorporated

TFI	The Fertilizer Institute
TIA	Transportation Intermediaries Association
TLCPA	Toledo-Lucas County Port Authority
TMACOG	Toledo Metropolitan Area Council of Governments
TPA	Test Period Average
TR	Designation for routes over which Conrail operates pursuant to trackage rights
TRAs	Trackage Rights Agreements
Transtar	Transtar, Inc.
TRRA	Terminal Railroad Association of St. Louis
TSTC	Tri-State Transportation Campaign
TTD	Transportation Trades Department
TTX	TTX Company (formerly known as Trailer Train)
UCIR	Union County Industrial Railroad Company
Union Camp	Union Camp Corporation
UPRR	Union Pacific Railroad Company
URCS	Uniform Railroad Costing System
URSA	United Railway Supervisors Association
USDA	United States Department of Agriculture
USOA	Uniform System of Accounts
UTU	United Transportation Union
UTU-GCA	United Transportation Union-General Committee of Adjustment
VRE	Virginia Railway Express
W&LE	Wheeling & Lake Erie Railway Company
WCL	Wisconsin Central Ltd.
Westlake	Westlake Group of Companies
WVSRA	West Virginia State Rail Authority
WVED	West Virginia Association for Economic Development through the Joint Use of Conrail Tracks by Norfolk Southern and CSXT
Wyandot	Wyandot Dolomite, Inc.

APPENDIX C: FREIGHT RAILROADS

ANN ARBOR RAILROAD. AA, a Class III railroad, operates over approximately 46 miles of main line track and 31.44 miles of yard and side tracks between Ann Arbor, MI, and Toledo, OH.[280] AA, which has four direct Class I connections (Conrail at Toledo and Ann Arbor; NS at Toledo and Milan; CSX at Toledo; and CN at Toledo),[281] claims that it offers its shippers nondiscriminant access to its Class I connections, and AA adds that the existence of these competitive connections has kept AA viable. AA contends: that its traffic base consists of nearly 50% bulk traffic and a little over 50% automotive traffic; that there is no intermodal competition for the bulk traffic; that the automotive traffic, however, will move by rail only so long as there is reliable and efficient service; and that such service can only be maintained by intra-rail competition.

Competitive access to Chicago, AA maintains, is critical. AA claims that only two of its four Class I connections (Conrail and NS) from/to Chicago are efficient and that its other Class I connections (CSX and CN) cannot provide competitive routings from/to Chicago. (1) AA claims that the AA/TSBY/CSX routing (via Howell) and the AA/TSBY/CN routing (via Durand) are too circuitous and would also involve an additional carrier. (2) AA claims that the AA-Toledo-CSX routings, via either Deschler, OH, or Fostoria, OH, are too circuitous. (3) AA claims that the AA-Toledo-CN routing, via Port Huron, MI, is even more circuitous than the other alternative routings.

The CSX/NS/CR application envisions that Conrail's Chicago-Kalamazoo-Ann Arbor and Chicago-Elkhart-Toledo lines will be assigned to NS. AA contends, in essence, that, as respects traffic moving from/to Chicago, it is a 2-to-1 shortline because the Conrail vs. NS competition that exists pre-transaction will cease post-transaction, and the AA/NS routing will become AA's only efficient routing for traffic moving from/to Chicago. AA concedes that the primary application also envisions new competitive routings for CSX, but these new routings, AA insists, will be of no use as respects Ann Arbor-Toledo traffic moving from/to Chicago.[282] AA also notes that CP is reported to have received, in a settlement with NS, certain rights to operate over (at least a portion of) Conrail's Chicago-Kalamazoo-Ann Arbor line. AA insists, however, that it has been informed that the rights provided for in the NS/CP settlement will not permit an AA/CP interchange at Ann Arbor.

AA fears that, without appropriate conditions, it stands to lose approximately 42% ($3,000,000) of its annual revenues. The loss of these revenues, AA warns, would have a devastating effect on AA, would require AA to reduce the level of its current service and to stop service to some customers altogether, and would impair AA's ability to perform essential services on its line. The effect, AA adds, would also be devastating to at least some AA-served shippers.

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[280] AA's Ann Arbor-Toledo line, which is located primarily in Michigan, passes through such Michigan points as Milan, Dundee, and Diann.

[281] AA also connects, at Ann Arbor, with the Tuscola & Saginaw Bay Railway Company, Inc. (TSBY), via which AA has two indirect Class I connections: CSX at Howell, MI; and CN at Durand, MI.

[282] AA cites three such routings. (1) AA claims that the AA-Toledo-CSX routing via Galatea, OH, will be too circuitous. (2) AA notes that the AA-Toledo-CSX routing via Lima, OH, will be even more circuitous than the routing via Galatea. (3) AA notes that certain CSX haulage rights on Conrail's Chicago-Elkhart-Toledo line, *see* CSX/NS-25, Volume 8B at 116, Item 2(A)(1): apparently are not applicable to traffic moving from/to AA's Ann Arbor-Toledo line; and, even if applicable, will be in effect for no more than 3 years and will not allow CSX to operate its own trains.

AA therefore asks that we require: that AA be granted "limited trackage rights" between Chicago and Toledo over the Conrail Chicago-Elkhart-Toledo line to be assigned to NS;[283] and that AA be permitted to interchange traffic with CP at Ann Arbor. AA also asks that we retain jurisdiction to set compensation and other terms in the event the parties are unable to resolve these matters through negotiations. (1) AA contends that its Chicago-Toledo trackage rights condition, by giving AA an alternative routing for traffic moving from/to Chicago, would allow AA: to preserve intramodal competition; to retain some traffic that would otherwise be diverted; and to attract new traffic to offset the remaining losses. (2) AA contends that its Ann Arbor interchange condition would allow AA to divert, to rail, certain automotive traffic that now moves by truck from Toledo to the Detroit-Windsor area. (3) AA contends that the conditions it seeks, by allowing AA to retain existing traffic and to attract new traffic, would enable AA to recoup its projected revenue losses, and would thereby allow AA to continue to provide essential services on its Ann Arbor-Toledo line.[284]

ASLRA & RRA. The American Short Line Railroad Association (ASLRA) and Regional Railroads of America (RRA), which claim that the CSX/NS/CR transaction will have substantial impacts on the more than 270 shortlines and regionals that presently have direct connections to CSX, NS, and/or Conrail, ask that we impose certain conditions. (1) ASLRA and RRA ask that we require CSX and NS to adopt existing inter-carrier agreements between Conrail, on the one side, and connecting shortlines and regionals, on the other side, and to apply those agreements, without modification except by mutual consent of the parties. (2) ASLRA and RRA ask that we require that existing gateways and rate relationships between CSX, NS, and Conrail, on the one side, and connecting shortlines and regionals, on the other side, be maintained until changed by mutual consent. (3) ASLRA and RRA ask that we consider expanded shortline and regional connections and access as a possible solution to competitive or operational problems that we identify during our review of the CSX/NS/CR transaction. (4) ASLRA and RRA ask that we clarify, as a matter of policy, that the rail system should be truly inter-active, by which is meant: (i) that, at junctions and terminal areas served by both CSX and NS, small railroads should have rights to interchange with both as well as with each other; and (ii) that artificial barriers that arbitrarily restrict full interchange rights should be discouraged. (5) ASLRA and RRA ask that, to ensure that CSX and NS do not use their market power to disadvantage small railroads, or shippers or receivers located on small railroads, we retain jurisdiction over inter-carrier relationships between CSX and NS, on the one side, and connecting shortlines and regionals, on the other side. (6) ASLRA and RRA ask that, to provide a forum for investigation and resolution of post-transaction competitive or service-related complaints by small railroads, or by shippers or receivers located on small railroads, we: (i) provide for continuing oversight for a period of 5 years after the effective date of the CSX/NS/CR transaction; and (ii) require periodic reporting of operational and service data by CSX and NS. (7) ASLRA and RRA ask that, at the conclusion of the 5-year oversight period, we include specific data and actions in our post-transaction study of the impact of the CSX/NS/CR transaction on small railroads in the affected service area.

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[283] The term "limited trackage rights" is used by AA to mean: (i) the right to operate trains over the described line; and (ii) the right to interchange with all carriers, including shortlines, at all junctions on the described line.

[284] AA adds that, if we believe that its conditions are inappropriate, we should impose alternative conditions, *e.g.*, rate equalization conditions intended to preserve efficient joint-line movements. The particular condition AA has in mind would require the merging carriers to quote cost-based rates for joint-line movements with small carriers. *See,* AA-8 at 26 and 34.

BOSTON AND MAINE. B&M opposes the suggestion, which it attributes to the State of Rhode Island, that, to allow for the creation of an NS/P&W interchange (at Gardner, MA), NS should be granted trackage rights over B&M's lines (apparently between Mechanicville, NY, and Gardner, MA).[285]

CANADIAN NATIONAL. CN, which operates a 1,000-mile rail network in the United States (in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin) and a transcontinental rail network in Canada, contends that, if we impose any conditions relating to the Buffalo/Niagara Falls area, we should ensure that any such condition affords equitable treatment to all rail carriers serving that area.

DURHAM TRANSPORT. Durham, a Class III railroad that operates within the Raritan Center Industrial Park (Raritan Center) in Edison, NJ, claims: that the lead tracks within Raritan Center are operated by Durham, which conducts such operations pursuant to an easement granted by the owners of Raritan Center, and which interchanges traffic with Conrail at Lower Yard; but that the maps submitted with the primary application indicate that all lead tracks within Raritan Center are part of the North Jersey SAA. Durham concedes that the maps submitted with applicants' North Jersey SAA operating plan do not indicate that the lead tracks within Raritan Center are part of the North Jersey SAA. Durham notes, however:[286] that the relevant map, and the related narrative material, contain no references of any kind to Raritan Center; and that the yard switching assignments anticipated by applicants, *see*, CSX/NS-119 at 99-100, make no reference to a Conrail/Durham interchange. Durham notes that applicants' Metuchen map, *see*, CSX/NS-119 at 98, shows a track 215 extending south to Raritan Junction. Track 215, according to Durham, proceeds south across U.S. 1 and the New Jersey Turnpike and terminates at Woodbridge Avenue, at which point the track number changes to 223 and becomes the GSA Lead; and the GSA Lead, Durham adds, extends into Raritan Center. Durham claims that the CSX/NS-119 material, although incomplete, and therefore ambiguous, suggests that the post-transaction Conrail will continue operations out of Metuchen Yard over the 215-223-GSA Lead track in order to reach shippers located on the Raritan Industrial Track both east and west of Raritan Center. Durham further contends that, because two carriers (Conrail and Durham) will be operating on the GSA Lead post-transaction, their operations will necessarily have to be coordinated, especially in view of the fact that much of the freight transported by Conrail through Raritan Center and over the GSA Lead will consist of chemicals and other hazardous materials. Durham therefore asks that we require the post-transaction Conrail to enter into an appropriate agreement governing the coordination of rail operations over the GSA Lead and the designation of crew assignments. Such an agreement, Durham notes, will ensure the preservation of interchange operations at Lower Yard.

Durham, in its brief filed February 23, 1998, claims: that applicants, in a letter received by Durham on December 5, 1997, acknowledged the inaccuracy of the Conrail System Map and stated

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[285] RIDOT has not asked that NS be granted trackage rights over B&M's lines. However, in connection with its request that we require direct access by a second Class I railroad into New England, RIDOT has indicated that it will continue to monitor any efforts by NS to gain access to New England via trackage rights on, or interchange agreements with, B&M.

[286] Durham's November 26, 1997, comments respecting applicants' North Jersey SAA operating plans were filed 2 days late, but were accompanied by a cover letter requesting leave to late file. In view of the minimal delay and the lack of prejudice, the request for leave to late file is being granted.

that they would honor Durham's Interchange Agreement with Conrail;[287] that, however, applicants, in their letter, failed to address Durham's request for a trackage agreement for the joint use of the GSA Lead (track 223); that, by letter dated December 11, 1997, Durham requested that applicants negotiate such an agreement;[288] that, however, applicants have not responded to this letter; and that applicants, in their rebuttal submission of December 15, 1997, did not address Durham's condition request.[289] Durham accordingly renews its request that we condition approval of the CSX/NS/CR transaction upon the negotiation by applicants and Durham of a satisfactory joint use agreement for the use of the GSA Lead Track. Durham insists that joint use of the GSA Lead within the Raritan Industrial Park is not presently addressed in any of the interchange or other agreements between Durham and Conrail and, accordingly, requires an agreement between Durham and the SAA operator.

GATEWAY WESTERN AND GATEWAY EASTERN. Gateway's interests in this proceeding[290] are focused upon two sets of trackage rights pursuant to which Conrail operates over portions of Gateway's lines. (1) The Cahokia trackage rights, which Conrail received in a 1988 agreement with the bankruptcy trustee of the Chicago, Missouri & Western Railroad Company (CMW, a previous owner of the GWWR line), permit Conrail to operate its trains between East St. Louis and Sauget, IL, via trackage rights over: GWWR from Missouri Avenue to Trendley Avenue; TRRA from Trendley Avenue to M&O Junction;[291] and GWWR from M&O Junction to the Cahokia Marine Terminal. Conrail is allowed to use the Cahokia trackage rights for the sole purpose of accessing the Cahokia Marine Terminal. (2) The Willows trackage rights, which Conrail received in a 1994 agreement with GWER, permit Conrail to operate its trains over GWER's line in East St. Louis between the east interlocking limits of "Willows" (MP 236.8±) and the TRRA connection at "Q" (MP 238.7±). Conrail is allowed to use the Willows trackage rights for bridge traffic only.[292]

The CSX/NS/CR application envisions that Conrail's lines and rights in the East St. Louis area will be assigned to CSX, and Gateway is concerned that the introduction of CSX trains, and unit coal trains in particular, on the Willows/Cahokia segments will substantially impair Gateway's ability to handle its own traffic on those segments. Congestion, Gateway indicates, is not a major problem

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[287] Although Durham indicates that this letter is attached to its brief as Exhibit A, our copies of Durham's brief do not contain this letter.

[288] Although Durham indicates that this letter is attached to its brief as Exhibit B, our copies of Durham's brief do not contain this letter.

[289] We have not been able to locate, in applicants' CSX/NS-176 rebuttal narrative, any reference to Durham. We have located, in applicants' CSX/NS-194 "party by party" index to the rebuttal narrative, a reference to Durham, *see* CSX/NS-194 at xiv; but the reference does not appear to be correct.

[290] GWWR, a Class II railroad, operates between Kansas City, KS, and East St. Louis and Springfield, IL. GWER, a Class III railroad: operates between East St. Louis and East Alton, IL; between WR Tower and Willows Tower, IL, over track of the Terminal Railroad Association of St. Louis (TRRA); and between Lenox Tower and Rose Lake, IL, over track of The Alton & Southern Railway Company (A&S). GWWR and GWER are referred to collectively as Gateway.

[291] GWWR and Conrail operate over TRRA from Trendley Avenue to M&O Junction pursuant to separate grants of trackage rights that predate the 1988 Conrail/CMW agreement.

[292] Gateway indicates that, combined, the Willows and Cahokia trackage rights allow Conrail to move its trains from its Rose Lake Yard in East St. Louis to the Cahokia Marine Terminal.

today because Conrail, with its limited market coverage, moves only a limited number of trains across the two segments. Gateway warns, however, that, given CSX's much greater market coverage, an assignment to CSX may result in a drastic expansion of the use of the two segments. Gateway adds that its dispatching control of the Willows/Cahokia segments will not enable it to resolve the operational problems posed by the introduction of large numbers of CSX trains.

In the STB Finance Docket No. 33388 lead docket, applicants have requested that we issue a declaratory order that, by virtue of 49 U.S.C. 11321(a), CSX and NS will have, post-transaction, the same authority to conduct operations over the routes of Conrail covered by certain "Trackage Agreements" that Conrail has pre-transaction, notwithstanding any clause in any such agreement purporting to limit or prohibit unilateral assignment by Conrail of its rights thereunder. The declaratory order applicants seek would confirm that, despite the provisions in the Cahokia/Willows trackage rights agreements (TRAs) that purport to bar unilateral assignment of Conrail's rights,[293] CSX will be Conrail's successor-in-interest with respect to the Cahokia/Willows trackage rights, and will have the same Cahokia/Willows trackage rights that Conrail had.

Gateway, which does not consent to the assignment of Conrail's Cahokia/Willows trackage rights to CSX, asks that we hold: (1) that, on account of Gateway's refusal to waive the provisions barring unilateral assignment of Conrail's Cahokia/Willows trackage rights, CSX will not be Conrail's successor-in-interest with respect to these rights; and (2) that CSX will be allowed to operate on the Cahokia/Willows segments if, but only if, it receives trackage rights on such segments (a) in negotiations with Gateway, and/or (b) in a 49 U.S.C. 11102 terminal trackage rights proceeding. Gateway argues: that section 11102 provides the only means by which one railroad can be compelled to open its terminal tracks to access by another;[294] and that CSX has made, in the present proceeding, no showing that its use of the Cahokia and Willows segments is justified under the terms of section 11102.[295] Gateway also argues that, even if section 11321(a) provides a means by which Gateway can be compelled to open its Cahokia/Willows tracks to CSX, CSX has not demonstrated that an override of the provisions in the Cahokia/Willows TRAs that bar unilateral assignment is "necessary" to allow CSX to carry out the CSX/NS/CR transaction.[296]

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[293] Both the Cahokia TRA and the Willows TRA provide that neither party thereto may transfer or assign any of its rights thereunder without obtaining the prior written consent of the other party. The Cahokia TRA further provides that such consent shall not be necessary if such transfer or assignment is to a purchaser, successor, or assign of all or substantially all of the rail properties of one of the parties thereto. Gateway claims, however, that, because Conrail's assets will not be assigned to a single assignee, the Cahokia unilateral assignment bar will be applicable to the Cahokia assignment contemplated by the CSX/NS/CR application.

[294] Gateway contends, in essence, that section 11321(a), despite its literal application to "all" law, cannot be read to exempt CSX from the requirements of any law that is codified in Part A of Subtitle IV of Title 49, United States Code (49 U.S.C. 11101-11908). Gateway also raises a constitutional issue: it claims that a section 11321(a) override of the provisions in the Cahokia/Willows TRAs that bar unilateral assignment would deprive Gateway "of the use of its property without adequate due process of law [and] adequate compensation, and without an opportunity to resolve operational problems." GWWR-3 at 11.

[295] Section 11102 provides that we may require terminal facilities owned by one railroad to be used by another if the use is practicable and in the public interest, and will not substantially impair the ability of the owning carrier to handle its own traffic.

[296] (1) Gateway argues that, given the availability of the section 11102 remedy, resort to section 11321(a) cannot possibly be necessary. (2) Gateway also argues that, even aside from the (continued...)

Gateway also contends that, if we hold that section 11321(a) authorizes an override of the provisions in the Cahokia/Willows TRAs that bar unilateral assignment, we should go further and hold that this override applies to all provisions in these TRAs. The holding urged by Gateway would substitute CSX for Conrail as the trackage rights tenant on the Cahokia/Willows segments, but would also require the terms and conditions applicable to the Cahokia/Willows trackage rights to be negotiated by Gateway and CSX or, if negotiations fail, to be set by the Board. Gateway argues, in essence: that the limited override sought by CSX would result in unbalanced agreements that neither Gateway nor its predecessor would ever have negotiated and that no regulatory agency would ever have imposed; and that a complete override would allow Gateway to protect its interests by negotiating, or by asking this agency to impose, balanced agreements that reflect the expanded use of the trackage rights that may occur with the substitution of CSX for Conrail.[297]

HOUSATONIC RAILROAD COMPANY. HRRC, a Class III railroad that operates over approximately 161.3 miles of track in Massachusetts, Connecticut, and New York, has two lines that connect at Danbury, CT: a north-south line, that extends between Pittsfield, MA, and Danbury, CT; and an east-west line, that extends between Beacon, NY, and Derby, CT. HRRC, which interchanges all of its traffic (approximately 5,000 inbound cars and 750 outbound cars a year) with Conrail at Pittsfield, contends that the CSX/NS/CR transaction, which will substitute CSX for Conrail as HRRC's Pittsfield connection, will adversely impact HRRC and/or its shippers in five ways: (1) 1-to-1 shippers on HRRC's lines will be competitively disadvantaged vis-à-vis their 1-to-2 competitors; (2) for those shippers on HRRC's lines that ship to points open today to both CSX and NS, the neutral gateway service provided pre-transaction by Conrail will not be provided post-transaction by CSX; (3) HRRC shippers of freight moving from/to Conrail points that will be served post-transaction by NS (and not by CSX) will be competitively disadvantaged by the substitution of a possibly more costly three-carrier routing (HRRC/CSX/NS) for what is now a two-carrier routing (HRRC/Conrail); (4) the new intramodal competition west of the Hudson will allow for the development of new intermodal competition east of the Hudson, which will divert traffic from all New England shortlines but particularly (because of location) from HRRC; and (5) whereas Conrail has honored its "partnership" commitments to HRRC, CSX will not continue the pre-transaction HRRC/Conrail partnership.[298]

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[296](...continued)
section 11102 remedy, resort to section 11321(a) is not necessary, because CSX will be able to access the Cahokia Marine Terminal via terminal or interchange switching performed by Gateway.

[297] On May 15, 1998, CSX filed its CSX-147 motion for leave to file its CSX-148 verified statement concerning the incidence of antiassignment clauses in Conrail's rail transportation contracts. On May 28, 1998: we served our *Decision No. 84*, denying the CSX-147 motion and rejecting the CSX-148 verified statement; and Gateway filed its GWWR-5 motion, urging us to deny the CSX-147 motion and to strike the CSX-148 verified statement. The GWWR-5 motion was moot the day it was filed, and is therefore being denied.

[298] Conrail, HRRC notes, can compete against HRRC in several ways (*e.g.*, by establishing lower commodity rates to, or reload facilities at, nearby Conrail stations), but, mindful of its fiduciary obligations as HRRC's "partner," has not done so. CSX, HRRC warns, will do so.

To protect HRRC and its on-line shippers from the anticompetitive impacts that will result from the CSX/NS/CR transaction, to increase intramodal competition in the territory served by HRRC, and to preserve the essential services provided by HRRC, HRRC asks that we impose three conditions: an access condition; a "single-line to joint-line" (SL-to-JL) condition; and a rate condition.

Access Condition. (1) In its comments filed October 21, 1997, HRRC asks that we require that NECR be granted trackage rights between Palmer, MA, and Albany, NY (including Selkirk, NY, and Mechanicville, NY). HRRC notes that these trackage rights, combined with an HRRC/NECR commercial arrangement that HRRC expects to negotiate, would enable HRRC to interchange traffic with NS, CP, and B&M in the Albany area. HRRC also states, in its comments, that, if we do not require that NECR be granted the Palmer-Albany trackage rights sought by NECR, we should, at the very least, require that CSX enter into a haulage arrangement with HRRC, under the terms of which CSX would haul HRRC's traffic over Conrail's Albany-Boston line (1) between Pittsfield and Albany, for the purpose of interchange in the Albany area with, among other carriers, NS, CP, and B&M, and (2) between Pittsfield and Palmer, for the purpose of interchange with connecting carriers at Palmer and intermediate points.

(2) In its brief filed February 23, 1998, HRRC makes no mention of its trackage rights condition but asks that we require that CSX enter into a haulage arrangement with HRRC, under the terms of which CSX would haul HRRC's traffic over Conrail's Albany-Boston line (1) between Pittsfield and Albany, for the purpose of interchange in the Albany area with, among other carriers, NS, CP, and B&M, and (2) between Pittsfield and Palmer, for the purpose of interchange with connecting carriers at Palmer and intermediate points. HRRC also asks that we retain jurisdiction to establish an appropriate haulage fee.

SL-to-JL Condition. HRRC, noting that the NITL agreement provides limited 3-year rate protection for certain SL-to-JL movements, asks that we make this protection applicable to movements originating on HRRC. HRRC is asking, in essence, that we clarify that the "single line Conrail" movements covered by section III(E) of the NITL agreement include the HRRC/Conrail movements of interest to HRRC. *See,* HRRC-13 at 6-7.

Rate Condition. HRRC asks that we require CSX to fulfill its commitments: (i) that all rate arrangements binding on Conrail will be honored by CSX for their duration;[299] and (ii) that, with respect to public group-to-group or mileage scale rate documents, rates to HRRC stations will be the same as rates to CSX local stations within that same group.[300]

I&M RAIL LINK. I & M Rail Link, LLC (I&M), a Class II railroad, operates over approximately 1,386 miles of rail line connecting Minneapolis/St. Paul, MN, Kansas City, KS, and Chicago, IL. I&M's interests in this proceeding are focused upon intermediate switching services in the Chicago switching district. I&M contends that there are today, in that district, only two intermediate switching carriers (*i.e.*, only two carriers whose primary focus is on the movement of traffic from one railroad to another): Indiana Harbor Belt Railway (IHB) and The Belt Railway

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[299] HRRC claims that CSX made such a commitment in the primary application filed June 23, 1997. *See,* HRRC-13 at 7-8.

[300] *See,* HRRC-13, Exhibit A (a letter by a CSX official, dated January 27, 1998). The condition requested by HRRC would read as follows: "Upon acquisition of the CR properties by CSX, CSX Group Rates or Mileage Scale Rates will include HRRC stations in the same group or scale as CSX stations in the same geographical regional group, unless CSX and HRRC otherwise agree. Where binding existing CR/HRRC arrangements apply to the stations and commodities, the division of revenue will be in accordance with the existing arrangements for their duration." *See,* HRRC-13 at 7-8.

Company of Chicago (BRC). IHB is presently owned 51% by Conrail; the primary application envisions that this 51% interest will be retained by Conrail; and thus, post-transaction, IHB will be subject to joint control by CSX and NS.[301] BRC is presently owned 25% by CSX, 8.33% by NS, and 16.67% by Conrail; the primary application envisions that NS will acquire Conrail's stock; and thus, post-transaction, CSX and NS will each have a 25% ownership interest.[302] I&M is concerned that, post-transaction, the only two intermediate switching carriers in the Chicago switching district will be controlled or dominated by CSX and NS,[303] and that IHB will cease to be an intermediate switching carrier and will become instead an operating adjunct of CSX and NS (particularly of CSX, which will have dispatching authority over IHB).

I&M therefore asks that we require Conrail to sell its 51% IHB ownership interest to a "coalition" of interested carriers that, at the present time, consists of I&M alone.[304] I&M contemplates that IHB would continue to operate under its own management, and would control its own dispatching, serve on-line shippers from its own yards, and market its own services as an independent carrier. I&M contends that divestiture of Conrail's 51% ownership interest in IHB is necessary: to prevent an anticompetitive concentration of ownership and control of intermediate switching services and related terminal services in the Chicago switching district; to establish IHB as a neutral, independent switching carrier; to assure that IHB is not operated as an extension of CSX; to preserve essential switching capacity in the Chicago switching district; and to preserve an efficient connection at Chicago for I&M.[305]

ILLINOIS CENTRAL RAILROAD COMPANY. IC, a Class I railroad that operates approximately 2,624 route miles of rail line in Illinois, Kentucky, Tennessee, Mississippi, Louisiana, and Alabama,[306] asks that we impose two conditions: a competitive routing condition and a line acquisition condition.

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[301] IHB is also owned 49% by Soo Line Railroad Company (Soo).

[302] BRC is also owned 16.68% by BNSF, 8.33% by GTW, 8.33% by IC, 8.33% by UPRR, and 8.33% by Soo. *See,* CSX/NS-18 at 283.

[303] I&M notes that there is, in the Chicago switching district, a third carrier that historically has been designated a switching carrier: The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSX subsidiary). I&M contends, however: that B&OCT operates principally as an extension of, and a terminal company for, CSX, and not as a true intermediate switching carrier; and that B&OCT performs few, if any, intermediate switching services that do not include direct interchange to CSX or service to on-line industries.

[304] The I&M responsive application, as filed October 21, 1997, sought to require Conrail to transfer its IHB ownership interest to I&M and the Elgin, Joliet & Eastern Railway Company (EJ&E). It was announced at the oral argument (on June 3, 1998), however: that EJ&E, which had initially been a participant in the I&M responsive application, was withdrawing from participation therein; and that I&M would pursue the I&M responsive application in its own right, on behalf of a "coalition."

[305] A statement supporting the I&M responsive application was filed by the Ad Hoc Committee of On-Line IHB Shippers, an organization consisting of eight shippers physically served by IHB.

[306] IC's primary mainline extends between Chicago, IL, and New Orleans, LA. Secondary IC mainlines extend to Peoria and East St. Louis, IL, Mobile, AL, and Baton Rouge, LA.

Competitive Routing Condition. IC contends that there are today three joint-line routings for rail traffic moving between the South Central United States and Conrail territory in the Northeast: IC/Conrail;[307] CSX/Conrail; and NS/Conrail. IC further contends that, post-transaction, there will be, for this traffic, two joint-line routings (IC/CSX and IC/NS) and two single-line routings (CSX and NS). IC claims that its incentives will remain much the same post-transaction as they are pre-transaction because IC's participation in this traffic will continue to be on a joint-line basis only. IC further claims, however, that the incentives of CSX and NS will not be the same post-transaction because each will have, post-transaction, both a single-line routing and a joint-line routing; and IC believes that railroads, if at all possible, almost invariably favor their single-line routings and almost invariably seek to maximize their portions of joint-line routings, no matter how efficient alternative joint-line routings might be.

IC's interests in this proceeding relate to the preservation of its post-transaction joint-line routings (*i.e.*, IC/CSX and IC/NS) for traffic moving between the south central United States and Conrail territory in the Northeast. IC's interests as respects the IC/NS routing have been accommodated by an agreement with NS, which has committed to retaining shipper options via IC/NS gateways in Illinois. IC claims, however, that it has been unable to reach a similar agreement with CSX, and it is concerned that, post-transaction, CSX will favor less efficient IC/CSX joint-line routings via New Orleans and Memphis and will decline to participate in more efficient IC/CSX joint-line routings via Chicago, East St. Louis, and Effingham.[308]

IC therefore asks that we require, except insofar as IC and CSX agree otherwise: that, for traffic moving to/from stations on lines of CSX and its shortline connections,[309] CSX must, upon request of a shipper or IC, join with IC in market competitive joint rates via Chicago, East St. Louis, and Effingham "where the applicable joint line routes are reasonably efficient (distance considered) and/or where a competitive service package can be offered to the customer," IC-6 at 2; that, in constructing joint rates via IC, CSX's portion of such joint rates shall be at rate levels comparable on a per mile basis with CSX's revenue requirement via the portion of its preferred long-haul route between the same origins and destinations; that CSX's revenues shall be calculated by determining its revenue per car mile (revenue per car divided by CSX's route miles) over its preferred long-haul route (*e.g.*, via New Orleans) and multiplying such revenue per car mile by CSX's route miles for the routing via IC (*e.g.*, via Effingham); and that any absorbed switching charges or other unusual terminaling costs shall be added to this calculation. This competitive routing condition, IC contends, is necessary to assure that traffic moving between the south central United States and Conrail territory in the Northeast: has access to an IC/CSX joint-line routing option as an alternative to a CSX single-line routing option; and has access to an IC/CSX joint-line routing option via an Illinois gateway as an alternative to an IC/CSX joint-line routing option via Memphis and/or New Orleans.

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[307] Traffic routed IC/Conrail moves via one or another of IC's three "Illinois gateways" at Chicago, East St. Louis, and Effingham. The principal IC/Conrail gateway is at Effingham, which is where IC's north-south Chicago-New Orleans mainline crosses Conrail's east-west East St. Louis-Cleveland mainline.

[308] The pre-transaction IC/Conrail joint-line routing via Effingham, IC warns, will cease to exist once CSX acquires Conrail's East St. Louis-Cleveland mainline.

[309] IC has clarified that the phrase "stations on lines of CSX and its short line connections" is intended to reference only those stations located on Conrail lines assigned to CSX (including lines within any SAA) and on shortline connections to such lines. *See*, IC-15 at 35-36.

Line Acquisition Condition. An approximately 2-mile segment of IC's Chicago-New Orleans mainline (this segment is known as the Leewood-Aulon line) lies in or near Memphis, TN, and extends between CSX MP F-371.4 (IC MP 387.9) at Leewood and CSX MP F-373.4 (IC MP 390.0) at Aulon. Pursuant to an agreement dated January 22, 1907, and various amendments thereto, IC currently operates via trackage rights over the CSX-owned Leewood-Aulon line, both ends of which connect with IC-owned portions of IC's Chicago-New Orleans mainline. The double-track Leewood-Aulon line is an essential link for nearly all north-south traffic moving on IC's rail system; all traffic moving on IC's core north-south trunk must traverse this 2-mile line in order to pass through Memphis.[310] The Leewood-Aulon line is operated over by IC, CSX, and UPRR (UPRR operates over the line for the limited purpose of handling interchange traffic to and from CSX's Leewood Yard, which is located adjacent to the Leewood end of the line). Of the three, however, IC is by far the predominant user. The Leewood-Aulon line is, by IC's account, a secondary line for CSX; it is located at the end of CSX's Memphis-Nashville route and is used by CSX primarily for switching and the transfer of interchange traffic.

IC's grievance respecting the Leewood-Aulon line reflects the fact that the line is owned, and therefore dispatched, by CSX. IC's grievance respecting the line, the "number one bottleneck on IC as a scheduled service railroad," IC-6, V.S. McPherson at 17, also reflects the additional fact that dispatching on the line, which until December 1996 was handled by a CSX operator based at Leewood, is now handled by CSX's centralized dispatching center in Jacksonville, FL, using a Traffic Control System (TCS). IC claims: that, prior to the December 1996 transfer, train movements on the Leewood-Aulon line were, for the most part, effectively coordinated; that, however, since the transfer, CSX has caused significant interference with and delays to IC's through train movements on the line; that CSX trains have been held at length on the line; that yard movements at CSX's Leewood Yard have often been allowed to "foul" the line; and that repeated complaints to CSX dispatchers in Jacksonville have not been addressed. The result, IC contends, has been severe disruptions to IC's operations in Memphis.

The CSX/NS/CR transaction, IC claims, will allow CSX, for the first time, to compete directly with IC for certain traffic, and, in particular, for traffic currently moving in IC/Conrail joint-line service via Effingham. IC concedes that the CSX chokehold on IC's operations in the Memphis area predates the CSX/NS/CR transaction, but IC insists that, if the transaction is implemented, the anticompetitive effects of this chokehold will grow more harmful. With the CSX/NS/CR transaction, IC claims, CSX will have, for the first time, a competitive incentive to utilize its chokehold to render IC's service non-competitive and to force traffic now routed IC/Conrail via Effingham to move over a CSX routing via Memphis or New Orleans.

IC therefore asks that we require that, under terms to be negotiated by IC and CSX or, if negotiations fail, to be set by the Board, CSX convey the Leewood-Aulon line to IC, subject to: the retention by CSX of trackage rights over the line sufficient to allow CSX to continue all operations which it conducts on the line today; the retention by CSX and IC of their existing rights to serve local shippers and industries on the line; and the retention by UPRR of the right to continue its current usage of the line. This condition, IC claims, would remove the chokehold that CSX now has on IC's operations in the Memphis area; it would thereby assure that IC can continue to offer effective

[310] IC notes: that its Riverfront line, a single-track line through downtown Memphis with 12 grade crossings in just over a mile, is utilized only by Amtrak; and that a 1995 agreement with the City of Memphis, which owns the right-of-way underlying the Riverfront line, prohibits freight operations on that line except in emergencies.

competition for traffic to/from the Northeast; and it would preserve the basic operating patterns that now exist on the Leewood-Aulon line.[311]

INDIANA SOUTHERN RAILROAD. ISRR is a Class III railroad with four Class I connections[312] that operates in Indiana over approximately 176 miles of track between Indianapolis and Evansville. ISRR's interests in this proceeding are focused on rail traffic moving from/to: Indianapolis, Crawfordsville, Muncie, and Shelbyville, IN; and points on Conrail's Indianapolis-Crawfordsville, -Muncie, and -Shelbyville lines. (1) Indianapolis, a 2-to-1 point, is served today by Conrail (via its E. St. Louis-Cleveland mainline) and CSX (via its Cincinnati-Indianapolis line, and also via trackage rights over Conrail's Indianapolis-Crawfordsville line). The CSX/NS/CR application envisions the assignment to CSX of Conrail's E. St. Louis-Cleveland mainline and its Indianapolis-Crawfordsville line. The CSX/NS/CR application, however, also envisions: that NS will serve 2-to-1 shippers at Indianapolis via trackage rights over CSX from both Muncie and Lafayette, IN; that NS will occupy Conrail's tracks at Hawthorne Yard in Indianapolis, will bring trains directly into and out of that yard, and will switch its trains at that yard; and that CSX will switch the 2-to-1 industries at Indianapolis for NS. (2) Crawfordsville, a 2-to-1 point, is served today by Conrail and CSX. The CSX/NS/CR application envisions the assignment to CSX of Conrail's Indianapolis-Crawfordsville line, but also envisions: that NS will serve all 2-to-1 shippers at Crawfordsville under haulage and trackage rights; and that CSX will perform the actual switching at Crawfordsville. (3) Muncie, a 2-to-2 point, is served today by Conrail and NS. The CSX/NS/CR application envisions that Conrail's Muncie tracks will be assigned to CSX. (4) Shelbyville, a 1-to-1 point, is served today by Conrail. The CSX/NS/CR application envisions that Conrail's Shelbyville tracks will be assigned to CSX.

ISRR contends that, because NS will not have sufficient traffic to support routine service at Indianapolis and Crawfordsville, CSX vs. NS competition post-transaction will not be as strong as CSX vs. Conrail competition pre-transaction. ISRR also contends that, whereas Conrail today offers a neutral and indifferent gateway service for shippers located on its Indianapolis-Crawfordsville, -Muncie, and -Shelbyville lines (as respects traffic moving from/to nearby CSX and NS junctions), the post-transaction CSX will have a strong economic incentive to favor its own routes.[313]

The one shipper of most concern to ISRR is Indianapolis Power & Light (IP&L), which has two Indianapolis generating stations. (1) ISRR indicates that IP&L's Perry K plant, which is located on a Conrail line in Indianapolis, can receive coal originated by either Conrail, ISRR, or INRD. ISRR claims that, because Conrail does not serve IP&L's origin mines, Conrail functions today as a switch carrier, and is neutral as between traffic originated by ISRR and INRD. CSX, ISRR fears, would not be neutral (because INRD is an 89%-owned CSX subsidiary). (2) ISRR indicates that IP&L's Stout plant, which is located on an INRD line in Indianapolis, today has several routing options: INRD direct; CSX-INRD; ISRR-Switz City-INRD; ISRR-Indianapolis-Conrail-INRD; CP-INRD; and Conrail-INRD. ISRR contends that, whereas it has been able to compete for the Stout traffic via the Conrail switch at Indianapolis (because Conrail, which does not serve the origin mines,

[311] IC has indicated that it would be willing to entertain alternative remedies to the Leewood-Aulon problem, such as the establishment of local operator positions at Leewood, staffed by joint employees of IC and CSX, to govern operations on the line. *See,* IC-13 at 017-018; IC-15 at 22-23.

[312] The four connections are: Conrail at Indianapolis; CP at Bee Hunter; NS at Oakland; and CSX at Evansville. Two additional connections are: the Indiana Rail Road Company (INRD) at Switz City; and the Algers, Winslow & Western Railway (AWW) at Oakland.

[313] Shippers at intermediate points on Conrail's Indianapolis-Crawfordsville, -Muncie, and -Shelbyville lines are 1-to-1 shippers.

has been a neutral switching carrier), it will not be able to compete for this traffic post-transaction (because CSX will have an economic incentive to favor INRD).

ISRR also claims that the CSX/NS/CR transaction will effectively eliminate three additional competitive options that are presently available to IP&L: the option of building out from the Stout plant to a nearby Conrail line; the option of moving coal to the Stout plant via a truck transload facility to be established on a nearby Conrail line; and the option of moving coal by truck to the Perry K plant either from the Stout plant or from a nearby INRD yard. ISRR claims that, because these options depend on Conrail vs. INRD competition, they cannot possibly survive the CSX/NS/CR transaction; CSX, ISRR insists, cannot be expected to compete effectively with its 89%-owned subsidiary (INRD). ISRR further claims that, despite the NS Indianapolis rights provided for in the CSX/NS/CR application, NS will not be able to compete effectively with CSX for traffic moving to IP&L's Perry K and Stout plants: because NS, which does not serve IP&L's origin mines, will not be able to originate the traffic; because NS' post-transaction route from the Southwestern Indiana mine region to Indianapolis will be highly circuitous; because the eastern mines served by NS are too far away to be competitive with nearby Indiana coal sources; and because NS will not be permitted to connect with ISRR (and therefore will not be able to perform the switch services currently performed by Conrail).

ISRR contends that, with the traffic diversions (especially the IP&L traffic diversions) to CSX/INRD that will result from the new rail alignment envisioned in the CSX/NS/CR application, ISRR stands to lose $1.5 million in annual revenues (out of a total of approximately $9 million in annual revenues). The loss of these revenues, ISRR warns, would be devastating both to ISRR and also to those ISRR-served shippers whose transportation needs cannot economically be met by other modes of transportation. ISRR claims that it would have to abandon the northern segment of its line, cutting its connection to Indianapolis.

ISRR therefore asks that we require that ISRR be granted: (1) overhead trackage rights in Indianapolis, over a Conrail line to be assigned to CSX, between MP 6.0 on ISRR's Petersburg Subdivision and IP&L's Perry K facility; (2) overhead trackage rights in Indianapolis, over a Conrail line to be assigned to CSX and over a 7-mile segment of an INRD line, between MP 6.0 on ISRR's Petersburg Subdivision and IP&L's Stout facility; (3) local trackage rights in Indianapolis over all Conrail lines in Indianapolis (including the Indianapolis Belt Line) that are needed to access any 2-to-1 shippers located in Indianapolis; (4) local trackage rights between Indianapolis and Crawfordsville over the Conrail line to be assigned to CSX; (5) local trackage rights between Indianapolis and Muncie over the Conrail line to be assigned to CSX;[314] and (6) local trackage rights between Indianapolis and Shelbyville over the Conrail line to be assigned to CSX. ISRR also asks that we retain jurisdiction to establish compensation and other terms in the event the parties are unable to resolve these matters through negotiations. ISRR claims that the trackage rights it seeks: (a) would enable it to retain its current traffic base and to compete for some new traffic, and would thereby make it possible for ISRR to continue to provide essential rail service to its customers; (b) would allow it to provide an economical switching service to nearby Class I connections, and would thereby preserve intramodal competition in Indianapolis and the surrounding area; and (c) would provide more efficient routings and new marketing opportunities not only for ISRR itself but also for other shortlines in the Indianapolis area.

[314] ISRR seeks the right to serve shippers on the Indianapolis-Muncie line and to connect with NS at Muncie. ISRR does not seek the right to serve shippers in Muncie.

LIVONIA, AVON & LAKEVILLE. LAL, a Class III railroad that operates over two lines in Western New York, indicates that its interests in this proceeding relate to its Genesee Junction-Avon-Lakeville line, an approximately 29.4-mile north-south line that runs between (i) Conrail's Genesee Junction Yard in Chili, NY, immediately south of Rochester, NY, and (ii) Lakeville, NY. LAL, which was organized in 1963 to save tracks that the Erie-Lackawanna Railroad Company (EL) sought to abandon, originally operated between Avon (the location of the LAL/EL interchange) and Lakeville/Livonia (LAL's southern termini). The Avon interchange, at EL MP 366.2, was LAL's only interchange; LAL was, from the start, "captive" to EL. In the mid-1970s, at the time of the creation of Conrail, LAL attempted to acquire the EL line that ran west from Avon to Caledonia; this acquisition, had it been accompanied by acquisition of or trackage rights over the 0.2-mile segment between MPs 366.2 and 366.4, would have given LAL a connection, at Caledonia, with the Baltimore and Ohio Railroad Company (B&O). LAL, however, was not given an opportunity to purchase, or to acquire trackage rights over, the 0.2-mile segment; because there was no reason to acquire the Caledonia-Avon line without access rights to the 0.2-mile segment, LAL never acquired that line (which was, in due course, abandoned); and the LAL/EL Avon interchange at MP 366.2 became, in 1976, the LAL/Conrail interchange.

The LAL/Conrail interchange remained at Avon until 1996, at which time LAL acquired Conrail's Genesee Junction-Avon line (*i.e.*, the northern segment of what is now LAL's Genesee Junction-Avon-Lakeville line). LAL's ownership of the Genesee Junction-Avon-Lakeville line extends to the east end of Conrail's Genesee Junction Yard, ownership of which was retained by Conrail. LAL claims that Conrail retained ownership of Genesee Junction Yard in order to block LAL from connecting, at the west end of the yard, with the Rochester & Southern Railroad (R&S), a Class III railroad whose line runs south approximately 44 miles to Silver Springs, NY, at which point R&S connects both with CP and with Conrail (on Conrail's Buffalo-Corning line). LAL indicates that, although it has the right to operate in Genesee Junction Yard for purposes of the LAL/Conrail interchange, and although R&S also has the right to operate in the yard (for purposes of an R&S/Conrail interchange) and through the yard (for certain other purposes), neither LAL nor R&S has the right to operate in the yard for purposes of an LAL/R&S interchange (which, accordingly, does not exist). At present, therefore, LAL, which was for 20 years "captive" to Conrail at Avon, *see*, LAL-4 at 9 and 11, remains "captive" to Conrail at Genesee Junction Yard.[315]

The CSX/NS/CR application envisions that Conrail's Buffalo-Rochester-Syracuse line, and Genesee Junction Yard along with it, will be assigned to CSX. LAL fears that this assignment will adversely affect competitive rail service for shippers and receivers on its line because CSX, which will be much larger and more remote than Conrail, will be even more inclined than Conrail to neglect the needs of captive businesses. Operational issues are also of concern to LAL, which notes that grain shipments from LAL origins to Conrail destinations on the Delmarva Peninsula and in Pennsylvania will require duplicative costs and multiple interchanges attendant upon CSX/NS interline service. A CSX/NS interline routing, LAL insists, will not be equivalent to a Conrail single-line routing. LAL also contends that its customers will be adversely impacted by the fact that certain traffic that now moves, or that now could move, in NS/Conrail/LAL joint-line service will henceforth have to move in NS/CSX/LAL joint-line service. LAL insists that, as a practical matter (*i.e.*, given CSX vs. NS rivalry), any such joint-line routings involving LAL simply will not survive the CSX/NS/CR transaction.

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[315] LAL indicates that it acquired the Genesee Junction-Avon line: because the line functioned as the sole outlet for LAL's traffic; because the track required immediate repairs, which Conrail was unwilling to make; and because Conrail had indicated that, if the line could not be sold to LAL, it would be sold to another shortline.

LAL therefore asks that we require that LAL be allowed to acquire ownership of, or trackage rights over, the approximately 1 route mile of trackage constituting Genesee Junction Yard,[316] with the right to directly interchange with all carriers with access to that yard (the only such carriers mentioned in the record are CSX and R&S), subject to terms and conditions to be negotiated by LAL and CSX or, if negotiations fail, to be set by the Board.[317] This condition, LAL contends, would allow LAL's shippers to access both CSX and R&S,[318] and is necessary: to mitigate the CSX/NS/CR transaction's adverse impact on food processing and agricultural businesses in New York; to keep shippers on the Genesee Junction-Avon-Lakeville line competitive with other shippers in the region; and to preserve LAL as a provider of essential services to shippers on the Genesee Junction-Avon-Lakeville line.[319]

NEW ENGLAND CENTRAL RAILROAD. NECR, a Class III railroad that operates over approximately 343 miles of track between East Alburg, VT, and New London, CT, claims that, in at least two respects, the CSX/NS/CR transaction, by substituting CSX for Conrail, will competitively disadvantage New England shippers and shortlines. (1) NECR claims that 1-to-1 shippers in New England will be competitively disadvantaged vis-à-vis their 1-to-2 competitors (competitors that are served pre-transaction by Conrail but that will be served post-transaction by CSX and NS). (2) NECR claims that, for those 1-to-1 shippers in New England that ship to points open today to both CSX and NS, the neutral gateway service now provided by Conrail will not be provided post-transaction by CSX, which will have a strong incentive to favor its own routes by raising rates or reducing service for traffic moving to NS destinations.

NECR is also concerned that, with the traffic diversions that will result from the new post-transaction rail alignments, NECR stands to lose up to $8 million (*i.e.*, almost half) of its annual revenues. The loss of these revenues, NECR warns, would have a devastating and possibly fatal effect on NECR, which would be compelled to make significant reductions in service throughout its system and to discontinue service altogether on marginal sections. The effect, NECR adds, would be devastating to those NECR-served shippers that have no practical alternative to NECR's rail service (*e.g.*, NECR customers receiving forest products from Canadian origins); these shippers would lose essential rail service. NECR adds: that other shippers would incur increased costs in diverting their freight to truck; and that Amtrak service over NECR's system would be jeopardized.

NECR therefore asks that we require that NECR be granted "limited trackage rights" over the Conrail lines to be assigned to CSX,[320] (1) between Palmer, MA (the NECR/Conrail connection

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[316] LAL contemplates that its ownership would be accompanied by a reciprocal grant of trackage rights to CSX.

[317] LAL adds that, if CSX is to own the yard, CSX should be required to fulfill its promise to upgrade the yard to FRA Class 1 condition. *See*, LAL-7 at 17 n.9; CSX/NS-176 at 374.

[318] Because the CSX/NS/CR application envisions that Conrail's Buffalo-Corning line will be assigned to NS, the condition requested by LAL would allow for the creation of an LAL/R&S/NS routing (with an R&S/NS connection at Silver Springs).

[319] An additional condition requested by LAL, apparently as an alternative to its acquisition/trackage rights condition, is the elimination of the restriction in the LAL/Conrail interchange agreement that bars LAL from utilizing Genesee Junction Yard to interchange traffic with carriers other than Conrail or its successor. *See* LAL-4, V.S. Burt at 21; LAL-7 at 17-18.

[320] The term "limited trackage rights" is used by NECR to mean: (i) the right to operate trains over the described lines; and (ii) the right to interchange with all carriers, including shortlines, at all junctions on the described lines. These trackage rights would allow NECR to make at least the following new connections: with its Connecticut Southern Railroad, Inc. (CSO) affiliate, at West (continued...)

point), and West Springfield, MA, a distance of approximately 18 miles, (2) between West Springfield, MA, and Albany, NY (including Selkirk, NY, and Mechanicville, NY), a distance of approximately 98 miles, and (3) on the west side of the Hudson River, between Albany, NY, and the North Jersey SAA, a distance of approximately 140 miles. NECR also asks that we retain jurisdiction to establish terms in the event the parties are unable to resolve these matters through negotiations. NECR claims that the trackage rights it seeks: (a) would allow it both to retain some present traffic that CSX and NS would otherwise divert and also to attract some new traffic, and would thereby allow NECR to continue to provide essential rail service to its on-line customers; (b) would, by enabling NECR to offer New England shippers and shortlines alternative access to Class I carriers in the Selkirk-Albany-Mechanicville area and in the North Jersey SAA, resolve the anticompetitive disadvantages that New England shippers and shortlines are certain to suffer if the primary application is approved without conditions;[321] and (c) would provide more efficient routings and new marketing opportunities not only for NECR itself but also for other New England shortlines.[322]

NEW YORK & ATLANTIC RAILWAY. NYAR, which began operations in May 1997, holds an exclusive franchise to provide freight service over LIRR's rail lines, which extend between Pennsylvania Station (in Manhattan) and Montauk (at the eastern tip of Long Island). NYAR notes that, aside from Conrail, P&W, and NYCH, NYAR is (as LIRR formerly was) the sole provider of rail freight service on Long Island (*i.e.*, the Boroughs of Brooklyn and Queens and the Counties of Nassau and Suffolk). NYAR claims that, in this area, its geographical coverage is far more extensive than that of Conrail, P&W, and NYCH combined. NYAR's geographical coverage extends almost the entire east-west length of Long Island. The geographical coverage of Conrail and P&W, in contrast, is limited: their only access to Long Island is on the line that runs between Oak Point Yard (in the South Bronx) and Fresh Pond Yard (in Queens).[323] NYCH's geographical coverage is also limited; its operations are conducted in and near the Bay Ridge area of Brooklyn.[324]

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[320](...continued)
Springfield, MA; with HRRC at Pittsfield, MA; with B&M, D&H, and NS (via an NS/D&H haulage arrangement) in the Selkirk-Albany-Mechanicville area; and with NS and CSX in the North Jersey SAA.

[321] NECR acknowledges that, even without its requested trackage rights, it will have post-transaction access to NS via an NECR/B&M/NS routing (the NECR/B&M junction will be at Brattleboro; the B&M/NS junction will be at Mechanicville). NECR contends, however, that the post-transaction NS routing via Brattleboro will be significantly more circuitous than the post-transaction CSX routing (*i.e.*, the pre-transaction Conrail routing). NECR-8 at 7.

[322] NECR indicates: that the West Springfield connection with CSO would enable NECR and CSO to reduce costs by coordinating their operations; that the West Springfield connection with CSO and the Pittsfield connection with HRRC would provide CSO and HRRC with more efficient routings and new marketing opportunities for traffic moving from/to points on their lines via the major Class I gateways in the Selkirk-Albany-Mechanicville area and the North Jersey SAA; and that similar efficiencies and marketing opportunities would be gained by NECR's other shortline connections.

[323] Fresh Pond Yard (in Queens) is the location of the Conrail/NYAR and P&W/NYAR interchanges.

[324] Bush Junction (in Brooklyn) is the location of the NYCH/NYAR interchange.

NYAR's interests in this proceeding are focused upon the east-of-the-Hudson "joint facility" advocated by the Nadler Delegation, by which is meant (i) a cross-harbor float operation, and (ii) a core system of rail lines and terminals east of the Hudson River, including LIRR's 11-mile Bay Ridge Line (now operated over by NYAR) that extends between Bush Junction in Brooklyn and Fresh Pond Yard in Queens. NYAR asks that we reject the Nadler Delegation's proposal insofar as that proposal addresses the Bay Ridge Line.

The Bay Ridge Line, NYAR contends, is critically important to NYAR. The Bay Ridge Line: provides NYAR its only access to the NYCH/NYAR interchange at Bush Junction; provides NYAR its only access on a freight-only line to the Conrail/NYAR and P&W/NYAR interchanges at Fresh Pond Yard; is the only line in the NYAR system over which NYAR can handle overhead traffic; and is one of only two lines in NYAR's entire system that are not subject to joint use by LIRR for passenger operations (and the resulting flexibility to cater to shippers' service needs, NYAR insists, will allow it to attract new shippers to locate on the line and to induce current shippers to increase the amount of traffic shipped over the line).

NYAR claims that operations by applicants over the Bay Ridge Line would threaten NYAR's very existence. Applicants, NYAR claims, would have a tremendous advantage in competing for traffic that either originates or terminates on the line and that moves to/from (respectively) points served by CSX or NS. NYAR also fears that overhead traffic now handled by NYAR likely would be lost to applicants. And, NYAR adds, the physical characteristics of the single-tracked Bay Ridge Line do not make it a good candidate for multiple carrier use. NYAR contends: that, because the CSX/NS/CR transaction will not cause any fundamental changes in rail service on Long Island in general or on the Bay Ridge Line in particular, inclusion of the Bay Ridge Line in a joint facility would not address any transaction-related competitive harm; that 49 U.S.C. 11324(c) does not authorize us to compel the divestiture by a nonapplicant of its operating rights, or any portion thereof, in the manner proposed by the Nadler Delegation; that 49 U.S.C. 11102 does not authorize us to compel NYAR to grant applicants access to the Bay Ridge Line, (i) because the Bay Ridge Line is not a terminal facility, and (ii) because, in any event, multi-carrier use of this line would substantially impair NYAR's ability to use this line to handle its own traffic; and that 49 U.S.C. 10907(c)(1) does not authorize us to compel the sale of the Bay Ridge Line to applicants, (i) because sec. 10907(c)(1) does not address competitive access concerns, and (ii) because the Bay Ridge Line does not have any of the attributes necessary to make it a candidate for a forced sale under sec. 10907.[325]

NEW YORK CROSS HARBOR RAILROAD. NYCH, a Class III railroad that operates the lines formerly operated by the New York Dock Railway (NYDR) in Brooklyn, NY: serves shippers along a network of lines in the Bay Ridge area of Brooklyn; operates a car ferry service across New York Harbor, between its lines in Brooklyn (on the east side of the harbor) and Conrail's Greenville Yard in Jersey City, NJ (on the west side of the harbor); and serves customers at Greenville Yard. NYCH claims: (1) that, for traffic moving from/to shippers on its lines in Brooklyn, NYCH provides the

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[325] On March 19, 1998, NYAR filed its NYAR No. 4 pleading (to which no reply has been filed) containing: (a) a motion for leave to file a reply to the Nadler Delegation's brief; and (b) a reply to the Nadler Delegation's brief. NYAR insists: that the State of New York has never had an ownership interest in NYAR; that NYAR has never endorsed the proposal that the Bay Ridge Line be included in a joint facility; and that a temporary moratorium (agreed to by NYAR) on the rail transportation of municipal solid waste traffic reflects only a willingness to accommodate the interests of certain communities in the Borough of Queens, not a lack of capacity on the part of NYAR or any other railroad. In the interest of clarifying these matters, we will grant NYAR's motion and accept its reply.

principal connection to Conrail at Greenville Yard; (2) that, for traffic moving from/to points on the Long Island Rail Road (LIRR), NYCH provides a connection between LIRR and Conrail;[326] and (3) that, for traffic moving between (i) points in Southern New England and in Southern New York east of the Hudson River, on the one hand, and (ii) points south and west of New York City, on the other hand, NYCH provides a portion of the "bridge" between Conrail's lines north of New York City (these lines extend south only as far as Fresh Pond Yard in Queens) and Conrail's lines west of New York Harbor (these lines extend east only as far as Greenville Yard in Jersey City).

NYCH acknowledges that, upon implementation of the CSX/NS/CR transaction, it will have, for the first time, two Class I connections because Greenville Yard is in the North Jersey SAA. NYCH's post-transaction prospects, however, are not, in NYCH's view, entirely satisfactory because, although NYCH will have two Class I connections at Greenville Yard (CSX and NS), it will still have, via NYAR, only one Class I connection at Fresh Pond Yard (CSX). NYCH claims that its status, as respects its "bridge" function, will be 1-to-1: the pre-transaction Conrail/NYCH/NYAR/Conrail routing will become a post-transaction CSX/NYCH/NYAR/CSX routing; there will be no comparable post-transaction routing involving NS, because Fresh Pond Yard and Conrail's lines north thereof are to be assigned to CSX.

(1) NYCH fears that CSX, like Conrail, will favor its own Selkirk Yard (Albany, NY) routing, and will continue to route traffic around, rather than via, NYCH, which (NYCH claims) will threaten NYCH's ability to serve its on-line customers. NYCH therefore asks that we require CSX to utilize the CSX/NYCH/NYAR/CSX routing for traffic moving between points on Long Island and in Southern New England and in adjacent parts of New York State, on the one hand, and, on the other hand, points in the Mid-Atlantic States and the South and Southwest, where the CSX/NYCH/NYAR/CSX routing (what NYCH calls its "Greenville Gateway") represents the shortest, the most efficient, and the most economical routing.[327]

(2) NYCH contends that the marked decline in recent decades in the volume of traffic routed via the Greenville Gateway reflects wrongdoing on the part of Conrail, and, on the strength of this contention, NYCH recently filed suit against Conrail on antitrust and other grounds. NYCH claims that, if it prevails in that suit, its damage award may well be substantial. NYCH acknowledges that CSX and NS have represented that, if necessary, they will provide any funds that are required to enable Conrail to discharge its post-transaction obligations. NYCH submits, however, that, during discovery, applicants' witnesses were unable to confirm this representation. NYCH therefore asks that we require CSX and NS to jointly and severally guaranty Conrail's pre-closing liabilities arising out of litigation (or settlement of litigation) relating to actions by Conrail that occurred prior to closing to the extent that the post-transaction Conrail lacks sufficient assets to meet such liabilities.[328]

NORTH SHORE RAILROAD COMPANY AND AFFILIATES. NSHR, JVRR, NBER, LVRR, SVRR, and UCIR ask that we "note for the record" the settlement agreement they have entered into with NS.

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[326] The freight operations formerly conducted by LIRR are now conducted by New York & Atlantic Railway (NYAR).

[327] NYCH has provided two apparently alternative versions of this condition. *Compare,* NYCH's October 21, 1997, comments at 1-2 *with* NYCH's October 21, 1997, comments at 8.

[328] On May 29, 1998, NYCH submitted a letter that consists of: a request for leave to file a reply to the brief filed February 23, 1998, by the Nadler Delegation; and a reply to the brief filed February 23, 1998, by the Nadler Delegation. Because the NYCH letter should have been submitted (if at all) at a much earlier date, the request will be denied and the reply will be rejected.

OHI-RAIL CORPORATION. Ohi-Rail, a Class III railroad that operates over a 45-mile line between Baird, OH (its junction with Conrail) and Hopedale, OH (its junction with W&LE), indicates that its interests in this proceeding are focused on coal traffic originated at mines in Southeast Ohio and shipped to Centerior's Eastlake Plant in Eastlake, OH. This traffic, Ohi-Rail indicates, presently moves in a Conrail single-line routing.[329] Post-transaction, however, this traffic (and, more broadly, any traffic originated on NS' Conrail lines or on connecting shortlines accessed by NS via its Conrail lines) will have to be routed NS/CSX because, although NS is to acquire most of the relevant Conrail lines in Eeastern Ohio, CSX is to acquire the relevant Conrail tracks in the Cleveland area. Ohi-Rail, which fears that CSX may favor its own single-line coal movements, warns that the loss of single-line service to the Eastlake Plant and other similarly situated utilities will have a detrimental impact on the development of Ohio coal reserves. Ohi-Rail therefore asks that we require that NS be granted direct access to Centerior's Eastlake Plant.

PHILADELPHIA BELT LINE RAILROAD COMPANY. PBL, a Class III railroad, owns approximately 16.3 miles of track, right-of-way, and trackage rights along the waterfront in Philadelphia, PA, extending (i) from Bridge Street on the north, (ii) south to Allegheny Avenue (on the northern side of the site of Conrail's "former" Port Richmond Yard, *see,* PBL-10 at 4 n.4), (iii) further south to approximately Lehigh Avenue (which appears to be on the south side of the Port Richmond Yard), and (iv) further south, along or adjacent to Delaware Avenue, to Greenwich Yard. These tracks, right-of-way, and trackage rights, however, do not presently allow for uninterrupted operation from Bridge Street to Greenwich Yard; obstructions that PBL claims have been erected by the City of Philadelphia block such uninterrupted operation (these obstructions are apparently at the site of the Port Richmond Yard). As a practical matter, PBL's lines exist today as three discrete segments: the Belt Line North (from Bridge Street to Allegheny Avenue, a distance of approximately 3 miles);[330] the obstructed segment (from Allegheny Avenue to approximately Lehigh Avenue); and the Belt Line South (from approximately Lehigh Avenue to Greenwich Yard).

PBL claims that, at the time PBL was chartered in 1889 and at all relevant times thereafter, it was intended that PBL would function as a terminal and switching company whose facilities and services would forever be available on an equal access basis to all railroads then and in the future serving Philadelphia. PBL contends that the City of Philadelphia, by ordinances enacted in 1890 and 1914, memorialized this concept of equal access, which PBL refers to as the Belt Line Principle. The Belt Line Principle, PBL adds, remains as important today as it was more than a century ago; neutral, nondiscriminatory access by all railroads to PBL's lines is, PBL insists, essential to ensure that shippers located on these lines receive service at equitable rates from all carriers that reach the Philadelphia market.

PBL's interests in this proceeding are focused on the Belt Line North, which has been leased by Conrail since 1987. Shippers on the Belt Line North, PBL claims, should presently have three line-haul options: Conrail, CSX, and CP. PBL claims, however, that, in reality, these shippers presently have, for the most part, only one line-haul option, because Conrail has imposed excessively high reciprocal switching charges in order to discourage these shippers from routing via CSX or CP. PBL concedes, in essence, that, because the Belt Line North is located in the South Jersey/Philadelphia SAA, Belt Line North shippers will have, post-transaction, two line-haul options: CSX and NS. PBL notes, however, that, in general, these shippers will continue to be

[329] The context suggests that what Ohi-Rail refers to as a Conrail single-line routing may be either a Conrail single-line routing or an Ohi-Rail/Conrail joint-line routing.

[330] *See,* PBL-18 at 7-8 (the Port Richmond Yard today offers the only rail connection to the Belt Line North).

unable to route via CP, or indeed via any other railroad that now has or that hereafter acquires access to Philadelphia.

PBL therefore asks that we require that all carriers (including CSX, NS, and CP) that now have, or that in the future will have, access to any points in Philadelphia be provided equal, nondiscriminatory access to the Belt Line North through equitable reciprocal switch rates. PBL claims that the access provided by this condition: would allow for realization of the Belt Line Principle; would prevent CSX and NS from attaining market dominance over Belt Line North shippers; and would protect the essential services needed by shippers on the Belt Line North.

PBL, in its brief, apparently suggests (this is not entirely clear) that, if we do not impose the condition it has sought, we should, at the very least, state that applicants will not have, by virtue of the 49 U.S.C. 11321(a) immunity provision, a right to disregard Conrail's pre-transaction Belt Line Principle obligations. Such a statement, PBL apparently contends, would effectively preserve the status quo respecting the Belt Line Principle. *See,* PBL-18 at 9-11.[331]

PROVIDENCE AND WORCESTER RAILROAD COMPANY. P&W, a regional railroad that operates in Massachusetts, Rhode Island, New York, and Connecticut, holds overhead trackage rights between Fresh Pond Yard (in Queens) and New Haven, CT; these overhead rights extend over lines owned by Conrail,[332] the New York Metropolitan Transportation Authority (NYMTA), Amtrak, and the Connecticut Department of Transportation (CTDOT); and, with but one exception, these overhead rights are limited to the movement of construction aggregates.[333] P&W's interests in this proceeding are focused upon two matters: the joint facility advocated by the Nadler Delegation; and certain terminal properties in New Haven.[334]

The Joint Facility Proposal. (1) P&W suggests that the Nadler Delegation's proposal may reflect a misunderstanding of P&W's rights on the Fresh Pond Yard-New Haven line. P&W insists that, except as respects the Danbury and Waterbury Branches, P&W's rights on the Fresh Pond Yard-New Haven line are limited solely to the overhead movement of construction aggregates. (2) P&W is concerned that the Nadler Delegation's proposal envisions the introduction of an additional railroad on the portion of the Fresh Pond Yard-New Haven line that lies within the limits of the proposed joint facility. The Fresh Pond Yard-New Haven line, P&W claims, is heavily used both by Conrail and P&W, and also (for passenger operations) by Amtrak and Metro-North Commuter Railroad Company (MNCR). The introduction of a third freight operator on this line, P&W warns, would raise significant concerns regarding the availability of adequate operating windows. (3) P&W submits that, if we decide to require that an additional carrier be granted operating rights on the Fresh

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[331] PBL apparently contends that Conrail, by failing to honor the Belt Line Principle, has violated the terms of its lease of the Belt Line North. *See,* PBL-18 at 5-7 (most of the details are under seal).

[332] P&W's overhead trackage rights on Conrail extend over: Conrail's Market Running track between Pelham Bay and Oak Point Yard; and the New York Connecting Railroad line between Oak Point Yard (in the South Bronx) and Fresh Pond Yard (in Queens).

[333] P&W notes one exception to the "construction aggregates" limitation: P&W's overhead rights over the CTDOT-owned portions of the Fresh Pond Yard-New Haven line allow P&W to reach, for all purposes, its Waterbury Branch at Devon, CT, and its Danbury Branch at South Norwalk, CT.

[334] P&W, which supports the CSX/NS/CR application, notes that, in anticipation thereof, it has entered into an agreement with CSX pursuant to which P&W will be permitted to independently determine pricing for rail traffic moving between New York City and New England based on a long-term fixed revenue factor for CSX's movement of this traffic between Fresh Pond Yard and New Haven.

Pond Yard-New Haven line or any portion thereof, we should allow P&W to be that additional carrier.

Acquisition of New Haven Station. P&W claims that, pursuant to an order entered April 13, 1982, by the Special Court created by the Regional Rail Reorganization Act of 1973, Conrail must, upon implementation of the CSX/NS/CR transaction, sell to P&W certain terminal properties in the vicinity of New Haven, CT. The 1982 order provides, in relevant part, that, if Conrail elects to withdraw from or abandon or discontinue freight service obligations on the terminal properties known as "New Haven Station," and if, on application of P&W, the Federal Railroad Administrator shall find that P&W is continuing to operate as a self-sustaining railroad capable of undertaking additional common carrier responsibilities without federal financial assistance, then Conrail shall sell the New Haven Station properties to P&W. The 1982 order further provides: that such sale shall be at a reasonable price and on reasonable terms and conditions agreed upon by Conrail and P&W or, in the absence of agreement, set in arbitration; and that, upon the sale, P&W shall succeed to Conrail's service obligations, but subject to certain conditions. *See,* P&W's comments filed October 21, 1997, Exhibit 1 at pages 20-22 (section 21) and Appendix D.

The record indicates: that, at or after the time the primary application was filed with the Board, Conrail was advised by P&W that it intended to exercise its rights to acquire New Haven Station; that Conrail, however, refused either to negotiate or to arbitrate; that, on November 12, 1997, P&W sought, in the United States District Court for the District of Columbia, a declaration that its right to purchase New Haven Station had matured; that, on December 19, 1997, Conrail asserted that P&W's complaint "must be dismissed because its claims do not present a ripened case or controversy appropriate for judicial intervention at this time";[335] and that, by order entered January 22, 1998, the District Court, citing the ripeness doctrine, dismissed P&W's complaint, but expressly granted P&W leave to refile after we render a final decision on the primary application.[336]

P&W claims: that, upon the assignment of Conrail's New England lines to CSX, Conrail will have "withdraw[n] from or abandon[ed] or discontinue[d] freight service" at New Haven Station; that P&W will continue to operate as a self-sustaining railroad capable of undertaking additional common carrier responsibilities without federal financial assistance;[337] and that, in compliance with the 1982 order, Conrail, once it withdraws from New Haven Station, must sell the New Haven Station properties to P&W. P&W further contends, in essence: that claims arising under the 1982 order cannot be resolved by the Board but must be resolved by the United States District Court for the District of Columbia, which now exercises the jurisdiction formerly exercised by the now defunct Special Court; and that P&W's rights under the 1982 order cannot be preempted by 49 U.S.C. 11321(a).

Applicants are of the view that P&W's rights under the 1982 order can be adjudicated by the Board and must be preempted under 49 U.S.C. 11321(a). Applicants also contend that, in any event, the CSX/NS/CR transaction will not trigger P&W's rights under the 1982 order because Conrail will continue to own New Haven Station (and therefore will not withdraw from or abandon or discontinue

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[335] *See,* P&W's brief, filed February 23, 1998 (Conrail's motion is attached as Exhibit B).

[336] *See,* P&W's brief, filed February 23, 1998 (the court's decision is attached as Exhibit C).

[337] By letter dated October 2, 1997, P&W asked the FRA Administrator to make a determination to this effect. By letter dated October 30, 1997, the FRA Chief Counsel advised P&W: that the pendency of the CSX/NS/CR transaction in and of itself did not constitute an election by Conrail to withdraw from, abandon, or discontinue service at New Haven Station; but that FRA would entertain a renewed request from P&W if and when the Board ordered or permitted Conrail or a legal successor to withdraw from, abandon, or discontinue service at New Haven Station.

freight service at that station).[338] Applicants further contend that, even if P&W's rights under the 1982 order are triggered by the CSX/NS/CR transaction and are not preempted under 49 U.S.C. 11321(a), P&W is estopped from asserting such rights because the P&W/CSX settlement requires P&W to voice "unconditional support" for the primary application. *See,* CSX/NS-176 at 99-101 and 384; CSX/NS-177, Vol. 2A at 32-33.[339]

READING BLUE MOUNTAIN & NORTHERN. RBMN, a Class III railroad, operates over approximately 280 miles of rail line in eastern Pennsylvania, in a north-south corridor that extends between Mehoopany and Reading. Within this corridor, RBMN's lines comprise two physically separated divisions (the Lehigh Division, which extends between Mehoopany and Lehighton, and the Reading Division, which extends between Hazleton and Reading) which are linked by two separate sets of trackage rights: (i) trackage rights over Conrail, between Hazleton and M&H Junction;[340] and (ii) trackage rights over C&S and Conrail, between Haucks Junction and Packerton Junction.[341] Traffic moving on the Lehigh Division is apparently routed RBMN/Conrail via either Mehoopany or Lehighton;[342] traffic moving on the Reading Division is routed RBMN/Conrail via Reading.

RBMN has physical connections with two Class I railroads (CP, via a connection in the Scranton area with D&H; and Conrail), but, on account of a restriction it accepted upon its acquisition of the Lehigh Division from Conrail in 1996, RBMN, for the most part, has but a single realistic Class I connection (Conrail). The restriction, which we shall refer to as the blocking provision, provides "for the payment to [Conrail], its successors or assigns, of certain specified [penalty] amounts for any rail traffic handled by [RBMN, or its successors or assigns], which originates, terminates or otherwise moves over the [Lehigh Division], and which could commercially be interchanged with [Conrail], its successors or assigns, but is interchanged with another rail carrier." RBMN-5, V.S. Muller, Appendix 2 at 3-4.[343] RBMN claims that, in practice, the blocking provision works as intended, effectively blocking RBMN from participating in non-Conrail routings of traffic that can "commercially" be routed via Conrail. *See* RBMN-5, V.S. Muller, Appendix HC-2.

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[338] This view is apparently shared by the FRA Chief Counsel. *See,* CSX/NS-177, Vol. 2A at 33.

[339] P&W, in its brief filed February 23, 1998, contends that, because the P&W/CSX settlement does not contemplate that P&W would waive its rights under the 1982 order, P&W cannot fairly be held to have waived such rights under the circumstances presented here. P&W adds that the primary application (*i.e.*, the primary application filed June 23, 1997), which it agreed to support, does not even mention New Haven Station, the 1982 order, or P&W's rights under that order.

[340] RBMN, however, apparently does not utilize its Hazleton-M&H Junction trackage rights to link its two divisions.

[341] The C&S (C&S Railroad Corporation) trackage rights apparently cover most of the distance between Haucks Junction and Packerton Junction. The Conrail trackage rights apparently fill a short gap in the vicinity of Packerton Junction between the C&S tracks and the Lehigh Division.

[342] Such traffic includes overhead traffic moving between Conrail at Lehighton and two shortlines, Luzerne & Susquehanna Railroad (L&S) and Delaware-Lackawanna Railroad (DL), with which RBMN connects in the Scranton area.

[343] The Reading Division was acquired prior to 1996. There is apparently no Reading Division blocking provision, nor any need for one: prior to RBMN's acquisition of the Lehigh Division, Conrail was RBMN's only Class I connection; and, upon RBMN's acquisition of the Lehigh Division, the Lehigh Division's blocking provision became applicable to any Reading Division traffic transported via the Lehigh Division.

RBMN contends that the CSX/NS/CR application, which envisions that all of the Conrail lines with which RBMN connects will be assigned to NS, will disadvantage RBMN and/or its customers in several ways. RBMN claims: (1) that the RBMN/NS relationship may result in an increase in the costs borne by RBMN and/or its customers; (2) that, as a matter of state law, the substitution of NS for Conrail may result in an expansion of the effect of the blocking provision;[344] (3) that the division of Conrail contemplated by the primary application may jeopardize certain existing traffic flows (by changing Conrail single-line movements to CSX/NS joint-line movements); and (4) that the creation of new rail competition in other areas combined with the perpetuation of the Conrail monopoly in the RBMN region will adversely affect that entire region. Furthermore, RBMN, which now receives approximately $85,000 per month in fees from D&H trackage rights operations over the Lehigh Division, fears that perhaps half of the D&H trackage rights traffic will be diverted to another route post-transaction. The traffic is now routed Scranton-Allentown-Reading-Philadelphia (via the Lehigh Division) but, on account of certain trackage rights acquired by CP in a settlement agreement with NS, much of this traffic is likely to be routed Scranton-Harrisburg-Reading-Philadelphia post-transaction.

RBMN therefore asks that we require: (1) that the blocking provision be eliminated or modified;[345] and (2) that D&H be permitted to access, via RBMN's Reading Division, D&H's existing trackage rights on the Conrail line that runs through Reading.[346] Elimination of the blocking provision, RBMN contends: would extend rail competition to the RBMN region; would prevent any exacerbation of the anticompetitive effects of the blocking provision; would enable RBMN to retain traffic that might otherwise be lost; would allow certain shippers to enjoy "single-line" service;[347] and would enable RBMN to eliminate, in certain instances, excessively circuitous routings. Allowing D&H to access its trackage rights on the Conrail line that runs through Reading, RBMN contends: would provide RBMN the opportunity to retain, and indeed to expand, the trackage rights revenue now derived from D&H trackage rights operations; and would enable D&H to avoid congested conditions common on alternative routings.

R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE. RJCW, a Class III railroad that operates over three lines in Western Ohio, indicates that its interests in this proceeding are focused on its Glenmore-Lima line. RJCW notes that, at present, the Glenmore-Lima line's only direct Class I connection is Conrail at Lima. RJCW adds, however, that it also has, via a Conrail intermediate switch at Lima, access to both CSX and NS. RJCW states that traffic routed RJCW/CSX or RJCW/NS is switched through a British Petroleum yard located in Lima, over a 2.3-mile segment of Conrail's line by RJCW itself on behalf of Conrail. RJCW contends that Conrail's willingness to charge $60 per carload for this intermediate switch reflects the fact that Conrail is not competitive with respect to origins and destinations on traffic routed either RJCW/CSX or RJCW/NS.

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[344] Such an expansion would occur if it were determined that, for purposes of the blocking provision, the post-transaction NS is Conrail.

[345] RBMN has not specified any modification other than outright elimination.

[346] Implementation of this second condition would be contingent upon an RBMN/D&H agreement granting D&H trackage rights over RBMN's Reading Division. The "existing" D&H trackage rights referenced by this second condition are the trackage rights pursuant to which D&H traffic can now be routed Scranton-Allentown-Reading-Philadelphia. *See,* RBMN-5 at 4 (line 2) and 10 (line 2); RBMN-5, V.S. Muller at 10 (line 11).

[347] RBMN apparently has in mind traffic moving from or to points served by CP, either directly or through a shortline connection. With the blocking provision, such traffic might have to be routed RBMN/NS/CP. Were it not for the blocking provision, however, the routing might be RBMN/CP.

The CSX/NS/CR application envisions that Conrail's 2.3-mile Lima switch line will be assigned to CSX. RJCW fears that, once that happens, RJCW, although it will then have direct access to CSX, will no longer have, as a practical matter, any access to NS. RJCW therefore asks that we require that RJCW be allowed to acquire ownership of, or trackage rights over, Conrail's 2.3-mile switch line (between approximately MPs 54.4 and 52.1), subject to terms and conditions to be negotiated by RJCW and CSX or, if negotiations fail, to be set by the Board. This condition, RJCW contends, would allow RJCW to preserve a viable RJCW/NS routing in competition with the RJCW/CSX routing, and is necessary to keep Glenmore-Lima shippers competitive with other grain and fertilizer shippers in the region and to preserve RJCW as a provider of essential services on the Glenmore-Lima line.

THE ELK RIVER RAILROAD, INCORPORATED. TERRI, a Class III railroad, operates over 79 miles of track in Clay, Braxton, and Gilmer Counties, WV, and provides (by its account) essential rail service to an economically depressed region of south-central West Virginia. TERRI, which presently has a single Class I connection (CSX at Gilmer, WV), has planned, for several years, to "build out" to a second Class I connection, and, in fulfillment of this plan, it has sought and received regulatory authorization to construct a 30-mile connecting track from its western terminus (at Hartland, WV) to a Conrail line at Falling Rock, WV (about 17.1 miles northeast of Charleston, WV), and it is presently in the process of acquiring the necessary right-of-way. TERRI claims that the success of its build-out will depend upon: (1) the rehabilitation of Conrail's Charleston-Falling Rock-Sanderson line; and (2) the establishment of reasonable arrangements pursuant to which TERRI-originated coal may access rail-to-barge transloading docks at Charleston.

Because the CSX/NS/CR application envisions that NS will be assigned Conrail's West Virginia Secondary (between Columbus, OH, and Charleston, WV) and also Conrail's Charleston-Falling Rock-Sanderson line, the effect of the CSX/NS/CR transaction upon TERRI's build-out would seem to be merely the substitution of NS for Conrail as TERRI's potential second Class I connection. TERRI claims, however, that NS' interests vis-à-vis TERRI's build-out line are not precisely the same as Conrail's. Conrail, TERRI insists, was eager to gain additional coal traffic, and was therefore willing to work with TERRI. NS, TERRI adds, has substantial reserves of marketable coal on its own lines, and, for this reason, may be less interested in opening up new markets for TERRI-originated coal than Conrail was. TERRI therefore asks that we require a commitment by NS to negotiate in good faith with TERRI with respect to TERRI's acquisition of the Charleston-Falling Rock-Sanderson line and with respect to reasonable interchange arrangements for traffic moving to or from points beyond that line, all in accordance with TERRI's prior discussions with Conrail.

WHEELING & LAKE ERIE RAILWAY COMPANY. W&LE, a regional railroad which was created in 1990 as an NS spin-off[348] and which has since expanded with line acquisitions and trackage rights grants from NS, CSX, and Conrail, operates over 864 miles of track in Ohio,

[348] W&LE contends that it was spun off by NS in 1990 in anticipation of the CSX/NS/CR application of 1997. The argument seems to be: that NS' inability to acquire Conrail in the mid-1980s reflected, among other things, opposition by DOJ, which believed that anticompetitive effects in the Chicago-Pittsburgh Corridor could only be remedied by a divestiture of certain NS assets; that NS, to comply with DOJ's divestiture analysis, made preparations for the W&LE spin-off; that, however, the "packaged" W&LE was not spun off at the time, in view of the fact that Conrail was privatized through a general stock sale; but that the spinning off of W&LE in 1990 (some years after the privatization of Conrail) can best be understood as an effort by NS to accommodate the renewed DOJ divestiture demand that NS anticipated would be made in the event of a future effort to acquire Conrail.

Pennsylvania, West Virginia, and Maryland. W&LE's main stem extends 149 miles from Bellevue, OH, to Mingo Junction, OH; W&LE serves numerous Ohio points, including Bellevue, Carey, Chatfield, Wellington, Spencer, Akron, Canton, Orrville, Brewster, and Mingo Junction; and W&LE extends beyond Mingo Junction (i) south to Benwood, WV, and (ii) east to Rook and Connellsville, PA (and, via trackage rights, it extends beyond Connellsville to Hagerstown, MD). W&LE's interests in this proceeding are focused mainly on its relationship with NS, which has been W&LE's most significant joint-line partner. W&LE fears that NS, once it acquires the Conrail lines it will receive in the CSX/NS/CR transaction, (a) will have little need for a W&LE/NS routing, and (b) will be W&LE's most pervasive head-to-head competitor. The consequences, W&LE concludes, are likely to be so severe (a loss of more than 16,000 cars and $12.7 million in gross revenue) that, if the CSX/NS/CR transaction is implemented as proposed, W&LE will be rendered insolvent by no later than the year 2001.

W&LE therefore asks that we require that W&LE be granted: (1) access between Bellevue and Chicago by means of a haulage agreement, with underlying trackage rights; (2) access between Bellevue (Yeomans) and Toledo, a distance of 54 miles (on an NS line), by means of a haulage agreement, with underlying trackage rights;[349] (3) access via a lease of, with a right to purchase, NS' Huron Branch (Shinrock to Huron) and NS' Huron Dock on Lake Erie (W&LE currently has a short term lease on the dock); (4) access between Benwood, WV, and Brooklyn Junction, WV, a distance of 33.4 miles (on a CSX line), by means of a haulage agreement, with underlying trackage rights;[350] (5) trackage rights (a) on Conrail's Fort Wayne Line (to be assigned to NS), to reach the National Stone quarry near Bucyrus and also to reach stone receivers in Wooster (MP 135) and on a side track extending approximately from MP 87.3 to MP 85.1, near Alliance,[351] (b) on NS' Chatfield-Colsan line, a distance of 10.8 miles, between Chatfield and Colsan, to provide alternative access to the Spore Industrial Track, (c) on NS' Maple Grove-Bellevue line, a distance of 21.3 miles, between Maple Grove (MP 269.4) and Bellevue (MP 248.1), to reach a stone quarry located on the Northern Ohio & Western Railway (NO&W) in the vicinity of Redlands, and (d) on CSX's New Castle Subdivision in Akron (a distance of 0.5 miles), and then on Conrail's lines in the area east of Akron (these lines are to be assigned to NS), to reach stone terminal destinations in the Macedonia, Twinsburg, and Ravenna areas;[352] (6) access to Wheeling Pittsburgh Steel at Allenport, PA, by means of a haulage agreement with underlying trackage rights over CSX from MP 41 near Monessen, PA, to MP 53.9 near Brownsville, PA, a distance of 12.9 miles, and over Conrail from MP 53.9 near Brownsville, PA, to Wheeling Pittsburgh Steel at Allenport, PA, a distance of 9.5 miles; (7) access over CSX's New Castle Subdivision, by means of a haulage agreement, with underlying trackage rights, (a) from Akron, OH, to the Ohio Edison Power plant at Niles, OH, a distance of 42 miles, and

[349] W&LE seeks: rights to interchange with AA, CN, and Indiana & Ohio Railway Company (IORY); and access to British Petroleum for movement of coke to Cressup, WV.

[350] W&LE also seeks: access to the yard facilities at Brooklyn Junction; access to PPG and Bayer, both at Natrium, WV (and now served by CSX); and access to British Petroleum, at Cressup, WV.

[351] W&LE would operate on the Conrail line: (i) between Bucyrus (CP Colsan, at MP 200.5) and Orrville (CP Orr, MP 124), a distance of 76.5 miles; and (ii) between Canton (Fairhope, at MP 97.8) and Alliance, a distance of approximately 10 miles. W&LE would reach the National Stone quarry via the 6.2-mile Spore Industrial Track, which connects with the Fort Wayne Line at CP Colsan (MP 200.5).

[352] *See,* WLE-4 at 77 (description of trackage rights sought by W&LE in the Akron area; to bridge the gap between the CSX line and the Conrail lines, W&LE would apparently have to operate on an 8-mile line owned by Summit County).

(b) to Erie, PA, for interchange with other railroads;[353] (8) access via a lease of, with a right to purchase, Conrail's Randall Secondary between Cleveland (MP 2.5) and Mantua (MP 27.5); (9) access, apparently via trackage rights, to Reserve Iron & Metal, L.P., in Cleveland;[354] (10) access, apparently via trackage rights, to Weirton Steel Corporation at Weirton, WV;[355] (11) with respect to four "joint facilities" the maintenance of which has been W&LE's responsibility under the 1990 spin-off arrangements that created W&LE, an order (a) relieving W&LE of the burden of maintaining these facilities, and (b) allocating the costs of maintenance on a proportional use basis;[356] and (12) a guarantee of fairness and nondiscriminatory treatment on any haulage and trackage rights granted.

W&LE has also requested several additional conditions. W&LE asks: (i) that we require NS to assume W&LE's $915,000 per year lease payments on W&LE's P&WV (Pittsburgh & West Virginia Railroad) properties; (ii) that we encourage the full development of the Neomodal Terminal; (iii) that we impose an oversight condition and retain jurisdiction during the oversight period;[357] and (iv) that we provide, in connection with the oversight condition, a mechanism for an inclusion proceeding in the event W&LE fails during the pendency of the oversight proceeding.[358]

W&LE claims that the opportunities its conditions would provide might allow it to gain revenues of about $11 million, and might thereby allow for the preservation of W&LE service in the Chicago-Pittsburgh Corridor. Several purposes, W&LE contends, would be served by the continued existence of W&LE: W&LE would continue to exist as a competitive force in the Chicago-Pittsburgh Corridor; W&LE would continue to provide the essential rail services it now provides; W&LE's route structure would be available (via NS/W&LE and CSX/W&LE joint-line routings) to allow bunched traffic flows to bypass congested facilities in Cleveland and Pittsburgh; and W&LE would be able to offer routing efficiencies for traffic flows that would otherwise move over more circuitous CSX and NS single-line routings.

[353] W&LE seeks, in particular, an interchange at Erie with Buffalo & Pittsburgh Railroad, Inc. (BPRR). Access to Erie would apparently be over a CSX line (from Akron to Youngstown) and over Conrail lines to be assigned to CSX (from Youngstown to Erie via Ashtabula).

[354] Reserve, a scrap processor, presently has direct access to CSX and Conrail, and its routing options are presently CSX/W&LE joint-line and Conrail single-line; it ships to several Ohio mills now accessed by W&LE and Conrail; and it would prefer that W&LE be the carrier chosen to remedy the CSX/NS/CR transaction's 2-to-1 impact on Reserve's Cleveland facilities.

[355] W&LE concedes that Weirton Steel Corporation (which is located on a Conrail line to be assigned to NS) "has apparently taken itself out of play by executing a long term contract with NS." WLE-4 at 100.

[356] The four joint facilities are railroad grade crossings in Wellington, Canton, Steubenville, and Cleveland, OH. W&LE insists that it is no longer feasible for W&LE to maintain these facilities, in view of (i) CSX's and NS' anticipated post-transaction traffic increases, and (ii) W&LE's anticipated post-transaction traffic losses.

[357] W&LE asks that we retain jurisdiction to ensure fairness in the implementation of any rights it receives as a condition to the CSX/NS/CR transaction. W&LE also asks that we require guaranteed performance on access to trackage rights (including both trackage rights acquired prior to this proceeding and also trackage rights acquired in this proceeding).

[358] W&LE suggests that, if it ultimately fails as a consequence of the CSX/NS/CR transaction, inclusion in "the assets to be acquired by the Applicants," WLE-8 at 3 n.3, would be preferable to bankruptcy liquidation.

WISCONSIN CENTRAL LTD. WCL, a Class II railroad that operates over approximately 2,017 miles of rail line in Wisconsin, Michigan's Upper Peninsula, Minnesota, and Illinois, asks that we impose three conditions to protect its interests in efficient and competitive switching services in Chicago.

Purchase of Portion of B&OCT's Altenheim Subdivision. WCL fears that virtually all post-transaction WCL traffic interchanged at Chicago with either CSX or NS will be subject to CSX control as it moves through the Chicago switching district. WCL contends that, today, it has two routings by which it may reach NS: it may route via the Altenheim Subdivision of B&OCT (which CSX presently controls); or it may route via IHB (which CSX presently does not control). WCL further contends that, post-transaction, both of WCL's routings to reach NS will be subject to some measure of CSX control.[359]

WCL therefore asks that we require that WCL be allowed to acquire that portion of B&OCT's Altenheim Subdivision that begins at the WCL/B&OCT connection at B&OCT MP 37.4 at Madison Street, Forest Park, IL, and that extends to a connection with UPRR and the Panhandle Line of Conrail in the vicinity of Rockwell Street, Chicago, IL, a distance of approximately 10 miles. WCL claims that its ownership of this portion of the Altenheim Subdivision would allow WCL trains to move along a new route paralleling the congested B&OCT route between Western Avenue and Brighton Park. This new route, WCL contends: would allow WCL to establish, independent of CSX control, connections with NS, BNSF, and GTW; would thereby mitigate the CSX/NS/CR transaction's adverse impact on switching services competition in the Chicago switching district; and would mitigate congestion on the B&OCT route and thereby enhance the overall capacity and efficiency of the Chicago switching district.[360]

Direct Interchange With CSX. WCL contends that, for many years, CSX has operated B&OCT not as a true intermediate switching carrier but rather as a vehicle for obtaining desired operating efficiencies. WCL claims: that, for many years, B&OCT has been operated as an extension of CSX; that CSX, maintaining the fiction that CSX itself does not operate in the Chicago switching district, has required that any railroad seeking to interchange with CSX in the Chicago switching district must interchange via B&OCT;[361] that, however, any railroad seeking to interchange with CSX via B&OCT has been faced with a B&OCT intermediate switching charge; that, since 1988, this charge has been, in whole or in large part, either waived by B&OCT or absorbed by CSX with respect to those railroads that accommodate CSX's pre-blocking requirements; that, in essence, the fiction that CSX itself does not operate in Chicago has given CSX a bargaining lever to use in demanding blocking and classification services from other carriers; and that these arrangements have had an especially serious impact on smaller railroads that have volumes of traffic that do not suit CSX's pre-blocking needs. WCL fears that, post-transaction, CSX will operate IHB the way it has operated B&OCT. Under the arrangements provided for in connection with the CSX/NS/CR application, WCL notes,

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[359] WCL suggests that, in view of the significant degree of control that CSX will have vis-à-vis IHB, the Board may wish to consider whether CSX should be required to seek, in this proceeding, authority to control IHB. *See,* WC-18 at 12 n.7.

[360] The new route would also require operation by WCL over Conrail's Panhandle Line (in Chicago) from Ogden Junction (Rockwell Street) on the north to a point near the Ash Street interlock (near Brighton Park) on the south, a distance of approximately 3 miles. WCL notes, however, that it has already reached agreement with NS regarding the acquisition, by WCL, of a leasehold interest in this line.

[361] WCL, alluding to prior litigation on this point, suggests, in essence, that, even if CSX was not itself present in Chicago in years past, it is present in Chicago today. *See,* WC-10 at 033. *See also,* WC-18 at 28-32 (discusses prior litigation).

CSX will be responsible: for dispatching IHB between Gibson, IN, and Franklin Park, IL; for managing IHB; and for controlling Blue Island Yard (IHB's principal yard). WCL is concerned: that IHB, subject to the control of CSX, will cease to be a genuinely neutral switching carrier; and that CSX will use its management of IHB and its ownership of B&OCT to route via B&OCT WCL/Conrail traffic now routed via IHB.[362]

WCL therefore asks that we require that CSX, apart from B&OCT and without the use of B&OCT as an intermediate switch carrier, conduct direct interchange in the Chicago switching district. This condition, WCL contends: would implement the public policy codified at 49 U.S.C. 10742; would increase efficiency by removing B&OCT from interlining accounting systems where not necessary; and would recognize the reality that CSX today is, and even more so post-transaction will be, an active interlining carrier present in its own name and right in Chicago.

Neutral Dispatching. WCL is concerned that, post-transaction, CSX will control the two Chicago switching carriers that provide WCL virtually its only access to the Chicago switching district either via trackage rights or as intermediate carriers (B&OCT and IHB) and will be one of the two largest shareholders of the third Chicago switching carrier (BRC), and will therefore have, in WCL's judgment, far too much control over switching and dispatching in the Chicago switching district. Because efficient routings through the Chicago switching district are crucial to WCL, WCL asks that we require that dispatching over IHB in the Chicago switching district be provided by a neutral railroad (*i.e.*, a railroad other than any of the IHB owner railroads). This neutrality condition, WCL contends, is necessary to preserve competition and to assure adequate terminal facilities and efficiencies.

[362] CSX might do so, WCL suggests, in order to subject this traffic to the B&OCT intermediate switch charge or to obtain operating concessions for traffic so routed.

APPENDIX D: PASSENGER RAILROADS

AMERICAN PUBLIC TRANSIT ASSOCIATION. APTA, a trade association representing the North American transit industry, has concerns that the CSX/NS/CR transaction may adversely impact commuter rail operations throughout the eastern half of the United States, such as: (1) the rail realignments that will follow the CSX/NS/CR transaction may effectively limit the access that commuter railroads would otherwise have had to the lines operated over by CSX, NS, and Conrail; (2) the increased freight traffic that CSX and NS are likely to handle post-transaction may result in greater interference with commuter rail operations and commuter rail schedules; and (3) the workforce reductions that will be a consequence of the CSX/NS/CR transaction will result in additional cross-subsidization of the freight railroads by the commuter railroads. For example, with regard to the Railroad Retirement System, APTA notes: that both commuter railroads and freight railroads pay a payroll tax based upon the number of active employees working for each system; that this tax supports the pensions provided to railroad employees across the country; that, over the years, freight railroad employment has decreased while commuter railroad employment has increased; and that this has created a situation in which the commuter railroads have been compelled to provide large and growing subsidies to the freight railroads in the form of pension payments to freight railroad retirees.

To ensure that commuter rail operations can continue to provide the American public with high quality and efficient transportation service, APTA asks that we impose several conditions upon any approval of the primary application. (1) With regard to the access problem, APTA suggests that we should: promote cooperation between applicants and commuter railroads; ensure that commuter rail operations will be reasonably accommodated by applicants; ensure that fair and reasonable operating rights agreements can be established in the future, with fair and reasonable compensation to CSX and NS; and establish a process that will provide a means to resolve future disputes between freight railroads and commuter railroads, and thereby safeguard the public's interest in passenger rail service. (2) With regard to the interference problem, APTA suggests that we should: ensure that commuter rail operations are not undermined by freight rail operations, neither in the first 3 post-transaction years nor in the years that come thereafter; provide a means to resolve disputes that arise beyond the first 3 post-transaction years; and move towards incentive-based operating agreements. (3) With regard to the Railroad Retirement problem, APTA suggests that we should: review the 1990 report of the Commission on Railroad Retirement Reform; consider, in conjunction with the Railroad Retirement Board, the impact the CSX/NS/CR transaction and further declines in freight railroad employment will have on commuter rail systems; and impose conditions that will ensure that CSX and NS fund any negative financial impacts of the CSX/NS/CR transaction upon the commuter railroads' railroad retirement contributions.

AMTRAK. Amtrak, which has reached agreements with CSX, NS, and Conrail,[363] has advised that it now supports in all respects the CSX/NS/CR transaction, subject to imposition of a limited oversight condition that reads as follows: "The STB should require oversight, for a 3-year period, of the implementation and effect of the transactions subject to STB review and approval in Finance Docket No. 33388 to the extent they may affect the on-time performance of Amtrak intercity

[363] These agreements are apparently reflected in a document referred to as the "Principles of Cooperation Concerning the Northeast Corridor." *See,* NRPC-14 (filed May 18, 1998).

passenger train services. As part of this continuing oversight, the STB should require quarterly reports from NS and CSX and provide Amtrak an opportunity to comment. NS, CSX and Amtrak shall jointly recommend to the STB objective, measurable standards to be used in such reports: on-time performance standards should reflect measurements employed in calculating incentive payments under the applicable Amtrak operating agreements. The foregoing condition is not intended to limit the STB's authority to continue oversight beyond the 3-year period." *See*, NRPC-14 at 2.[364]

CHICAGO METRA. In its comments filed October 21, 1997, the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois (Metra or, on occasion, Chicago Metra) requested the imposition of several conditions primarily respecting four interlockings in the Chicago terminal area that are crucial to the commuter trains operated by Metra in its Southwest Service Corridor and that, in Metra's opinion, might be affected by the CSX/NS/CR transaction: the Chicago Ridge interlocking controlled by IHB/B&OCT; the Forest Hill interlocking controlled by CSX; the Belt Junction interlocking controlled by BRC; and the CP-518 interlocking controlled pre-transaction by Conrail and post-transaction by NS.

Conditions Directed To CSX. In its METR-8 pleading filed February 23, 1998, Metra has advised that it has reached, with CSX, a Letter Agreement that addresses Metra's concerns at the Forest Hill interlocking and that establishes a Joint Review Committee to address issues respecting the Chicago Ridge interlocking and the Belt Junction interlocking. *See* METR-8, Tab A (copy of the Letter Agreement). Metra, though it has withdrawn its request for conditions insofar as such conditions were directed to CSX, has called to our attention the last paragraph of the Letter Agreement, which provides that the Letter Agreement will be submitted into the record of this proceeding and that CSX and Metra "will seek from the Board confirmation of these understandings, that although the attached agreement does not seek or provide for the imposition of any conditions by the Board, the submission of this agreement will be considered by the Board as a representation that they will comply with its terms." Metra accordingly requests, on behalf of itself and CSX, that we confirm in our decision approving the CSX/NS/CR transaction that the contents of the Letter Agreement will be considered by the Board as representations to the Board that the parties will comply with the terms of the Letter Agreement. METR-8 at 2.

Conditions Directed To NS. Metra has also indicated, in its METR-8 pleading, that it has withdrawn "for the time being" its request for a condition respecting CP-518. *See*, METR-8 at 3. Metra premises this withdrawal upon: NS' claim that freight activity through the CP-518 interlocking will decrease post-transaction; NS' pledge to be bound by existing applicable agreements between Conrail and Metra, *see*, CSX/NS-176 at 234; and NS' promise to participate in the Joint Review Committee established under the Letter Agreement with CSX, *see* METR-8, Tab B.

METRO-NORTH COMMUTER RAILROAD. MNCR operates, each week, 99 passenger trains on its 97.5-mile Port Jervis line, which extends between Port Jervis, NY, and Hoboken, NJ, and which consists of two segments: a 66.2-mile segment between Port Jervis and Suffern, which is owned by Conrail; and a 31.3-mile segment between Suffern and Hoboken, which is owned by NJT.[365] MNCR claims that, at the present time, MNCR's and NJTRO's commuter trains[366] and

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[364] Amtrak indicates that both CSX and NS have acquiesced in the imposition of a 3-year oversight period as described in the text, and have authorized Amtrak to represent to the Board that neither opposes action by the Board consistent with the terms of the limited oversight condition. *See*, NRPC-14 at 2-3.

[365] The New Jersey Department of Transportation is referred to as NJDOT. New Jersey Transit Corporation and its commuter rail operating subsidiary (New Jersey Transit Rail Operations,

(continued...)

Conrail's freight trains co-exist on the Port Jervis line with relatively few problems.[367] MNCR anticipates, however, that there will be, within the next few decades, substantial increases in commuter service on the Port Jervis line. MNCR further anticipates that, as a consequence of the CSX/NS/CR transaction, there will also be, within the years to come, substantial increases in freight service on the Port Jervis line (which will be assigned to NS).

MNCR, which contends that the anticipated increased number of trains, both passenger and freight, will require very careful scheduling and dispatching so as to prevent the impairment of either service, fears that the freight scheduling contemplated by NS will not properly accommodate MNCR's passenger trains. MNCR also fears that the dispatching function would suffer if NS were to assume dispatching control on the Port Jervis-Suffern segment, and were to remove that function to a far-distant location staffed by personnel unfamiliar with commuter trains. And, MNCR adds, if NS were to assume dispatching control on that segment, there would necessarily have to be a "hand off" of every MNCR train at Suffern (because dispatching control of the Suffern-Hoboken segment will remain with NJTRO). It would be far better, MNCR contends, to retain the "hand off" at its present location (CP Sparrow, at Port Jervis), which is just beyond the end of the commuter passenger service territory.

MNCR's Purchase Condition. MNCR therefore asks that we require that the Port Jervis-Suffern segment be conveyed to MNCR, subject to a reservation of trackage rights in favor of NS (PRR).[368] MNCR also asks: that the purchase price be set at $9.8 million, the price upon which MNCR and Conrail had reached a tentative understanding before their negotiations were disrupted by the pending CSX/NS/CR transaction; and that any other terms respecting the purchase, if not agreed to by MNCR and NS, be subject to arbitration or a similar process. MNCR adds: that it stands ready to accept the segment "as is" based on the price it agreed upon with Conrail; that it would retain the status quo as respects dispatching; and that it is prepared to contribute its appropriate share of funding to put the segment into proper condition for operation of a modern, reliable rail passenger service in conjunction with reasonable levels of freight service.

MNCR's Extension Condition. MNCR contends that, if we do not impose its purchase condition, we should at least require that NS agree to a long-term extension of the existing MNCR/Conrail trackage rights agreement, which extension (MNCR claims): would resolve, to some extent, MNCR's concerns respecting the conditions NS might otherwise impose upon MNCR's operations on the Port Jervis-Suffern segment; and would allow MNCR to justify at least some investment of public funds in the rehabilitation of that segment.

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[365](...continued)
Inc., known as NJTRO) are referred to collectively as NJTC. NJDOT and NJTC are referred to collectively as NJT.

[366] MNCR's commuter service on both segments of the Port Jervis line is performed, under contract, by NJTRO.

[367] MNCR's trains (operated by NJTRO) and Conrail's trains operate over the entire length of the Port Jervis line. NJTRO's own trains operate only over the Suffern-Hoboken segment. The entire Port Jervis line, however, is dispatched by NJTRO dispatchers working in Hoboken.

[368] MNCR states on brief: that we should require conveyance "or a long term lease" of the Port Jervis-Suffern segment, MNCR-4 at 16; and that the reservation of trackage rights would be in favor of NS or Conrail, MNCR-4 at 2-3.

NORTHEAST OHIO METRO. The METRO Regional Transit Authority (referred to as METRO or, on occasion, Northeast Ohio METRO) operates a mass transit system transporting citizens of Summit County within the Cleveland-Akron-Lorain Consolidated Metropolitan Statistical Area. METRO contends: that it has invested substantial resources in the development of a commuter rail transportation system intended to link the cities of Canton, Akron, and Cleveland (the CAC corridor); that Conrail's Hudson-Cleveland line is a key component of, not simply "one option" for, the CAC corridor; that the CSX/NS/CR application contemplates the assignment of the Hudson-Cleveland line to NS; that METRO is concerned that the rail realignments likely to follow the CSX/NS/CR transaction will have serious impacts on future commuter rail operations; and that METRO fears that, without guaranteed conditional commuter rail operating rights, these realignments will jeopardize the efficient implementation of commuter rail in Northeast Ohio. METRO therefore asks that we require that METRO be granted conditional commuter rail operating rights on Conrail's Hudson-Cleveland line. METRO adds, in its brief, that, if we do not impose its operating rights condition, we should at least require that NS and METRO negotiate a mutually binding agreement to mitigate the impacts of the CSX/NS/CR transaction on planned commuter rail service.[369]

VIRGINIA RAILWAY EXPRESS. VRE, a commuter railroad owned by the Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock Transportation Commission (P&RTC), operates 24 passenger trains per weekday over two routes: the Manassas route, which runs 35 miles between Manassas, VA, and Washington, DC; and the Fredericksburg route, which runs 55 miles between Fredericksburg, VA, and Washington, DC.[370] The two routes, which share a common segment, run over tracks now owned by CSX, NS, Conrail, and Amtrak. NVTC and P&RTC claim that their present relationships with the three freight railroads over whose tracks VRE operates are not entirely satisfactory. The Operating Access Agreements pursuant to which VRE's operations are conducted, NVTC and P&RTC claim: require NVTC and P&RTC to indemnify the freight railroads for any damages that would not have occurred "but for" the existence of VRE's service, including damages attributable to the gross negligence of the freight railroads themselves;[371] provide the freight railroads with unilateral powers to cancel or delay VRE trains, to impose schedule changes and restrictions, and to compel VRE to make capital improvements; and allow the freight railroads the right to force VRE to discontinue operations on short notice for any reason. NVTC and P&RTC claim that CSX and NS, citing the demands imposed by their existing freight train schedules, have thwarted efforts to expand VRE's operations. NVTC and P&RTC further claim that, apparently for the same reason, they have been unable to reach agreement with CSX and NS with respect to capital improvements that NVTC and P&RTC would like to make. NVTC and P&RTC add: that CSX's dispatchers have made little effort to accommodate VRE's schedules; that CSX's managers, when arranging maintenance work on the CSX lines, have similarly made little effort to accommodate VRE's schedules; and that the resulting deterioration in the on-time performance of VRE's trains has led to a decrease in the number of VRE riders.

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[369] METRO notes, in its brief, that it seeks conditional operating rights or any other relief the Board deems appropriate.

[370] VRE's operations are conducted by Amtrak.

[371] Total liability is capped at $200 million.

NVTC and P&RTC are concerned that the likely substantial post-transaction increases in freight traffic on these lines will result in a further deterioration of VRE's commuter service; any capacity enhancements resulting from VRE's own investments in the rights-of-way may well be eroded even before VRE can operate any new service; and the infrastructure improvements that applicants intend to undertake will wreak havoc with VRE's commuter schedules. NVTC and P&RTC claim that applicants have not even attempted to address freight-passenger conflicts through "structural" undertakings designed to ensure accommodation of passenger operations, but have proposed to avoid any negative impact on passenger operations solely by better scheduling of freight train operations. NVTC and P&RTC contend that, in these circumstances, applicants' claims that VRE's operations will not be adversely affected by the CSX/NS/CR transaction cannot be taken seriously. NVTC and P&RTC therefore ask that we require the modification of the terms and conditions provided for in the Operating Access Agreements pursuant to which VRE's operations are presently conducted.[372]

CSX Access Agreement. If the terms and conditions provided for in the CSX Access Agreement were modified in the manner requested by NVTC and P&RTC: (1) the CSX Access Agreement would henceforth apply to the Conrail line between RO Interlocking in Arlington and Virginia Avenue Interlocking in Washington; (2) CSX would continue to have the authority to grant to third parties new rights to use the CSX line, but any grant of such rights to third parties made after January 10, 1995, would be subject to the current rights (at the time of such grant) of NVTC/P&RTC with respect to that line; (3) CSX would continue to have the authority to approve or reject any VRE commuter rail service modifications proposed by NVTC/P&RTC, but CSX would have to explain any denial of any such proposed modifications; (4) CSX's right to charge NVTC/P&RTC for capital improvements made by CSX would be limited to capital improvements required by law; (5) CSX would be required to submit to arbitration disputes between CSX and NVTC/P&RTC regarding the responsibilities of each for capital improvements in connection with expansion of VRE service; (6) CSX would no longer have the right to charge NVTC/P&RTC for revenue losses attributable, in CSX's view, to the presence of VRE commuter rail service; (7) a portion of the compensation paid to CSX would be dependent upon on-time performance standards; and (8) the termination date of the CSX Access Agreement, which is presently set as June 30, 1999, would be extended to June 30, 2008.[373]

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[372] The relief sought by NVTC and P&RTC can be characterized as either: (i) the acquisition by NVTC and P&RTC of new operating rights over the lines now operated over by VRE, with such new operating rights to be governed by the terms and conditions requested by NVTC and P&RTC; or (ii) the modification, in the manner requested by NVTC and P&RTC, of the terms and conditions that govern the existing VRE operating rights. NVTC and P&RTC have embraced both characterizations, although their arguments have generally employed the framework of the second. NVTC and P&RTC, however, have affirmed on brief: that they are seeking operating rights over all of the lines now operated over by VRE subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, to be set by the Board; and that they put their proposed conditions in the form of contract revisions simply to be as specific as possible in tailoring these conditions to the anticipated harms arising from the CSX/NS/CR transaction. *See*, VRE-12 at 21.

[373] *See* VRE-9, Attachment 3 (the terms sought by NVTC and P&RTC). *See also*, the NVTC/P&RTC errata submission filed November 25, 1997 (adding an item respecting the termination date). The description we have provided of the changes proposed by NVTC and P&RTC is not exhaustive.

NS Access Agreement. If the terms and conditions provided for in the NS Access Agreement were modified in the manner requested by NVTC and P&RTC: (1) NS would continue to have the authority to grant to third parties new rights to use the NS line, but any grant of such rights to third parties made after September 1, 1996, would be subject to the current rights (at the time of such grant) of NVTC/P&RTC with respect to that line; (2) NS would be required to explain any denial of changes proposed by NVTC/P&RTC in the schedule for VRE service; (3) NVTC and P&RTC would continue to be obligated to pay for capital improvements occasioned or required by VRE's commuter operations, but NS would be required to submit to arbitration disputes respecting whether and to what extent NVTC and P&RTC should be required to pay for such capital improvements; (4) the termination date of the NS Access Agreement, which is presently set as July 15, 1998, would be extended to July 31, 2006; (5) NVTC and P&RTC would be required to work in good faith to develop a plan to purchase, lease, or acquire an interest in the NS line (they are presently required to work in good faith to develop a plan to purchase the line), and NS and NVTC/P&RTC would be allowed to submit to arbitration unresolved disputes respecting this matter; and (6) a portion of the compensation paid to NS would be dependent upon on-time performance standards.[374]

[374] *See*, VRE-9, Attachment 4 (the terms sought by NVTC and P&RTC). The description we have provided of the changes proposed by NVTC and P&RTC is not exhaustive.

APPENDIX E: SHIPPER ORGANIZATIONS

AFBF, AFIA, NCBA, NCGA, & NPPC. The American Farm Bureau Federation (AFBF), the American Feed Industry Association (AFIA), the National Cattlemen's Beef Association (NCBA), the National Corn Growers Association (NCGA), and the National Pork Producers Council (NPPC)[375] believe that the CSX/NS/CR transaction, if properly implemented, will benefit the agricultural sector, but are concerned that implementation may be marred by logistical problems. AFBF, AFIA, NCBA, NCGA, and NPPC contend that strong oversight will be needed in the short term to ensure that service problems are minimized and that applicants' proposed operating plans are carried out as promised. AFBF, AFIA, NCBA, NCGA, and NPPC therefore propose that we conduct periodic public hearings and require an annual report that evaluates how well the transition is proceeding, especially as it relates to agriculture.

The annual report envisioned by AFBF, AFIA, NCBA, NCGA, and NPPC would consist of six sections. (1) A "general overview" section would describe actions taken during the year, with comparisons between plans and accomplishments. (2) A "service" section would focus on the new routes proposed by each carrier, and would describe in detail whether each is operational, the new services provided, and rate changes for selected commodities relative to those of a historical base period (*e.g.*, 1995-97). (3) An "operating savings and other cost reductions" section would describe, for each carrier, the degree to which such savings and reductions have been realized relative to those expected and also relative to the base period. (4) An "increased competition" section would indicate, using selected measures, how competitive the new system is relative to expectations and relative to the base period. (5) An "other impacts" section would include descriptions of changes in specific characteristics of the system, and compare current operations relative to the base period for (among others) single-line operations, computer integration, new and improved routes, service reliability, equipment utilization and availability, terminal delays, and capital investment. (6) An "increased services for agriculture" section would address applicants' claims that the CSX/NS/CR transaction will yield a number of expected, specific benefits to agriculture.

CMA & SPI. The Chemical Manufacturers Association (CMA) and The Society of the Plastics Industry, Inc. (SPI), insist that the CSX/NS/CR transaction should not be approved.[376]

Opposition to the CSX/NS/CR Transaction. (1) CMA and SPI warn that captive traffic, including long-distance chemicals/plastics (C/P) movements, is likely to suffer as the CSX/NS/CR transaction is implemented, both from impaired service (as applicants' systems become more congested) and from upward pressure on rates (as applicants' costs escalate). CMA and SPI maintain: that the revenue growth needed to pay for the CSX/NS/CR transaction depends on an almost faultless execution by CSX and NS of a strategy of capturing increasing volumes of marginally profitable traffic using an intricate "spider web" network of yards, while simultaneously reducing employment levels and locomotive power; that the intermodal traffic upon which CSX and NS are relying will be subject to competition from trucks and, largely on account of this competition, will generate relatively low per-car revenues; that, because the per-car revenues will be relatively low, CSX and NS will have to haul a great deal of additional intermodal traffic, the efficient movement of which will require more personnel and more locomotives; but that, despite all of the

[375] AFBF, AFIA, NCBA, NCGA, and NPPC are farm and food organizations.

[376] CMA is a trade association whose member companies represent more than 90% of the productive capacity for basic industrial chemicals in the United States. SPI is a trade association whose member companies are responsible for an estimated 75% of total sales of plastics materials/products in the United States.

new traffic CSX and NS project, and despite the increased handling this traffic will require, the financial pressures created by the debt CSX and NS have incurred have led CSX and NS to project reductions both in their employment levels and in their locomotive fleets.

(2) CMA and SPI contend that the CSX/NS/CR transaction represents an unprecedented effort to disaggregate a major railroad's operations and to parcel out to three railroads (CSX, NS, and the post-transaction Conrail) the traffic that now flows over one. The complexity of this dismemberment, CMA and SPI warn, increases the likelihood of massive confusion, disruption, and delay, particularly in view of the fact that CSX and NS do not have, and prior to the Control Date will not have, full knowledge of the details of Conrail's operations, its data processing systems, its communications systems, its costs, its traffic base, and its contracts. CMA and SPI fear, however, that, under the pressure of the financial demands imposed by the debt that CSX and NS have incurred, CSX and NS will attempt to implement the CSX/NS/CR transaction as soon as possible after the Control Date.

(3) CMA and SPI contend that the operations envisioned by CSX and NS in the three SAAs will be especially difficult. CMA and SPI claim: that CSX and NS have not explained how three railroads can be expected to operate over tracks that now have sufficient line capacity for only one; that dispatching and operations in the SAAs are likely to be hampered by the rivalry of CSX and NS; and that arbitration, applicants' chosen remedy for disputes respecting operations in the SAAs, will prove to be a cumbersome and time-consuming way to run a railroad.

(4) CMA and SPI contend that, in any event, the creation of the SAAs will not result in rail-to-rail competition for all traffic moving from/to points in those areas. CMA and SPI insist: that, if the other end of a movement is open only to CSX or only to NS, there will be no competition; that the SAAs are not "shared" in all respects, in that some facilities (such as bulk chemical terminals at Croxton, NJ, and Eastside Yard in Philadelphia, PA) are off limits either to CSX or to NS; and that, even though certain other bulk chemical facilities may be open to both CSX and NS, there are many reasons why such facilities may not be fungible or equally accessible to shippers or customers in the area.[377]

(5) CMA and SPI contend that the CSX/NS/CR transaction will provide new single-line service to relatively few C/P shippers, will eliminate single-line service for many C/P shippers, and will likely impair service for many additional C/P shippers.[378] Applicants, CMA and SPI fear, have no plans to remedy the transaction-related harms to C/P shippers whose pre-transaction Conrail single-line service will be eliminated or whose pre-transaction service will otherwise be impaired.

(6) CMA and SPI contend that there is a potential for higher rates if CSX and NS attempt to shift traffic away from the gateways used today (the St. Louis/Illinois gateways) to gateways that would give CSX and NS longer hauls (New Orleans and Memphis). CMA and SPI fear that C/P

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[377] CMA and SPI add that the fact that some traffic moving from/to SAA points is today under contract creates an additional limitation on the rail-to-rail competition created by the SAAs. CMA and SPI note that section 2.2(c) of the Transaction Agreement provides for the allocation, between CSX and NS, of Conrail's Existing Transportation Contracts. *See*, CSX/NS-25, Volume 8B at 25-29. CMA and SPI claim, however, that section 2.2(c): does not specify how CSX and NS will decide which of them will handle contract movements to and from open points; and does not give shippers under those contracts the right to choose as between CSX and NS.

[378] CMA and SPI claim, by way of example, that movements terminating on Conrail from jointly served points like Atlanta may today benefit from a degree of competition between CSX and NS. Post-transaction, CMA and SPI warn, that competition will disappear, as the carrier taking over the Conrail destination point will effectively insist on carrying the traffic single-line over its expanded system.

shippers will be whipsawed between the western carriers' desire to preserve their revenues and the eastern carriers' desire to preserve their margins but on longer hauls.

CMA/SPI Conditions. CMA and SPI therefore ask that we impose: (A) certain Pre-Implementation Conditions;[379] (B) certain SAA Conditions; and (C) certain Oversight and Other Conditions. CMA and SPI insist that, because the provisions of the NITL agreement fall short, in many respects, of the protections that would be afforded by the CMA/SPI conditions, we should adopt the CMA/SPI conditions in lieu of those contained in the NITL agreement.

Condition A.1, which would have to be satisfied prior to implementation, would require CSX and NS: to establish the necessary management and operations protocols; and to integrate the Management Information Systems established for the SAAs into the Management Information Systems in place on the overall CSX and NS systems.

Condition A.2, which would have to be satisfied prior to implementation, would require CSX and NS to adopt all existing tariffs and circulars that were in effect on June 23, 1997, and to publish supplements incorporating new routes.[380]

Condition A.3, which would have to be satisfied prior to implementation, would require CSX and NS: to put in place labor implementing agreements; to complete all necessary safety and other training; and to familiarize personnel with the new territories.

Condition A.4, which would have to be satisfied prior to implementation, would require CSX and NS to extend their own Management Information Systems, particularly their car tracking systems, to their respective portions of Conrail.

Condition A.5, which would have to be satisfied prior to implementation, would require CSX and NS to complete the construction projects covered by STB Finance Docket No. 33388 (Sub-Nos. 1, 2, 3, 4, 5, 6, and 7).[381]

Condition B.1 would require each of CSX and NS to be fully responsible and liable for its shipments to/from/within the SAAs.[382]

Condition B.2 would require that all existing bulk C/P transloading terminals located within the SAAs, including rail-to-truck terminals, be open to both CSX and NS.[383]

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[379] CMA and SPI envision: that CSX and NS would have to certify, prior to implementation of operations on their respective integrated systems, compliance with the pre-implementation conditions; that their certifications would be filed with the Board and served on all parties of record; that interested parties would have 15 days to comment; and that the Board would be expected to accept or reject the certifications within 30 days after the date of filing.

[380] Condition A.2 is intended to ensure: that shippers have ready reference to the full range of rates and routes they can use to ship their freight; that no traffic is prevented from moving because of the absence of a quoted rate; and that CSX and NS do not restrict the range of rates and routes and thereby constrain competitive options post-transaction.

[381] Condition A.5 is intended to prevent the development of bottlenecks.

[382] CMA and SPI contend that, because the residual Conrail operator will not be a common carrier and will have been stripped of most of its revenues, CSX and NS should be required to accept full responsibility for shipments handled by the Conrail entity for their accounts, as well as for cars that may be picked up by the SAA operator prior to the preparation of billing documents, as (CMA and SPI claim) often occurs in the industry. The responsibility envisioned by CMA and SPI would include responsibility for loss, damage, and delay, and also for spillage or release of products.

[383] CMA and SPI insist that, if shippers are to realize the benefits of the SAAs, all bulk facilities in the SAAs should be open to both CSX and NS. CMA and SPI contend: that bulk terminals are not "fungible" because, for product integrity reasons, a bulk terminal typically can serve

(continued...)

Condition B.3 would require that all new facilities within the SAAs be open to both CSX and NS.[384]

Condition B.4 would provide that, where the CSX/NS/CR transaction creates, for contract shippers of traffic to/from/within the SAAs, new competitive options (*i.e.*, new options for traffic not moving to/from closed points on CSX or NS): (a) each shipper must have an "open season" (not to exceed 2 years from the date of transaction implementation) to test service from both CSX and NS under Conrail contracts; (b) each shipper must have the right to decide whether to have Conrail contract service performed by CSX or NS or both; and (c) each shipper must have an option to reopen its Conrail contracts.[385]

Condition C.1: (a) would require CSX and NS to keep open all existing gateways and interchanges on competitive rate and service terms;[386] and (b) for Conrail single-line traffic that becomes CSX-NS or NS-CSX interline traffic, would prohibit increases (greater than RCAF-A increases) on rates in effect on June 23, 1997.[387]

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[383](...continued)
only a limited range of products; and that, for this reason, the fact that some bulk terminals within the SAAs are open to both CSX and NS does not diminish the harm of closing other bulk terminals. CMA and SPI indicate that Condition B.2 would affect only one facility: the Croxton bulk chemical facility in Northern New Jersey.

[384] CMA and SPI contend that Condition B.3: will provide greater certainty to industries considering locating in the SAAs; will remove a possibly troublesome source of friction between CSX and NS; will ensure that there will be joint access in the SAAs in perpetuity; and will prevent CSX and NS from bargaining away their joint access to particular points or industries by granting private considerations between themselves. CMA and SPI add that, without Condition B.3, the benefit of joint access in the SAAs will diminish over time as existing facilities are retired and new facilities are constructed.

[385] CMA and SPI claim that section 2.2(c) of the Transaction Agreement, *see* CSX/NS-25, Volume 8B at 25-29, neither (i) resolves which carrier will handle Conrail contract traffic moving between an SAA point and a point open to both CSX and NS, nor (ii) gives shippers any say in the matter. CMA and SPI submit that, in order for shippers to benefit from the new competition created by the SAAs and to avoid undesirable routing or service shifts, the shippers themselves should have the ability to determine, as between CSX and NS, which carrier should perform the existing Conrail contracts (assuming that service under the contract is not to or from a closed CSX or NS point), and should have a 2-year period of free choice as between CSX and NS. CMA and SPI add that shippers, in order to realize some of the previously unforeseeable benefits of the SAAs, should have the right to elect to terminate their current Conrail contracts where the SAAs create new competitive options (*i.e.*, where the traffic is not moving between an SAA point and a closed point on CSX or NS).

[386] CMA and SPI claim that Condition C.1(a) does not prescribe rigid rate levels, proportions, or escalation factors, but merely establishes a "rule of reason" that could be invoked in an oversight proceeding if CSX or NS were to foreclose a routing favored by shippers.

[387] CMA and SPI insist that shippers whose pre-transaction Conrail single-line routing becomes a post-transaction CSX-NS or NS-CSX joint-line routing will be harmed by the increased delays and difficulties that attend an interchange between two carriers. Condition C.1(b), CMA and SPI contend, would at least ensure that such shippers would not be further harmed by rate increases justified on the basis that handling costs have increased and that each of the carriers in the interline movement wants a minimum amount of revenue.

Condition C.2: (a) would require CSX and NS to keep open all reciprocal switching points on CSX/NS/Conrail that were open to reciprocal switching on June 23, 1997; (b) would require CSX and NS to set reciprocal switching charges between CSX and NS within Conrail territory (*i.e.*, the territory now served by Conrail) at $130 per car;[388] (c) would require CSX and NS, respectively, to eliminate all reciprocal switching charges on all former Conrail-CSX and Conrail-NS interline movements that become CSX and NS single-line movements;[389] and (d) would require that reciprocal switching be reinstated at Buffalo (apparently by CSX and NS) and at Niagara Falls (apparently by CSX).[390]

Condition C.3 would require: that CSX and NS be held to the post-transaction transit times presented in the operating plans and train schedules submitted in this proceeding; and that CSX and NS service not reflected in their operating plans and train schedules be monitored to ensure that service on their pre-transaction systems does not deteriorate post-transaction.

Condition C.4 would require: (a) that CSX and NS file quarterly reports with the Board;[391] and (b) that there be 5 years of Board oversight of the CSX/NS/CR transaction.[392]

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[388] CMA and SPI claim that workable reciprocal switching at a reasonable price level is essential if there is to be strengthened competition throughout the Eastern United States. CMA and SPI add: that many shippers now served via Conrail single-line service will find that their movements have become interline CSX-NS or NS-CSX post-transaction; that, for some of these shippers, it will be possible to have a single-line CSX or NS movement but for a short reciprocal switch by the other; and that, for those shippers, imposition of a $130 per car limit on reciprocal switching fees would help to limit the damage caused by the loss of single-line Conrail service.

[389] CMA and SPI contend that "phantom" fees that serve no purpose should be eliminated. Condition C.2(c) is apparently also intended to apply to a situation in which: traffic was formerly routed Conrail-CSX or Conrail-NS; CSX or NS, respectively, acquires Conrail's linehaul track; but NS or CSX, respectively, acquires the local service at the Conrail origin or the Conrail destination. CMA and SPI insist that, in this situation, any new switching charges respecting the switch between the local service carrier and the linehaul carrier should be absorbed by the linehaul carrier.

[390] CMA and SPI contend: that the important Buffalo and Niagara Falls markets should have access to the outside world on the same competitive terms as other important Eastern markets; that, at present, switching at Niagara Falls is non-existent except for certain switches with the D&H for movements to Binghamton, and switching in Buffalo has been all but eliminated by switching fees of over $450 per car; and that, because the most recent Conrail actions to eliminate reciprocal switching at Buffalo were taken after March 1996, it is reasonable to presume that such actions were taken in contemplation of enhancing the value of Conrail's franchise for sale to CSX or NS or both. The need for switching at Buffalo and Niagara Falls, CMA and SPI add, is accentuated by the fact that some former Conrail single-line moves will become CSX-NS interline moves post-transaction. CMA and SPI also suggest that we should establish "a rate for switching at Buffalo," CMA-10 at 39, and they further suggest that we may wish to use the Condition C.2(b) $130 per car rate.

[391] Condition C.4(a) contemplates: that CSX and NS would serve copies of their quarterly reports on all parties of record that request copies; that parties of record would have the opportunity to comment on the quarterly reports; and that CSX and NS would have the right to reply to such comments.

[392] Condition C.4(b) contemplates 2 years of semi-annual review proceedings and an additional 3 years of annual review proceedings. Condition C.4(b) further contemplates that there will be, during each review proceeding, an opportunity for public comments and for carrier replies, and expedited resolution of issues by the Board.

Condition C.5 specifies that the oversight proceedings would address eight general issues: (a) safety performance; (b) customer transit times in key corridors (both new and existing CSX and NS service); (c) service efficiency gains (*e.g.*, run-through trains and 286,000-pound gross rail load routes); (d) maintenance of shipper gateway and interchange options on competitive rate and service terms; (e) attainment of projected new traffic volumes; (f) realization of projected cost savings; (g) post-transaction financial ratios; and (h) effects of the purchase price and premium paid for Conrail, and the financial justification for the transaction.

CPTA. CPTA contends that the CSX/NS/CR transaction should be approved only if four implementation conditions, four oversight conditions, and four additional conditions are imposed. CPTA also contends that we should take no action that would effectively nullify any antiassignment clauses contained in Conrail's Existing Transportation Contracts.

Implementation Conditions. Implementation Condition #1: would require the joint submission by applicants of a plan for operations within the SAAs, and would provide for a period for comment by shippers, followed by approval of the plan by the Board. CPTA contends: that operations within the SAAs are critical to the pro-competitive features of the CSX/NS/CR transaction; that, however, train operations into, out of, and within the SAAs are likely to be extremely complex; and that, accordingly, it is absolutely necessary that CSX and NS have in place, prior to Day One, a detailed operational plan with operational "metrics" that will enable the Board to monitor the success of operations within the SAAs when they commence.

Implementation Condition #2 would require CSX and NS to certify, prior to implementation of the CSX/NS/CR transaction, that they have put in place all necessary labor agreements (*i.e.*, all labor agreements necessary to implement operations within the SAAs, all labor agreements necessary to implement operations on the other Conrail properties to be acquired by CSX and NS, and all labor agreements necessary to implement operations on properties already owned by CSX and NS insofar as such operations will be integrated with operations on the properties to be acquired from Conrail). Recent experience, CPTA claims, indicates that implementation of labor agreements is critical to the successful implementation of a rail consolidation.

Implementation Condition #3 would require CSX and NS to certify, prior to implementation of the CSX/NS/CR transaction, that they have put in place the management information systems, including car tracking systems, necessary to manage operations on the former Conrail system, within the SAAs, and at interchanges between the merged CSX/Conrail and NS/Conrail systems.

Implementation Condition #4: would require CSX and NS to submit a plan as to how revenues, costs, and responsibilities for rail transportation contracts for movements from, to, or within the current Conrail system are to be handled; and would provide for a period for comment by shippers, followed by approval of the plan by the Board. CPTA acknowledges that applicants have already submitted a "plan" of this nature. *See* CSX/NS-25, Volume 8B at 25-29. CPTA contends, however: that, although the arrangements contemplated by applicants are extraordinarily complex, many uncertainties still surround this issue; that shippers with current Conrail contracts, and particularly those with contracts respecting movements from or to the SAAs, still do not know which carrier or carriers will handle their traffic, and/or what choice they will have over the selection of that carrier post-transaction; and that this uncertainty has the potential for enormous confusion.

Oversight Conditions. Oversight Condition #1 would provide for continuing oversight of the implementation and effect of the CSX/NS/CR transaction for a 5-year period.

Oversight Condition #2 would require CSX and NS to file quarterly and yearly reports, and would provide for a comment period for shippers and other interested parties.

Oversight Condition #3 would require CSX and NS to include, in their quarterly and yearly reports: (1) progress reports on key aspects of the transaction, such as the division and integration of the Conrail locomotive and freight car fleet, customer billing, and capital investment; (2) statistics on operations, such as number of employees in key categories, number of locomotives available, etc.; (3) key service statistics against a baseline (number of turns per month for key equipment groups, train starts, etc.); (4) status and progress reports on implementation of operations in the SAAs; (5) reports on experience in truck market penetration; (6) rate trends, by key commodity groups, against a baseline; and (7) financial performance indicators.

Oversight Condition #4 would require the Board to develop objective and measurable standards to determine if the transaction is resulting in benefits to the shipping public.

Additional Conditions. Additional Condition #1 would impose upon the CSX/NS/CR transaction the transload, new facility, and build-out conditions that were imposed upon the *UP/SP* merger. CPTA insists that, even though the number of 2-to-1 and similar points in this proceeding is relatively small, a shipper whose competitive options are directly restrained as a result of the CSX/NS/CR transaction should receive no less protection than was afforded shippers whose competitive options were directly restrained by the *UP/SP* merger.[393]

Additional Condition #2 would require CSX and NS to keep open for reciprocal switching all reciprocal switching points that would provide post-transaction transportation options for shippers. Reciprocal switching, CPTA contends, constitutes one of the few ways in which rail-to-rail competition can be brought to bear in the increasingly concentrated rail marketplace. The preservation of reciprocal switching, CPTA adds, would be consistent with the creation of SAAs and other newly competitive points, and indeed would insure that the benefits of competition in those areas and at those points actually accrue to shippers.

Additional Condition #3 would require a reduction of reciprocal switching charges to a maximum level of $130 per car, the level (CPTA notes) that was agreed upon by the *UP/SP* applicants.[394]

Additional Condition #4 would require CSX and NS to propose, by no later than 30 days after the decision,[395] a plan to protect, for a period of at least 5 years after implementation of the CSX/NS/CR transaction, the current single-line rates and service (including efficient means of interchange) of each "single-line to joint-line" (hereinafter, SL-to-JL) shipper. CPTA contends: that SL-to-JL shippers may be seriously disadvantaged as a result of the CSX/NS/CR transaction, not only with respect to rates but also with respect to service; that there are a variety of possible remedies (trackage rights, extension of reciprocal switching limits, run-through power and crews, contract guarantees, etc.); that CSX and NS should be required to submit to each SL-to-JL shipper a written proposal for protecting that shipper's rates and service for a period of 5 years after the effective date of the transaction; that the shipper should be given the right to accept or reject the proposal, and should be given the further right to request the Board to adjudicate any dispute respecting a rejected proposal; and that the Board should order specific relief if it finds that the carriers' proposal is not likely to provide the shipper with the same rates and service that the shipper enjoyed prior to the transaction.

Antiassignment Clauses. Applicants have requested, in the lead docket, a declaratory order, or a declaration to the same effect as a declaratory order, that, by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS may use, operate, perform, and enjoy the Allocated Assets and the assets in the SAAs consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts) as fully and to the same extent as Conrail itself could. CPTA insists, in essence, that, if we issue the sought declaratory order, we should make clear that it is not intended to result in the nullification of an Existing Transportation Contract's antiassignment clause (*i.e.*, a clause that purports to bar the assignment of the contract by Conrail without the consent of the shipper). *See,* NITL-7 at 38 n.11. CPTA notes that an antiassignment clause, if allowed to take

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[393] *See, UP/SP,* 1 S.T.B. at 419-20.

[394] *See, UP/SP,* 1 S.T.B. at 371-20.

[395] CPTA also refers to this deadline as the 30th day after the effective date of the transaction.

effect, would enable a shipper located within an SAA to obtain the benefits of CSX vs. NS competition immediately. Nullification of such a clause, CPTA adds, would unlawfully strip the shipper of its contract rights, and would allow CSX and NS to decide among themselves which carrier should perform under the contract.

CPTA, NITL, & TFI. The National Industrial Transportation League (NITL), the U.S. Clay Producers Traffic Association, Inc. (CPTA), and The Fertilizer Institute (TFI) insist that captive shippers should not be asked to shoulder the financial burdens of the CSX/NS/CR transaction.[396]

Acquisition Premium. NITL, CPTA, and TFI fear that the financial demands of the CSX/NS/CR "acquisition premium" may cause CSX and NS to increase the rates charged to their captive shippers.[397] NITL, CPTA, and TFI contend: that the new debt that CSX and NS have incurred to finance the CSX/NS/CR transaction will place enormous pressures on CSX and NS for years to come; that the new competition that will be created in certain areas, and particularly in the SAAs, will exert downward pressures on the rates that CSX and NS can charge shippers in those areas; and that CSX and NS will therefore be tempted to increase the rates charged to their captive shippers. NITL, CPTA, and TFI acknowledge applicants' claims that the costs of the CSX/NS/CR transaction will be paid for by operational efficiencies and traffic gains. NITL, CPTA, and TFI indicate, however, that they are skeptical that such efficiencies and gains will suffice.

NITL, CPTA, and TFI claim that the threat posed by the demands of the new debt incurred by CSX and NS is heightened by the fact that, given the current regulatory structure, the CSX/NS/CR acquisition premium will distort the limited regulatory protections now available to captive shippers. This, they claim, will happen in two ways: one involving revenue adequacy determinations and the revenue adequacy constraint; and the other involving the jurisdictional threshold computation.

(1) NITL, CPTA, and TFI note that acquisition costs are used to determine the investment base used in revenue adequacy calculations. *Railroad Revenue Adequacy - 1988 Determination*, 6 I.C.C.2d 933, 940-42 (1990). NITL, CPTA, and TFI claim that, as respects the CSX/NS/CR transaction, the use of acquisition costs will increase the investment base (for both CSX and NS) and increase depreciation expenses (for both CSX and NS), which effects, in combination, will reduce the reported return on investment of both CSX and NS and thereby make each of these carriers appear to be either less revenue adequate or more revenue inadequate. NITL, CPTA, and TFI contend that this result will be perverse, given that CSX and NS claim that the CSX/NS/CR transaction will make each stronger and more effective; and will be particularly perverse as respects the presently revenue adequate NS, which will escape the revenue adequacy constraint of our Constrained Market Pricing maximum rate reasonableness guidelines if the use of its portion of the acquisition premium in determining its investment base causes it to be considered revenue inadequate. *See, Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 534-37 (1985) (*Coal Rate Guidelines*).

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[396] NITL is an organization of shippers and groups and associations of shippers. CPTA is an association of producers of clay. TFI is an association of the fertilizer industry.

[397] NITL, CPTA, and TFI calculate the acquisition premium as either $6.726 billion (the excess of the purchase price paid by CSX and NS over Conrail shareholders' equity as of December 31, 1995) or $9.550 billion (the excess of the market value of Conrail's assets over the net book value of Conrail's assets). NITL-7 at 15-16 (indicating that the second calculation is tentative). *See also*, NITL-12 at 10: "[A]t this point, it cannot be known with certainty what the exact amount of the acquisition premium (however it is calculated) will be, and indeed, that amount could change over time as the Applicants' accountants complete their evaluations."

(2) NITL, CPTA, and TFI note: that the market dominance finding necessary to establish our rate reasonableness jurisdiction cannot be made if the rate at issue results in a revenue to variable cost ratio (R/VC ratio) of less than 180%, *see,* 49 U.S.C. 10707(d)(1)(A); and that, for purposes of determining the R/VC ratio, variable costs are calculated under the Uniform Rail Costing System (URCS), *see,* 49 U.S.C. 10707(d)(1)(B). NITL, CPTA, and TFI claim that, if acquisition costs are used to determine the post-transaction CSX and NS investment bases: the increase in the basis of CSX's and NS' assets that will be a consequence of the acquisition premium will result, under URCS, in an increase in those variable costs that are calculated by reference to asset value; the increase in variable costs will result in an increase in the dollar value of the R/VC 180% ratio; and the increase in the dollar value of the R/VC 180% ratio will allow CSX and NS to increase, free of regulatory oversight, all rates that are below the increased dollar value of that ratio (and every dollar of increased variable cost will allow CSX and NS to increase rates, free of regulatory oversight, by $1.80). NITL, CPTA, and TFI add that the 180% jurisdictional threshold is particularly important in the case of many bulk movements, because the calculation of the stand-alone cost constraint (SAC) under *Coal Rate Guidelines* is below the 180% jurisdictional threshold (and therefore, for such movements, the 180% jurisdictional threshold is, for all practical purposes, the maximum reasonable rate level).[398]

Bottleneck Matters. NITL, CPTA, and TFI claim that, although the CSX/NS/CR application envisions the creation of new rail-to-rail competition in the SAAs and in the other areas in which there will be two-carrier service, many shippers in the newly competitive areas will not actually enjoy the benefits of rail-to-rail competition. NITL, CPTA, and TFI insist that the culprit is our 1996 *Bottleneck I* decision[399] which, they claim, stands for the proposition that, where traffic moves from/to a point in one of the newly competitive areas to/from a point served exclusively either by CSX or by NS, the carrier with access to the exclusively served point will be able to exclude the other carrier from participating in the traffic. NITL, CPTA, and TFI therefore contend that the only shippers within the newly competitive areas that will actually enjoy rail-to-rail competition will be those shippers whose traffic moves from/to a point in the newly competitive areas: to/from a point open to both CSX and NS (either a point presently open to both CSX and NS or a point in one of the newly competitive areas); or to/from a neutral interchange carrier (*i.e.*, a carrier other than CSX and NS).

Loss of Competition. NITL, CPTA, and TFI claim that, in at least three respects, the CSX/NS/CR transaction is likely to result in the diminution of competition.

(1) NITL, CPTA, and TFI claim that competition will be lost on account of the reduction in neutral, competitive rail routings. NITL, CPTA, and TFI contend: that where a shipper's plant is served by one railroad (here, Conrail), but there are two or more unaffiliated railroads physically able to transport the freight from an interchange to the destination (here, CSX and NS), the shipper receives the benefit of competition between the neutral destination rail carriers; that, however, when the origin monopoly carrier merges with one of the destination carriers, the shipper loses the benefits of the pre-transaction competition; that, in the CSX/NS/CR transaction, this phenomenon will occur on a massive scale (with respect to those Conrail points that will be exclusively served either by CSX or by NS); and that, as a consequence thereof, traffic that would have had the benefit of CSX vs. NS competition on at least part of the move will become captive to one of the carriers over the entire movement. NITL, CPTA, and TFI concede that the "one-lump" theory holds that where a rail carrier

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[398] NITL, CPTA, and TFI claim that courts and other regulatory agencies have frequently determined that it is unlawful to include acquisition write-ups in any portion of an investment base used for regulatory purposes. NITL-7 at 26-27.

[399] *Central Power & Light Co. v. Southern Pacific et al. (Bottleneck I)*, 1 S.T.B. 1059 (1996).

(here, Conrail) controls any portion of a movement, the whole "lump" of monopoly profits is taken by that carrier, so that the merger of the monopoly carrier with one of the competing destination carriers should make the shippers no worse off. NITL, CPTA, and TFI contend, however, that this agency has never performed empirical studies to determine whether this theory conforms to reality.

(2) NITL, CPTA, and TFI claim that competition will be lost on account of the elimination of multiple-plant leverage. NITL, CPTA, and TFI contend: that where a shipper served by a single rail carrier (here, Conrail) at one location has a plant producing the same or similar products at another location on the line of another carrier (here, CSX or NS), that shipper may, in some instances, have a certain amount of leverage for use in negotiating with each carrier, at least where the two plants are not running at or near capacity; but that this form of competition will be eliminated by the CSX/NS/CR transaction, insofar as plants that used to be on Conrail on the one hand and either CSX or NS on the other hand become totally CSX or NS origins or destinations.

(3) NITL, CPTA, and TFI claim that competition will be lost on account of the greater geographic spread of CSX and NS. NITL, CPTA, and TFI contend: that, to the extent competing shippers are served by different carriers, each carrier has an interest in seeing that its shippers are not disadvantaged vis-à-vis shippers on other carriers, at least if there is excess manufacturing capacity and at least to the extent of the marginal production; but that this form of competition will be diminished by the CSX/NS/CR transaction, as more and more producers of a product are located on the lines of a single carrier.

Post-Implementation Rate Conditions. NITL, CPTA, and TFI therefore ask that we impose three post-implementation rate conditions. NITL, CPTA, and TFI claim that these "safety net" conditions would operate only in the event that CSX and NS, having failed to generate the additional revenues and savings they expect, attempt to obtain the revenues they need by exercising market power over captive shippers.[400]

Rate Condition #1 would provide that, for a period of 5 years after the CSX/NS/CR transaction, qualitative market dominance will be presumed for any CSX or NS shipper served by only one railroad if the rates to that shipper are increased by an amount greater than that set forth in Rate Condition #2.

Rate Condition #2 would provide that, for a period of 5 years after approval of the CSX/NS/CR transaction, CSX and NS will bear the burden of proving the lawfulness of any rate increase for market dominant shippers that exceeds the RCAF-U.[401]

Rate Condition #3 would provide that the acquisition premium shall affect neither the determination of revenue adequacy for CSX and NS nor the determination of the jurisdictional threshold for CSX and NS rate reasonableness cases.

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[400] NITL, CPTA, and TFI also ask that we direct our focus beyond the competitive effects of the CSX/NS/CR transaction, and take into account, in addition to the competitive effects of this transaction, the substantial reduction in rail-to-rail competition that has taken place over the last decade and a half.

[401] TFI insists that the Rate Condition #2 adjustment mechanism should be the RCAF-A rather than the RCAF-U which, TFI claims, overstates increases in the railroads' costs. TFI adds: that the RCAF-A is, whereas the RCAF-U is not, the rail cost adjustment factor provided for by statute; and that the Board is simply not permitted to use any measure other than the RCAF-A as an adjustment mechanism for railroad rates or other charges. *See*, TFI-5. TFI concedes, however, that an adjustment factor other than the RCAF-A may apply as to "switching rates" (because of the special circumstances applicable to the reduction in such rates pursuant to the NITL agreement). *See,* TFI-7 (filed June 3, 1998).

NITL Settlement Agreement. In December 1997, CSX and NS entered into a settlement agreement (referred to as the NITL agreement)[402] with NITL, the largest trade association of shippers in the United States.[403]

Conrail Transaction Council. Section I(A) of the NITL agreement provides for the creation, by February 1, 1998, of a Conrail Transaction Council (the Council), which shall consist of representatives from CSX, NS, and NITL, and also any other organization of affected rail users, and which shall serve as a forum for constructive dialogue. Section I(A) further provides: that CSX and NS shall discuss the implementation process with the Council; that the Council may present to CSX and NS mechanisms to identify and address any perceived obstacles to the effective and efficient implementation of the CSX/NS/CR transaction, and may convey to CSX and NS any particular concerns or recommendations with respect to implementation planning or the implementation process; and that CSX and NS shall endeavor to address such presentations, concerns, or recommendations, and shall report to the Council on the actions taken with respect thereto or the reasons for taking different actions. Section I(A) also provides that the Council is not intended to supplant our oversight of the CSX/NS/CR transaction (which is provided for by section II(A) of the NITL agreement).

Shared Assets Areas Summary Description. Section I(B) of the NITL agreement provides that CSX and NS shall provide, by February 1, 1998, a "summary description" of how operations will be conducted in each of the three SAAs. Section I(B) further provides that the summary shall focus on the function and interrelationship of the various crews of each railroad, dispatching controls, and the effect on individual shippers in matters such as car ordering, car supply, and car location.

Labor Implementing Agreements. Section I(C) of the NITL agreement provides: that CSX and NS will implement the CSX/NS/CR transaction as soon after the Control Date as possible; that CSX and NS will obtain the necessary labor implementing agreements prior to the Closing Date, and will advise the Board when such agreements have been obtained; and that NITL will support a request by CSX or NS that we initiate the labor implementing agreement process prior to the Control Date.

Management Information Systems. Section I(D) of the NITL agreement provides that, prior to the Closing Date, CSX and NS will advise the Board that management information systems (including car tracking capabilities) designed to manage operations on the former Conrail system, within the SAAs, and at interchanges between the CSX/Conrail and NS/Conrail systems, are in place.

Oversight. Section II(A) of the NITL agreement provides that we should require specific oversight of the implementation and effect of the CSX/NS/CR transaction for a 3-year period. Section II(A) further provides that it is not intended: to limit our authority to continue oversight beyond the 3-year period; or to limit the right of any party (including NITL) to request continued oversight if conditions at the end of the 3-year period warrant such a request.

Reports. Section II(B) of the NITL agreement provides, with respect to the continuing oversight provided for by section II(A): that we should require quarterly reports from CSX and NS; that we should provide shippers an opportunity to comment; that CSX, NS, and the Council shall jointly recommend objective, measurable standards to be used in the reports filed by CSX and NS; and that the base for these standards shall be, to the extent the information is readily available, the standards on Conrail prior to the Control Date. Section II(B) further provides that, in addition to any

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[402] *See,* CSX/NS-176 at 768-74.

[403] By motion (NITL-10) filed January 13, 1998, NITL has requested leave to file its NITL-11 pleading respecting the details of the NITL agreement. We are granting the motion. In accordance with the provisions of the NITL agreement, NITL: has withdrawn its request that we impose most of the conditions it had previously detailed in its NITL-7 pleading; but has renewed its request that we impose its post-implementation rate conditions. *See,* NITL-11 at 2-3.

measurable standards, information in the quarterly reports may include: status of implementation plans for operations in the SAAs; status of labor implementing agreements; status of integration of management information systems; status of allocation of responsibility for performing Conrail transportation contracts; and any other matters about which the Board or the Council reasonably requests information.

Allocation of Transportation Contracts. Section 2.2(c) of the Transaction Agreement provides for the allocation, between CSX and NS, of Conrail's Existing Transportation Contracts. *See* CSX/NS-25, Volume 8B at 25-29 (providing, among other things, that where both CSX and NS can perform single-line transportation, CSX and NS will allocate among themselves the responsibility for providing service under an Existing Transportation Contract). Section II(C) of the NITL agreement provides that, beginning 6 months after the Closing Date, if a shipper whose Existing Transportation Contract has been allocated in whole or in part either to CSX or to NS is dissatisfied with the service it is receiving from the carrier performing the contract from specified origins to specified destinations, it may submit the matter to expedited binding arbitration (after written notice to the carrier as to claimed operating or other deficiencies below the level at which Conrail provided performance of the contract, and an opportunity of 30 days to improve its performance and cure those deficiencies). Section II(C) further provides: that the issue to be arbitrated shall be whether there is just cause because of a deficiency in performance to have the responsibility for the performance of the contract (for the specified origin/destination pairs) transferred; that, if such just cause appears, the remedy shall be an order transferring such responsibility of performance to the other carrier; and that arbitration is to be concluded within 30 days from the date the arbitrator is selected. Section II(C) also provides that an arbitration protocol for the selection of arbitrator(s) and the conduct of arbitration will be developed by CSX, NS, and NITL not later than July 1, 1998.

New Facilities Within the SAAs. Section III(A) of the NITL agreement clarifies that the SAA Operating Agreements generally provide: (1) that both CSX and NS will have access to existing or new shipper-owned facilities in the SAAs; (2) that both CSX and NS will have the opportunity to invest in joint facilities in the SAAs in order to gain access to such facilities; and (3) that either CSX or NS may solely develop, within the SAAs, facilities that it will own and control (such as transloading facilities or automotive ramps) that will be accessed exclusively by the railroad that develops such facilities.

Reciprocal Switching. Section III(B) of the NITL agreement provides that CSX or NS, as the case may be, will cause any point at which Conrail now provides reciprocal switching to be kept open to reciprocal switching for 10 years after the Closing Date.

Reciprocal Switching Rates. Section III(C) of the NITL agreement provides that, for 5 years after the Closing Date, reciprocal switch charges between CSX and NS at the points referred to in the preceding paragraph will not exceed $250 per car, subject to annual RCAF-U adjustment, and at other points and/or with all other carriers will not exceed: (a) where no separate settlement is made between carriers, the existing rates subject to RCAF-U adjustment; or (b) where there are such settlements, the amount therein prescribed (not in excess of that provided for in (a)). Section III(C) further provides that it does not apply where CSX and NS have entered into agreements intended to address so-called 2-to-1 situations as set forth in the CSX/NS/CR application.[404]

Gateways. Section III(D) of the NITL agreement clarifies that CSX and NS anticipate that all major interchanges with other carriers will be kept open as long as they are economically efficient.

[404] The Rail Cost Adjustment Factor is referred to as RCAF. The Rail Cost Adjustment Factor adjusted for productivity is referred to as RCAF-A. The Rail Cost Adjustment Factor unadjusted for productivity is referred to as RCAF-U.

Interline Service. Section III(E) of the NITL agreement is applicable to transportation services to Conrail shippers on routes (*i.e.*, origin-destination pairs) over which at least 50 cars were shipped in the calendar year prior to the Control Date in single-line Conrail service (*i.e.*, origin and destination served by Conrail) which will become joint-line CSX-NS service after the Closing Date. Section III(E) provides that, upon request of an affected shipper, CSX and NS will, for a period of 3 years, (a) maintain the Conrail rate (subject to RCAF-U increases), and (b) work with the shipper to provide fair and reasonable joint-line service. Section III(E) further provides: that, if a shipper objects to the routing employed by CSX and NS, or to the point selected by them for interchange of its traffic, the disagreement over routing or interchange, or both, shall be submitted to binding arbitration under the procedures adopted in STB Ex Parte No. 560;[405] that the arbitrator shall determine whether the route or the point of interchange, or both, satisfies the requirements of 49 U.S.C. 10705; and that, upon a determination that such requirements have not been satisfied, the arbitrator may award a different route or point of interchange for such traffic.[406]

Board Approval. Section III(F) provides that, except as provided in this paragraph, the NITL agreement: (a) is not subject to Board approval; and (b) will be binding on the parties in the absence of Board approval, except with respect to any provision disapproved by the Board or inconsistent with the Board's action on the CSX/NS/CR application. Section III(F) further provides that the parties to the NITL agreement will ask the Board to approve: the creation of the Council; the exchange of information; the process provided for addressing shipper implementation and service concerns; and the allocation of transportation contracts under section II(C).[407] Section III(F) also provides that, in the absence of such approval by the Board, CSX and NS shall not be obliged to take any action which in their sole judgment might create liability under the antitrust laws.

INSTITUTE OF SCRAP RECYCLING INDUSTRIES. ISRI, which has "sign[ed] onto" the NITL agreement, *see* ISRI-13 (filed April 21, 1998), asks that we impose certain "post-implementation rate conditions" and certain "ISRI member conditions."[408]

Post-Implementation Rate Conditions. ISRI contends: (A) that we should impose a condition stating that, for a period of 5 years after the transaction, market dominance will be presumed for any CSX or NS shipper served by only one railroad if the rates to that shipper are increased by an amount greater than the RCAF-U; (B) that we should impose a condition that would place on the carriers, for a period of 5 years after approval of the transaction, the burden of proving the lawfulness of any rate increase for market dominant shippers that exceeds the RCAF-U; and (C) that we should impose a condition stating that, for CSX and NS, the acquisition premium will affect neither the

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[405] *See, Arbitration of Disputes Subject to the Stat. Juris. of the STB*, 2 S.T.B. 564 (1997), and published at 62 Fed. Reg. 46,217 (1997) (regulations codified at 49 CFR part 1108).

[406] Shippers whose pre-transaction Conrail single-line route will be replaced by a post-transaction CSX-NS joint-line route are referred to by NITL as "1-to-2" shippers. *See,* NITL-11 at 15. We will not use this term in this context because we have accorded a different meaning to the "1-to-2" concept. We regard a "1-to-2" shipper as a shipper that presently has access to a single railroad (Conrail) but that will have, post-transaction, access to two railroads (CSX and NS).

[407] The parties have asked for approval. *See,* CSX/NS-176 at 729; NITL-11 at 15; CSX-140 at O-4, ¶13 (seeks approval for: the provisions for a Conrail Transaction Council; the communication and sharing of information among CSX, NS, and the Council; and the process for addressing shipper implementation and service concerns under the NITL agreement and under the allocation of CRC Existing Transportation Contracts in "Part II.C" of the NITL agreement); NS-62 at O-4, ¶13 (same).

[408] ISRI is a trade association whose member companies process, broker, and consume recyclable materials, including ferrous and nonferrous metals, paper, plastics, glass, rubber, and textiles.

determination of revenue adequacy nor the determination of the rate reasonableness jurisdictional threshold.

ISRI Member Conditions (SAAs). (A) Louis Padnos Iron & Metal Company (LPIM) operates two 1-to-1 ferrous scrap processing facilities near the Detroit SAA. Its facility at Grand Rapids, MI, is located approximately 150 miles west of Detroit; its facility at Lansing, MI, is located approximately 80 miles west of Detroit. Each facility is presently rail-served by a single carrier (CSX at Grand Rapids; Conrail at Lansing) and each will be served by a single carrier post-transaction (CSX at Grand Rapids; NS at Lansing). Both facilities, however, compete with at least nine other scrap processors located in the Detroit SAA, all of which are presently rail-served exclusively by Conrail but, post-transaction, will have direct access to both CSX and NS. ISRI warns that, whereas LPIM (which ships 90% of its outbound ferrous scrap product by rail) can now compete with its nine competitors on an equal basis, it will not be able to do so post-transaction. ISRI therefore asks that we grant a second rail carrier access to the LPIM facilities at Grand Rapids and Lansing. ISRI requests: (1) that, at Grand Rapids, we grant trackage rights to NS (which will acquire a nearby Conrail line) over the CSX line serving the LPIM facility; and (2) that, at Lansing, we grant trackage rights to CSX over the Conrail line (to be assigned to NS) serving the LPIM facility.

(B) William Reisner Corporation (WRC), which operates a single scrap processing facility in Clinton, MA, competes with other scrap processors in the North Jersey SAA and the South Jersey/Philadelphia SAA. ISRI claims that both WRC and its competitors in the SAAs, all of which are presently rail-served exclusively by Conrail, presently have access to single-line Conrail service, which keeps them on roughly comparable competitive footings in terms of rates and car supply. ISRI concedes that WRC is already at a slight disadvantage in freight rates because, given its location in Massachusetts, all of its traffic must move greater distances south toward its principal markets. ISRI notes, however, that, after the CSX/NS/CR transaction, WRC will be single-served by CSX while its competitors will gain dual service from CSX and NS; and ISRI warns that the slight advantage that WRC's SAA competitors enjoy today will be transformed into a major advantage that will render WRC noncompetitive. ISRI therefore asks that we grant trackage rights to B&M over the Conrail line serving the WRC facility. B&M, ISRI notes, could haul the traffic over its own line to Mechanicville, NY, for interchange with either NS or CP.

(C) Royal Green Corporation (RGC) operates a single ferrous scrap processing facility in Temple (Reading), PA; this facility lies approximately 40 miles from the South Jersey/Philadelphia SAA and 120 miles from the North Jersey SAA; and RGC's principal competitors are located in these two SAAs. RGC and its principal competitors are today rail-served exclusively by Conrail. Post-transaction, however, RGC will be served solely by NS while its competitors will have access to both CSX and NS. ISRI therefore asks that we grant a second rail carrier (such as CSX or CP) trackage rights over the Conrail line (to be assigned to NS) between RGC's Temple facility and Philadelphia, with the right to interchange traffic at Philadelphia. ISRI adds: (1) that, if the carrier granted the trackage rights is not CSX, we should require the carrier to absorb all switch charges on two-line movements, or impose such other condition as will provide rate levels comparable to a single-line movement; and (2) that the trackage rights should include access to Conrail's Reading Yard at which RGC stores its private fleet of railcars.

(D) ISRI claims that LPIM, WRC, and RGC are representative of a larger group of ISRI members who may also be harmed by the SAAs. ISRI therefore asks that we condition the CSX/NS/CR transaction in a way that would allow other similarly affected ISRI members to obtain comparable relief.

ISRI Member Conditions (W&LE). ISRI supports the conditions requested by W&LE to the extent those conditions will alleviate harm to ISRI members. (1) Reserve Iron & Metal, L.P., is concerned about the loss of two-carrier access to its facility at Cleveland, OH. Reserve therefore supports W&LE Condition #9 (access by W&LE, apparently via trackage rights, to Reserve's Cleveland facility). (2) Annaco, Inc., operates scrap facilities in Ohio that are served by W&LE. Annaco is concerned that NS' acquisition of the Conrail lines in W&LE's territory may bankrupt W&LE; and this, Annaco fears, will adversely affect Annaco's competitiveness. Annaco has also been displeased with both CSX service and NS service; both CSX and NS, Annaco claims, have been less dependable than W&LE. Annaco therefore supports W&LE's attempts to preserve its essential services and its position as a competitive ratemaker. (3) On behalf of any other ISRI members that may be similarly affected, ISRI asks that we impose conditions, as requested by W&LE, that will protect ISRI's members from the anticompetitive effects of the CSX/NS/CR transaction in the areas served by W&LE.

NATIONAL GRAIN AND FEED ASSOCIATION. NGFA[409] believes that the CSX/NS/CR transaction will improve market access and service, but also believes that implementation of the transaction must be monitored to assure quality service and effective competition. NGFA therefore asks that we appoint a Conrail Acquisition Advisory Council to develop standards and performance measurements, as well as specific reporting measures, that will provide an accurate portrayal of implementation by CSX and NS. NGFA recommends: that the advisory council consist of a broad representation of rail users that ship or receive freight on CSX and/or NS, as well as senior executives of CSX and NS; that the advisory council develop, within the private sector, mechanisms to prevent, or to identify and address, obstacles to effective and efficient implementation; that the advisory council be subject to federal laws that would require its meetings to be publicly announced and open; and that the advisory council's reports and findings submitted to the Board be broadly and publicly disseminated. NGFA adds that, if such a council cannot be formed, we should accomplish the same oversight process by expressly committing to provide an open public forum in which representatives of CSX and NS, and of the industries they serve, would provide regularly scheduled updates on post-transaction performance.

NATIONAL MINING ASSOCIATION. NMA[410] contends that the increased traffic, and particularly the increased intermodal traffic, that CSX and NS intend to haul post-transaction raises serious questions about the ability of CSX and NS to provide, post-transaction, effective and efficient service in the transportation of mineral products traffic, particularly coal traffic. Service disruptions, NMA warns, are likely to occur, if either CSX or NS has not developed, prior to implementation of the CSX/NS/CR transaction, a unified operational structure. Service disruptions, NMA adds, are also likely to occur if either CSX or NS attempts to implement the transaction notwithstanding a lack of sufficient operating personnel; and NMA particularly fears that reductions of the work force engaged in train operations could cause severe service disruptions if such reductions occur before the newly expanded CSX and NS systems have been rationalized from a systems management perspective. NMA therefore asks: (1) that, prior to approving the CSX/NS/CR transaction, we require applicants to prepare and file a detailed initial plan of operations focused on actions necessary to avert service disruptions and to assure the continuation, at not less than prevailing service levels, of the railroad transportation services provided coal producers, consumers, and/or shippers by Conrail; (2) that we provide for a comment period of not less than 120 days for the public to respond to the detailed initial plan of operations; (3) that we consider the comments, and, in light of the comments, order appropriate revisions to the plan of operations; and (4) that we require applicants' adherence to the approved plan of operations as a condition for approval of the CSX/NS/CR transaction.

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[409] NGFA is an association of grain, feed, and processing companies.
[410] NMA is a trade association representing mineral resource industries.

APPENDIX F: COAL SHIPPERS

A. T. MASSEY COAL COMPANY. Massey produces, processes, and sells bituminous, low sulfur coal of steam and metallurgical grades from 19 mining complexes (17 of which include preparation plants) located in Kentucky, West Virginia, Virginia, and Tennessee.[411] Massey, which has only "very limited" operations served by Conrail, ATMC-3 at 4, indicates that its coal is originated primarily by CSX and NS (indeed, Massey claims to be the second largest coal shipper on both CSX and NS). Massey adds that it is "in favor of the proposed transaction, since it will produce more single-line service than has ever existed for the movement of Massey's coal." ATMC-2 at 3.

Massey's chief concern respecting the CSX/NS/CR transaction involves the impact the transaction may have upon Massey's relative competitive position vis-à-vis its 1-to-2 rivals. Massey indicates: that each of its facilities is served by a single railroad pre-transaction and will be served by a single railroad post-transaction;[412] that, accordingly, there is no reason to believe that the rail rates charged Massey will experience post-transaction decreases; that each of the MGA facilities of many of Massey's direct competitors is served by a single railroad pre-transaction but will be served by two railroads post-transaction;[413] that, accordingly, there is reason to believe that the rail rates charged Massey's MGA competitors will experience post-transaction decreases; and that, therefore, there is reason to fear that the CSX/NS/CR transaction may significantly degrade Massey's competitive position vis-à-vis its 1-to-2 MGA competitors.

Massey concedes that, given the many origin points for its coal traffic, it cannot determine with any degree of specificity how the CSX/NS/CR transaction will affect its ability to compete with other producers, particularly those located on Conrail's MGA lines. Massey insists, however, that, if competition drives down the net freight costs of Massey's MGA competitors, Massey's relative position could be substantially harmed, although Massey adds that, because much of its coal production is tied up in long-term contracts (with the purchasers of its coal), the full impact of the CSX/NS/CR transaction will not become apparent for quite some time.[414]

Massey therefore asks that we impose upon the CSX/NS/CR transaction conditions that embody four principles. (1) Massey contends that, in view of the problems that could develop with the division of Conrail, we should conduct oversight proceedings following consummation. (2) Massey contends that oversight proceedings should be conducted over a 10-year period, no less often than annually for the first 4 years and thereafter at such intervals as experience warrants. (3) Massey contends that, because of the long tail of events that will occur following consummation, we should reserve continuing jurisdiction to impose such conditions as are needed to correct problems as and if they occur. (4) Massey contends that, should it become apparent post-transaction that Massey's competitive position has suffered vis-à-vis its 1-to-2 competitors, Massey should be allowed to seek,

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[411] The map submitted with Massey's ATMC-2 and -3 pleadings, which covers an area embracing portions of three of these States (eastern Kentucky, Southern West Virginia, and Southwestern Virginia), appears to show 20 Massey coal facilities (of which nine appear to be served by CSX, nine appear to be served by NS, and two appear to be served by Conrail).

[412] The two Conrail-served facilities noted on the map submitted with Massey's ATMC-2 and -3 pleadings will apparently be served by NS post-transaction.

[413] Massey itself has no facilities on Conrail's MGA lines.

[414] Massey adds that matters are further complicated by the fact that an NS subsidiary is a major owner of coal reserves in Appalachia. *See,* ATMC-4 at 10 n.10.

in the oversight proceedings, the imposition of competitive access or other conditions to remedy the harm to Massey's relative competitive position.[415]

AMERICAN ELECTRIC POWER SERVICE CORPORATION. AEP's Cardinal Plant, a coal-fired electric generating station located on the Ohio River in Brilliant, OH, is served by a single line of track but can receive coal delivered by two railroads:[416] W&LE (which owns that single line of track) and Conrail (which has local trackage rights over approximately 3.5 miles of that single line of track, between a Conrail/W&LE junction at Shannon Run, OH, and the Cardinal Plant at Brilliant, OH).[417] AEP concedes that the CSX/NS/CR transaction would not appear to have a competitive impact: post-transaction, the Cardinal Plant will still be served by a single line of track and will still have access to two railroads (W&LE, which will own the single line of track, and NS, which will acquire Conrail's trackage rights over that line, and which will also acquire all of the Conrail tracks in eastern Ohio that are in the general vicinity of the Cardinal Plant).[418] AEP is concerned, however, that, if the CSX/NS/CR transaction sets in motion forces that result in the eventual collapse of W&LE, the Cardinal Plant will lose one of its two railroads.[419]

AEP therefore asks that we impose a condition to take effect if and when W&LE is unable to perform its obligations to serve the Cardinal Plant. This condition: (1) would require CSX to assume W&LE's rights and obligations vis-à-vis AEP; (2) would require CSX to submit to the Board a specific proposal for carrying out those obligations forthwith; and (3) if CSX's coal trains cannot operate on W&LE's Benwood-Cardinal Plant line for the entire distance between Benwood and the Cardinal Plant, would require NS to permit CSX to access the Cardinal Plant via trackage rights over the parallel Conrail line, under the terms and conditions provided for in the current W&LE/Conrail agreement.

CENTERIOR ENERGY CORPORATION. Centerior,[420] an electric utility serving customers in Northern Ohio, operates five coal-fired generating stations in Ohio: Eastlake Station in Eastlake, OH; Lake Shore Station in Cleveland, OH; Ashtabula Station (with two units, Ashtabula 5 and

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[415] Massey also contends that our competitive access rules should be revised to allow meaningful competitive access.

[416] The Cardinal Plant can also receive coal delivered by truck and by barge.

[417] Much of the information respecting the Conrail trackage rights, and also respecting certain apparently prospective W&LE trackage rights, was submitted under seal. *See,* AEP-5 (filed October 20, 1997) and CSX/NS-176 at 430-33 (filed December 15, 1997). We have found it necessary to put some of this information in the public record. *See also, Consolidated Rail Corporation — Trackage Rights Exemption — The Wheeling and Lake Erie Railway Company*, STB Finance Docket No. 33520 (STB served March 24, 1998).

[418] It is anticipated that, after an interim period, the Conrail/W&LE junction will be moved to Brilliant, OH, in which case Conrail's local trackage rights over the W&LE line would extend approximately 2.0 miles between the new junction and the Cardinal Plant. The essence of AEP's situation, pre-transaction and post-transaction, would not be affected by the relocation of the junction: it would still have access to two railroads, W&LE (which owns the line serving the Cardinal Plant) and either Conrail or NS (Conrail has, and NS will have, local trackage rights over that line).

[419] AEP indicated at the oral argument (on June 3, 1998) that a third railroad (CSX) also has access to the Cardinal Plant today. AEP further indicated, however, that CSX has restricted access only (CSX can only deliver low sulphur coal, which, AEP claims, is not the only kind of fuel used at the plant).

[420] Although Centerior recently consummated a merger with Ohio Edison to form FirstEnergy Corporation, we will continue to refer to Centerior by its prior name. *See,* CEC-17 at 1 n.1.

Ashtabula C) in Ashtabula, OH; Avon Lake Station in Avon Lake, OH; and Bayshore Station in Oregon, OH. Pre-transaction, Eastlake and Lake Shore Stations and the Ashtabula 5 unit at Ashtabula Station are served exclusively by Conrail; post-transaction, Eastlake and Lake Shore Stations and the Ashtabula 5 unit at Ashtabula Station will be served exclusively by CSX. Pre-transaction, the Ashtabula C unit at Ashtabula Station has no rail access but receives limited quantities of coal via truck; post-transaction, the Ashtabula C unit at Ashtabula Station will still lack rail access and will apparently still receive limited quantities of coal via truck. Pre-transaction, Avon Lake and Bayshore Stations are served exclusively by NS; post-transaction, Avon Lake and Bayshore Stations will continue to be served exclusively by NS.

(1) Centerior claims that the CSX/NS/CR transaction will eliminate Centerior's currently-available single-line haul from Southeastern Ohio coal origins to Eastlake, Lake Shore, and Ashtabula Stations. Pre-transaction, much of the coal burned at Eastlake and Lake Shore Stations and at the Ashtabula 5 unit at Ashtabula Station has come from The Ohio Valley Coal Company's Powhatan No. 6 Mine (this coal is referred to as East Ohio coal) and the Cyprus Amax Minerals Company's Emerald Mine in the Pittsburgh No. 8 Seam (this coal is referred to as MGA coal). Pre-transaction, East Ohio coal (from the Powhatan No. 6 mine and other sources) and MGA coal (from the Emerald Mine and other sources) has been transported by Conrail in a single-line haul; post-transaction, however, a single-line haul will not be possible, because the destinations will be served by CSX but the origins will be served by NS. Joint-line service, Centerior insists, is necessarily less efficient: delays are inherent, and transit times are necessarily increased. Another concern, Centerior adds, is that CSX will be able to control the pricing on any joint-line movement from Ohio origins, so as to assure that Centerior will select coal sources served by CSX (which will provide CSX with a longer haul).

(2) Centerior claims that the CSX/NS/CR transaction, by affording certain Conrail-served utilities access to dual-carrier service from origin to destination, will harm Centerior by enhancing the competitive position of its utility rivals. Centerior contends that, because it competes with these utilities for off-system sales, and because these utilities will be able to generate electricity in a less costly manner (due to new or improved dual rail access), Centerior's ability to make off-system sales will be prejudiced.[421]

(3) Centerior fears that the CSX/NS/CR transaction will expose Centerior to pass-through of a portion of the acquisition premium that CSX and NS have paid to acquire Conrail. Centerior concedes, in essence, that Conrail and NS presently seek to maximize their earnings on Centerior's coal traffic, and that each of Centerior's five stations is exclusively served today (either by Conrail or by NS). Centerior claims, however, that, because of the acquisition premium, the pressure CSX and NS will be under to maximize their earnings post-transaction will be greater than the pressure Conrail and NS presently are under to maximize their earnings pre-transaction. Centerior contends that, even if actual earnings by CSX and NS from intermodal diversions, etc., do not fall so far short of their projections as to prompt direct rate increases, upward pressure on coal and other bulk commodity rates is threatened by: (1) a dampening of any competitive ardor on the part of CSX and NS as each concentrates on maximizing revenues from its post-transaction traffic base; and (2) higher reported unit costs due to acquisition premium amortization, which in turn would raise the variable cost threshold for the Board's rate reasonableness jurisdiction. Centerior fears that the impact of the acquisition premium on exclusively served shippers like Centerior will be extreme: by Centerior's calculations, the acquisition premium will increase the rate reasonableness jurisdictional threshold

[421] Centerior participates in off-system sales in two National Electric Reliability Council (NERC) regions, the East Central Area Reliability (ECAR) Interconnection Network and the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Grid.

by 15% for CSX and by 24% for NS. Centerior also fears that the acquisition premium will reduce the return-on-investment calculation for both CSX and NS.

Basic Conditions Requested. Centerior therefore asks that we condition any approval of the primary application: (1) by granting NS trackage rights over the Conrail line between the Lake Shore Station located in Cleveland and CP 124 located east of Ashtabula, including rights to enter that line through the Buffalo Connecting Track and the Cleveland Connecting Track, for the limited purpose of transporting loaded and empty trains of coal to and from Centerior's Eastlake, Lake Shore, and Ashtabula Stations; and (2) by requiring (i) that the acquisition premium be quantified, and (ii) that the quantified amount be excluded from applicants' net investment bases for regulatory costing purposes.

Alternative Conditions Requested. Centerior contends on brief that, if we do not impose its basic trackage rights condition, we should at least require that NS be granted terminal trackage rights under 49 U.S.C. 11102(a): (i) between Collinwood Yard and Eastlake Station; (ii) between Collinwood Yard and Lake Shore Station; and (iii) between Ashtabula and Ashtabula Station. *See,* CEC-17 at 31-35. Centerior also contends on brief that, if we do not impose its basic/alternative trackage rights condition, we should at the very least require applicants to enter an agreement: (a) which will be enforceable by the Board; (b) which will obligate applicants to offer rates and service commitments to Centerior (from all Southeastern Ohio origins from which Centerior's three Cleveland-area plants formerly could receive coal via single-line Conrail service) that will be the same as the rates and service commitments in Centerior's current contract(s) with Conrail which were effective on January 1, 1997; (c) which will preclude the disclosure of Centerior's confidential rail rate information to any third party; and (d) which will obligate applicants to offer such rates and services for a minimum period of 10 years from the separation date (as defined in paragraph 2 of the Ohio Valley agreement, which is discussed below). *See,* CEC-17 at 23-24 and 36-37.

Ohio Valley Coal Company Agreement; Additional Condition Requested. Centerior claims that a settlement agreement entered into by applicants and The Ohio Valley Coal Company (hereinafter referred to as the Ohio Valley agreement): (a) does not provide a remedy for the harms Centerior will suffer if the CSX/NS/CR transaction is approved and implemented; and (b) will, if allowed to take effect, cause Centerior (and Ohio Valley's competitors as well) to suffer additional harms. Centerior contends that the Ohio Valley agreement is flawed in three significant respects.[422]

(1) Paragraph 5 of the Ohio Valley agreement requires applicants: to certify to Ohio Valley the applicable transportation rates from Ohio Valley's Powhatan No. 6 mine and other Ohio Valley sources in the near vicinity thereof to Centerior's Eastlake and Ashtabula Stations; and to expressly state such certification requirement in any applicable contract with Centerior. Centerior contends that paragraph 5 is blatantly anticompetitive because Ohio Valley, in responding to Centerior's coal supply bids, could use the certified information to the detriment of both Centerior and competing coal mines.

(2) Paragraph 1 of the Ohio Valley agreement provides: that applicants will seek to negotiate contract freight rates with Centerior for coal from Powhatan No. 6 mine and nearby affiliated mines; and that such rates will be the same as the rates set forth in Centerior's contract(s) with Conrail which were in effect on January 1, 1997. Centerior notes, however, that there is no guarantee that these rates will ever be available from Ohio Valley origins because other provisions of the Ohio Valley agreement provide: that applicants will work with Ohio Valley to find other purchasers for its coal; and that, if during any period applicants ship at least 1.2 million tons of coal per year from Ohio

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[422] Much of the information respecting the Ohio Valley agreement was submitted under seal. *See,* CEC-14 and -15 (filed December 10, 1997) and CSX/NS-181 (filed December 31, 1997). We have found it necessary to put some of this information in the public record.

Valley origins to destinations other than Centerior, the Ohio Valley agreement shall not apply for and during such period.

(3) Paragraph 2 of the Ohio Valley agreement provides that the term of that agreement will extend through December 31, 2004, with a possible extension for an additional year. Centerior claims, however, that the Ohio Valley "solution" to Centerior's single-line problem: is, at best, a short fix; and is, at worst, completely illusory, because, as previously noted, the obligation to quote 1997 rates can be extinguished if Ohio Valley finds other purchasers for its coal.

Centerior insists that, regardless of whether we impose its basic (and presumably also its alternative) conditions, we should condition approval of the CSX/NS/CR transaction on the rejection, nullification, and/or termination of the offending provisions of the Ohio Valley agreement.[423]

CONSUMERS ENERGY COMPANY. Consumers, an electric and gas utility serving Michigan's Lower Peninsula, operates five coal-fired generating plants that provide over 77% of its baseload system capacity: the J.H. Campbell Station near West Olive, MI; the D.E. Karn and J.C. Weadock Stations near Essexville, MI; the B.C. Cobb Station at Muskegon, MI; and the J.R. Whiting Station near Toledo, OH.[424] Consumers concedes that its pre-transaction transportation options are constrained, both at origin (many of Consumers' eastern sources are served exclusively by rail and exclusively by CSX) and, at least as respects Campbell, at destination. Campbell, a baseload plant responsible for about half of Consumers' coal-fired generation, is served exclusively by rail and exclusively by CSX (and therefore can receive eastern coal only via a CSX single-line haul); Karn and Weadock are served by CSX and CMGN (and therefore can receive eastern coal via a CSX single-line haul and also via a Conrail-CN-CMGN joint-line haul) and are also served by lake vessel;[425] Cobb, which has no rail access, is served exclusively by lake vessel (and therefore can receive eastern coal originated by a railroad other than CSX); and Whiting is served by CSX and CN (and therefore can receive eastern coal via a CSX single-line haul and also via a Conrail-CN joint-line haul). Consumers, though conceding the existence of potential rail competitive options as respects eastern coal moving to Karn, Weadock, Cobb, and Whiting, insists that CSX's dominance at Campbell has tempered the impact of the options at the other stations.[426]

Consumers acknowledges that, whereas its pre-transaction access to Conrail's MGA coal mines is generally limited to a Conrail-CSX joint-line haul, its post-transaction access to Conrail's MGA coal mines will entail a CSX single-line haul.[427] Consumers claims, however, that this CSX single-line haul (not to mention dual access by CSX and NS to Conrail's MGA coal mines) will be of little or no value. The notion that Consumers will benefit from this new CSX single-line access,

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[423] As respects Paragraph 5, Centerior adds that we should, at the very least, impose a condition prohibiting applicants from disclosing Centerior's rates to Ohio Valley "under any scenario." CEC-17 at 20.

[424] At Campbell, Karn, Weadock, and Cobb, Consumers blends various types of coal from different sources (in general, these stations blend relatively less expensive western coals from Montana with relatively more expensive eastern coals from West Virginia, Pennsylvania, and Kentucky). At Whiting, Consumers burns only eastern coals.

[425] Central Michigan Railway is referred to as CMGN.

[426] Consumers adds that, because Conrail has only limited access to eastern low sulfur coal sources, Conrail joint-line service (a Conrail-CN-CMGN joint-line haul to Karn and Weadock and a Conrail-CN joint-line haul to Whiting, and presumably also a Conrail-lake vessel joint-line haul to Cobb) offers only a limited alternative to CSX single-line service (and presumably offers, for the same reason, only a limited alternative to a CSX-lake vessel joint-line haul to Cobb).

[427] Conrail's MGA coal mines are the mines located on the lines of the former Monongahela Railway Company (MGA) in Southwestern Pennsylvania and Northern West Virginia.

Consumers contends, is premised upon the erroneous view that the only thing that prevents Consumers from greater use of MGA coal today is the necessity for a Conrail-CSX joint-line haul. The fact of the matter, Consumers insists, is that, given the limitations of its equipment, environmental considerations have generally precluded Consumers, and generally will continue to preclude Consumers, from burning substantial amounts of relatively high sulfur MGA coal. Improved CSX access to MGA coal mines, Consumers therefore contends, will not confer any competitive benefits on Consumers.

Consumers fears, in fact, that the CSX/NS/CR transaction will actually result in a reduction of competition for the delivery into Michigan of the eastern low sulfur and compliance coals that meet Consumers' requirements. Consumers claims that, because most of the eastern low sulfur and compliance coal sources on which Consumers relies are already located on CSX, the CSX/NS/CR transaction, which will further concentrate CSX's dominance over these coal sources, will lessen what little competition exists today. Consumers also fears that, for captive shippers like itself, the CSX/NS/CR transaction presents a serious risk of significant harm from future increases in rail rates, as applicants move to recover the multi-billion dollar price premium they paid for Conrail.

Consumers accordingly asks that we deny the primary application, or, alternatively, that we subject any approval thereof to two conditions. (1) Condition #1, which is premised upon the notion that the most effective means to protect Consumers from rail market power abuse vis-à-vis future rates to Campbell is to open Campbell to effective rail competition, would require CSX to grant trackage rights or haulage rights, on reasonable terms, over the CSX line that runs between Campbell Station near West Olive, MI, and the CSX/Conrail interchange at Grand Rapids, MI.[428] (2) Condition #2, which is premised upon the notion that an investment base calculated by reference to acquisition price is inappropriate for regulatory costing purposes, would require CSX and NS to exclude the acquisition premium from their net investment bases for such purposes. The purchase price of new or additional assets, Consumers contends, is not the proper measure of a utility's increased investment base; to protect captive shippers from being forced to subsidize the bidding war waged by CSX and NS, only the book value of Conrail's assets (and not the acquisition premium) should be included in CSX's and NS' investment bases for regulatory costing purposes.[429]

EASTMAN KODAK COMPANY. Kodak relies on rail service for the inbound transportation of coal and other materials used in, or in connection with, the manufacturing operations it conducts at its Kodak Park facility in Rochester, NY. Post-transaction, Kodak notes, both CSX and NS will be able to provide competitive rates, routes, and service on traffic moving to Kodak Park, including coal movements originating on Conrail's MGA lines. CSX, which will acquire Conrail's Buffalo-Rochester-Albany line, will access Kodak Park directly; and NS, which will acquire Conrail's Buffalo-Silver Springs-Corning line, will access Kodak Park via a shortline connection (R&S, the shortline, connects with Conrail's Buffalo-Silver Springs-Corning line at Silver Springs). Kodak is concerned, however, that, because it is a party to one of Conrail's Existing Transportation Contracts,

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[428] The line between West Olive and Grand Rapids (via Holland) is presently a CSX line. The trackage rights or haulage rights over this line would presumably be granted to NS, which will acquire what is now the Conrail line into Grand Rapids.

[429] Consumers' CE-12 motion filed May 26, 1998, is being denied; Consumers should have discussed its CE-12 concerns in its evidentiary filing (which was due October 21, 1997). It should have been apparent to Consumers, and well before October 21, 1997, that, because applicants had not committed to making NS the substitute carrier, applicants intended to keep open the possibility that CSX might be the substitute carrier with respect to coal originated at the Fola mine in West Virginia and handled by Conrail under contract. *See also*, CSX-150 (CSX's reply, filed May 29, 1998).

the new competition made possible by the CSX/NS/CR transaction will not benefit Kodak (not, at least, as respects the coal traffic subject to the Conrail/Kodak contract) until the Conrail/Kodak contract's expiration date (December 31, 2001). Kodak fears that CSX, which will succeed to Conrail's rights with respect to the Conrail/Kodak contract, intends to monopolize Kodak's business into the next century (*i.e.*, until December 31, 2001).[430]

Kodak claims, in essence, that the position CSX has taken vis-à-vis the Conrail/Kodak contract is unfair, in that CSX is insisting on adherence to those provisions of the contract that favor CSX but is asking the Board to override those provisions of the contract that favor Kodak. (1) The contract apparently contains provisions that require Kodak to accept delivery, at specified rates, of substantial volumes of coal. CSX is insisting on adherence to these provisions (*i.e.*, CSX is insisting that, until the contract's expiration date, coal traffic that would have moved under the contract had there been no CSX/NS/CR transaction must move under the contract notwithstanding the CSX/NS/CR transaction). (2) The contract also contains provisions that bar assignment of the contract, in whole or in part, by Conrail without the prior written consent of Kodak. CSX is not insisting on adherence to these provisions; CSX, rather, is asking for an override of these provisions.

Kodak contends: that we have no authority to nullify the provisions of the Conrail/Kodak contract that bar assignment without consent; and that, even if we do have such authority, we should not utilize that authority to facilitate the efforts of CSX and NS to carve up and allocate markets without a competitive alternative in a most egregious anticompetitive fashion. And, Kodak adds, nullification of the "consent to assignment" provisions is not "necessary" to implementation of the CSX/NS/CR transaction. Kodak therefore asks that we take no action that might impair the contractual rights of Kodak and other shippers that have entered into "Existing Transportation Contracts" with Conrail.

EIGHTY-FOUR MINING COMPANY. EFMC, a Rochester & Pittsburgh Coal Company subsidiary, owns and operates a coal mine known as Mine 84 in Washington County, PA. Mine 84 produces a high Btu content and medium sulphur content Pittsburgh Seam coal that competes with coal produced at six other rail-served Pittsburgh Seam mines (the Bailey, Enlow Fork, Blacksville, Loveridge, Emerald, and Federal #2 mines, referred to collectively as the six competitive mines).[431] EFMC warns that the CSX/NS/CR transaction will effect a drastic change in the competitive posture of Mine 84 vis-à-vis the six competitive mines. Pre-transaction, Mine 84 is served exclusively by rail and exclusively by Conrail; post-transaction, Mine 84 will be served exclusively by rail and exclusively by NS.[432] Pre-transaction, the six competitive mines are served exclusively by rail and exclusively by Conrail; post-transaction, however, these mines, though still served exclusively by rail, will be served by two railroads (CSX and NS).[433] The CSX/NS/CR transaction, EFMC therefore claims, will harm EFMC in three distinct ways: (1) by conferring upon the six competitive mines, and upon any new mines accessible from the MGA lines, an advantage (dual carrier access) not conferred upon Mine 84; (2) by effectively foreclosing Mine 84 from access to any destination served exclusively by Conrail pre-transaction and by CSX post-transaction; and (3) by imposing

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[430] Kodak notes: that about 25% of the coal that has moved under the Conrail/Kodak contract has originated at points that will be exclusive NS points post-transaction; and that the remaining 75% of the coal that has moved under the Conrail/Kodak contract has originated at points that both CSX and NS will have the right to serve post-transaction.

[431] The Bailey, Enlow Fork, Blacksville and Loveridge mines are operated by CONSOL; the Emerald mine is operated by Cyprus Amax; and the Federal #2 mine is operated by Peabody Coal.

[432] Mine 84 is served via Conrail's Ellsworth Secondary, which intersects at Monongahela, PA, with Conrail's Monongahela Branch (the Mon Branch).

[433] The six competitive mines are served by Conrail's MGA lines.

upon Mine 84 a severe disadvantage in competing to supply coal to destinations jointly served by CSX and NS. And, EFMC insists, the new single-line access it will have to southeastern utility customers served by NS will not compensate for the foreclosure and disadvantage EFMC will suffer with regard to approximately half of its market.[434]

EFMC therefore asks that we preserve the pre-transaction competitive balance within the MGA coal market by imposing a condition granting CSX access to Mine 84. (1) EFMC's preferred condition would require that CSX be granted trackage rights over the Ellsworth Secondary with the right to serve Mine 84, and with associated rights of access along the Mon Branch. These trackage rights, EFMC adds, should be subject to terms and conditions consistent with those governing CSX's access to Conrail's MGA lines. (2) EFMC's alternative condition would require that CSX be allowed to access Mine 84 via switching provided by NS, with cars interchanged either at Homestead (at the north end of the Mon Branch) or at West Brownsville (the junction point between CSX and the MGA lines). EFMC adds: that, if CSX and NS cannot agree on an interchange point, that point would have to be determined by the Board; and that the switching to be performed by NS should be subject to the same terms and conditions that will be applicable to the reciprocal switching already provided for in the CSX/NS/CR application.

GPU GENERATION. GPU indicates that its interests in this proceeding are primarily focused on two coal-burning units: Portland Station (which is located 10 miles from Stroudsburg, along the west bank of the Delaware River in Northampton County, PA); and Titus Station (which is located two miles south of Reading, along the Schuylkill River in Berks County, PA). GPU also indicates: that Portland and Titus Stations are rail-served exclusively by Conrail pre-transaction and will be rail-served exclusively by NS post-transaction; that, in 1994, GPU entered into a coal transportation agreement with Conrail to provide the coal transportation requirements of Portland and Titus Stations from specified MGA coal mines; and that the Conrail/GPU contract expires on December 31, 1998. GPU further indicates: that it has entered into a number of long-term contracts with mining companies for the supply of coal for consumption by its various generating stations; that these contracts, which expire at various dates through 2007, provide for the purchase of either a fixed or a minimum/maximum amount of its stations' coal needs; that the coal burned at Portland and Titus Stations is presently sourced from Consol's Pittsburgh Seam mines; and that GPU recently entered into a new coal supply contract (that continues until December 31, 2002) respecting coal originated at Rochester & Pittsburgh Coal Company's Mine 84.

GPU's grievance respecting the CSX/NS/CR transaction concerns the "exorbitant" acquisition premium that applicants agreed to pay for Conrail.[435] GPU notes that, if the CSX/NS/CR transaction is approved, the pending expiration of the Conrail/GPU contract will require GPU to negotiate with NS over post-1998 rail service to Portland and Titus Stations. GPU contends that it will be captive to NS post-transaction (because NS' post-transaction control over the lines into Portland and Titus Stations will negate the effect of CSX's post-transaction access to the MGA coal fields), but

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[434] EFMC claims that the harm it will suffer on account of the CSX/NS/CR transaction is more serious than the harms alleged in previous cases by 1-to-1 shippers concerned by the advantages conferred upon their 1-to-2 competitors. EFMC contends: (a) that Mine 84's problem is the direct effect of the CSX/NS/CR transaction itself, not a collateral effect flowing from the settlement of other competitive problems; and (b) that Mine 84's problem is unique, in that the CSX/NS/CR transaction will confer the advantages of 1-to-2 status upon all, and not merely some, of Mine 84's competitors.

[435] GPU, which defines "acquisition premium" as the amount paid by CSX and NS in excess of the book value of Conrail's assets, claims that, for regulatory purposes, the acquisition premium amounts to between $7.7 and $9.1 billion.

concedes, in essence, that it will be no more captive to NS post-transaction than it has been to Conrail pre-transaction. GPU insists, however, that, because of the acquisition premium, the revenue maximization pressures upon NS will be far greater than the revenue maximization pressures upon Conrail.

GPU asks that the CSX/NS/CR application be denied. The CSX/NS/CR transaction, GPU contends, will harm the public interest because the acquisition premium paid by applicants will burden CSX and NS with substantial fixed charges, which CSX and NS will attempt to finance by imposing unreasonable rate increases on their captive shippers. CSX and NS, GPU claims, will have difficulty recovering those charges in any other fashion; the cost savings and intermodal traffic diversions CSX and NS have projected, GPU further claims, simply will not generate the required amount of revenues. Captive shippers, GPU contends, should not be required to bear the risk that applicants paid too much for Conrail.

GPU insists that, if we approve the CSX/NS/CR application, we must impose an acquisition premium exclusion condition designed to protect GPU and other captive shippers from being forced to subsidize the acquisition premium through higher rail rates. The condition contemplated by GPU: would require the Board to quantify the amount of the acquisition premium; and would require applicants to exclude the quantified amount from their net investment bases for regulatory costing purposes. Citing what it calls "[l]ong-standing precedent in the area of utility maximum rate regulation [that] holds that acquisition-related asset write-ups are not properly includable in a utility's investment base," GPU-03, Argument at 7-8, GPU contends that, for regulatory costing purposes, only the uninflated (by the premium) net book value of Conrail's assets should be allocated to CSX's and NS' investment bases.

INDIANAPOLIS POWER & LIGHT COMPANY. IP&L, an electric utility, has two coal-fired generating stations in Indianapolis. (1) IP&L's Perry K plant is located on a Conrail line. IP&L contends that, because Conrail does not serve IP&L's downstate Indiana origin mines, Conrail functions today as a switch carrier, and is neutral as between traffic originated by Indiana Southern Railroad (ISRR) and Indiana Rail Road Company (INRD, an 89%-owned CSX subsidiary). (2) IP&L's Stout plant is located on an INRD line. IP&L contends that coal originated at IP&L's downstate Indiana origin mines can today be delivered to Stout both by ISRR (via switches by Conrail and INRD) and by INRD.

IP&L fears that the CSX/NS/CR transaction will have 2-to-1 impacts at both plants. (1) Perry K, IP&L contends: can today be served by two railroads (ISRR and INRD, both of which have access via a Conrail switch); post-transaction, however, CSX, to which the Conrail line will be assigned, will favor INRD; and, therefore, Perry K's post-transaction service will be provided by CSX/INRD. IP&L also contends: that Perry K presently has access to direct service by Conrail and to indirect service by INRD (via a short truck haul from Stout); that, once the CSX/NS/CR transaction is implemented, CSX will not compete with INRD; and that, therefore, Perry K's post-transaction coal will be hauled by CSX/INRD only. (2) Stout, IP&L contends: can today be served by two railroads (ISRR, apparently via switches by Conrail and INRD; and INRD); post-transaction, however, INRD will favor CSX; and, therefore, Stout's post-transaction service will be provided by CSX/INRD only. IP&L adds that, in any event, it presently has the ability to "build out" from Stout to reach a nearby Conrail line, formerly the Indianapolis Belt Secondary Route (the Indianapolis Belt); but this build-out option, IP&L warns, will cease once the Indianapolis Belt is assigned to CSX, because NS will have only overhead trackage rights on that line. IP&L also adds that it would presently be possible to establish a truck transloading facility on the Indianapolis Belt, and to serve Stout from that facility; and IP&L warns that this transload option, much like the build-out option, will cease once the Indianapolis Belt is assigned to CSX. IP&L therefore contends that the CSX/NS/CR transaction should not be approved unless we adopt certain conditions.[436]

Condition #1. IP&L asks that we impose a condition making NS an equal competitor with CSX/INRD. This, IP&L adds, could be most effectively accomplished by making Indianapolis an SAA. IP&L claims that an SAA approach: would give NS an ownership interest in Conrail's Indianapolis lines, and also in Conrail's Avon and Hawthorne Yards; would allow NS to connect with shortlines operating in and around Indianapolis; would allow NS to provide direct service to points that can presently receive direct service from Conrail; and would allow NS to serve Stout via a build-out or build-in to/from the Indianapolis Belt.[437]

Condition #1a. IP&L contends that, because Conrail can today serve Stout via switching over INRD, we should impose a condition granting NS the right to serve Stout via switching over INRD, at a reasonable switching charge and without the inefficiencies of moving traffic via Hawthorne Yard.

Condition #2. IP&L asks that we impose a condition preserving the build-in/build-out status quo at Stout. Conrail, IP&L claims, would be able to serve a build-out constructed between Stout and the Indianapolis Belt; and NS, IP&L therefore insists, should also be able to serve any such build-out.[438]

Condition #3. IP&L asks that we require direct access by NS (via fully effective local trackage rights) to shippers in Indianapolis (especially IP&L at its Perry K and Stout plants) and to shortlines serving Indianapolis. IP&L notes that, with direct access: the inefficient routing of NS traffic through Hawthorne Yard would be unnecessary; and NS would be able to provide local service, service via build-ins and build-outs, and service to new facilities.[439]

Condition #4. IP&L asks that we impose a condition requiring that the Perry K and Stout plants be treated as 2-to-1 destinations.[440]

Condition #5. IP&L contends that there is no reason why NS should be charged, with respect to any particular movement, both a trackage rights fee and a switching charge. IP&L insists that, although one or the other would be appropriate, the imposition, with respect to any particular movement, of both would not be appropriate, and would leave NS unable to provide competitive service to Indianapolis shippers. IP&L therefore asks that we require that NS pay CSX: (1) either (i) a trackage rights fee set at CSX's costs, or (ii) a switching charge set at CSX's or INRD's costs (depending on which carrier delivers the traffic); but (2) not both a trackage rights fee and a switching charge. Condition #5 would also require that such costs be billed to shippers on a "direct passthrough" basis.[441]

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[436] Conditions #1 through #11 are taken from IP&L's IP&L-3 submission. *See,* IP&L-3 at 37-40 (we have made a few revisions in IP&L's numbering scheme). Conditions #12, #13, and #14 are taken from IP&L's "ACE, *et al.*-18" (hereinafter referred to as ACE-18) submission. *See,* ACE-18 at 51-52 (we have renumbered these conditions). *See also,* IP&L-11 at 46-49 (IP&L presented, in its brief, a slightly different version of its conditions). *See also,* the "NITL-12, TFI-6, IP&L-12" brief (IP&L endorses NITL's post-implementation rate conditions).

[437] IP&L would prefer that we confer SAA status on Indianapolis and also grant ISRR trackage rights access to Perry K and Stout. *See,* IP&L-11 at 6.

[438] Condition #2 is an alternative to Condition #1, and probably also to Condition #1a.

[439] Condition #3 is an alternative to Condition #1.

[440] Condition #4 is apparently intended as an alternative to Condition #3.

[441] IP&L asks that we impose Condition #5: as a supplement to Condition #3; and also in the event we impose neither Condition #3 nor Condition #1. IP&L adds, *see,* IP&L-11 at 47, that, if we

(continued...)

Condition #6. IP&L asks that we impose a condition that provides that traffic in Indianapolis handled by NS, especially IP&L's unit trains of coal, need not be routed by NS via Hawthorne Yard, but instead may be delivered or picked up by NS directly to/from shippers. There is, IP&L claims, no justification for denying NS local trackage rights and instead requiring it to route all traffic via Hawthorne Yard.

Condition #7. To ensure that any switching upon which NS must rely is efficient and nondiscriminatory, IP&L asks that we impose a condition providing for oversight of any CSX switching services.

Condition #8. IP&L asks that we impose, with respect to the cost-based trackage rights fees and switching charges provided for by Condition #5, a supplemental condition providing: (1) that the Board will have the right to audit CSX's relevant costs; (2) that shippers, including IP&L, will have the right to audit CSX's relevant costs; (3) that shippers may challenge such costs as excessive or unreasonable; (4) that the Board will review any such challenge on an expedited basis; and (5) that the Board will have the authority to prescribe lower, reasonable fees and/or charges, if appropriate.

Condition #9. Because (IP&L claims) applicants have not determined precisely how NS will operate in Indianapolis, IP&L asks that we impose a condition that provides that the CSX/NS/CR transaction cannot take effect until all necessary labor agreements and detailed operations plans are in place.

Condition #10. IP&L contends: that, after its current contracts with INRD expire in 2002, environmental considerations may require the use of low-sulfur "compliance" coal at Stout; that the low-sulfur coal needed at Stout will probably have to come from western origins; that the competitive routing options for western coal that exist today (Conrail via St. Louis; CSX via Chicago) will cease to exist post-transaction (because the Conrail route will be acquired by CSX); that a post-transaction NS routing would not be a viable option, because NS' routings via St. Louis and Chicago will be circuitous and inefficient, and because there will be serious impediments to an NS routing via Kansas City; and that, accordingly, IP&L's only post-transaction western coal routing option will be via CSX which, by favoring its own low-sulfur coal origins, might actually prevent IP&L from using any western coal, even though coal originated at CSX origins might not produce the best outcome for IP&L's ratepayers or the environment. To ensure that balanced competition for movements of western coal to Indianapolis is maintained, and to ensure that any IP&L traffic routed via Kansas City or other interchanges to NS from western carriers will be handled efficiently with through rates quoted through Kansas City, IP&L asks that we impose a condition requiring, for an indefinite period, continuing expeditious oversight of this matter.

Condition #11. To ensure that NS will be able to compete effectively with CSX for western coal movements to Indianapolis, IP&L asks that we impose a supplemental condition providing either: (1) that the western railroads (UPRR and BNSF) must, upon request by IP&L or NS, participate in a through rate with NS at Kansas City on a nondiscriminatory basis vis-à-vis St. Louis and Chicago; or (2) that CSX must, upon request by IP&L or NS, give NS access on a nondiscriminating basis over one of CSX's lines from St. Louis or Chicago to Indianapolis.

Condition #12. IP&L claims that its evidence: demonstrates that the railroads involved in the CSX/NS/CR transaction are not now pricing their "bottleneck" services in the profit maximizing mode contemplated by the "one-lump" theory; demonstrates, that is to say, that a coal-burning plant

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[441](...continued)
grant access rights to ISRR, we should also impose a condition requiring that ISRR pay CSX, on a direct passthrough basis to IP&L: (1) either (i) a trackage rights fee set at CSX's costs, or (ii) a switching charge set at CSX's or INRD's costs (depending on which carrier delivers the traffic); but (2) not both a trackage rights fee and a switching charge.

served by a single (bottleneck) railroad at destination may benefit from rail competition at origin, provided that the destination railroad is not one of the origin railroads; and demonstrates, by necessary implication, that the one-lump notion that a captive coal-burning utility cannot be adversely impacted by a transaction such as the CSX/NS/CR transaction is not necessarily valid. IP&L insists that its evidence demonstrates that, given the rigorous nature of the assumptions that underlie the one-lump theory, such assumptions are not likely to be met in practice with sufficient uniformity to justify a presumption that the theory applies to every transaction. IP&L further insists that its evidence demonstrates that, in reality, the profit maximizing pricing pattern contemplated by the one-lump theory has not been followed consistently by the railroads involved in the CSX/NS/CR transaction. IP&L therefore concludes that its evidence demonstrates that the CSX/NS/CR transaction will increase the market power of CSX and NS vis-à-vis captive coal-burning utilities, and will thereby enable CSX and NS to extract increased monopoly profits from such utilities.

IP&L contends that, to ensure that the CSX/NS/CR transaction does not result in an increase in the market power exercised by applicants, we must impose an appropriate condition: to protect any coal shipper presently served by a single bottleneck railroad at destination, provided that the bottleneck railroad is not also one of the origin railroads; and also to protect any coal shipper whose rail competition at destination will be reduced or eliminated by the CSX/NS/CR transaction. The appropriate condition that we must impose, IP&L contends, would be either an "equal access" condition (IP&L's first choice), a "bottleneck rate jurisdiction" condition (IP&L's second choice), or a "rate cap" condition (IP&L's third choice).[442] (1) The equal access condition would provide IP&L, and any other similarly situated coal shipper, effective equal access to CSX and NS at destination for the receipt of coal. (2) The bottleneck rate jurisdiction condition would require CSX and NS to accept rate jurisdiction over the bottleneck segment of any movement of coal to IP&L and any other similarly situated coal shipper. (3) The rate cap condition would impose a rate cap (with adjustments for cost changes using the RCAF-A) for at least 5 years, subject to extension if circumstances warrant.

Condition #13. IP&L asks that we impose a condition barring CSX and NS from including the acquisition premium in the determination of the jurisdictional threshold under 49 U.S.C. 10707(d)(1)(A).[443] IP&L contends that, without this condition: the acquisition premium, the associated asset write-up, and the increased depreciation expense resulting from the write-up will generate a substantial increase in CSX's and NS' variable costs; and any increase in such variable

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[442] IP&L also asks that we impose a condition to assure that the CSX/NS/CR transaction "does not lead to rate increases for shippers on CSX or NS adversely affected by the transaction through the loss of, or reduction in, competition." *See,* ACE-18 at 6. IP&L apparently regards this broadly worded condition as a goal to be met by its more narrowly worded equal access, bottleneck rate jurisdiction, or rate cap conditions.

[443] IP&L calculates that, for jurisdictional threshold purposes, the acquisition premium will be $7.733 billion. *See also,* IP&L-11 at 10 and 39 (the acquisition premium may be a greater amount). IP&L indicates that the condition barring CSX and NS from including the acquisition premium in the determination of the jurisdictional threshold could be accomplished by directing CSX and NS to record their portion of Conrail's historical gross book value and accumulated depreciation as it was reported to the Board before the CSX/NS/CR transaction. The difference between the appraised value and historical book value, IP&L adds, would be recorded in CSX's and NS' Account 80 (Other Elements of Investment).

costs will effectively raise the R/VC 180% rate floor for captive traffic.[444] IP&L further contends: that, as a practical matter, the R/VC 180% ratio is, for captive traffic, the rate ceiling as well as the rate floor; and that, for this reason, if we were to allow any part of the acquisition premium and the associated write-up of Conrail's assets to affect the calculation of variable costs for purposes of determining the jurisdictional threshold, we would be permitting CSX and NS to raise their rates and those of Conrail's customers above the previous "reasonable maximum."[445]

Condition #14. IP&L asks that we impose a condition barring CSX and NS from including the acquisition premium in the determination of revenue adequacy under 49 U.S.C. 10704(a).[446] This condition, IP&L claims, is critical because, without it, the acquisition premium CSX and NS have paid will result in inflated valuations, which themselves will result in inflated return targets for revenue adequacy calculations. IP&L adds that the decision holding that revenue adequacy calculations are to be based upon acquisition costs,[447] which was adopted in the context of acquisitions at prices below book value, should not be used as justification for perpetuating railroad claims of revenue inadequacy.

NIAGARA MOHAWK POWER CORPORATION. NIMO, an electric utility that serves customers in upstate New York and that also sells electricity in the wholesale market as a participant in the New York Power Pool (NYPP), indicates that its interests in this proceeding are focused on its two coal-fired generating stations in Western New York: Huntley Station, located in Tonawanda, NY (on the Niagara River, 3 miles north of Buffalo, NY); and Dunkirk Station, located in Dunkirk, NY (on a peninsula jutting out into the City of Dunkirk harbor on Lake Erie). NIMO claims: that both stations, which are rail-served exclusively by Conrail, burn coal obtained from mines in the Pittsburgh Seam, which is located in Southwestern Pennsylvania and Northern West Virginia; that, because Conrail serves these mines, Conrail has transported coal to Huntley and Dunkirk Stations in single-line service; that both stations are primarily dependent on rail service (*i.e.*, Conrail service) for their coal deliveries;[448] that, for this reason, both stations are captive to Conrail pre-transaction;

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[444] IP&L concedes that, if the CSX/NS/CR transaction yields the benefits CSX and NS project (*i.e.*, increased traffic and increased efficiencies), variable costs will not be increased. IP&L is concerned, however, that, if the projected benefits do not materialize: variable costs will be increased; and CSX and NS will attempt to raise the rates they charge captive shippers.

[445] IP&L, citing decisions involving laws administered by the Federal Power Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Interstate Commerce Commission, contends that it has long been a universally recognized principle of maximum rate regulation that acquisition-related asset write-ups cannot be allowed to affect the investment base. *See,* ACE-18 at 39-43.

[446] IP&L calculates that, for revenue adequacy purposes, the acquisition premium will be $9.113 billion. *See also,* IP&L-11 at 10 and 39 (the acquisition premium may be a greater amount). IP&L indicates that the condition barring CSX and NS from including the acquisition premium in the determination of revenue adequacy could be accomplished by recording the acquisition premium in Account 80 (Other Elements of Investment). IP&L adds that it would be necessary: to identify Conrail's net railway operating income and net investment base at pre-acquisition or existing book levels; to divide these amounts between CSX and NS on a 42%-58% basis; and to take these divided amounts into account in determining post-transaction revenue adequacy for CSX and NS.

[447] *Railroad Revenue Adequacy - 1988 Determination*, 6 I.C.C.2d 933, 940-42 (1990).

[448] NIMO claims that it relies on rail service for nearly all of the coal deliveries at Huntley Station and for most of the coal deliveries at Dunkirk Station. Neither trucks nor lake vessels, NIMO contends, can provide effective competition to rail as respects coal receipts at Huntley and Dunkirk (continued...)

and that, because the CSX/NS/CR transaction envisions the assignment to CSX of the Conrail lines serving Huntley and Dunkirk Stations, both stations will be captive to CSX post-transaction.

(1) NIMO believes that its 1-to-1 Huntley and Dunkirk Stations will be competitively disadvantaged vis-à-vis the 1-to-2 plants of competing utilities in the Detroit SAA and the South Jersey/Philadelphia SAA. NIMO fears, in particular, that the CSX/NS/CR transaction will diminish the ability of its Huntley and Dunkirk Stations: to compete with the River Rouge and Trenton Channel plants of The Detroit Edison Company (DEC); and to compete with these two plants and many other 1-to-2 plants as respects wholesale energy sales to utilities that are members of the NYPP and also to utilities located beyond the limits of the NYPP.

(2) NIMO believes that the acquisition premium and other economic factors will result in increases in the rail rates it will have to pay at Huntley and Dunkirk Stations. NIMO contends: that CSX and NS, which will have no choice but to pay their respective portions of the acquisition premium they incurred to acquire Conrail, will be subject to competitive pressures in serving 1-to-2 shippers; that, therefore, it is likely that CSX and NS will attempt to raise the rates charged their captive shippers; and that such rate increases will be made even more likely if CSX and NS are unable to realize the growth and efficiency gains they have projected.

(3) NIMO concedes that the CSX/NS/CR transaction will result in the establishment of CSX vs. NS competition on Conrail's MGA lines (which serve most of the Pittsburgh Seam mines relied upon by NIMO) and at the Ashtabula Harbor facility at Ashtabula, OH (at which coal may be transloaded to lake vessels for movement to Dunkirk Station). NIMO claims, however, that, because CSX will control the destinations at Huntley and Dunkirk Stations, NIMO will not be able to take advantage of the new competition at the MGA origins. And, NIMO further claims, it will not benefit from competition at Ashtabula either. NIMO contends: that Ashtabula, which is already operating near capacity, has a limited coal storage area; that Ontario Hydro, which already accounts for more than 30% of the total coal movements at Ashtabula, is expected to vastly increase its own coal shipments through Ashtabula; that the increase in coal movements by Ontario Hydro will likely prevent NIMO from receiving the benefits of the increase in competition at Ashtabula; and that NIMO's opportunities at Ashtabula are likely to be further limited by a natural reluctance on the part of CSX to use its limited share of capacity at Ashtabula to compete against itself to move coal to Dunkirk Station.

(4) NIMO believes that the CSX/NS/CR transaction may significantly harm the ability of the Bessemer and Lake Erie Railroad (B&LE) to move MGA coal to the Pittsburgh & Conneaut Dock Company (P&C Dock) rail/water dock facilities on Lake Erie at Conneaut. NIMO contends: that water movements of coal to Dunkirk Station, though limited, have generally moved through P&C Dock's Conneaut transloading facilities; that, because B&LE has limited access to the kind of quality low cost coal sources found in the MGA area, B&LE will be able to move significant volumes of coal to Conneaut only if the coal is originated by CSX and/or NS; but that CSX will have no incentive to offer competitive service to Dunkirk Station that would involve an interchange with

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[448](...continued)
Stations. (1) NIMO acknowledges that, on occasion, trucks have delivered coal to Huntley and Dunkirk Stations, but claims that, in recent years, trucks have been used only to a limited extent. (2) NIMO acknowledges that, in recent years, lake vessels have delivered a limited amount of coal to Huntley Station and somewhat greater quantities of coal to Dunkirk Station. NIMO insists, however, that, at both stations, the role that lake vessels can play is severely limited by weather conditions. And, NIMO contends, it simply cannot stockpile at Huntley Station the quantities of coal that it would be required to stockpile if Huntley Station were to receive all, or even most, of its coal via lake vessel.

B&LE and a subsequent vessel movement from Conneaut because CSX has no reason to compete with its own direct rail service to Dunkirk Station. NIMO also contends that NS will have no incentive to offer competitive service to Dunkirk Station that would involve an interchange with B&LE and a subsequent vessel movement from Conneaut because Ashtabula and Conneaut are competing facilities, and because NS (like CSX) will have access to Ashtabula. NIMO is therefore concerned about the potential loss of its limited, but important, rail/vessel (via Conneaut) alternative for moving coal to Dunkirk Station.

(5) NIMO believes that the CSX/NS/CR transaction will cause competitive harm to the Rochester & Pittsburgh Coal Company's Mine 84, an important supplier of low-sulfur coal to Huntley and Dunkirk Stations. NIMO contends: that, pre-transaction, Mine 84 coal is transported by Conrail in a single-line movement from origin to destination; that, post-transaction, Mine 84 coal will have to be transported in an NS/CSX joint-line movement (because Mine 84 will be rail-served exclusively by NS, whereas Huntley and Dunkirk Stations will be rail-served exclusively by CSX); and that movements from Mine 84 to Huntley and Dunkirk Stations will therefore require a switch from NS to CSX, which may be subject to a high switching charge.

NIMO therefore asks that we impose conditions intended to alleviate the anticompetitive effects that NIMO contends will be created if the CSX/NS/CR transaction is approved without appropriate conditions. NIMO, a member of the Erie-Niagara Rail Steering Committee (ENRSC), asks, in particular, that we adopt either an ENRSC condition (either ENRSC Condition #1, #2, or #3, in that order of preference) or NIMO's own condition (in the event we do not adopt any of the ENRSC conditions).

ENRSC Conditions. ENRSC Condition #1 contemplates: (i) the creation of a Niagara Frontier SAA that would permit equal access by Conrail shippers (including Huntley and Dunkirk Stations) to both CSX and NS; and (ii) the establishment within the Niagara Frontier SAA of reciprocal switching arrangements for all current Conrail customers (including Huntley and Dunkirk Stations) that would allow other rail carriers serving the area to provide competitive service at a reasonable level of charges (*i.e.*, $156.00 per car). ENRSC Condition #2 contemplates the reciprocal grant of terminal trackage rights by CSX and NS (to NS and CSX, respectively) for operations over the Conrail lines in the geographical area of the Niagara Frontier SAA, which would allow all current Conrail customers (including Huntley and Dunkirk Stations) to receive rail service directly from both CSX and NS at a reasonable level of charges (*i.e.*, $0.29 per car mile). ENRSC Condition #3 contemplates the establishment by CSX and NS of reciprocal switching to all current and future customers that are or will be served by the Conrail lines located within the geographical area of the Niagara Frontier SAA (including Huntley and Dunkirk Stations), and further contemplates the establishment of a reasonable reciprocal switching charge (*i.e.*, $156.00).

NIMO's Own Condition. NIMO contends that, if we do not adopt any of the ENRSC conditions, we should, at the very least, condition approval of the CSX/NS/CR transaction upon the grant by CSX to NS of trackage rights that would enable NS to serve Huntley and Dunkirk Stations. (i) NIMO asks that we order that NS' overhead trackage rights on Conrail's Belt Line Branch and Niagara Branch be modified to allow NS to operate over such tracks and any necessary connecting tracks for the purpose of serving Huntley Station. (ii) NIMO asks that we order that NS be granted trackage rights over Conrail's Chicago Line between CP 58 (near Westfield, NY) and Dunkirk Station (near CP 42 in Dunkirk, NY) for the purpose of serving Dunkirk Station.[449]

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[449] NIMO adds that, to the extent connections, crossings, and related rail facilities are required to permit the exercise of the trackage rights granted to NS, we should further condition approval of

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NORTHERN INDIANA PUBLIC SERVICE COMPANY. NIPS operates four coal-fired electric generating stations, all of which obtain their coal supplies virtually exclusively by rail: the Bailly Generating Station in Chesterton, IN, which is rail-served exclusively by the Chicago SouthShore & South Bend Railroad (CSS); the Michigan City Generating Station in Michigan City, IN, which is rail-served by Conrail and CSS; the Mitchell Generating Station in Gary, IN, which is rail-served exclusively by EJ&E; and the Schahfer Generating Station in Wheatfield, IN, which is rail-served exclusively by Conrail. All of the coal burned at the Bailly, Michigan City and Mitchell Stations moves through the Chicago area; and western coal burned at the Schahfer Station also moves through the Chicago area.

Service Quality. NIPS fears that the CSX/NS/CR transaction may result in a degradation in the quality of service. NIPS therefore asks that we investigate the service implications of the CSX/NS/CR transaction, and take all necessary steps to assure that there will be, following implementation, an adequate quality of service. NIPS also asks that we adopt a mechanism to allow for the prompt identification and correction of any resulting inadequacy in the quality of service.

Indiana Harbor Belt Railway. NIPS fears that the CSX/NS/CR transaction, by transferring Conrail's 51% stake in IHB to CSX and NS, will give CSX and NS a dominating position in the Chicago area, which they may be able to use as leverage outside that area. NIPS therefore asks that we preserve the independence of IHB by conditioning any approval of the primary application upon the transfer, to EJ&E and I&M, of Conrail's 51% stake in IHB. NIPS contends that this would preserve the independence of IHB and thereby enable those who must route via IHB to avoid the unfair, discriminatory, and/or anticompetitive treatment that can result from a loss of independence.[450] NIPS adds that a less desirable alternative solution would involve conditions intended: (i) to assure nondiscriminatory dispatch of rail traffic over IHB; and (ii) to preclude CSX and NS from quoting or utilizing joint or through rates that include service on IHB or the other Chicago district carriers controlled by CSX and/or NS.

ORANGE AND ROCKLAND UTILITIES. O&R, an electric utility, indicates that its Lovett Plant, located in Tomkins Cove, NY (on the west side of the Hudson River, about 25 miles north of New York City), is a key component of its generating system, accounting for more than a third of its total generating capacity. O&R notes: that Lovett is rail-served exclusively by Conrail, which currently delivers, in unit train service, all of the coal burned at Lovett; that 90% of this coal is originated by NS, and moves in joint-line NS/Conrail service under rail transportation contracts (the traffic is interchanged either at Hagerstown, MD, or at Buffalo, NY);[451] that, for environmental reasons, O&R must burn extremely low-sulfur "supercompliance" coal; and that, as a practical matter, this coal must be obtained from one of the handful of mines in Central Appalachia known to produce this coal in volumes suitable for unit-train loading.[452]

Because the CSX/NS/CR application contemplates the assignment to CSX of Conrail's River Line (on which Lovett is located), the Lovett destination service provided pre-transaction by Conrail will be provided post-transaction by CSX. O&R acknowledges, in essence, that it is a 1-to-1 shipper,

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[449](...continued) the CSX/NS/CR transaction upon any construction or relocation of tracks or other steps necessary to permit NS to serve Huntley and Dunkirk Stations.

[450] It was announced at the oral argument (on June 3, 1998) that EJ&E has withdrawn from the I&M responsive application, which now seeks the transfer to an I&M "coalition" of Conrail's 51% stake in IHB.

[451] The other 10% of the coal burned at Lovett is originated by Conrail, and moves to Lovett in a single-line Conrail haul.

[452] O&R insists that it does not have a water delivery option. *See,* ORU-4 at 11-12.

and acknowledges too that CSX's ability to offer single-line service to Lovett may offer certain advantages. And O&R concedes that it understands that, post-transaction, CSX and NS will assume Conrail's obligations under O&R's existing contracts, making only those changes necessary to reflect line transfers and modified interchange points, with rates to be adjusted accordingly. O&R is nevertheless concerned that it may be adversely impacted by the CSX/NS/CR transaction in two respects. (1) O&R is concerned that implementation of the CSX/NS/CR transaction will be marred by the kinds of service problems that occurred in Texas as the *UP/SP* merger was being implemented. O&R, which claims that pre-transaction Conrail service is poor, warns that it would be adversely affected if present service problems were to be exacerbated as a result of the CSX/NS/CR transaction. (2) O&R claims that, because Conrail has not had access to supplies of supercompliance coal sufficient to meet Lovett's needs (and because Conrail has therefore been unable to use its market dominance over Lovett to force O&R to take all of its coal from Conrail-served mines), O&R has benefitted from competition between CSX and NS, and also between CSX-served mines and NS-served mines, respecting originations of supercompliance coal. O&R fears, however, that this competition will cease to exist post-transaction, because CSX, which will have direct access to Central Appalachian low-sulfur coal mines, will have the ability and an incentive to manipulate its rates to make the delivered price of NS-originated coals noncompetitive. The problem is especially serious, O&R adds, because NS-served mines are today O&R's principal suppliers, and also because more than half of the supercompliance coal reserves are accessible only by NS.[453]

O&R asks that we impose conditions intended to mitigate the adverse effects it anticipates. (1) Condition #1 would require the Board to retain jurisdiction over implementation of the CSX/NS/CR transaction. This condition, O&R notes, would enable us to monitor the actions taken by CSX and NS in absorbing their respective portions of Conrail. (2) Condition #2 would require that NS be granted trackage rights over Conrail lines extending from Northern New Jersey (probably Oak Island Yard) to Lovett. Condition #2, O&R contends: would permit CSX and NS, and the Central Appalachian mines they serve, to compete based on price and quality; would thereby mitigate the danger of foreclosure or exclusionary pricing by CSX; would also mitigate the risk of post-transaction delays and other service problems; and would provide some assurance that O&R's ability to compete with other generating companies will not be compromised. (3) Condition #3 (intended as an alternative to Condition #2) would require CSX to establish reasonable interchange rates from the nearest CSX/NS interchange point (probably Oak Island Yard).

ROCHESTER GAS AND ELECTRIC CORPORATION. RG&E's Russell Station, a coal-burning electric generating station located in Greece, NY (just north of Rochester, NY), relies principally on coal originated at mines located in the Monongahela Valley of Northern West Virginia. Pre-transaction, both the mines and Russell Station are rail-served exclusively by Conrail. Post-transaction: the mines will be rail-served by CSX and NS; but Russell Station will be rail-served exclusively by CSX. RG&E warns that, for shippers such as itself, the benefits of the new competition on Conrail's MGA lines will prove illusory; little real benefit can be realized, RG&E contends, so long as the destination leg of the transportation is locked up by a single carrier. And, RG&E adds, because the new CSX vs. NS competition will benefit RG&E's competitors but not

[453] O&R claims that, even as respects the higher rates it fears, the rate case remedy that will be available to O&R will not be adequate. O&R's claim apparently reflects the view that the relevant rates, though in excess of stand-alone cost, are likely to be below the jurisdictional threshold (a problem, O&R notes, that will be compounded if the acquisition premium is allowed to inflate the jurisdictional threshold). And, O&R adds, the rate case remedy will provide no redress for the competitive problem that will arise if the new rail competition available to O&R's competitors drives their costs of generation below O&R's.

RG&E, RG&E will be placed at a competitive disadvantage in the wholesale and retail power markets. RG&E therefore asks that we impose four conditions.

Condition #1 would require, in general, the creation of genuine competition in the Rochester area between at least two long haul rail carriers, and would require, in particular, the creation of genuine competition for coal originated on Conrail's MGA lines and moving to Russell Station. RG&E suggests either: (a) access by NS, and perhaps by other carriers as well, to Conrail's east-west route through Rochester, between MP 437 at Buffalo and MP 335 at Lyons; or (b) access by one or more shortlines to Conrail's Corning Secondary, between MP 0 at Lyons and MP 70 at Corning, to bridge the gap between Rochester in the north and NS' Southern Tier route in the south. RG&E adds that it would be particularly helpful if carriers in addition to CSX could be given access to Conrail's 10-mile Charlotte Running Track, which runs between the connection with the Conrail main line at CP 373 in the western part of Rochester to Russell Station in the adjoining suburb of Greece.

Condition #2 would bar CSX and NS from charging exorbitant fees for essential services such as switching traffic from one carrier to the other (particularly as respects the routing of RG&E coal traffic) and would require the Board to provide an inexpensive procedure for determining a fair, nondiscriminatory switching charge in locations pertinent to coal delivery to Russell Station. A railroad, RG&E contends, should not be allowed to use excessive switching charges and similar mechanisms to force a shipper to use a routing that, though less efficient from the shipper's perspective, is more profitable from the railroad's. Condition #2, RG&E adds, is important in its own right, but would be more important if the fully open, end-to-end route competition contemplated by Condition #1 is not achieved.

Condition #3, which reflects RG&E's concern that CSX and NS may intend to compete head-to-head only in the areas in which the CSX/NS/CR application specifically prescribes joint access, would require, in general, that CSX and NS compete vigorously for any traffic that each is operationally capable of handling. And, with an eye to our *Bottleneck II* decision,[454] Condition #3 would require, in particular, that, in those instances in which one carrier (NS or CSX, respectively) operates only a segment of a route between a certain origin and a certain destination, and the other carrier (CSX or NS, respectively) operates the entire length of a route between that origin and that destination, the carrier operating only the segment (NS or CSX, respectively) must be open to reaching reasonable contract provisions with shippers as respects the segment over which it can operate.

Condition #4, which would bring switching charges into the context of the *Bottleneck I*[455] and *Bottleneck II* decisions, would apply in any situation in which a shipper has entered into a contract with a non-bottleneck carrier with respect to a movement of freight from an origin to an interchange point with the bottleneck carrier. Condition #4 would require the bottleneck carrier to include, as part of its challengeable offer of service over the bottleneck segment, any switching charges necessitated by the inter-carrier connection, at a price reasonably related to the cost of such switching service. RG&E suggests, as an alternative, that the shipper could be allowed to elect to have any switching charges become a part of the Board's interconnection point resolution in those instances in which the carriers cannot themselves agree on an interconnection point.

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[454] *Central Power & Light Co. v. Southern Pacific et al.*, 2 S.T.B. 235 (1997) (*Bottleneck II*).

[455] *Central Power & Light Co. v. Southern Pacific et al.*, 1 S.T.B. 1059 (1996) (*Bottleneck I*).

APPENDIX G: CHEMICALS/PLASTICS SHIPPERS

ASHTA CHEMICALS. ASHTA, which manufactures chemical products at its facility on the south shore of Lake Erie in Ashtabula, OH, claims that it is now captive to Conrail, and further claims that its products: are first transported from ASHTA's plant to Conrail's West Yard, located approximately 6 miles west of ASHTA's plant; are then transported from West Yard northeast to Buffalo, NY; and are then transported to their final "ship-to" destinations. ASHTA contends that, because Conrail has been the only railroad providing transportation services to ASHTA out of West Yard, ASHTA has had no choice but to accept Conrail's via-Buffalo routing even as respects products being shipped to western and southern destinations.

The CSX/NS/CR transaction contemplates a division of Conrail's lines in and around Ashtabula. Conrail's east-west line through Ashtabula will be assigned to CSX; Conrail's north-south line ending at Ashtabula will be assigned to NS. Because ASHTA's plant is apparently located on, or off of, the east-west line, the CSX/NS/CR transaction will involve, from ASHTA's perspective, the substitution of CSX for Conrail. Nothing will have changed, ASHTA contends: it will still be a captive shipper; and it will still be forced to ship its freight to Buffalo for routing to southern and western destinations.[456]

ASHTA insists that, if the CSX/NS/CR transaction is approved as proposed, there will be no economically feasible competitive alternatives available to ASHTA and other similarly situated shippers of liquid freight.[457] ASHTA contends that: there will be no effective intramodal competition because such shippers will have access to one railroad only (CSX, if the shipper is located on the east-west line; NS, if the shipper is located on the north-south line); and there will be no effective intermodal competition either because shipping via the Great Lakes is impracticable (as respects southern and western destinations) and because trucking is simply not a feasible alternative. Nor, ASHTA adds, will there be any effective geographic competitive alternatives because there are so few alternative sources of ASHTA's products. And, ASHTA contends, approval of the CSX/NS/CR transaction as proposed will put ASHTA and similarly situated shippers at a competitive disadvantage as compared to other shippers that will receive, as a consequence of the transaction, either better service, more direct routes, new rail network, new physical plant, or other improvements.

Condition #1: Competitive Access. Invoking both 49 U.S.C. 11102 and 49 U.S.C. 11324(c), ASHTA asks that we require the establishment of a reciprocal switching arrangement or other competitive access remedy in the Ashtabula area, at or near West Yard. ASHTA contends that some such competitive access remedy is necessary: to prevent acts that are anticompetitive or otherwise contrary to the policies of the Staggers Act; to promote balanced competition; to promote public health and safety;[458] and to promote energy conservation. ASHTA adds that a competitive access remedy is feasible (ASHTA claims that there are two locations at and near West Yard where interchange and switching by and between carriers could be accommodated) and would be used by ASHTA to meet a significant portion of its shipping needs.

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[456] ASHTA adds, in its brief, that it will be adversely impacted by the transformation of certain single-line Conrail movements into joint-line CSX/NS movements.

[457] ASHTA's Ashtabula facility is situated in an industrial complex that includes other chemical manufacturers.

[458] ASHTA claims that a competitive access remedy would allow more direct, and therefore shorter and quicker, routings of its chemical products, which would necessarily reduce the risks that attend the transportation of such products.

Condition #2: Oversight. ASHTA also asks that we establish an ongoing oversight committee to monitor implementation of any conditions imposed in this proceeding and to ensure against any deterioration in service quality and the occurrence of any anticompetitive abuses.

E.I. DUPONT DE NEMOURS AND COMPANY. DuPont, a diversified chemical and energy corporation, maintains that safe, reliable, efficient, and predictable rail transportation at competitive rates is essential if DuPont and other domestic manufacturers and producers are to properly serve their customer bases. DuPont contends, however, that, due to the present-day concentration in the rail industry, the normal incentives and constraints that exist in competitive markets are no longer as effective in the rail sector as they once were. DuPont adds that action must be taken to ensure that implementation of the CSX/NS/CR transaction does not result in a repetition of the unfortunate experiences that occurred during implementation of the *UP/SP* merger.

DuPont, which generally supports the conditions advocated by CMA and SPI, has also submitted several recommendations of its own. (1) DuPont recommends that we utilize the services of "independent rail service experts" in conducting our evaluation and review of the operational plans of CSX and NS. (2) DuPont recommends that we create a "Rail Service Committee" made up of shippers, consumers, academics, carrier personnel, and government experts. The principal function of the Rail Service Committee would be to define appropriate "benchmarks" or "service metrics" against which the future performance of CSX and NS could be measured. (3) DuPont recommends that we create a "Rail Safety Committee" made up of shippers, hazardous materials experts, experienced rail operations personnel, and government safety experts. The principal function of the Rail Safety Committee would be to establish "benchmarks" or "safety metrics" against which the safety performance of CSX and NS could be measured. (4) DuPont, which is concerned by the amount of the "acquisition debt" incurred by CSX and NS, recommends that we ensure that shippers are not called upon to "pay" for this debt either directly through increased rates or indirectly through decreased service levels, increased safety risks, or neglect of the rail infrastructure. (5) DuPont, which is concerned that CSX and NS, in their efforts to cut costs, may terminate too many Conrail personnel too soon, recommends that we ensure that critical Conrail operating and supervisory personnel are not "encouraged to leave" or otherwise dismissed until all CSX/CR and NS/CR service elements are fully integrated and demonstrated to be working efficiently and well.

FINA OIL AND CHEMICAL COMPANY. Fina, a chemical company with production facilities located primarily along the Texas and Louisiana Gulf Coast, opposes the CSX/NS/CR transaction. Fina warns: that service disruptions may occur during implementation of the transaction; that shippers may experience decreased service levels both in the short term and in the long term; that, although the creation of the SAAs should provide certain benefits to shippers, service in the SAAs may be inadequate; and that, if applicants' post-transaction traffic and cost projections are not fully realized, shippers may be called upon to bear the cost of the transaction in the form of increased rates. Fina adds that, if we approve CSX/NS/CR application, we should, at a minimum, impose the conditions advocated by CMA and SPI.

MILLENNIUM PETROCHEMICALS. Millennium, a chemical company with facilities located throughout the United States, fears that the CSX/NS/CR transaction will have negative operational impacts at its Conrail-served regional distribution center (RDC) at Finderne, NJ, which is located on an NJT line over which Conrail has trackage rights. Millennium contends: that, because the Finderne RDC's rail yard is split in two by the NJT line, Conrail serves this facility via two sidings (one located north of the NJT line, and one located south of the NJT line); that, to avoid interference with NJT service, Conrail's switching operations at the Finderne RDC are subject to various operational constraints; that, because of these constraints and also because there are only 115 rail car spots on-site, the efficient switching of rail cars from marshaling yards and storage tracks to/from the Finderne RDC is crucial; that, in general, the marshaling of rail cars for switching to/from the Finderne RDC is out of Conrail's Manville Yard on the Lehigh Line; that, when Manville Yard is full, Conrail stores rail cars destined for the Finderne RDC at Croxton Yard or Elizabethport Yard;

and that Millennium also maintains leased track at Bound Brook and South Plainfield on the Lehigh Line to accommodate overflow from the Finderne RDC.

Millennium claims that the CSX/NS/CR transaction contemplates: that Finderne and Croxton Yard will be allocated to NS; that Manville Yard and Elizabethport Yard will be allocated to CSX; and that Bound Brook and South Plainfield will become part of the North Jersey SAA. Millennium is concerned that, whereas one carrier now provides both the line haul service and the switching service, the transaction will result in a situation in which two carriers (CSX and NS) will have to coordinate and cooperate in order to switch rail cars into and out of the Finderne RDC. Millennium claims: that the CSX and NS operating plans fail to address fully just how this cooperation and coordination will be accomplished; and that it is not clear from the operating plans that there will be sufficient marshaling yard space for NS in Manville Yard. Millennium therefore asks that we require: (1) that the North Jersey SAA be expanded to include the Finderne RDC and Manville Yard; and (2) that the Conrail Shared Assets Operator (CSAO) provide local switching. This condition, Millennium claims, is necessary to maintain the status quo and to prevent the undue hardship that would be suffered by Millennium under the proposed allocation of Conrail's operations and assets.

OCCIDENTAL CHEMICAL CORPORATION. OxyChem, a chemical corporation, supports the primary application but asks that we impose a number of conditions that are similar to though not as elaborate as: the "Pre-Implementation Conditions" urged by CMA and SPI; the "Post-Implementation Rate Conditions" urged by NITL, CPTA, and TFI; the "Oversight and Other Conditions" urged by CMA and SPI; and the "Additional Conditions" urged by CPTA.

PPG INDUSTRIES. PPG, a corporation with facilities in the United States and other countries, ships substantial volumes of chemicals by rail throughout North America. The CSX/NS/CR transaction, PPG contends, will eliminate yet another Class I railroad; it will eliminate shipper options; it will have a negative impact on whatever geographic competition is now available to competitive traffic moving to current Conrail markets. PPG therefore believes that the CSX/NS/CR transaction should not be approved, unless certain conditions are imposed on CSX and NS. PPG suggests, among other things: that the necessary operating plans, labor agreements, and computer systems should be put in place prior to implementation of the transaction; that interchange and junction points should be maintained and kept open; that competitive access, divestitures, and reciprocal switching should be implemented wherever possible to maintain rail-to-rail competition; that reciprocal switching charges should be capped at a reasonable figure ($150); that the practice of single-served origins remaining served by one carrier should be discarded; that rate increases on captive traffic created by this transaction should be capped, and should not exceed a formula such as the RCAF, for a specified period; that market dominance, using stand-alone costs, should not be an acceptable defense for the railroads; that oversight should be maintained for at least 5 years; that the oversight conditions should include reports from CSX and NS on the progress and implementation of the transaction; and that the shipping industry should have an opportunity to comment on these matters.

PPG has also raised two issues specific to itself. (1) PPG indicates that its facility in Beauharnois, Québec, is currently served by Conrail but is open to CN and, through the Canadian switching regulations, is accessible to CP. The CSX/NS/CR transaction contemplates the assignment of the relevant Conrail line to CSX. PPG contends: that the level of service provided pre-transaction by Conrail must be provided post-transaction by CSX; that the terms and conditions of the current Conrail contract (which apparently involves both Conrail and CN) must be honored by CSX; that access to the other railroads must be maintained; and that switching charges must be maintained at or below the current levels. (2) PPG concedes that its facility in Natrium, WV, is rail-served exclusively by CSX, but claims that the CSX/NS/CR transaction, by virtually eliminating geographic competition in the eastern United States, will reduce PPG's competitive options on traffic moving from/to Natrium. PPG therefore suggests that we should allow a second railroad (apparently NS) to serve the Natrium facility. PPG adds: that another option would be the W&LE, which currently interchanges with CSX at Benwood, WV (approximately 35 miles north of Natrium); and that, if W&LE service to Natrium is not operationally practical, we should establish a reasonable haulage arrangement or proportional rate between Natrium and Benwood.[459]

SHELL OIL COMPANY & SHELL CHEMICAL COMPANY. Shell,[460] which owns and operates petrochemical plants served by CSX, NS, and Conrail, insists that the CSX/NS/CR transaction poses three dangers to shippers in general and to Shell in particular: service deterioration; acceleration of rate increases; and a continued decrease in railroad competition. Shell has therefore recommended certain conditions that, Shell contends, should be imposed to facilitate integration of the CSX/CR and NS/CR networks, to increase competition, and to protect captive shippers. These conditions, Shell adds, should remain in place for an oversight period of 5 years.

Operations. Shell contends: that baseline measurements based on current safety and service levels should be established for each operating territory; that annual goals for each of the measurements should be established; that quarterly progress reports should be submitted to, and published by, the Board; that shipper and connecting carrier input should be solicited annually; and that the Board should establish, for sub-standard safety and service levels, consequences (*e.g.*, reparations, fines, and temporary transfers of operating authority) and a mechanism by which such consequences could be invoked. Shell further contends that, prior to final transaction approval, applicants should be required: to complete all labor agreements necessary to operate the SAAs as well as the acquired Conrail lines; to submit detailed operating plans for all the SAAs; and to present a plan to handle the disposition of contracts for movements from, to, or within the current Conrail system.

Economics. Shell, which insists that it needs rate relief for its captive facilities, contends: that, in a rate complaint case, the market dominance determination for any shipper served by any one of the three applicants should be predicated only on the presence or absence of intramodal competition; that rates on new traffic by a market dominant applicant should be limited to the level of the regulatory threshold; that rate increases by a market dominant applicant should be limited by the RCAF-A, unless that carrier proves that the proposed rate is at or below the regulatory threshold; and that the acquisition premium should not be included in the revenue adequacy calculation or used in the determination of the regulatory threshold. Shell further contends that progress reports on the capital investment proposed in the application should be required annually of all parties.

Competition. Shell contends: that a reciprocal switching system such as the Canadian interswitching system should be implemented; that all points that now enjoy reciprocal switching should be kept open; that reciprocal switch charges should be set at $130 per car; that all gateways should be maintained; that the railroads should be required to honor a shipper's gateway choice, and should be required to establish reasonable divisions over the gateway chosen by the shipper; that NS gateways in Illinois with UPRR (at Sidney, IL) and IC (at Tolono, IL) should be evaluated to ensure sufficient capacity to handle traffic moving from Texas and Louisiana Gulf Coast refineries to points in the Northeastern United States;[461] that the SAA concept should be extended to Indianapolis, Cincinnati, and West Virginia; and that any shipper currently switched by the IHB should retain the right to route its traffic to the line-haul carrier of its choice.

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[459] PPG adds that, to ensure the survival of the W&LE, we should grant it access to additional traffic, including but not limited to the traffic moving from/to PPG's Natrium facility.

[460] Shell Oil Company & Shell Chemical Company are referred to collectively as Shell.

[461] The STB Finance Docket No. 33388 (Sub-No. 5) construction project involves the Sidney gateway. The STB Finance Docket No. 33388 (Sub-No. 13) construction project involves the Tolono gateway. Shell adds that it has still other unresolved issues regarding these gateways.

UNION CAMP CORPORATION. Union Camp, which claims that its chemical plant in Dover, OH, is dependent on rail for the inbound transportation of raw materials, contends: that this plant is located near MP 71 on the line between Warwick and Uhrichsville, OH; that, until 1990, this line was owned and operated by CSX; that, in 1989, CSX and R.J. Corman filed an application (the original application) for approval of the purchase of the line by R.J. Corman; that, in connection with the original application, CSX assured Union Camp that ownership of the line by R.J. Corman would improve competition because R.J. Corman would have access not only to CSX (at Warwick, OH) but also to NS and Conrail (at Massillon, OH); that, however, after the time for submitting comments had passed, CSX, without any prior notice to Union Camp, filed an amendment to the application; that the amended application provided that R.J. Corman would purchase only a portion of the line (the portion between MP 108.4 at Warwick and MP 74.6 at Dover) and would lease the remainder of the line (the portion between MP 74.6 at Dover and MP 59.5 at Uhrichsville, on which portion the Dover plant is located). Union Camp also indicates that the lease agreement that was ultimately executed between CSX (as lessor) and R.J. Corman (as lessee) contains a provision (hereinafter referred to as the blocking provision) that assesses a substantial penalty whenever R.J. Corman interchanges traffic moving from/to points on the leased portion of the line with any carrier other than CSX. Union Camp contends that, by virtue of the blocking provision, it has been deprived of the competition that CSX used to induce Union Camp to support the original application.

Union Camp, which claims that the CSX/NS/CR transaction will adversely impact competition for shippers on the leased portion of the Warwick-Uhrichsville line by eliminating competition from carriers other than CSX, asks that we require the removal of the blocking provision from the R.J. Corman Sale/Lease Agreement. Retention of the blocking provision, Union Camp claims, will destroy any competition that currently exists and will ensure that no meaningful rail competition will exist in the future; whereas removal of the blocking provision, Union Camp contends, would provide shippers on the leased portion of the Warwick-Uhrichsville line with true CSX vs. NS competition (because the CSX/NS/CR transaction contemplates that the Conrail line through Massillon will be assigned to NS). Class I railroads, Union Camp adds, should not be permitted to utilize such anticompetitive provisions either when merging or when selling off branch track to shortlines.[462]

WESTLAKE GROUP OF COMPANIES. Westlake, a petrochemical and plastics manufacturer, asks that we act to assure that an economically viable rail transportation system will be sustained in the post-transaction environment. (1) Westlake, which notes that only nine of its approximately 49 Conrail destinations will be located in an SAA, urges us to put in place a mechanism to remedy any adverse post-transaction rate actions. (2) Westlake, which contends that it is important that shippers be allowed to choose carriers, routes, and particularly interchanges in the movement of freight, urges us to protect the ability of shippers to choose interchange points across the post-transaction Conrail property. (3) Westlake, noting the service problems that occurred as the *UP/SP* merger was being implemented, asks: that we require CSX and NS to provide safeguards to assure adequate service; and that we require that any substantiated service deficiency claims will be reimbursable by the railroads for a period of up to 5 years from the effective date of the transaction.

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[462] The "R.J. Corman" that owns/leases the Warwick-Uhrichsville line is an affiliate of the "R.J. Corman Railroad Company/Western Ohio Line" (RJCW) that is a party in the instant proceeding. The issues raised in the instant proceeding by Union Camp and RJCW (*i.e.*, the issue respecting the Warwick-Uhrichsville line, raised by Union Camp, and the issue respecting the 2.3-mile Conrail line in Lima, OH, raised by RJCW) are entirely unconnected.

APPENDIX H: OTHER SHIPPERS & COMMERCIAL INTERESTS

A.E. STALEY MANUFACTURING COMPANY. Staley, a corn refiner with processing plants in Illinois, Indiana, and Tennessee, which ships products via rail to locations throughout North America, supports the CSX/NS/CR application but asks that we consider two matters. Stanley is concerned about: (1) the potential for disruption of service when Conrail's operations are ultimately divided between CSX and NS; and (2) the effect that CSX's control and administration of the IHB will have on the switching services that IHB now provides in the Chicago switching district. It would be best, Staley suggests, if CSX and NS were to develop sound operating plans before integrating the Conrail lines into their respective operations. Staley asks that we consider conditions to assure that IHB operations and facilities are dispatched on a fair and neutral basis, and to prevent IHB from being operated primarily for the benefit of CSX.

AK STEEL CORPORATION. AK Steel, which produces iron and steel at its plants at Middletown, OH, and Ashland, KY, claims that the CSX/NS/CR transaction will have an adverse impact as respects the rail service available at Toledo, OH. AK Steel indicates: that it uses iron ore obtained from the region around the upper Great Lakes and similar areas; that much of that iron ore is transported via lake vessel to lower lake ports for further movement by rail to Middletown and Ashland; that, at present, all of AK Steel's iron ore moving by lake vessel moves via the Toledo Docks located at or near Toledo;[463] and that this iron ore is currently transported by CSX from the Toledo Docks to Middletown and Ashland. AK Steel is concerned that, whereas it can now obtain rail service from either CSX or Conrail for the movement of iron ore from the Toledo Docks to Middletown and Ashland, it may henceforth be able to obtain that service only from CSX.[464]

AK Steel's Comments (filed October 21, 1997). AK Steel argued in its comments that certain provisions contained in the Transaction Agreement and in the various ancillary agreements attached thereto suggest that CSX will have, post-transaction, exclusive access to the Toledo Docks. AK Steel conceded: that one of the ancillary agreements purports to grant NS trackage rights over the line of the former Toledo Terminal Railroad Company over which Conrail, via trackage rights of its own, now accesses the Toledo Docks; and that the trackage rights to be granted to NS are purportedly intended to allow NS to access the Toledo Docks. AK Steel claimed, however, that the trackage rights that NS is to receive are such that, if certain details are read literally, NS will not actually be able to access the Toledo Docks. AK Steel added that its view was consistent with the related application filed in STB Finance Docket No. 33388 (Sub-No. 26) (seeking approval for the acquisition by CSX of control of LD&RT). Control of LD&RT by CSX, AK Steel claimed, will make it impossible for NS to have any role in the management and operation of the Toledo Docks.

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[463] The Toledo Docks are: the Lakefront Dock, which is owned by The Lakefront Dock and Railroad Terminal Company (LD&RT, which is owned 50% by CSX and 50% by Conrail); the TORCO Dock, which is operated by the Toledo Ore Railroad Co. (TORCO, which is owned 100% by CSX) on property leased from the LD&RT; and the Presque Isle Dock, which is operated by CSX pursuant to a lease from the Toledo-Lucas County Port Authority (TLCPA). AK Steel claims: that the Lakefront and TORCO Docks are presently used to handle iron ore traffic; that the Presque Isle Dock is presently used to handle coal traffic; and that, pursuant to agreements entered into over many years, CSX, LD&RT, and TORCO are obligated to provide Conrail with unrestricted access to, and impartial treatment as respects all movements over, the Toledo Docks.

[464] It is clear that Conrail can haul traffic from the Toledo Docks to Middletown. It is not, however, entirely clear that Conrail can haul traffic from the Toledo Docks to Ashland.

Applicants' Rebuttal (filed December 15, 1997). Applicants, though insisting that they intend that the Toledo Docks will be accessible post-transaction by both CSX and NS, have all but conceded that a literal reading of the relevant ancillary agreement (CSX/NS-25, Volume 8B at 489-95) supports AK Steel's claim that the trackage rights provided for in that agreement will not actually allow NS to access the Toledo Docks. *See,* CSX/NS-176 at 70-71. Applicants claim, however, that, pursuant to the further agreements that will be entered into pursuant to the provisions of the Transaction Agreement: the various agreements by virtue of which Conrail has enjoyed equal access to the Toledo Docks will survive the CSX/NS/CR transaction for the benefit of NS; NS will obtain all trackage rights and operating rights currently held by Conrail on CSX that provide access to the Toledo Docks; and PRR will be assigned all of Conrail's rights under the Toledo Docks Operating Agreement and the TORCO Operating Agreement such that NS will have the same operating rights that Conrail presently has to operate the Toledo Docks. *See,* CSX/NS-176 at 68-73. Applicants further contend, with respect to the Sub-No. 26 application, that CSX's control of LD&RT will not change the operational status quo. *See,* CSX/NS-176 at 72.

AK Steel's Brief (filed February 23, 1998). AK Steel has made, in its brief, two requests. (1) AK Steel asks that we require applicants to implement promptly their commitments to enter into all further agreements that are needed to vest in and assign to NS all of Conrail's rights relating to the Toledo Docks. (2) AK Steel, which contends that it is Conrail's 50% ownership interest in LD&RT that has given Conrail both the economic motivation and the legal leverage to obtain the equal right of access to the Toledo Docks, asks that we disapprove the Sub-No. 26 application and require that this application be amended to provide for the transfer to NS of Conrail's 50% ownership interest in LD&RT.

AMERICAN TRUCKING ASSOCIATIONS. ATA, the national trade association for the trucking industry, has addressed five topics: intermodal highway equipment; rail/highway grade crossings; "back solicitation" and similar practices; discrimination by railroads against motor carriers; and options to ensure competition and service.

Intermodal Highway Equipment. ATA notes that, although a motor carrier participating in an intermodal haul may provide the power equipment, another entity (generally a railroad or its subcontractor, or a steamship line or its subcontractor) provides the trailer, or the chassis and container, that the motor carrier hauls. The motor carrier, ATA contends, has no control over the maintenance and repair of, and no real opportunity to inspect, the highway equipment provided by the railroad or other entity. ATA argues, in essence, that this arrangement is neither fair nor safe, because federal motor vehicle safety regulations do not require the non-motor carrier owner or operator of intermodal highway equipment either to maintain the equipment or otherwise to comply with the equipment safety requirements. ATA concedes, in essence, that the problem predates the CSX/NS/CR transaction, but contends that the problem will be greatly exacerbated by this transaction, which (applicants have claimed and ATA is willing to concede) will result in the diversion of large numbers of highway movements to intermodal service. ATA therefore asks that we require applicants to ensure the roadworthiness of all intermodal equipment prior to releasing the equipment to a motor carrier for highway use. The condition ATA has in mind: would make applicants responsible for the condition of the equipment they tender to motor carriers; would require an applicant railroad or an entity operating the intermodal facility at which the equipment is stored and interchanged on behalf of an applicant railroad to perform inspections and effect repairs; and would require applicants to comply with federal safety rules with which they would not otherwise be required to comply.

Rail/Highway Grade Crossings. ATA concedes, in essence, that the dangerous conditions that exist at too many rail/highway grade crossings predate the CSX/NS/CR transaction, but contends that these conditions will be exacerbated by this transaction because the transaction, if it results in an increase in rail movements, is certain to result also in an increase in grade crossing accidents. ATA therefore asks that we require applicants to make a financial and operational commitment to improve or remove the many hazardous rail/highway grade crossings on Conrail's lines. The condition contemplated by ATA would require applicants: to identify each crossing by number; to post an 800 telephone number at each crossing; to provide emergency communication devices (*e.g.*, telephones) at all rural crossings; and to improve the quality of all crossings, with better grading, better markings, and more effective warning devices.

"Back Solicitation" and Similar Practices. ATA claims that NS has, and that CSX and Conrail may have, begun to require motor carriers purchasing intermodal transportation to provide the supplier railroad with the name of the motor carrier's customers. ATA contends: that this practice, which (ATA claims) is intended to facilitate "back solicitation" by the railroad, is both unethical and of questionable legality; that, when the motor carrier is purchasing the intermodal service, the motor carrier (and not the consignor) is the party with privity of contract with the railroad and the party that is liable to the railroad for the freight charges; that, for this reason, the railroad has, in this context, no privity of contract with the consignor and no legitimate need to know its name; but that the motor carrier has, as a practical matter, no choice but to comply with the railroad's requirements. ATA concedes, in essence, that the basic problem predates the CSX/NS/CR transaction, but contends that the problem will be exacerbated by the transaction because motor carriers will have, post-transaction, even fewer options with respect to the availability of rail service. ATA therefore asks that we direct applicants to cease "back solicitation" and other anticompetitive practices.

Discrimination By Railroads Against Motor Carriers. The Nation's railroads, ATA contends, wholesale their intermodal services via a number of different marketing channels, each of which is distinct as to the party through which the service is sold, the service itself, and the ownership of the equipment used; and ATA claims that, in this environment, motor carriers need protection against the railroads' potential use of unfair service offerings and pricing practices that unreasonably favor one channel over another. ATA indicates, by way of example: that NS may be tempted to favor its Triple Crown subsidiary in competition with non-affiliated motor carriers; and that CSX may be similarly tempted to use its CSXI subsidiary to gain market share relative to non-affiliated motor carriers. ATA concedes, in essence, that the problem predates the CSX/NS/CR transaction, but contends that the problem will be exacerbated by the increase in rail industry consolidation that will accompany the transaction. ATA therefore asks that we take steps to ensure: that applicants do not practice channel management ("discrimination"); that applicants do not retaliate against non-affiliated motor carriers or intermodal management companies; and that all motor carriers and intermodal management companies are provided reasonable and nondiscriminatory rates and services.

Options To Ensure Competition And Service. ATA urges us to ensure that the procompetitive benefits of the CSX/NS/CR transaction will be realized and that service will not be allowed to deteriorate post-transaction. ATA suggests three options. (1) ATA suggests that the SAAs should be expanded beyond the narrow zones urged by applicants. (2) ATA suggests that we should consider conditions to ensure that shortlines will be able to provide connecting service between the communities they serve and the connections with other Class I railroads. (3) ATA suggests that we should consider proposals for "open access" (also known as "competitive access") which, ATA contends, would inject competition into previously noncompetitive areas of rail service.[465]

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[465] ATA adds in its brief that we should not make a final determination with regards to the CSX/NS/CR transaction until the STB Ex Parte No. 575 process has been completed. *See, Review of Rail Access and Competition Issues,* STB Ex Parte No. 575 (STB served February 20, 1998) (announcing that the Board has commenced a review of access and competition issues in the rail industry).

APL LIMITED. APL, which operates fleets of containerships, containers, and doublestack railcars, and which specializes in the transportation of containers moving in international and domestic commerce, indicates that its interests in this proceeding are focused upon two distinct traffic flows that involve Conrail: international traffic moving between ports in Asia and the Pacific Rim, on the one hand, and, on the other, points in the Northeastern United States; and North American traffic moving either within the continental United States or between Canada and Mexico. APL claims that the APL/Conrail relationship reflects both a long-term contract (which runs until May 31, 2004) and also the years of joint effort APL and Conrail have invested in the development of a superior container service. APL emphasizes that its business is critically dependent upon quality Conrail service; Conrail, APL notes, is today, and has been for more than 20 years, APL's link to the APL terminals (including the APL terminal at South Kearny, NJ) that cover the Eastern United States consuming markets.[466]

APL claims that one of its principal competitors is CSX, whose ocean carrier and stacktrain subsidiaries (Sea-Land and CSXI, respectively)[467] compete head-to-head with APL as respects the transportation of time-sensitive commodities from points in Asia and the Pacific Rim to points in the Eastern United States. And, APL adds, APL and CSXI, the two national stacktrain operators, compete head-to-head in every major transportation corridor within the United States.

Anticipated Impacts. APL's concerns with the CSX/NS/CR transaction are focused primarily upon section 2.2(c) of the Transaction Agreement, which provides for the allocation, between CSX and NS, of Conrail's Existing Transportation Contracts. *See,* CSX/NS-25, Volume 8B at 25-29. APL contends that it will be adversely impacted by section 2.2(c) in several respects.

(1) APL claims that section 2.2(c), by locking APL into contractual relationships with CSX and NS until May 31, 2004, will impose a severe competitive disadvantage upon APL vis-à-vis those of its competitors that will be free to exploit CSX vs. NS competition at an earlier date.

(2) APL claims that the administration of its contract by CSX and NS will be unworkable. APL contends that certain matters (*e.g.*, day-to-day coordination) that can now be worked out with one carrier will henceforth have to be negotiated with two. APL concedes that certain other matters (*e.g.*, services provided at certain terminals) will be handled by a single carrier, but that single carrier, APL fears, will be APL's primary competitor, CSX. And there will also be, APL adds, difficulties of an antitrust nature. APL claims: that the "most favored nation" (MFN) clause in its Conrail contract,[468] when triggered by a rate action of CSX or NS, will require inappropriate communications between CSX and NS (inappropriate, because CSX and NS will be competitors); that routine administration of the MFN clause may allow APL to gain information about CSXI's commercial business; and that, at "dual points" served by both carriers, any rate adjustments desired by APL will require the consent of both CSX and NS.[469]

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466 APL notes: that South Kearny is the major Conrail intermodal yard in Northern New Jersey; that Conrail leases a portion of South Kearny to APL for APL's exclusive use (this portion is referred to as APINY); and that Conrail also serves APL from South Kearny.

467 Sea-Land Service, Inc., is referred to as Sea-Land. CSX Intermodal, Inc., is referred to as CSXI.

468 APL claims that the MFN clause requires Conrail to give APL the lowest rate for comparable traffic between comparable service points whether Conrail provides that rate to another shipper or another carrier provides that rate to another shipper.

469 APL also claims: that section 2.2(c) does not address all possible questions that may arise respecting services provided under APL's Conrail contract; and that applicants' suggestion that MFN issues can be resolved, and improper disclosures of confidential information can be prevented, by (continued...)

(3) APL claims that the very process of partitioning Conrail's existing contracts raises antitrust concerns. Applicants, APL claims, envision that they will determine, after the Control Date, whether CSX or NS will operate a contract that could be operated by either (*i.e.*, a contract that involves service between "dual" points). APL notes: that, to make that determination, CSX and NS will have to review each contract; that, therefore, CSX and NS will necessarily have to share rate information; and that, no matter which railroad is chosen to serve APL, that railroad's competitor will have had knowledge of and access to APL's rates.

(4) Section 2.2(c), APL claims, does not provide sufficient protections to APL in a contractual setting in which its principal competitor will become an essential service provider. Conrail, APL notes, does not have a major conflict of interest in supporting APL; and, in drafting the contract with Conrail, much was left unsaid, because there was no need to spell out every detail that APL expected Conrail to attend to. APL insists that, because CSX and APL are competitors, APL will not be competitive if it must work with CSX under the contract terms that APL negotiated with a noncompeting Conrail. APL contends that, if it is to remain competitive, it will need to define the standards of performance and remedies for noncompliance much more precisely with CSX than it did with Conrail.

(5) Section 2.2(c), APL claims, creates a disincentive for either railroad to handle APL's traffic between "dual points." APL contends: that, as respects the allocation of contract traffic where both CSX and NS can serve both the origin and destination, section 2.2(c) provides that revenues and expenses pertinent to such traffic will be divided on a 50/50 basis; that, therefore, no matter which railroad handles APL's traffic between Chicago and APINY, the railroad handling the traffic will receive only 50% of the revenues and the railroad not handling the traffic will also receive 50% of the revenues; that, accordingly, neither railroad will have any real incentive to handle the traffic; and that, for essentially the same reason, each railroad will have an incentive not to handle the traffic because the railroad not handling the traffic will also receive 50% of the revenue. *See* APL-18, Volume 1 at 34-36.

(6) APL fears that implementation of the CSX/NS/CR transaction may be accompanied by service failures throughout the Conrail system, particularly in the New York-New Jersey area and in Chicago and particularly as respects intermodal traffic. APL also warns: that, because CSX will be able to set, on its lines, its own priorities for handling trains through congested areas, the delays that will be experienced by APL stacktrains will not necessarily be experienced by CSXI stacktrains; and that section 2.2(c), by requiring APL to accept the allocation to CSX of at least a portion of APL's Conrail service, will deprive APL of the flexibility to adjust to changing circumstances.

New Contracts Required. APL contends that, if it is to compete effectively in the markets in which CSX and APL are competitors, it must be freed from the restraints contained in section 2.2(c). New contracts, APL argues, will be required: as to CSX (which is APL's competitor), to provide adequate safeguards for APL; and as to NS (which is not APL's competitor), to reflect precisely what NS will do and how that will be integrated into the existing services NS now provides for APL.

Request #1. APL asks that section 2.2(c) be disapproved in its entirety, and asks, in the alternative: that the application of section 2.2(c) to contracts providing for intermodal and container services be disapproved; and, at the very least, that the application of section 2.2(c) to APL's Conrail contract be disapproved. The public interest, APL contends, would best be served: by requiring CSX and NS to negotiate separately with APL the partition of APL's Conrail contract, on terms and

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[469](...continued)
the use of "third party neutrals" raises a number of questions that have not yet been answered, *see* APL-18, Volume 1 at 23 n.37. APL further claims that section II(C) of the NITL agreement does not resolve the problems posed by section 2.2(c). *See* APL-18, Volume 1 at 28-29.

conditions no less favorable than those that APL currently has with Conrail; and, generally, by requiring CSX and NS to negotiate separately, with other purchasers of rail intermodal service, the partition of their Conrail contract(s), on terms and conditions no less favorable than those that such other purchasers currently have with Conrail.[470]

Request #1a. APL contends that there must be support track at South Kearny for APINY for the railroad that serves APL under its Conrail contract. APL suggests that, if applicants fail to agree on such support track, we should require that such track at South Kearny be reserved for whichever railroad serves APL under its Conrail contract. APL adds that, if both CSX and NS provide such service, support track at South Kearny must be reserved for both CSX and NS. *See* APL-8, V.S. Baumhefner at 6.

Request #2. CSX and NS have sought a declaratory order, or a declaration having the effect thereof, that, by virtue of 49 U.S.C. 11321(a), CSX and NS will have the same authority to use Conrail's Existing Transportation Contracts that Conrail itself would have had. APL asks: that we not issue the sought declaratory order or a declaration having the effect thereof; that we say nothing that might suggest that our approval of the CSX/NS/CR transaction has had the effect of overriding provisions of Conrail's Existing Transportation Contracts; and that we make clear that nothing we have said is to be construed as approving any curtailment of the rights of parties which have current transportation contracts with Conrail. APL's interests as respects Request #2 are focused upon two provisions in its Conrail contract: the anti-assignment provision, which provides (subject to an exception not presently relevant) that no party to such contract "may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any of the duties hereunder," without the prior consent of the other party, *see* APL-18, Volume 1 at 36 n.57;[471] and the inequities provision, which requires negotiations respecting any gross inequities resulting from a substantial change in circumstances or conditions, *see* APL-18, Volume 1 at 34.[472]

APL advances several arguments in support of Request #2. (1) APL argues: that contracts authorized by 49 U.S.C. 10709 or by old 49 U.S.C. 10713 are "not subject" to 49 U.S.C. 11321(a), and that, for this reason, the preemption power of 49 U.S.C. 11321(a) does not reach such contracts and we have no jurisdiction to modify such contracts.[473] (2) APL argues: that APL's Conrail contract is for intermodal traffic; that intermodal traffic has long been "deregulated" (*i.e.*, exempted from regulation); that 49 U.S.C. 10502 provides, in essence, that, as long as an exemption remains in effect, we cannot regulate a matter that has been deregulated; and that, accordingly, we cannot "regulate" APL's Conrail contract by overriding a provision contained therein. (3) APL argues that an override of the provisions contained in its contract is not "necessary" to the CSX/NS/CR transaction. APL notes that, if its contract (and any similar contract) were allowed to remain in

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[470] APL contends that, because the CSX/NS/CR transaction should not be allowed to place APL (or any other purchaser) in a worse position than it is in today, APL's (or the other purchaser's) current Conrail contract must be taken to establish the baseline of APL's (or the other purchaser's) rights and the railroads' obligations. APL apparently has in mind that each provision in its current Conrail contract must be taken to establish the baseline of APL's rights and the railroads' obligations as respects the matters addressed by that provision.

[471] The anti-assignment provision would be directly impacted by the sought declaratory order.

[472] APL concedes that the inequities provision would not be directly impacted by the sought declaratory order, but claims that this provision would be "covert[ly]" preempted by approval of section 2.2(c). *See* APL-18, Volume 1 at 16.

[473] Section 10709(c)(1) provides that a contract authorized by 49 U.S.C. 10709 is not "subject to this part [*i.e.*, Part A of Subtitle IV of Title 49, United States Code]." *See also,* old 49 U.S.C. 10713(i)(1) (similar provision in the pre-1996 law).

effect, the only consequence would be that CSX and NS would have to negotiate separately with APL (and with any holder of a similar contract) respecting APL's (and any such other contract holder's) rail service needs.[474]

Request #2a. As respects the portion of the services provided under APL's Conrail contract that may be assigned to CSX, APL claims that there is an "excellent possibility that CSXI will administer the APL-Conrail Contract for CSXT." APL contends that, even if we override the anti-assignment provision in its contract, we should not allow applicants to assign that contract beyond CSXT or NSR. It would be "truly bizarre," APL argues, to allow its contract with Conrail to be assigned to a non-railroad that is, in this proceeding, a nonapplicant. *See* APL-18, Volume 1 at 25 n.41.

Request #3. APL asks that we retain jurisdiction over the CSX/NS/CR transaction and conduct quarterly oversight thereof until December 31, 2004.

Request #4. APL asks that we prohibit CSX and NS from discriminating, either in schedules, terminal services, space allocations, equipment allocations, or otherwise, in favor of affiliated container transportation providers (such as Sea-Land) or affiliated stacktrain operators (such as CSXI) to the detriment of independent, non-affiliated container service providers or stacktrain operators.

CARGILL. Cargill, which merchandises agricultural commodities, supports the CSX/NS/CR transaction but suggests that we should consider certain modifications intended to facilitate implementation. (1) Cargill asks that the relevant labor organizations be required to participate in the negotiation and arbitration process for obtaining labor implementing agreements, to assure that such agreements are in place on or shortly after the effective date of a Board decision approving the transaction. (2) Cargill contends that, to ensure a smooth transition, there should be a period of time, after the Board's approval decision is served, for CSX's and NS' management to complete the design of plans to achieve effective day-to-day operation of both systems after the breakup of Conrail.

DeKALB AGRA. DeKalb Agra, a cooperative based in Waterloo, IN, receives inbound rail shipments of fertilizer and potash, and relies heavily on rail to market whole grain to the eastern domestic and export markets and to poultry and feed mills in the Southeastern United States. DeKalb Agra, which is apparently rail-served exclusively by Conrail on a line that will be assigned to NS, claims that, although service has deteriorated in recent years and shipper costs have increased, it has nonetheless been able to sell grain to the river markets and/or to the southeastern poultry producers via Conrail/CSX and Conrail/NS joint-line routings. DeKalb Agra, which fears that, post-transaction, it will be able to market its grain only to NS destinations, asks that we take a pro-active stance in reviewing the impact of the CSX/NS/CR transaction on switch rates and service levels. DeKalb Agra contends that, where necessary, joint-line rates must be prescribed to guarantee access to river markets.

FORT ORANGE PAPER COMPANY. FOPC, which manufactures clay-coated recycled box board, indicates: that its plant is located on a Conrail line at Castleton-on-Hudson, NY (on the east side of the Hudson River, a few miles south of Rensselaer, NY); that its raw materials (kaolin clay and scrap paper) move inbound via truck and rail; that its finished products move outbound via truck; that it currently receives, via Conrail, fewer than 50 carloads of raw materials every year, primarily from origins in the Deep South and central Pennsylvania; that, prior to 1994, it typically received approximately 50 to 100 carloads of inbound product by rail per year; that, however, it had to divert much of this traffic to truck when Conrail imposed a $350 per car light density surcharge plus a 20%

[474] APL also contends, and for essentially the same reasons, that approval of section 2.2(c) is not "necessary" to the CSX/NS/CR transaction.

increase in the base rate of FOPC's inbound traffic;[475] that, however, FOPC still relies on inbound rail freight to the extent that truck transportation is unavailable or unacceptable; that, for all practical purposes, Conrail presently has an effective monopoly over that portion of FOPC's inbound freight that must move by rail; and that FOPC has been constrained in its ability to reach other sources of raw materials and markets for its products (especially Canadian sources and markets) on account of its lack of cost-effective access to CP.

FOPC has four principal concerns with the CSX/NS/CR transaction. (1) FOPC claims that the CSX/NS/CR transaction, which contemplates the assignment of Conrail's lines east of the Hudson River to CSX, does not offer to points east of the Hudson the economic benefits it offers to points west of the Hudson. (2) FOPC, which has some SL-to-JL traffic, fears that the new post-transaction NS/CSX interchange will delay shipments, will create opportunities for loss and damage of product, and will result in increased rates. (3) FOPC, which has some traffic that Conrail has traditionally interlined with either CSX or NS, fears that CSX and NS may not cooperate to interline traffic in a way that best serves FOPC's interests. Conrail, FOPC contends, has traditionally functioned as a neutral connection for CSX and NS; but CSX, FOPC fears, will not function as a neutral connection for NS. (4) FOPC fears that CSX, much like Conrail, will view the Hudson Division (which lies east of the Hudson) as the "poor sibling" of the River Division (which lies west of the Hudson).

FOPC therefore asks that we make available to FOPC the competitive rail service that shippers located west of the Hudson can expect to receive.[476] (1) FOPC would prefer: that we grant, to NYDOT or its designee, local service trackage rights between Rensselaer and New York City via Castleton; and that we assign to the grantee of these rights a common carrier obligation to provide local service on customer request. (2) FOPC suggests that, if we do not grant NYDOT the trackage rights it seeks, we should order CSX: (a) to maintain or establish routes and rates through gateways at Albany and New York City to allow interchange of freight with CP at Albany (for movement to NS at Harrisburg) and with NYCH in New York City (for movement to NS at Greenville, NJ); (b) to fix rates at their current level (subject to normal industry-wide rate increases or decreases); and (c) to cancel the light density surcharge imposed by Conrail in 1995.

GENERAL MILLS. General Mills' operations in Buffalo, NY, include a flour mill, a grain elevator, a cereal plant, and several warehousing operations, all presently located on Conrail (on a line that will be assigned to CSX). General Mills contends: that, prior to the establishment by Conrail of the current reciprocal switching charges, over 90% of General Mills' inbound traffic into Buffalo was shipped via other carriers (principally NS), General Mills' Buffalo mill was run at capacity, and Buffalo was a distribution center for packaged products for customers throughout the Northeast; that the establishment by Conrail of the current reciprocal switching charges (approximately $450) effectively shut down the Buffalo/Niagara Frontier rail gateway, and forced shippers to tender all traffic to Conrail at Chicago or East St. Louis; that, since the establishment by Conrail of the current reciprocal switching charges, virtually 99% of inbound traffic to General Mills' Buffalo facilities has had to come via Conrail; and that, on account of the current reciprocal switching charges, General Mills' Buffalo mill is not currently running at capacity, General Mills' distribution operations for the Northeast have been consolidated in the Harrisburg, PA, area, and

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[475] FOPC notes that, although its plant is located on Conrail's Hudson Division (*i.e.*, the Albany-New York City line that runs east of the Hudson River), the stretch of the Hudson Division on which FOPC's plant is located is primarily a passenger (not a freight) mainline because freight trains running over the Hudson Division between the Albany area and the New York City area generally cross the Hudson River south of Castleton-on-Hudson.

[476] FOPC also suggests that we should impose oversight for at least 5 years following consummation of the transaction.

much outbound traffic that formerly moved by rail now moves by truck. General Mills argues that the current high Conrail switch charge, which (General Mills claims) CSX has indicated will remain in effect for the Buffalo/Niagara Frontier area, will preclude General Mills from using other railroads either into or out of Buffalo.

General Mills therefore asks that we impose four conditions. (1) General Mills contends that, to create competitive options for shippers in Western New York, the reciprocal switch charge in the Buffalo/Niagara Frontier area should be reduced to a uniform $130 per car. (2) General Mills, which fears that the acquisition debt that CSX and NS have taken on will make both carriers revenue inadequate, contends that CSX and NS should be prevented from factoring acquisition costs into ratemaking calculations for a period of 5 years. (3) General Mills contends that CSX and NS should be required to protect current Conrail single-factor local rates that post-transaction will become two-factor joint rates for 5 years, subject to RCAF-U adjustments. General Mills adds that this condition is intended to include the full switch absorption at either destination or origin if applicable. (4) General Mills contends that CSX and NS should be required to amend the current Buffalo switching district to include a new industrial park located in West Seneca, NY. General Mills claims that inclusion within the switch limits of this new park, which lies a mere hundred yards from the current limits of the switch district, will allow new industries and warehouses in this park to enjoy competitive rail service.

INLAND STEEL COMPANY. ISC, which operates a steel production plant at East Chicago, IN, and two related facilities (a cold-rolling mill and a galvanizing plant) near New Carlisle, IN, contends: that it is dependent on rail transportation for its inbound raw materials, for its coal and coke requirements, for the distribution of its finished steel products, and for the transfer of steel inventories between the East Chicago plant and the New Carlisle facilities; that its East Chicago plant is served by two railroads, the IHB and the EJ&E, each of which serves as a switch carrier, connects to all major trunklines in the Chicago area, and handles significant volumes of traffic moving from/to the East Chicago plant; that the New Carlisle facilities are served by Conrail; that Conrail transports over 95% of the work-in-progress inventories moving between the East Chicago plant and the New Carlisle facilities; that IHB is the delivering or originating carrier for all work-in-progress inventories moved via Conrail between the East Chicago plant and the New Carlisle facilities; and that IHB is of critical importance to ISC's operations at East Chicago and New Carlisle.

ISC's interests in this proceeding are focused upon its rail options at its East Chicago plant, which (ISC claims) might be adversely affected either by unconditioned approval of the CSX/NS/CR primary application or by unconditioned approval of the EJ&E/I&M responsive application.[477]

The CSX/NS/CR Primary Application. ISC claims that applicants' post-transaction plans vis-à-vis IHB raise serious concerns about IHB's post-transaction ability to operate independently and to provide reliable service to its shippers. ISC thereforef asks that we require that NS be granted trackage rights to directly service ISC's East Chicago plant, at fee levels that will allow NS to compete effectively for traffic moving from/to that plant.

The EJ&E/I&M Responsive Application. ISC claims that the EJ&E vs. IHB competition that presently exists for traffic moving from/to ISC's East Chicago plant would be eliminated if EJ&E and I&M were to acquire Conrail's 51% IHB ownership interest. ISC therefore contends that, to preserve the rail competition ISC now enjoys, we should deny the EJ&E/I&M responsive application. ISC further contends, but only in the alternative, that, if we decide to grant the EJ&E/I&M responsive application, we should require a grant to NS of trackage rights over the rail lines of IHB that access ISC's East Chicago plant. ISC argues that a grant of trackage rights to NS, although not its preferred

[477] With the withdrawal of EJ&E (announced at the oral argument, on June 3, 1998), the EJ&E/I&M responsive application is now the I&M responsive application.

solution, would at least preserve two-carrier rail competition (NS vs. EJ&E/IHB) at ISC's East Chicago plant.

INTERNATIONAL PAPER COMPANY. IP's interests in this proceeding are focused on traffic that now moves in Conrail single-line unit train service between: (i) an IP mill in Erie, PA; and (ii) an IP mill at Lock Haven, PA. The Conrail route consists of three segments: (1) a Conrail line, roughly 3 miles in length, between IP's Erie mill and Conrail's OD Yard in Erie; (2) an Allegheny & Eastern Railroad, Inc. (ALY) line, roughly 150 miles in length, between OD Yard and Emporium, PA, over which Conrail has trackage rights; and (3) a Conrail line, roughly 75 miles in length, between Emporium and IP's Lock Haven mill.[478] IP contends: that it uses a combination of its own cars and Conrail's cars to transport freight between its Erie mill and its Lock Haven mill; that it uses approximately 330 specialized log and gondola cars of its own; and that it uses Conrail's box cars only as necessary to carry rolled or baled pulp. IP further contends: that the IP unit train departs the Erie mill comprised of gondolas and box cars loaded with wood pulp, and empty log cars to be dropped off at wood yards along the way; that, when the loaded cars arrive at Lock Haven, the wood pulp is unloaded; that the gondola and box cars return empty to Erie; that, on the return trip from Lock Haven to Erie, loaded log cars are picked up at wood yards along the way; and that, once the cars have been returned to Erie, the logs are unloaded, and wood pulp is loaded for the next trip to Lock Haven.

The CSX/NS/CR transaction contemplates: that the Conrail line between the Erie mill and OD Yard will be assigned to CSX; that Conrail's trackage rights over the ALY line between OD Yard and Emporium will be assigned to NS; and that the Conrail line between Emporium and Lock Haven will also be assigned to NS. IP warns that the conversion to joint-line service: will likely jeopardize the entire Erie-to-Lock Haven arrangement, given the increased costs and decreased efficiencies inherent in joint-line service; and, in consequence, will likely jeopardize the continuing economic viability both of the Erie mill and of the Lock Haven mill. IP contends that the substantial harm to the local economy that will result from the loss of single-line service establishes that such service is "essential" as that term is used in our regulations. And, IP adds, section II(C) of the NITL agreement will not ameliorate the problems it will face post-transaction, because that provision does not address situations in which a shipper is losing single-line service. *See,* IP-5 at 13.[479]

IP therefore asks that we impose either of two conditions upon any approval of the CSX/NS/CR transaction. Condition #1, which would allow for the creation of NS single-line service in lieu of the pre-transaction Conrail single-line service, would require CSX to grant NS trackage rights over the Conrail line between the Erie mill and OD Yard. Condition #2, which would allow for the creation of ALY single-line service in lieu of the pre-transaction Conrail single-line service: would require CSX to grant ALY trackage rights over the Conrail line between the Erie mill and OD Yard; and would require NS to grant ALY trackage rights over the Conrail line between Emporium and the Lock Haven mill. IP adds that the trackage rights granted under either condition could be restricted to the transportation of IP's dedicated cars between its Erie and Lock Haven mills.

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[478] Applicants claim that IP has neglected to mention that, at Lock Haven, IP's "Conrail single-line" traffic is handled by a shortline, the Nittany & Bald Eagle Railroad Company (NBER). *See,* CSX/NS-176 at 495. IP, which acknowledges in its brief that NBER provides switching services at Lock Haven, claims that NBER, in providing such services: operates over Conrail's track; conducts switching as Conrail's agent; and does not appear on the billing. IP therefore insists that the service it now receives between its Erie mill and its Lock Haven mill is single-line service, not joint-line service. *See,* IP-5 at 9 & n.6.

[479] *But see,* section III(E) of the NITL agreement (the SL-to-JL provision).

J.B. HUNT TRANSPORT. Hunt, a truckload motor carrier which currently has in place a contract with Conrail pursuant to which Hunt moved 130,000 containers in 1996, is concerned whether, and to what extent, its Conrail contract will be operated by CSX and/or NS post-transaction. Hunt, which claims to have made, in connection with this contract, substantial investments, contends that no provision has been made by either CSX or NS to assume Hunt's Conrail contract or to continue services with Hunt under similar terms and conditions. Shippers, Hunt warns, have come to rely upon the services provided by Hunt, and any disruption of these services would have an adverse impact on the development of intermodal transportation and on highway congestion in the heavily populated Northeastern Corridor. Hunt therefore asks that we weigh the effect of the proposed transaction on the existing truck/rail services rendered by Conrail and require CSX and NS to provide intermodal transportation services in conjunction with Hunt and other motor carriers under terms and conditions no less favorable than the terms and conditions contained in Conrail's current contracts.

JOSEPH SMITH & SONS. Although JS&S's Capital Heights, MD, scrap metal processing facility is bounded on three sides by rail lines (Amtrak's NEC to the north; a CSX line to the east and south; and a Conrail line to the south), service can presently be provided only by Conrail (because the JS&S industry track connects only with the Conrail line). JS&S insists, however, that its present ability to build out to the CSX line establishes the potential for rail vs. rail competition. JS&S adds that, from a physical perspective, an Amtrak build-out would also be feasible, although JS&S admits that, as a practical matter, its ability to build out to the Amtrak line would not establish rail vs. rail competition (because the carrier that presently provides freight service on the Amtrak line is Conrail). JS&S, which insists that there is only limited intermodal competition for its traffic, asks that we preserve the two build-out options that exist at its Capital Heights facility today.

JS&S's Requests. (1) JS&S notes that, because the CSX/NS/CR transaction contemplates the assignment of the Conrail line to CSX, JS&S's pre-transaction CSX build-out option will not exist post-transaction. JS&S claims, however, that NS will receive, as part of the CSX/NS/CR transaction, trackage rights over the CSX line. JS&S therefore asks that we preserve its CSX build-out option by permitting NS to build-in to serve JS&S, or JS&S to build-out to reach NS, at any point along the existing CSX line that borders the JS&S property. (2) JS&S, though it notes that the CSX/NS/CR transaction contemplates the assignment to NS of Conrail's trackage rights on that portion of the Amtrak line that runs next to JS&S's facility, contends that there is uncertainty whether JS&S will be able to be served by NS via those trackage rights in the same manner that JS&S could be served by Conrail today. JS&S therefore seeks clarification that it will have the same opportunity to connect to the Amtrak line that it has today, and that NS will have the right and a common carrier obligation to serve JS&S via that connection.

Applicants' Rebuttal (filed December 15, 1997). Applicants contend that JS&S will not suffer competitive harm as a result of the CSX/NS/CR transaction. (1) Applicants claim that JS&S has neglected to mention that it currently enjoys service from a second carrier (CSX, via a Conrail switch). Applicants add: that, post-transaction, CSX will operate the current Conrail line that directly serves JS&S; that NS will have trackage rights over this line;[480] that CSX has agreed to switch for NS;[481] that JS&S will therefore continue to have direct access to two railroads; and that, accordingly, the NS build-out requested by JS&S will not be necessary. (2) Applicants claim that the CSX/NS/CR transaction will not affect JS&S's rights as respects a build-out to the Amtrak line.

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[480] Applicants state that the NS trackage rights will run over the pre-transaction Conrail line. Applicants, however, have not explicitly referenced JS&S's statement that the NS trackage rights will run over the pre-transaction CSX line.

[481] Applicants are apparently referencing section III(B) of the NITL agreement.

NS, applicants insist, will receive Conrail's rights over that line, and will have the same operating rights Conrail now has over this stretch of Amtrak's NEC. Applicants add that, in any event, JS&S will not need to reach NS on the Amtrak line because NS will be accessible (via a switch) from the CSX line (*i.e.*, the Conrail line) over which NS will have trackage rights.

JS&S's Brief (filed February 23, 1998). (1) JS&S insists that the reciprocal switching arrangement cited by applicants will not preserve JS&S's pre-transaction competitive position. Reciprocal switching, JS&S notes, is not equivalent to direct rail access; a location can be closed to reciprocal switching at any time and/or the switching rates can be increased; and the NITL agreement only obligates CSX to provide reciprocal switching at a designated rate for 5 years. A build-in option, JS&S adds, will last as long as the build-in carrier operates over a nearby line.[482] (2) JS&S agrees that NS will inherit the same operating rights on the relevant stretch of Amtrak's NEC that Conrail has today, and that, therefore, NS will have the same right Conrail now has to serve JS&S via a connection to the NEC. JS&S adds, however, that, to avoid a future dispute, it seeks clarification of this matter in the form of a condition.

JSTAR CONSOLIDATED. JStar, a rail logistic services provider that operates a facility at Conrail's Stanley Yard in Toledo, OH, serves rail shippers that route traffic from/to its facility. Conrail is the only railroad to which JStar has direct access, but JStar contends that Conrail plays, at Toledo, the role of a neutral switching carrier, and JStar fears that CSX (Conrail's successor as respects JStar)[483] will not be a neutral switching carrier; CSX, JStar warns, will favor its own routings. And, JStar adds, it will also be adversely impacted by the existence of the nearby SAA in Detroit. JStar insists that, to preserve the competitive status quo, it must have access to NS. JStar therefore suggests that we require either: (1) that NS be given trackage rights within the Stanley Yard area, between the NS portions of the yard and the JStar facility; or (2) that CSX provide a competitive access switch for NS at no extra cost, handling NS linehaul traffic within Stanley Yard to the JStar facility; or (3) that JStar be given trackage rights through the CSX portion of the yard to a connection with NS.

NATIONAL LIME AND STONE COMPANY. NL&S, which operates in Ohio, nine quarry and stone processing locations as well as four rail distribution yards and two truck distribution yards, and which, for many years, has shipped limestone and limestone products on CSX, NS, Conrail, and W&LE, indicates that its interests in this proceeding are focused on its Bucyrus and Carey quarries. NL&S claims that, at Bucyrus, rail service can be provided only by Conrail, which can provide single-line hauls to several key destinations east of Crestline (one such destination is NL&S's sales yard at Wooster). NL&S further claims: that, at Carey, rail service can be provided by Conrail, CSX, and W&LE; that Conrail can provide single-line hauls to several key destinations east of Crestline; that CSX can provide single-line hauls to several key destinations; and that W&LE can provide single-line hauls to a few key destinations. NL&S contends that, because the CSX/NS/CR transaction envisions the allocation of NL&S's Carey and Bucyrus plants to a territory controlled by CSX and the allocation of NL&S's Wooster sales yard to a territory controlled by NS, NL&S will be adversely impacted in two respects. (1) NL&S contends that the CSX/NS/CR transaction will significantly degrade the adequacy of the single-line Conrail routings that will hereafter be joint-line

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[482] JS&S, which still contends that NS' post-transaction trackage rights will run over "the current CSX line," JSSI-7 at 3, asks, once again, that we permit NS to build-in to JS&S "over the CSX line that runs along the southern and eastern edges of the" JS&S facility (*i.e.*, the current CSX line), JSSI-7 at 6. JS&S, however, has not explicitly noted applicants' statement that the NS trackage rights will run over the current Conrail line.

[483] JStar indicates that, although Stanley Yard will be split between CSX and NS, CSX will receive the portion of the yard to which JStar has access.

CSX/NS routings. NL&S claims that this SL-to-JL effect will result in increased transportation costs to NL&S, will make rail cars more difficult to source, and will make service slower and less reliable. NL&S adds that the CSX/NS/CR transaction, if it has the effect of putting W&LE out of business, will also deprive NL&S of single-line service to the markets to which W&LE now provides such service. (2) NL&S contends that, at Carey, it will lose access to competing suppliers of rail transportation. NL&S claims that its status at Carey will be at least 3-to-2 (when the Conrail lines are assigned to CSX) and may ultimately be 3-to-1 (if the CSX/NS/CR transaction has the effect of putting W&LE out of business).

NL&S claims that it will have no way to escape the adverse impacts it fears. (a) NL&S concedes, in essence, that it ships a significant quantity of its product by truck, but insists that the characteristics of aggregates and crushed rock are such that, beyond very short distances, truck transport is not a viable option. And, NL&S adds, because neither Carey nor Bucyrus is located near a water transport route, barge shipping is not available either. (b) NL&S concedes that applicants have agreed to honor NL&S's existing contracts with Conrail. NL&S insists, however, that, in the relatively little time these contracts have left to run, NL&S will be unable to recoup the investments it has made at Bucyrus and Wooster. And, NL&S adds, even if applicants honor the Conrail contracts, the CSX/NS joint-line service that NL&S will receive will necessarily be less reliable and lower in quality than the single-line service heretofore provided by Conrail. (c) NL&S concedes that the rates on its SL-to-JL traffic will be covered, for 3 years, by section III(E) of the NITL agreement. NL&S insists, however, that the 3 years of protection provided by section III(E) is not enough time to protect the facility investments that NL&S made on the premise of continued access to single-line rail service. Nor, NL&S adds, will section III(E) protect NL&S against the service degradation that will accompany the conversion to joint-line service. (d) NL&S concedes, in essence, that the new CSX single-line service it will have at Bucyrus may open up new opportunities. NL&S contends, however: that any such benefit is entirely speculative; and that, in any event, post-transaction CSX single-line service (unlike pre-transaction Conrail single-line service) will not allow NL&S to coordinate the operations of its Bucyrus/Carey plants and its Wooster sales yard.

NL&S therefore contends: that the CSX/NS/CR transaction should be denied; and that, if the transaction is to be approved, appropriate conditions must be imposed to protect NL&S against a loss of the "essential service" now provided by Conrail (*i.e.*, single-line service between Carey and Bucyrus, on the one hand, and, on the other, NL&S's eastern markets).[484] NL&S seeks four conditions: (1) a condition that would require CSX to grant NS trackage rights from Crestline to Spore (the site of NL&S's Bucyrus plant); (2) a condition that would require CSX to grant NS trackage rights from Upper Sandusky to NL&S's Carey plant;[485] (3) a condition that would require NS to grant CSX reciprocal trackage rights to enable CSX to provide single-line service to NL&S's existing and future markets east of Crestline; and (4) a condition that would apply if control over W&LE or its facilities were to change as a result of the CSX/NS/CR transaction, and that would require that a railroad other than W&LE's successor be granted trackage rights over W&LE's tracks to NL&S's markets now served by W&LE.

NYNJFFF&BA. The New York/New Jersey Foreign Freight Forwarders & Brokers Association (NYNJFFF&BA), which represents ocean freight forwarders and non-vessel operating common carriers in the New York/New Jersey port area, notes that the efficient operation of the rail

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[484] NL&S insists the single-line service it currently receives is "essential" in the sense that, without such service, NL&S's traffic will not move.

[485] NL&S's second condition is apparently premised on the notion that NS would be able to link up its Upper Sandusky-Carey trackage rights with its overhead trackage rights on Conrail's Fort Wayne-Upper Sandusky-Crestline line.

lines and rail terminals in that area is of vital importance to its members. NYNJFFF&BA warns that, if the CSX/NS/CR transaction is not implemented efficiently in the New York/New Jersey port area, many problems are likely to develop, including congested rail lines, bottlenecking at rail terminals, lengthy delays, untimely deliveries, and equipment shortages. It is critical, NYNJFFF&BA contends, that shippers, carriers, and transportation intermediaries understand, prior to approval of the CSX/NS/CR application, the type of market access and operating infrastructure that will be available to meet current needs and projected growth. NYNJFFF&BA therefore asks that we require CSX and NS to provide more detailed information respecting their plans for the management of and operations within the New York/New Jersey port area, and particularly within the North Jersey SAA.[486]

PRAIRIE GROUP. Prairie Group, a construction materials company based in Bridgeview, IL, owns seven brick distribution subsidiaries. Six of the seven are served by rail; of the six served by rail, five are located in the Chicago switching district; and, of the five located in the Chicago switching district, two are served by IHB. Prairie Group supports the CSX/NS/CR transaction but is concerned about problems that may arise in the wake of the change in control of IHB. Prairie Group mentions two such problems: (1) Prairie Group is concerned about the competitive problem that may arise from CSX's control of IHB (the danger here reflects the fact that at least some of Prairie Group's brick distribution subsidiaries are served by NS); and (2) Prairie Group is concerned about the operational problem that may arise from CSX's control of IHB (the danger here is that CSX will use IHB to accommodate line-haul traffic moving through Chicago, and will have less interest in using IHB to provide quality switching service to traffic that either originates or terminates in Chicago).

The focus of Prairie Group's concern is the operational problem. Prairie Group claims that, in the wake of the recent western rail mergers: increasing numbers of overhead trains moving through Chicago have been routed via IHB, which has made the Class I railroads IHB's largest customers; the handling of these trains has been given priority over serving customers actually located in the IHB corridor; the switching service provided by IHB to the two Prairie Group subsidiaries served by IHB has deteriorated; and shipments on IHB have incurred significant delays. Prairie Group insists that the inability of its brick companies to receive brick on a timely basis has negatively impacted Prairie Group's competitive position vis-à-vis other brick distribution companies in the Midwest.

The Chicago switching district, Prairie Group contends, is an extremely congested area, and efficient switching services accessible to everyone on an equal basis are vital to the movement of the traffic of Prairie Group and other similarly situated companies in the IHB corridor. Prairie Group contends, in essence, that the existing situation as respects IHB is not good, and that it is likely to get worse (because CSX will continue to focus IHB's operations on overhead trains moving through Chicago). Prairie Group, which believes that IHB should be managed and operated as a neutral switching carrier devoted to serving its on-line customers and all carriers entering Chicago equally, therefore supports the EJ&E/I&M responsive application.[487]

RESOURCES WAREHOUSING & CONSOLIDATION SERVICES. RWCS, a freight forwarder with facilities located on an NYS&W line in North Bergen, NJ,[488] supports the CSX/NS/CR transaction but has requested equal access to CSX and NS rail service from/to its facilities. Applicants have indicated, in rebuttal, that RWCS, which can only be served now by NYS&W and

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[486] NYNJFFF&BA's comments were filed prior to the submission of applicants' North Jersey SAA operating plan.

[487] With the withdrawal of EJ&E (announced at the oral argument, on June 3, 1998), the EJ&E/I&M responsive application has become the I&M responsive application.

[488] NYS&W is owned by the Delaware Otsego Corporation.

which will only be served post-transaction by NYS&W, will be provided the dual access it seeks. "It will be able to connect to NS via Passaic Junction off the Southern Tier on the Conrail lines allocated to NS; and to CSX via a connection to be built from North Bergen to Little Ferry." *See*, CSX/NS-176 at 167-68.[489] RWCS has indicated, on brief, that, although it accepts applicants' statement that it will be provided the dual access it seeks, it is concerned that CSX and NS, which "have in fact purchased NYS&W and are the co-owners," RWCS-4 at 4,[490] may discriminate in favor of their own facilities within the North Jersey SAA. RWCS has therefore requested the imposition of a condition to ensure (a) that the interconnect is built to allow access to CSX at North Bergen/Little Ferry, and (b) that neither CSX nor NS acts to restrict the opportunity for equal or dual access.[491]

REDLAND OHIO. Redland ships lime, limestone, and aggregate products from its quarry and processing sites at Woodville and Millersville, OH (and also receives inbound shipments of coal at its Woodville facility). Redland indicates: that its Woodville facility is served directly by Conrail and indirectly (via a shortline connection) by NS and CSX;[492] that its Millersville facility is served indirectly (via a shortline connection) by Conrail, NS, and CSX;[493] and that the vast majority of Redland's rail shipments are presently shipped either via Conrail or via CSX. Redland contends that the traffic realignments occasioned by the CSX/NS/CR transaction will have a variety of impacts as respects Redland's traffic.[494] In some cases, Redland notes, there may be new single-line routing options; in other cases, existing single-line routing options will be lost; and, in still other cases, the old single-line routing options may continue to exist but may prove to be less desirable than certain new single-line routing options. And, Redland adds: Redland will be losing the one rail carrier (Conrail) that has provided the best rates and the most reliable service; and NS, which is now a minor participant in the movement of Redland's traffic, will be better positioned to compete for a greater share of Redland's business. The bottom line, however, is that Redland has doubts about the level of service that CSX and NS will be able to provide once the CSX/NS/CR transaction has been implemented. Redland is also concerned about the future of Ohio's largest regional carrier, the W&LE.

Redland initially asked that we deny the CSX/NS/CR application, or, alternatively, that we impose three conditions upon any approval thereof. *See*, Redland-2 at 5 (filed October 21, 1997). Redland, however, has since withdrawn both its opposition to the transaction and also its request that we impose its Conditions #1 and #2. Redland now states that it is prepared to allow CSX and NS to prove themselves. Redland adds, however, that it "reserves the right" to return to the Board to

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[489] The Little Ferry connection is apparently the connection proposed in STB Finance Docket No. 33388 (Sub-No. 8).

[490] Applicants insist that "[e]ven after the management buyout of Delaware Otsego Corporation, CSX and NS will not have [a] controlling interest in either Delaware Otsego Corporation or the NYS&W." *See*, CSX/NS-176 at 567.

[491] The RWCS-4 brief was filed 3 days late, but was accompanied by a motion (designated RWCS-5) for leave to file out of time. In view of the minimal delay and the lack of prejudice, the motion for leave to file out of time is being granted.

[492] The shortline is the Northern Ohio & Western Railway (NO&W), which connects: with NS at Maple Grove, OH; and with CSX at Tiffin, OH.

[493] The shortline is, again, the NO&W, which connects: with Conrail at Woodville; with NS at Maple Grove; and with CSX at Tiffin.

[494] The CSX/NS/CR transaction will have two immediate impacts vis-à-vis Redland: (a) the Conrail line into Woodville will become a CSX line; and (b) Redland, which previously had access, directly or indirectly, to three Class I railroads, will henceforth have access only to two.

seek protective relief and monetary damages in the event that CSX, once it assumes operation of the Conrail line into Woodville, subjects Redland's traffic to avoidable operating inefficiencies or similar abuses. Redland continues to request that we impose Condition #3, which would require applicants to provide to W&LE, upon reasonable terms and conditions, either trackage or haulage rights over an existing NS line from Bellevue, OH, to the NO&W interchange at Maple Grove, OH. Redland seeks Condition #3 both for W&LE's sake (Redland claims that the revenue potential for W&LE at Maple Grove would help to keep W&LE solvent) and for Redland's sake (Redland indicates that a W&LE routing would provide Redland with access to customers that Redland cannot reach today). Redland may also be requesting that we affirm any anti-assignment clauses contained in any applicable Conrail contract. *See,* Redland-2 at 11-12.

TRANSPORTATION INTERMEDIARIES ASSOCIATION. TIA, which represents transportation intermediaries providing services as property brokers, freight forwarders, consolidators, intermodal marketing companies, non-vessel operating common carriers, ocean and air forwarders, and logistics companies, warns that its members, and the small to mid-range businesses they serve, will suffer negative impacts if CSX and NS raise their contract volume requirements, eliminate existing service lanes and intermodal terminals, impose more stringent credit terms, and/or increase rates. TIA has therefore asked us to impose three conditions upon any approval of the CSX/NS/CR transaction. (1) TIA asks that CSX and NS, and Conrail where applicable, be prohibited from imposing liquidated damages for volume shortfalls due to: increases in a carrier's rates which materially reduce the competitiveness and marketability of its service; termination of railroad service lanes and/or intermodal terminals when no other competitive rail service alternative exists; service performance which materially deviates from published service schedules; carrier service schedules which materially increase service transit times; and increased frequency and/or severity of cargo loss or damage by the railroad. (2) TIA asks that CSX and NS, and Conrail where applicable, be required to submit plans demonstrating competitive intermodal linehaul service in all lanes currently serviced by Conrail. (3) TIA asks that CSX and NS, and Conrail where applicable, be required to submit plans: showing how they plan to allocate intermodal containers and trailers; and showing continued interchange of intermodal railcars, containers, and trailers with all other railroads.

WYANDOT DOLOMITE. Wyandot, which claims that most of the aggregate and limestone it produces at Carey in Northwestern Ohio is shipped by rail to points in Eastern Ohio, contends: that it now has access to CSX, Conrail, and W&LE;[495] that W&LE handles most of Wyandot's rail freight; and that Conrail, the only carrier that can provide single-line service to Alliance, OH, handles the approximately 20% of Wyandot's annual stone sales that move to East Ohio Stone Co. in Alliance. Wyandot's interests in this proceeding are focused upon its Carey-to-Alliance traffic, which, though it now moves in Conrail single-line service, will henceforth move, if at all, in CSX/NS joint-line service, given that the CSX/NS/CR transaction envisions the assignment to CSX of Conrail's Carey-Upper Sandusky trackage rights[496] and the Conrail line between Upper Sandusky and Crestline, and the assignment to NS of the Conrail line between Crestline and Alliance. Wyandot contends that, with two Class I carriers in the move, Carey-to-Alliance rates will rise and service will decline, and, in consequence, Wyandot will almost certainly lose East Ohio Stone's business. Wyandot insists that the new inefficiencies and likely increased costs Wyandot and East Ohio Stone

[495] CSX accesses Wyandot over a CSX line, and W&LE accesses Wyandot over a W&LE line. Conrail accesses Wyandot via trackage rights over the CSX line between Carey and Upper Sandusky.

[496] The CSX/NS/CR transaction envisions that, in general, Conrail trackage rights over CSX lines will be assigned to NS. *See*, CSX/NS-25, Volume 8B at 120-21 (Item 11). The CSX/NS/CR transaction, however, does not envision that Conrail's trackage rights over the CSX Carey-Upper Sandusky line will be assigned to NS. *See, e.g.*, CSX/NS-176 at 509-10.

will bear if the CSX/NS/CR transaction is approved without appropriate conditions constitute harm to the public interest warranting relief. And, Wyandot adds: the pre-transaction Conrail Carey-to-Alliance single-line routing is, from Wyandot's perspective, an "essential" service (it is essential in the sense that, without such a routing, Wyandot's traffic, which cannot move by truck, will not move at all); and section III(E) of the NITL agreement (the SL-to-JL provision) fails to provide Wyandot any real assurances concerning its East Ohio Stone traffic.

Wyandot therefore asks that we impose four conditions. (1) Condition #1 would require: that the Conrail trackage rights over CSX's Carey-Upper Sandusky line be assigned to NS; and that NS be allowed to link these trackage rights with the generally overhead trackage rights it is slated to receive on Conrail's Fort Wayne-Upper Sandusky-Crestline line, *see* CSX/NS-25, Volume 8B at 111 (Item 11). And, Wyandot adds, the fees NS must pay for such trackage rights must be structured so as to ensure that Wyandot's shipping costs on this route are not higher than those now charged by Conrail.[497] (2) Condition #2 would make the Condition #1 trackage rights mandatory, and would impose upon NS a common carrier obligation to serve Wyandot. (3) Condition #3 would require NS to retain in effect for 5 years a rate or rates for the movement of aggregate traffic to East Ohio Stone at Alliance that is no higher than that currently charged by Conrail. (4) Condition #4 would provide that, if NS proves unwilling or unable to provide Carey-to-Alliance service upon reasonable request, or if NS abandons or otherwise relinquishes its rights of access to or between Carey and Alliance, then this proceeding will be reopened upon Wyandot's request, and, at Wyandot's election, another rail carrier of Wyandot's choosing will be directed to provide Carey-to-Alliance service.[498]

[497] Wyandot adds that haulage rights (as opposed to trackage rights) would not suffice. Haulage, Wyandot notes, would permit single-line marketing by NS for Wyandot, but would not eliminate the inefficient CSX/NS interchange that would have to take place at some point to complete the Carey-to-Alliance movement.

[498] The Wyandot-6 pleading, filed June 16, 1998, will be denied insofar as that pleading constitutes a motion to strike. *See also*, NLS-9, filed June 18, 1998 ("response" by NL&S in support of Wyandot-6); CSX/NS-208, filed June 19, 1998 (reply by CSX and NS in opposition to Wyandot-6). The assertions and remarks that Wyandot seeks to strike are merely statements by applicants of the conditions they are willing to accept, and the Wyandot-6 motion itself constitutes Wyandot's opportunity to respond to such statements.

APPENDIX I: REGIONAL/LOCAL INTERESTS IN THE NORTHEAST

BUSINESS COUNCIL OF NEW YORK STATE. BCNYS conditionally supports the CSX/NS/CR transaction but asks: (1) that we act to ensure the viability of shortline and regional carriers; (2) that we ensure, to the extent possible, that the inordinately high switching charges found in the Port of New York and upstate population centers will be reduced to reasonable levels; (3) that we ensure that shortline, regional, and other Class I railroads will be allowed to interchange with applicants' lines and other proximate railroads in areas where they are now prohibited from doing so; and (4) that we allow a third carrier trackage rights from upstate New York to the New York Metropolitan Area and the Port of New York, especially on the east side of the Hudson.

COALITION OF NORTHEASTERN GOVERNORS. CNEG, an association of the governors of the nine Northeastern states (New York, New Jersey, Pennsylvania, and the six New England states), argues that approval of the CSX/NS/CR transaction should be conditioned to ensure effective rail competition throughout the Northeast.[499] CNEG claims: that, insofar as CSX and NS propose to restore effective rail competition in the Northeast, their initiative should be encouraged; that, however, CSX and NS also propose to preserve the Conrail monopoly in large parts of the Northeast, including portions of New York, New Jersey, and Pennsylvania, and, in particular, the areas east of the Hudson River; and that the combination of the restoration of competition in certain areas and the preservation of the Conrail monopoly in other areas will have adverse impacts in all of the areas in which the Conrail monopoly is preserved. CNEG insists that our decision in this proceeding must reflect the unique history of Conrail, which (CNEG notes) was created in the public interest as a response to the rail crisis in the Northeast in the 1970s.

Proposed Remedy. CNEG argues that we must assure that the areas in which CSX and NS intend to preserve the Conrail monopoly will be afforded effective, two-carrier rail competition. CNEG notes that the competitive access it seeks can be accomplished in several ways. The preferred way, CNEG indicates, would entail the type of direct access by both CSX and NS that is being proposed for the SAAs. CNEG adds, however, that there are also other (though less effective) means to promote competition, such as trackage rights or haulage rights. CNEG indicates, in this regard, that it would be best if any east-of-the-Hudson trackage rights (in particular, trackage rights between Albany and New York City, and also between Albany and Worcester) were granted to NS.

Retained Jurisdiction. CNEG further contends that we should retain jurisdiction to determine whether there will be, post-transaction, effective rail competition in all parts of the Northeast and, in particular, in the areas east of the Hudson. The condition contemplated by CNEG would provide for periodic review of the competitive access issues, and would also provide the Board with sufficient authority to impose additional or other relief to the extent warranted. Such additional relief, CNEG indicates, might entail the creation of additional SAAs or the imposition of trackage rights in favor of NS over the CSX lines east of the Hudson River.

COMMONWEALTH OF MASSACHUSETTS. The Commonwealth of Massachusetts indicates that, because CSX has agreed to certain conditions which, if implemented, will bring about economic balance and enhance passenger/freight operational coordination, the Commonwealth supports the CSX/NS/CR transaction subject to the fulfillment of certain "stipulations" agreed to by CSX. The Commonwealth, though it has not asked us to impose as conditions the stipulations agreed to by CSX, has asked that we retain jurisdiction: to provide for periodic oversight of the issues it has

[499] CNEG notes that its views do not necessarily represent those of the Governor of Pennsylvania.

raised; and to confirm the fulfillment of the stipulations agreed to by CSX within a reasonable time frame (*i.e.*, not less than 3 years nor more than 5 years after the effective date of approval).

CONNECTICUT DEPARTMENT OF TRANSPORTATION. CTDOT argues that the CSX/NS/CR transaction, by preserving the Conrail monopoly east of the Hudson while creating competition west of the Hudson, will place New England at a competitive disadvantage. And, CTDOT adds, what makes matters even worse is that the Conrail monopoly in New England will be assigned to CSX, which will be less inclined to extend intermodal service into New England than NS would be.[500] CTDOT therefore contends that, for competitive reasons and environmental reasons alike,[501] we should approve the transaction only with conditions: to ensure competitive access to Connecticut for two or more Class I railroads, by extending the North Jersey SAA easterly through New York City and Westchester County, NY, along the Northeast Corridor to New Haven; to ensure competitive connections to national markets for shortline and regional railroads in New England; to provide incentives for the truck-to-rail diversion of traffic in the I-95 corridor; and to ensure the application of uniform, competitive rates for shippers in Connecticut and other areas east of the Hudson. CTDOT also contends that we should retain jurisdiction to implement changes as warranted in the future to ensure that the goal of competitive rail freight access to all regions is realized.

CONSERVATION LAW FOUNDATION. CLF, an environmental group based in New England that supports rail as a sensible alternative to the urban sprawl and air pollution that will result from endless highway expansion, asks that we require CSX: to work with the Massachusetts Bay Transportation Authority and Amtrak in providing improved, faster passenger rail service and increased access between Albany and Boston; and to make every effort to improve freight rail service east of the Hudson River, especially from New York City and the ports of New Jersey to New England.

DELAWARE RIVER PORT INTERESTS. The Philadelphia Regional Port Authority, the South Jersey Port Corporation, The Delaware River Port Authority, and The Port of Philadelphia and Camden, Inc. (referred to collectively as the Delaware River Port Interests) support the CSX/NS/CR transaction but contend: that CSX and NS must honor the agreements they have made with various parties; that the Board should establish guidelines and oversight requirements to ensure that implementation of the transaction does not result in a repetition of the problems that occurred as the *UP/SP* merger was implemented; and that implementation should not take place until all necessary labor-enabling agreements are effective, and until state, county, and local governments have been given an opportunity to provide input to CSX and NS on their detailed operating plans. Nor, the Delaware River Port Interests add, should implementation take place prior to the time that (a) all Conrail computer data is accessible and usable in providing customer service, (b) a determination has been made as to which Conrail personnel must be retained to provide at least the level of service that Conrail provided, and such personnel are employed by CSX and NS, and (c) the train schedules as provided to the Board are actually ready to be implemented.

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[500] CTDOT contends that direct intermodal rail freight service on the Northeast Corridor through Penn Station (in Manhattan) to New Haven: would be the most effective means of mitigating intolerable levels of truck traffic in the I-95 corridor; and could be accomplished using single containers on flatcars and RoadRailer-type equipment. CTDOT claims, however, that, although NS might well be interested in using RoadRailers on the Northeast Corridor via New York City, CSX has indicated little interest in providing such a service.

[501] A failure to extend the North Jersey SAA to New Haven, CTDOT contends, will likely exacerbate congestion and air quality problems in the I-95 corridor, if, as has been predicted, a significant volume of new container traffic will be moving from/to applicants' terminals in the North Jersey SAA.

DELAWARE VALLEY REGIONAL PLANNING COMMISSION. DVRPC, the metropolitan planning organization for the nine-county Delaware Valley region,[502] contends that, with the dissolution of Conrail, that region stands to lose a crucial employer, transportation provider, and civic leader. (a) DVRPC, which argues that the Delaware Valley region's losses will exceed 1,800 direct jobs, 1,800 indirect jobs, and $100 million of annual income, believes that a commitment for economic development should be proposed by applicants to help offset these losses. (b) DVRPC, which notes that the Delaware Valley region, an ozone nonattainment area, is affected by ozone precursors emitted by mobile sources, contends that attention should be accorded to the air quality impacts of proposed new rail facilities. (c) DVRPC, noting that the Delaware Valley region's rail passenger operators and Conrail share the use of each other's tracks, contends: that existing trackage rights and dispatching agreements should remain in force for at least 10 years; that the passenger carriers should have reasonable access to regional freight lines, including lines not currently served; and that the freight operators should have adequate access to shippers located on passenger lines. (d) DVRPC insists that applicants must provide guarantees for the continuation of current levels of doublestack and conventional intermodal services both at Ameriport and at the new, proposed Greenwich intermodal terminal. (e) DVRPC contends that, to safeguard the interests of the Delaware Valley region, there should be: an official mechanism to allow public input into the management of the South Jersey/Philadelphia SAA; and provisions to ensure long-term maintenance of SAA facilities in good condition. (f) DVRPC, noting that the CSX/NS/CR transaction contemplates continued train operations on the left bank of the Schuylkill River through Center City Philadelphia between Park Junction and Grays Ferry, contends that, to limit the adverse impacts of such operations, the diversion of all train traffic to the Highline Branch on the right bank of the Schuylkill River should be pursued.

EIGHT STATE RAIL PRESERVATION GROUP. ESRPG's interests in this proceeding are focused on the Youngstown-Meadville-Corry-Hornell rail line, which ESRPG refers to, in its entirety, as the Southern Tier Extension. ESRPG claims: that the Southern Tier Extension once extended west from Hornell all the way to Chicago; that major portions of the Extension west of Youngstown have been abandoned and removed; but that, between Youngstown and Hornell, the Extension remains basically intact. ESRPG further claims: that CSX and NS hope to capture large volumes of traffic that now move by truck; that, however, these large volumes promise to tax the Conrail routes that CSX and NS will acquire far beyond their capacities; and that the Youngstown-Hornell line is ideally situated to furnish the additional capacity that will surely be needed in the years to come. ESRPG therefore asks that we require NS to maintain the Youngstown-Meadville and Corry-Hornell segments of the Southern Tier Extension in a condition adequate to accommodate through traffic on a continuous basis (by which ESRPG means that all trackage would have to be maintained at least to FRA Class 2 safety standards, permitting train speeds of at least 25 mph). ESRPG notes that the relief it seeks would require NS to restore those segments to that condition if they are currently below that condition, and would require NS to repair the washouts on the Corry-Hornell segment and otherwise restore that segment to operable status.

EMPIRE STATE PASSENGERS ASSOCIATION. ESPA's interests in this proceeding are focused on the rail passenger service that will be provided post-transaction over the "Empire Corridor" lines linking Niagara Falls, Buffalo, Albany, and New York City. ESPA, which is an association dedicated to improving and expanding Amtrak, mass transit, and bus service in New York State, indicates that, during the course of this proceeding, CSX (to which the Empire Corridor lines will be assigned) has taken several steps that have given ESPA considerable comfort that CSX

[502] The nine counties are: Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania; and Burlington, Camden, Gloucester, and Mercer Counties in New Jersey.

has been listening to ESPA's concerns and wants to cooperate with both Amtrak and New York State on passenger service. ESPA notes that it is gratified with this turn of events, and wants to commend CSX by giving it a qualified endorsement for its application. ESPA asks, however: (1) that we condition approval of the CSX/NS/CR transaction on certain commitments made by CSX in a December 19, 1997, letter sent by Paul H. Reistrup, CSX's "Vice President Passenger Integration," to William E. Sanford, Chair of the Empire Corridor Rail Task Force for the Onandaga County Legislature;[503] and (2) that we retain oversight jurisdiction to ensure that CSX's performance matches its promises.[504]

ERIE-NIAGARA RAIL STEERING COMMITTEE. ENRSC, an ad hoc committee representing business interests in New York State's Niagara Frontier region, contends that the CSX/NS/CR transaction will inflict direct competitive harm upon shippers located in that region. ENRSC claims: that, since 1976, shippers in the Niagara Frontier region have had to endure the burdens of the Conrail monopoly; that Conrail now controls the major revenue stations in the Niagara Frontier region, and originates and terminates the substantial majority of all Niagara Frontier rail traffic; that, although NS, CP/D&H, CN, and several shortlines have some physical access to the Niagara Frontier region, these carriers have no direct access to most of Conrail's principal revenue stations; and that Conrail has steadily reduced the number of Niagara Frontier shippers that can obtain access via reciprocal switching to the services of other rail carriers.[505]

ENRSC fears that the CSX/NS/CR transaction will adversely impact Niagara Frontier shippers in a variety of ways. (1) ENRSC claims that the Niagara Frontier market will remain largely captive to CSX (which will replace Conrail as the region's dominant rail carrier) and, to a lesser extent, NS. (2) ENRSC claims that many Conrail single-line moves will henceforth be CSX/NS joint-line moves because, although the vast majority of Conrail stations in the Niagara Frontier region will be assigned to CSX, the Conrail destinations for traffic originating in the Niagara Frontier region and the Conrail origins for traffic destined to the Niagara Frontier region will be split between CSX and NS. (3) ENRSC claims that another element of competitive harm occurring as a result of the CSX/NS/CR transaction is the elimination of reciprocal switching that occurred when Conrail made wholesale cancellations of reciprocal switching services in the Niagara Frontier area. ENRSC argues, in essence: that 1995 should be the operative date for determining a Niagara Frontier shipper's 2-to-1 status for purposes of the present proceeding; and that the shippers that were deprived of reciprocal switching by Conrail's 1996 cancellations have been adversely impacted by the CSX/NS/CR transaction.[506] (4) ENRSC claims that certain shippers located on the Buffalo waterfront on a line of the former Buffalo Creek Railroad will suffer 2-to-1 impacts on account of the CSX/NS/CR transaction. ENRSC argues: that these shippers now have access both to Conrail (which owns the

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[503] *See,* ESPA-5, filed February 23, 1998 (the letter is attached to the ESPA-5 pleading).

[504] The ESPA-5 pleading purports to be a petition for leave to submit supplemental comments in lieu of a brief. This pleading, however, is for all practical purposes a brief (it is, at the very least, the functional equivalent of a brief), and we therefore see no need to act upon the "petition."

[505] The "Niagara Frontier" region consists of: Niagara County; Erie County (wherein is located the City of Buffalo); and those parts of Chautauqua County that lie north or east of CP 58 near Westfield.

[506] ENRSC insists: that CSX/NS negotiations were well underway, perhaps as early as 1994, for the joint acquisition of Conrail; that, in 1995, CSX and NS agreed amongst themselves on a division of Conrail and a price they would pay for Conrail (although Conrail's desire to remain independent prevented implementation of the 1995 agreement); and that it is therefore clear that the cancellation by Conrail, in 1996, of reciprocal switching for certain customers in Niagara Falls and Buffalo occurred after an agreement had been reached on the acquisition and division of Conrail.

line) and to CSX (which has trackage rights over the line); and that, although the line will be assigned to CSX, the CSX trackage rights will not be assigned to NS.[507] (5) ENRSC claims that the acquisition premium paid for Conrail will result in higher transportation rates for captive shippers in the Niagara Frontier region. (6) ENRSC claims that, whereas most rail-dependent businesses in the Niagara Frontier region will generally continue to have access to only a single railroad, rail-dependent businesses in the three SAAs that will be created by applicants will henceforth have access to two railroads.

NITL, CP, and CN Agreements. ENRSC contends that neither the NITL agreement nor the settlement agreements entered into by CSX with CP and CN will mitigate the anticompetitive impacts that the CSX/NS/CR transaction will have in the Niagara Frontier region. The reciprocal switching provisions of the NITL agreement, ENRSC argues, will only benefit the relatively few shippers in the Niagara Frontier region that still have reciprocal switching service available from Conrail; but, because the NITL agreement does not provide for the establishment of reciprocal switching services at locations where such service is not now provided by Conrail, the NITL agreement, ENRSC insists, does nothing to correct the loss of competitive rail service that has already occurred in the Niagara Frontier region. And, ENRSC adds, the settlement agreements entered into by CSX, on the one side, and, on the other side, CP and CN, provide only modest opportunities for CP and CN to obtain relatively insignificant reductions by CSX in its required revenue share for new traffic that might move via the Niagara Frontier region.

"Public Interest" Standard. ENRSC argues that we should not focus primarily on the potential benefits of operating and economic efficiencies that may or may not be generated by the CSX/NS/CR transaction; we should focus instead, ENRSC insists, on the potential benefits of the increased rail competition that the transaction may or may not allow. And, ENRSC adds, our analysis of the increased rail competition that may or may not result from the CSX/NS/CR transaction should consider: (i) whether the transaction fulfills the goals of the Final System Plan; and (ii) whether the transaction complies with the "balanced competition" principle that holds that the largest markets must be served by at least two large railroads.[508] ENRSC also contends that, because the combination of the preservation of the Conrail monopoly in the Niagara Frontier region and the establishment of new rail competition in the three SAAs will inflict competitive harm upon businesses located in the Niagara Frontier region, that region is entitled to relief even under the traditional analysis of railroad consolidations.

Conditions Requested. ENRSC has proposed three alternative conditions. Condition #1 is the preferred alternative; Condition #2 is a less preferable alternative to Condition #1; and Condition #3 is a less preferable alternative to Conditions #1 and #2.[509]

Condition #1 contemplates: (i) the creation of a Niagara Frontier SAA that would enable all current and future customers that are or will be served by the Conrail lines within the limits of the Niagara Frontier region to receive direct and equal access to rail service from both CSX and NS; and

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[507] Applicants claim: that CSX once had two sets of trackage rights over this line; that, in connection with the 1988 sale of certain Buffalo-area rail assets to the BPRR, one set of such trackage rights was assigned to BPRR; that CSX has not had access to, nor has it served, shippers on the Buffalo waterfront since the 1988 sale; and that shippers on the Buffalo waterfront will have, post-transaction, access to two railroads (CSX, which will acquire the line from Conrail; and BPRR).

[508] The reference is to a set of "balanced competition" principles that NS announced during the run-up to the Conrail bidding contest.

[509] ENRSC also has proposed lesser forms of relief, including the assignment of certain CSX trackage rights over a line of the former Buffalo Creek Railroad to NS and relief relating to Conrail's cancellation of switching at Niagara Falls in April 1996.

(ii) the establishment of reciprocal switching arrangements for all current and future customers that are or will be served by the Conrail lines within the limits of the Niagara Frontier region that would allow other rail carriers serving the region (such as CN, CP, and existing shortlines) to provide competitive service at a reasonable level of charges (*i.e.*, \$156 per car, subject to adjustment).

Condition #2 contemplates the reciprocal grant of terminal trackage rights by CSX and NS (to NS and CSX, respectively) for operations over the Conrail lines within the limits of the Niagara Frontier region, with trackage rights compensation set at \$0.29 per car mile.

Condition #3 contemplates the establishment by CSX and NS of reciprocal switching to all current and future customers that are or will be served by the Conrail lines located within the Niagara Frontier region, and further contemplates the establishment of a reasonable reciprocal switching charge (*i.e.*, \$156 per car). The reciprocal switching contemplated by Condition #3 would be open to all rail carriers that currently have access to the region and that wish to provide service to customers located at points that would otherwise be served only by CSX or only by NS.

GENESEE TRANSPORTATION COUNCIL. GTC, the metropolitan planning organization for the nine-county "GTC region" in Upstate New York (the nine counties are Orleans, Monroe, Wayne, Genesee, Wyoming, Livingston, Ontario, Seneca, and Yates), supports the CSX/NS/CR transaction in principle[510] but has asked that we impose certain conditions that, GTC claims, would correct various problems that have developed during the years Conrail has been the dominant railroad in the GTC region.

Conditions Requested. (a) GTC asks that CSX be required to establish an intermodal terminal in Rochester, to allow Rochester shippers to participate, on a competitive basis, in the service CSX proposes to open up between points in the Midwest and the Southwest and on the West Coast, on the one hand, and, on the other, Boston/New York. (b) GTC asks that NS be required either (i) to establish an intermodal terminal east of Rochester at Exit 42 on I-90, or (ii) to cooperate with the Rochester & Southern Railroad (R&S) in the establishment of an intermodal terminal in Rochester (such cooperation, GTC adds, would have to include the creation of joint through routes and service between Rochester and the Southeast). GTC claims that an NS (or R&S) intermodal terminal would give the GTC region truck-competitive intermodal service between points in the GTC region and points in the Southeast east of I-75, and would thereby allow the region to compete with shippers in the eastern part of New York who will enjoy, post-transaction, new north-south intermodal lanes.[511] (c) GTC asks that CSX be required to remove Conrail-imposed interchange restrictions on two local shortlines, the Livonia, Avon & Lakeville (LAL) and the Falls Road Railroad (FRRR). (d) GTC asks that CSX be required to reduce Conrail's Rochester reciprocal switching charge from its current level of \$390 per car to a level not in excess of 120% of variable cost. GTC claims that such a reduction would remove a barrier to competition by R&S as respects the many industrial sidings in Rochester to which only Conrail has direct access. (e) GTC asks that we establish oversight of the proposed CSX/NS joint usage agreement respecting the Monongahela coal fields, to ensure fair and impartial

[510] The CSX/NS/CR transaction contemplates: the assignment to CSX of Conrail's Buffalo-Rochester-Albany line, which runs through the northern portion of the GTC region; and the assignment to NS of Conrail's Southern Tier (Buffalo-Hornell-Binghamton) line, which runs through the southern portion of the GTC region.

[511] GTC has also suggested, as respects NS north-south intermodal operations, that it might be best to reinstitute service on certain line segments that have either been abandoned or rail-banked, or sold to shortlines. *See,* GTC-2 at 26-30.

enforcement of the terms of that agreement. (f) GTC asks that CSX be required to upgrade the Amtrak Empire Corridor between Buffalo and Schenectady from Class 4 to Class 5.[512]

Appropriate Standards. GTC concedes, in essence, that its conditions are largely directed to problems that predate the CSX/NS/CR transaction. GTC contends, however, that, given the unique character of a transaction that will establish the rail system east of the Mississippi River for generations to come, we would be better advised to broaden our view of what constitutes "adequacy of transportation to the public" and "the public interest," as those terms are used in 49 U.S.C. 11324. A condition that enhances the adequacy of transportation, GTC argues, is in the public interest, even if the problem that condition will correct predates the transaction.

MAINE DEPARTMENT OF TRANSPORTATION. MEDOT's concerns respecting the CSX/NS/CR transaction involve: competitive access for Maine shippers; better access to markets; enhanced capacity and intermodal operations; and passenger rail service. Choice, competition, and capacity are essential, MEDOT contends, if Maine is to have affordable and effective rail service that advances its competitiveness. MEDOT therefore asks that we impose certain conditions intended to assure that the effects of the CSX/NS/CR transaction will be beneficial, rather than harmful, to the State of Maine. (1) MEDOT seeks assurances that future competitive access to Maine and, more broadly, to New England by both CSX and NS will be provided. One way to improve the situation, MEDOT contends, would be to grant NS trackage rights between Albany, NY, and Worcester, MA; common access through a neutral carrier, MEDOT adds, would also be adequate. MEDOT suggests that, if we approve the transaction: we should require a periodic review of competitive access issues in New England; and we should retain jurisdiction to impose additional relief. (2) MEDOT, which contends that real cooperative efforts would be beneficial for both freight operations and passenger operations, asks that we impose conditions: allowing a means for attaining on-time performance for passenger trains; creating a process to address the initiation of new or special services; establishing standard and reasonable formulas for variable and fully allocated costs; creating liability standards; and establishing a means of allowing higher passenger train speeds.

NADLER DELEGATION (NY & CT). The interests of the Nadler Delegation are focused on an area (referred to as "the Region") that consists of: the City of New York, NY; Long Island, NY; Westchester County, NY; and the State of Connecticut. The Nadler Delegation notes: that the Region is currently rail-served from Selkirk, NY, via Conrail's Hudson Division; that Conrail also operates freight service between Fresh Pond Yard and New Haven, CT; that NYCH operates a float service across New York Harbor;[513] that NYAR operates freight service on the New York State-owned LIRR; and that P&W, which connects with Conrail at New Haven, has trackage rights (limited to carriage of construction aggregates in unit trains) between Fresh Pond Yard and New Haven. The Nadler Delegation claims: that the Region generates 142 million tons of freight per year, 98 million tons of which is rail-appropriate; that, because the Region has a 19th Century rail infrastructure, just 2.8% of the 98 million tons of the Region's rail-appropriate freight currently moves by rail; and that the other 97.2% moves by truck.

Loss of Rail: Economic Consequences. The Nadler Delegation contends that much of the economic dislocation now evident within the Region can be traced to a termination of rail services that occurred in 1968 after the Penn Central Transportation Company (the Penn Central) was required to take over the New York, New Haven and Hartford Railroad Company (the New Haven). The Nadler Delegation claims: that the Penn Central closed the cross-harbor rail car float service that

[512] GTC has also asked that we remind CSX and NS of their obligation under federal law to give priority handling to Amtrak trains operating over the segments of Conrail each will acquire.

[513] The Nadler Delegation indicates that NYCH's assets are owned by NYCH and the City of New York.

until then had been operated by the New Haven between its line at Bay Ridge (in Brooklyn) and the former Pennsylvania Railroad facilities at Greenville (in Bayonne, NJ);[514] that the consequences of this loss of rail service were immediate (between 1968 and 1976, the City of New York lost 342,000 manufacturing jobs); and that no factor other than the degradation, and then the termination, of the quality rail freight services that New York City had previously enjoyed can explain the enormity of the City's employment losses among industrial, warehouse, wholesale, harbor, and other blue collar occupations. The Nadler Delegation further contends that, since the withdrawal of rail service, the Region has had to rely almost entirely on truck transport. The Nadler Delegation claims: that truck transport is more expensive than rail service, particularly for commodities that are better suited to rail; that truck transport, because of its greater cost, has not been able to support a diverse economy; and that, therefore, the fact that rail transport has not been available has contributed to the creation of an abnormally white collar economy in the Region.

Loss of Rail: Environmental Consequences. The Nadler Delegation contends: that the entire Region is within an air quality nonattainment area and is the subject of a State Implementation Plan required by the Clean Air Act; that the Bronx, via which 60% of all truck traffic entering or leaving the Region must pass, has the highest rates of respiratory disease and related mortality attributable to air quality in the entire United States; that, in the South Bronx, respiratory disease death rates are far above the national average; and that, because there are no coal-burning electrical generating plants in the vicinity of the neighborhoods in the South Bronx with the worst respiratory disease problems, all such respiratory problems must be attributed to vehicle emissions.

Cross-Harbor Float Could Be Revitalized; RoadRailer and/or COFC Service Could Be Instituted. The Nadler Delegation contends: that the efficient operation of a cross-harbor float service could divert 14.4 million tons of freight from the highways to rail by the year 2020; and that roughly 4.2 million tons per year would use a float service immediately if it were realistically available. The Nadler Delegation further contends that it would be feasible to institute RoadRailer intermodal service and/or single container-on-flatcar (COFC) intermodal service on the tracks that run through the Hudson and East River tunnels (these tunnels are linked by tracks that run through Pennsylvania Station in Manhattan).

Opposition To The CSX/NS/CR Transaction. The Nadler Delegation contends that the CSX/NS/CR transaction fails the 49 U.S.C. 11324(c) "public interest" test. The Nadler Delegation claims: that, because applicants do not intend to provide essential rail service within the Region, the transaction violates their 49 U.S.C. 11101 common carrier obligations; that the transaction will cause further economic dislocation in the Region; that the transaction, by creating new rail competition in Northern New Jersey while simultaneously preserving the old rail monopoly in the Region, will place the Region at a tremendous economic disadvantage; that, because CSX and NS intend to compete in the Region by drayage from their New Jersey terminals, the transaction will cause further deterioration in air quality levels in the Region; that, given the location of key highways within the Region, the transaction will result in substantial environmental degradation within areas of the Region with large minority populations, which areas are already suffering tremendous rates of disease related to excessive levels of air pollution; and that the transaction will result in no material improvement in transportation in the Region that would justify the permanent reduction in transportation options, economic opportunities, and environmental quality that the transaction will cause.

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[514] The Nadler Delegation notes, however, that the New Haven's cross-harbor float was first shut down by the New Haven's receivership trustee.

Conditions Requested. The Nadler Delegation contends: that the current rail situation has not worked well for the Region and, for this reason, should not be allowed to continue;[515] that, if the public interest is to be served, the rail system within the Region must be rationalized; that rationalization requires the establishment of a competitive east-of-the-Hudson route, which itself requires that major carriers be granted east-of-the-Hudson access to friendly connections; that the inclusion in the Conrail Shared Assets Operator (CSAO) of the cross-harbor floats and the lines connecting the floats to the feeder lines to the east, up to and including the P&W line, is essential to the future success of the cross-harbor floats; and that, without a rationalization of the Region's rail system, applicants will not be able to provide efficient and needed rail services to the public. The Nadler Delegation therefore contends that we should make approval of the CSX/NS/CR transaction subject to several conditions, and that we should retain jurisdiction to fix compensation in the event the interested parties are unable to reach agreement.

Condition #1 would require the extension of the CSAO from Bayonne, NJ, across New York Harbor to Bay Ridge, by the "acquisition of car float and rail facilities owned in part by the City of New York" (*i.e.*, the car float and rail facilities operated by NYCH). Condition #1, which is premised upon 49 U.S.C. 10907(c)(1) and 11324(c), contemplates, among other things, access by the CSAO to the 65th Street Yard (in Brooklyn). The Nadler Delegation claims that, given NYCH's chronic lack of adequate capitalization, the increased cross-harbor rail traffic the Delegation envisions will never be achieved as long as NYCH's rail assets are allowed to continue under present ownership.

Condition #2 would require the extension of the CSAO from Bay Ridge to Fresh Pond Jct. by "the granting of overhead trackage rights on tracks owned by the State of New York, LIRR" (*i.e.*, the tracks operated over by NYAR). Condition #2, which is premised upon 49 U.S.C. 11102 and 11324(c), contemplates, among other things, access by the CSAO to Fresh Pond Yard. The Nadler Delegation: concedes that Condition #2 would eliminate NYAR's participation in bridge traffic between Fresh Pond and Bay Ridge; but contends that there is presently very little such traffic, and that NYAR, much like NYCH, lacks the resources even to maintain, let alone to improve, the vital rail link that could be provided over NYAR's lines.

Condition #3 would require the transfer to the CSAO of the Conrail line from Fresh Pond Jct. (in Queens) to Pelham Bay (in the Bronx). Condition #2, which is premised upon 49 U.S.C. 10907(c)(1), contemplates, among other things, the transfer to the CSAO of: the line between Fresh Pond Jct. and Oak Point Yard (known as the New York Connecting Railroad line); and Oak Point Yard.

Condition #4 would require the extension of the CSAO from Oak Point Yard to Harlem River Yard (both in the Bronx). Condition #4, which is premised upon 49 U.S.C. 10907(c)(1) and 11324(c), contemplates, among other things: the transfer to the CSAO of Harlem River Yard; and access by the CSAO to the New York Terminal Produce Market (Hunt's Point Market).

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[515] The Nadler Delegation contends: that the CSX/NS/CR transaction must be judged not as a single discrete transaction in and of itself, but rather as the most recent in a series of transactions (dating back to the 1960s) that, taken together, have had the demonstrably adverse cumulative effect of depriving the Region of effective rail service; and that, in any event, the adverse effects that may flow from a single discrete transaction include a broad range of effects, and not only anticompetitive effects. And, the Nadler Delegation adds, the fact of the matter is that the CSX/NS/CR transaction, even considered by itself, will have anticompetitive effects: the very act of opening competition west of the Hudson while retaining a monopoly east of the Hudson will produce an anticompetitive effect for all freight moving to/from the Region.

Condition #5 would require the extension of the CSAO to a point in Connecticut where it could connect directly with the full freight services of the P&W "via trackage rights on Amtrak's Northeast Corridor, owned by New York State's Metro-North and by the Connecticut Department of Transportation." Condition #5 is premised upon 49 U.S.C. 10907(c)(1) and 11324(c).

Condition #6a would reserve to Amtrak, as the owner or designated operator of the Northeast Corridor, the right to negotiate with any responsible operator, including but not limited to applicants, to provide intermodal or other direct freight service on the Northeast Corridor, which service must include but need not be limited to service through Amtrak's tunnels under the Hudson and East Rivers. The Nadler Delegation claims that Condition #6a, which is premised upon 49 U.S.C. 11324(c): would be a specific exception to the exclusivity of any rights to operate on the Northeast Corridor granted to applicants; and seeks only to prevent applicants from being granted the right to preclude the service contemplated by Condition #6a.

Condition #6b, which is premised upon 49 U.S.C. 10907(c)(1) and 11324(c), would require that the State of New York be granted the right to designate a second operator of services on the Hudson Division between Selkirk and Oak Point Yard.

Public Benefits Of The Conditions. The Nadler Delegation contends: that the creation of a rationalized rail system within the Region would generate enormous public benefits; that use of the floats would lower the cost of transporting a rail carload from a typical mid-Atlantic origin to a destination on geographic Long Island by $5.08 per ton; that the transfer of this traffic from truck to rail would generate enormous environmental savings (because taxpayers and the general public would not incur the costs that would otherwise be incurred on account of adverse environmental effects, *e.g.*, the cost of time lost to disease and the cost of treating that disease); and that the conditions the Nadler Delegation seeks would give applicants an incentive to carry by rail much of the 98 million tons per year of the Region's rail-appropriate freight that currently moves by truck.

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION. NYCEDC, in its separately filed comments, contends that we should condition approval of the CSX/NS/CR transaction upon the grant of the relief sought in the jointly-filed responsive application.[516]

Horizontal Market Allocation. The CSX/NS/CR transaction, NYCEDC argues, represents an agreement by two similarly situated competitors (CSX and NS) to carve up a market (the New York Metropolitan Area) and to decide amongst themselves where competition will take place (in North Jersey) and where competition will not take place (in New York City and Long Island). NYCEDC contends that, under the antitrust laws, this would be considered a horizontal market allocation and a *per se* violation of Section 1 of the Sherman Act.

"Essential Facilities" Doctrine. NYCEDC contends that we should consider the antitrust "essential facilities" doctrine, which NYCEDC claims is applicable in the case of an entity that controls a facility or other resource that is alleged to be essential to a competitor's operation. This doctrine, NYCEDC argues, holds that it is an anticompetitive violation of Section 2 of the Sherman Act if: the entity that controls the facility or resource is a monopolist; the facility or resource cannot practically or reasonably be duplicated by competitors; the monopolist could feasibly deal with competitors; and the monopolist refuses to do so. NYCEDC contends that CSX's forthcoming monopoly east of the Hudson satisfies the criteria establishing anticompetitive behavior pursuant to the essential facilities doctrine.

Social Impacts. NYCEDC contends that the adverse impact of the CSX/NS/CR transaction will not be limited to shippers and receivers; New York City itself, NYCEDC claims, will suffer greatly in the absence of competition along the Conrail line east of the Hudson River. New York City's

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[516] NYCEDC is a private non-profit corporation created by the City of New York to serve as a catalyst for public and private investment to promote the City's long-term viability.

ability to maintain and attract manufacturing and distribution facilities within the City limits will be weakened; the many transportation-dependent businesses in New York and Long Island that are harmed by the lack of competitive options available to them in their present locations will naturally look to relocate to places where they will enjoy greater competition and more choice of service; the lack of adequate rail alternatives will mean greater resort to trucks; and the increased congestion associated with the use of these trucks will interfere with the economic development of the businesses and industries located in the City. And, NYCEDC adds, the increased use of trucks will add to air pollution in a metropolitan area that needs to find ways to improve, not worsen, the quality of its air.[517]

NEW YORK DEPARTMENT OF TRANSPORTATION. NYDOT contends that our application of the "public interest" standard should not be limited to consideration of the impact of the CSX/NS/CR transaction on existing rail competition. NYDOT argues: that the creation of Conrail was the result of a complex process, which was intended to preserve rail competition throughout New York and the Northeast; that, for various reasons, this process failed to achieve its competitive goals; that the emergence of the present Conrail monopoly in important parts of New York was a result disfavored by all key participants in the Conrail creation process, including the United States Railway Association (USRA); that USRA's primary goal of region-wide rail competition, although not achieved in 1976, has reappeared in 1998 as a key theme of the CSX/NS/CR application; and that we must therefore consider whether the CSX/NS/CR transaction will allow for the creation of the regional competition that should have been created, or preserved, in 1976. And, NYDOT adds, we should also consider the fact that, since 1974, the State of New York has invested or guaranteed over $1 billion dollars in rail service and infrastructure, much of which was for the support of Conrail and its facilities.

Adverse Impacts East of the Hudson. NYDOT argues: that the New York Metropolitan Area and Hudson River Valley are among the country's largest markets for the consumption of products and transportation services; that, from a rail perspective, the region is one in which the State of New York has an enormous financial stake, in light of past and ongoing public investments in commuter and inter-city passenger facilities, yards and terminals, and freight service enhancements;[518] that, however, the transaction as contemplated by applicants will preserve, within this region, the existing Conrail monopoly, while creating, within Northern New Jersey, intramodal competition;[519] and that, in consequence, "east side" produce distributors, municipal waste and wood products shippers, and general merchandise shippers will lose market share and revenue. And, NYDOT adds, a transaction that leaves that portion of New York east of the Hudson River without effective rail competition is

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[517] NYCEDC also claims that a lack of competitive rail options will adversely impact the already enormous cost of moving municipal solid waste (MSW) out of New York City. And, NYCEDC adds, with the upcoming closing of the Fresh Kill landfill on Staten Island, transportation of MSW beyond the City is certain to become an even greater issue in the future than it has been in the past.

[518] NYDOT notes, in this context, that, as part of a plan to enhance freight service to the New York City area, NYDOT has constructed, on a trestle in the Harlem River, a $200 million rail bypass track known as the Oak Point Link (so called because it will end at Oak Point Yard) that will enable freight trains to avoid congestion at Mott Haven Junction and nearby locations.

[519] NYDOT concedes that NS will be able to participate, though not directly, in traffic moving from/to points east of the Hudson. NYDOT claims, however, that, to reach such points, NS will have to rely: (a) on intermodal or drayage service through crowded tunnels and over crowded bridges; (b) on interline movements with CSX itself; or (c) on the NYCH car float across New York Harbor. None of these options, NYDOT contends, will be an effective substitute for direct rail access.

at odds with Congress' clearly intended goals for the rail lines that ultimately became Conrail. The mandate of USRA, NYDOT insists, was to preserve as nearly as possible the competitive rail service that existed in New York State before the bankruptcies of the early 1970s.

Adverse Impacts in Buffalo. NYDOT contends: that, in the Buffalo area, the CSX/NS/CR transaction amounts to a division and allocation of lines and shipping locations, with no real changes in the competitive outlook for shippers heretofore dependent on Conrail; that in the Detroit area, however, shippers in the Detroit SAA will gain new access to competitive rail service; that the terminal and related facilities in the Buffalo area compete with similar facilities in the Detroit area for important U.S.-Canada cross-border through traffic; and that, therefore, the CSX/NS/CR transaction, by creating an SAA in the Detroit area while preserving the Conrail (henceforth, CSX) monopoly in the Buffalo area, will put shippers and other commercial interests in the Buffalo area at a relative competitive disadvantage.[520]

Passenger Transportation Services. NYDOT contends: that the State of New York has made massive investments in railroad passenger operations and facilities; and that Conrail is the cornerstone of the New York passenger network, because Conrail's facilities constitute the backbone of both the commuter system and the inter-city systems. NYDOT argues that, given New York State's enormous stake in the protection of current passenger service levels and in the preservation of its ability to meet the public's growing need for expanded and enhanced passenger service, continuing Board oversight would be appropriate.

Conrail Contracts. NYDOT claims: that 13 contracts entered into by New York State and Conrail remain in effect today, and will require further performance by Conrail in coming years, *see* NYS-10, V.S. Utermark, Exhibit ___ (JAU-5); that these contracts represent public investments for a variety of rail maintenance and operation services; that applicants have made no specific commitment to carry out Conrail's obligations under these contracts; and that, therefore, unconditioned approval of the CSX/NS/CR application could cost New York State millions of dollars in lost benefits due from Conrail under these contracts.[521]

MNCR and STWRB. NYDOT contends: that the conditions sought by MNCR would serve the public's interest in safe, adequate, and expanded passenger rail service; and that the conditions sought by STWRB are reasonable and necessary.

Acquisition Premium. NYDOT contends that appropriate conditions must be crafted to assure that the recovery of any difference between the acquisition price and the value of the acquired assets does not become a pretext for higher rail rates on freight traffic that has no competitive alternatives.

Conditions Requested. NYDOT contends that, in view of the adverse impacts an unconditioned CSX/NS/CR transaction could be expected to generate, that transaction is not in the public interest and should not be approved. NYDOT further contends that, in the event we approve that transaction, we must impose certain conditions intended to mitigate these adverse impacts.

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[520] NYDOT concedes that some stations in the Buffalo area are, and will remain, open to reciprocal switching. NYDOT claims, however, that the number of such stations has declined in recent years due to Conrail cancellations, and that those that are still open face switching charges so high as to preclude meaningful competition. NYDOT also concedes that NS will receive certain trackage rights in the Buffalo area. NYDOT claims, however, that these trackage rights will not open up any additional competitive options for local shippers.

[521] Applicants have indicated that CSX and NS, as appropriate, will be fully responsible for the fulfillment of all contractual obligations to the State of New York relating to the lines allocated to CSX and NS, respectively. *See,* CSX/NS-176 at 200-01. NYDOT has indicated in its brief that this "stipulation" satisfies NYDOT's substantive concerns regarding applicants' intentions vis-à-vis Conrail's current and future contract obligations. *See,* NYS-27 at 33-34.

(1) NYDOT contends that, to mitigate the adverse impacts that will occur if CSX is established as the sole operator of Conrail's New York lines and trackage rights south of Albany and east of the Hudson River, we should grant the relief sought by NYDOT and NYCEDC in their jointly-filed responsive application. NYDOT adds that we should retain jurisdiction to rule upon and resolve potential disputes respecting implementation.

(2) NYDOT contends that, to preserve the competitive balance between Buffalo and Detroit as through points for U.S.-Canada trade, we should grant the conditions sought by the ENRSC and establish an SAA and reasonable, associated switching terms in and around Buffalo.[522]

(3) NYDOT contends that, to ensure that the CSX/NS/CR transaction does not adversely affect commuter and inter-city passenger service, and to monitor applicants' compliance with other conditions, we should prescribe a 10-year oversight and reporting condition, and retain jurisdiction to impose such further or additional conditions as may be necessary. NYDOT specifically contends: that we should order CSX and NS to maintain their operations and facilities so that they can sustain both the present level of passenger operations in New York and future operations dictated by New York's investments and its expanding and dynamic needs; that we should require an express commitment by applicants to continue the New York program to achieve high speed passenger service between New York City and Albany (125 mph) and between Albany and Buffalo (100 mph); that we should require an express commitment by applicants to enhance and expand their passenger facilities in conjunction with Amtrak as circumstances require, consistent with New York's investment in Conrail facilities; and that, in view of New York's investment in facilities benefitting Conrail and Conrail's reciprocal commitments, New York must be entitled to petition for and receive Board orders that will compel applicants to meet New York's reasonable needs for passenger service.

(4) NYDOT contends that, to protect the public investments made by the State of New York and to ensure that unfulfilled contractual undertakings made by Conrail are fully honored by its successors: we should impose a condition that will serve to memorialize, and make enforceable, applicants' "stipulation" respecting the 13 referenced contracts with New York and its agencies, *see* NYS-10, V.S. Utermark, Exhibit ___ (JAU-5); and we should confirm that, because full compliance with these contracts will in no way interfere with the carrying out of the CSX/NS/CR transaction, a 49 U.S.C. 11321(a) override or avoidance of these contracts is not necessary.

(5) NYDOT contends that we should grant the conditions sought by MNCR and STWRB.

(6) NYDOT contends that we should impose appropriate conditions to ensure that captive New York shippers do not suffer unreasonable rate increases as a consequence of the high price applicants paid for Conrail. The conditions NYDOT has in mind would require CSX and NS to record their acquisition costs at historic book values for ratemaking purposes.

Other Parties: LAL, NECR, and NWPRA. (1) NYDOT contends that we should grant the relief sought by LAL, and that we should take action to protect connecting railroads like LAL from the harms threatened by the anticompetitive aspects of the proposed transaction. (2) NYDOT contends that we should grant the relief sought by NECR, but adds that, because the trackage rights sought by

[522] NYDOT argues that the remedy supposedly provided by section III(C) of the NITL agreement will not suffice. That provision, NYDOT claims: covers only those stations that are presently open to reciprocal switching (but, NYDOT notes, not all of Conrail's stations in the Buffalo area are presently open); and caps switching charges at $250 per car, subject to RCAF-U adjustments (but, NYDOT contends, this is almost $100 higher than the level needed to facilitate true competition).

NYDOT/NYCEDC and NECR overlap,[523] we must take care to ensure that all arrangements governing access to the common segment provide for such access on an equal and nondiscriminatory basis. (3) NYDOT contends that, unless NWPRA can demonstrate that the operations it has proposed are feasible and compatible with the through service that NYDOT expects NS will conduct across the Southern Tier Extension (between Corry, PA, and Hornell, NY), the relief sought by NWPRA should be denied.

NYDOT & NYCEDC (JOINT RESPONSIVE APPLICATION). NYDOT and NYCEDC claim: that, at present, all rail freight originating or terminating in the New York City/Long Island/Northern New Jersey area, and in the Hudson River Valley (between the New York Metropolitan Area and Albany), must be handled by Conrail; that, however, although the new North Jersey SAA will give shippers in Northern New Jersey direct access to CSX and NS, and although a new NS/CP haulage arrangement for through service via Albany may create additional new options for west-of-the-Hudson shippers, east-of-the-Hudson shippers will continue to be dependent on a single carrier (CSX); and that it necessarily follows that east-of-the-Hudson shippers will be disadvantaged relative to their west-of-the-Hudson counterparts. NYDOT and NYCEDC further claim that exclusive service by CSX on the east side of the Hudson may disrupt the prevailing trade flows of New York City and Long Island. NYDOT and NYCEDC contend: that much of the New York area's traffic is originated in Canada, New England, the Upper Midwest, and the West; that CSX, in an attempt to develop North-South traffic flows bridging its territory with Conrail territory, will favor traffic moving from/to the South as opposed to traffic moving from/to Canada, New England, the Upper Midwest, and the West; that it is likely that shippers of freight originating in Canada, New England, the Upper Midwest and the West will attempt to use truck transport to remain competitive; and that, therefore, the traffic may continue to flow, but the congestion on New York City's highways and bridges will be greatly increased.

Trackage Rights Requested. NYDOT and NYCEDC therefore ask that we require the grant of unrestricted (full service) trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over Conrail's lines: (i) between the points of connection with CP/D&H at CP-160 near Schenectady, NY, and at Selkirk Yard near Selkirk, NY, on the one hand, and, on the other, CP-75 near Poughkeepsie, NY, with sufficient rights on tracks within Selkirk Yard to permit the efficient interchange of freight with CP/D&H; and (ii) between Mott Haven Junction (in the Bronx) and the point of connection with the lines of the LIRR near Fresh Pond (in Queens), via Harlem River Yard and Oak Point Yard.[524]

Declaration Requested. NYDOT and NYCEDC indicate that, because the lines between CP-75 and Mott Haven Junction are controlled by Metro-North Commuter Railroad Company (MNCR),[525] any new railroad operating between CP-160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, will have to obtain, from MNCR, operating rights over the lines between CP-75 and Mott Haven Junction. This, however, should not be an insurmountable obstacle, because MNCR has indicated that it is prepared to negotiate the granting of such rights. NYDOT and NYCEDC note, however, that, although MNCR contends that it is not prohibited or otherwise restricted, by the terms of any agreements now in effect, from granting the necessary rights, there is a question respecting

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[523] The common segment extends between Selkirk (west of the Hudson) and approximately CP-187 (east of the Hudson).

[524] NYDOT and NYCEDC acknowledge that any issues arising from their designation of a carrier to exercise the sought trackage rights will have to be resolved in a follow-up proceeding.

[525] The New York Metropolitan Transportation Authority, of which MNCR is a subsidiary, is the lessee (under a long-term lease) of the lines between CP-75 and Mott Haven Junction, over which Conrail has trackage rights.

MNCR's ability to grant such rights. NYDOT and NYCEDC therefore ask that, to the extent necessary to permit uninterrupted rail freight transportation between CP-160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, we issue a declaration that, pursuant to 49 U.S.C. 11321(a), MNCR may grant, to a rail carrier other than Conrail or CSX, unrestricted trackage rights over the lines between CP-75 and Mott Haven Junction, notwithstanding any provisions of any agreements that purport to limit or prohibit such a grant.[526]

Purposes Served. NYDOT and NYCEDC contend that the relief they seek would allow for the preservation of the competitive balance that now exists in the New York Metropolitan Area and the Hudson River Valley, by extending to shippers in New York City and Long Island, and on the eastern side of the Hudson River Valley, the same benefits of intramodal competition that applicants propose to confer on shippers in the North Jersey SAA.[527]

NORTHWEST PENNSYLVANIA RAIL AUTHORITY. NWPRA indicates: that it owns the Meadville-Corry line between MP 102.3 (in Meadville) and MP 60.8 (in Corry); that it is the lessee of an additional 0.3-mile segment of that line, between MPs 60.8 and 60.5 in Corry; that its operator, the Oil Creek and Titusville Lines - Meadville Division (OC&T), is authorized to provide common carrier rail service between MPs 102.3 and 60.5; and that it expects Conrail to convey to NWPRA the additional 0.3-mile segment, upon the expiration of Conrail's Southern Tier Agreement with NYDOT. NWPRA claims: that the CSX/NS/CR transaction contemplates that NS will acquire, and provide common carrier rail service over, the Conrail line running via Corry between Erie, PA, and Hornell, NY;[528] that NS, to provide such service, will have to operate over the 0.3-mile segment; that, however, OC&T is the only railroad common carrier authorized to provide rail service on the 0.3-mile segment;[529] and that it therefore follows that NS, if it intends to provide through rail service between Erie and Hornell, will have to acquire trackage rights from NWPRA.

It so happens, NWPRA adds, that it has interests of its own in connection with the Meadville-Corry line, because (NWPRA claims) efficiencies and opportunities for traffic growth on the Meadville-Corry line can only be advanced if OC&T is allowed to connect with its affiliate, the NY&LE, at Waterboro, NY (MP 23.2). NWPRA therefore contends that, because NS needs trackage rights over the 0.3-mile segment and because NWPRA (OC&T) needs trackage rights over the Corry-Waterboro segment, we should impose a condition requiring a "reciprocal" grant of overhead trackage rights between NS and NWPRA/OC&T. The reciprocal grant contemplated by NWPRA

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[526] NYDOT and NYCEDC have not indicated which provisions of which agreements might purport to limit or prohibit such a grant, although NYCEDC has suggested, *see,* NYC-9 at 18 n.4, that Conrail and/or CSX may claim exclusive rights to conduct rail freight operations over the MNCR lines between CP-75 and Mott Haven Junction. It should be noted, however, that Conrail and CSX have not challenged the claim that MNCR is not prohibited or otherwise restricted, by the terms of any agreements now in effect, from granting the necessary rights. *See,* CSX/NS-176 at 124 n.11.

[527] NYDOT and NYCEDC further contend: that *bona fide* dual carrier service to east-of-Hudson shippers and receivers would be both economically viable and operationally feasible; and that neither drayage nor the limited "commercial access" rights granted to CP/D&H and CN under their settlements with CSX can provide an effective substitute for such *bona fide* dual carrier service.

[528] The Erie-Corry segment of this "Conrail" line is owned by ALY. Conrail, however, has trackage rights over this segment, and these trackage rights will be assigned to NS.

[529] NWPRA argues, in essence, that NS will have no more rights vis-à-vis NWPRA than Conrail presently has.

would consist of: (i) a grant to NS of trackage rights between MPs 64.1± and 60.5;[530] and (ii) a grant to OC&T of trackage rights between MP 60.5 in Corry and the connection with the NY&LE at MP 23.2 in Waterboro.

NYDOT's Reply. NYDOT contends: that NWPRA should not be allowed to compromise viable through service over the Southern Tier Mainline (which runs from Northern New Jersey through Binghamton and Hornell to Buffalo, NY) and/or the Southern Tier Extension; that NWPRA's requested condition, which seeks to put OC&T on a segment of track comprising an essential piece of an NS through route, threatens to interfere with New York's plans for improved rail service on the Southern Tier lines; and that NWPRA has provided no assurance that the service it contemplates can co-exist with NS' through operations on the Southern Tier Extension. NYDOT therefore insists that, unless NWPRA can demonstrate that its proposed operations are feasible and compatible with NS through service across the Southern Tier Extension, the relief sought by NWPRA should be denied.[531]

Applicants' Rebuttal. Applicants contend that, although NS will indeed conduct through service between Erie and Hornell, it will conduct such service via Buffalo, and not via the Southern Tier Extension. It therefore follows, applicants note, that NS neither needs nor wants trackage rights over the 0.3-mile segment between MPs 60.8 and 60.5.

NWPRA's Brief. NWPRA claims that NS' admission that it will not conduct through service on the Southern Tier Extension means that NS will continue the process of line degradation and segmentation that Conrail has pursued. NWPRA argues: that NS has failed to demonstrate that the Corry-Waterboro overhead trackage rights sought by NWPRA are inconsistent with the public interest; that, in fact, such trackage rights would allow for the preservation of alternative rail routings and competitive options; and that there is no reason to believe that joint use of the Corry-Waterboro segment would cause congestion or operational problems.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. The Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and the Pennsylvania Department of Transportation (referred to collectively as PADOT) support the CSX/NS/CR transaction. PADOT has asked, however, that we include in the record in this proceeding two letter agreements dated October 21, 1997 (one with CSX; the other with NS). Each letter contains various "proposals" respecting the CSX/NS/CR transaction, and is addressed both to the Honorable Thomas Ridge, Governor of Pennsylvania, and to the Honorable Edward Rendell, Mayor of Philadelphia. PADOT indicates that the two agreements (the agreement with CSX, as memorialized in the CSX letter; and the agreement with NS, as memorialized in the NS letter) do not require the imposition of any conditions by the Board. PADOT adds, however, that the two agreements may be considered by the Board as constituting representations that applicants will comply with their respective terms.[532]

PENNSYLVANIA TRANSPORTATION COMMITTEES. The Pennsylvania House and Senate Transportation Committees (the Pennsylvania Transportation Committees) have several concerns respecting the CSX/NS/CR transaction.

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[530] NWPRA claims that this grant would allow NS to establish a new high-speed connection at MP 64.1 between the ALY line and the Meadville-Corry line.

[531] NYDOT also appears to be suggesting: that a conveyance of the 0.3-mile segment to NWPRA might violate certain NYDOT/Conrail contractual commitments; and that NS will have, as a consequence of the CSX/NS/CR transaction, sufficient authority to operate over the 0.3-mile segment, NWPRA's objections to such operations notwithstanding.

[532] *See,* PA-10 (filed February 23, 1998) (the two letter agreements attached thereto were filed under seal).

Concern #1: Regional and Shortline Competitive Access Issues. The Pennsylvania Transportation Committees urge resolution of certain regional and shortline competitive access issues, including: (a) access by B&LE to the Monongahela coal fields through trackage rights and appropriate haulage arrangements with CSX and/or NS;[533] (b) the elimination of the interchange restrictions that presently preclude RBMN from interchanging freely with CP; and (c) the grant to W&LE of reasonable access trackage rights to competing carriers and gateway interchanges to insure W&LE's ability to provide essential services to Western Pennsylvania shippers. These competitive access conditions, the Pennsylvania Transportation Committees claim, are particularly important because the CSX/NS/CR transaction will restructure long-established traffic patterns and route relationships in fundamentally anticompetitive ways, and because (the Pennsylvania Transportation Committees claim) the only effective way to counter this reduction in competition is to grant regional and shortline railroads competitive access to carriers other than NS so that shipper options can be created to insure continued rail-to-rail competition between CSX and NS.

Concern #2: Revenue Gains From Projected Intermodal Traffic Diversions. The Pennsylvania Transportation Committees claim that applicants have failed to demonstrate the credibility of the revenue gains they anticipate from their projected intermodal traffic diversions. The Pennsylvania Transportation Committees contend: that applicants' diversion estimates fail to take into account the impact of economic downturns or changes in equipment availability in years two through five of the CSX/NS/CR transaction; that this failure is highly significant, because the acquisition premium paid to acquire Conrail cannot be justified without the diverted intermodal revenues applicants have projected; and that the Board, in its determination of the public interest, cannot simply accept applicants' assumption that economic conditions as they exist today will continue to exist unchanged into the future.

Concern #3: Governor Ridge's Support For The CSX/NS/CR Transaction. Applicants have noted "that the Governor and the Commonwealth of Pennsylvania support approval of the Transaction without conditions." CSX/NS-176 at 147. This statement, the Pennsylvania Transportation Committees claim, is true as far as it goes; Governor Ridge, that is to say, has indicated support for the CSX/NS/CR transaction and has not asked for conditions. The Pennsylvania Transportation Committees add, however, that Governor Ridge has also indicated that he expects applicants to adhere to all the commitments they have made; Governor Ridge, that is to say, has premised his support for the CSX/NS/CR transaction on a clear understanding that applicants' commitments to the Commonwealth will be honored. The characterization of Governor Ridge's support takes on a certain significance, the Pennsylvania Transportation Committees contend, because many of the projects proposed by applicants involve the development of intermodal service facilities; and the Pennsylvania Transportation Committees fear that, in the event of a future economic downturn, applicants may be inclined to postpone or cancel the development of intermodal facilities that have been promised to the Commonwealth. The Pennsylvania Transportation Committees, which would prefer to have a means of recourse in the event applicants decide not to honor their commitments, have therefore asked that we impose, as conditions to the CSX/NS/CR transaction, the commitments applicants (particularly NS) have made to the Commonwealth.

Concern #4: CSX/SEPTA Operational & Safety Issues. The Pennsylvania Transportation Committees insist that, unless CSX and SEPTA are able to reach a negotiated resolution of their differences, we should deny CSX authorization to proceed with its proposed freight operations over

[533] B&LE, which participated in this proceeding in its own right, withdrew after entering into a settlement.

any rail lines in Philadelphia and surrounding counties that are also used by SEPTA for commuter rail operations.[534]

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION. The City of Philadelphia and the Philadelphia Industrial Development Corporation (referred to collectively as PIDC) support the CSX/NS/CR transaction. PIDC has indicated, however, that it joins in PADOT's request that the two letter agreements previously referenced be made a part of the record in this proceeding.

RHODE ISLAND DEPARTMENT OF TRANSPORTATION. RIDOT contends that the CSX/NS/CR transaction must be conditioned to balance the competitive inequities that will otherwise be inflicted upon Rhode Island in particular and New England in general. RIDOT claims that, without proper conditions: certain ports, such as those in New York/New Jersey, that are today served exclusively by Conrail will henceforth enjoy the benefits of rail-to-rail competition; other ports, specifically those in New England, that are today served exclusively by Conrail will remain subject to the Conrail (henceforth, the CSX) monopoly; and the combination of new competition in certain areas and a preserved monopoly in New England will put New England ports at a major disadvantage vis-à-vis other East Coast ports. The problem will be especially serious, RIDOT argues, in view of the investments Rhode Island has made to upgrade Amtrak's Northeast Corridor to handle double stack containerized freight. RIDOT notes: that, to develop a world class intermodal port in Rhode Island, a public/private partnership has invested hundreds of millions of dollars in infrastructure improvements at Quonset Point, a former naval base; and that, in connection with that project, Rhode Island has invested over $120 million in the construction of a 22-mile freight-dedicated third track on the Northeast Corridor between the Rhode Island points of Davisville and Boston Switch, that is intended to permit safe operation of modern freight cars to/from Quonset Point (operations will be conducted by P&W, which will operate over the Northeast Corridor on the new third track between Davisville and Boston Switch, and over its own line between Boston Switch and its connection with Conrail, henceforth CSX, at Worcester, MA).

RIDOT asks that we impose several conditions. (1) RIDOT asks that we require direct access by a second Class I railroad into New England. (2) RIDOT asks that CSX be required to enter into an agreement with Rhode Island committing to a reasonable rate structure that will assure comparable rates between the SAAs and the areas that will have, post-transaction, only one Class I railroad. RIDOT claims, in essence, that a reasonable rate structure will be necessary to promote the full development potential of Quonset Point. (3) RIDOT asks that CSX be required to pledge that existing and planned passenger rail operations will not be harmed, and that there will continue to be adequate access for the growth of high speed rail and commuter rail services along the Northeast Corridor.[535] (4) RIDOT asks that we retain jurisdiction to monitor the rail competition issues, and, if necessary, to impose remedies as they are warranted. Provision must be made, RIDOT argues, for Board oversight and review to ensure that RIDOT's first three conditions are met for a period of at least 3 to 5 years.

SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION. SJTPO, the metropolitan planning organization for Atlantic, Cape May, Cumberland, and Salem Counties, supports the CSX/NS/CR transaction but suggests conditions: (1) to prescribe a public voice in the governance

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[534] We were advised at the oral argument (June 3 and 4, 1998) that SEPTA (the Southeastern Pennsylvania Transportation Authority), which had participated in this proceeding in its own right, has entered into a settlement with applicants.

[535] RIDOT concedes that Conrail does not operate on the Rhode Island portion of the Northeast Corridor, but notes that commuter rail service between Providence and Boston is directly impacted by freight operations on the Massachusetts portion of the Northeast Corridor.

of the SAAs; and (2) to protect operating rights for passenger rail operations and potential new starts, especially in the Camden-Millville corridor.

SOUTHERN TIER WEST REGIONAL BOARD. STWRB's interests in this proceeding[536] are focused on the eastern segment of a line that runs in a generally east-west direction between Youngstown, OH, and Hornell, NY. The line consists of three segments: a western segment (owned by Conrail) between Youngstown, OH, and Meadville, PA; a middle segment (once owned by Conrail and now owned by NWPRA) between Meadville, PA, and Corry, PA; and a 146-mile eastern segment (owned by Conrail, and referred to as the Southern Tier Extension) between Corry, PA, and Hornell, NY. The Southern Tier Extension: connects at Corry, PA, with the Erie-Emporium line of the Allegheny & Eastern Railroad, Inc. (ALY); connects at Waterboro, NY, with a line of the New York & Lake Erie Railroad Company (NY&LE);[537] connects at East Salamanca, NY, with a line of the Buffalo & Pittsburgh Railroad, Inc. (BPRR); connects at Olean, NY, with Conrail's Buffalo-Harrisburg line; and connects at Hornell, NY, with Conrail's Buffalo-Jersey City "Southern Tier" line. The CSX/NS/CR transaction contemplates the assignment, to NS, of the Conrail assets of interest to STWRB: the Youngstown-Meadville segment of the Youngstown-Hornell line; the Southern Tier Extension; Conrail's Buffalo-Harrisburg line; Conrail's Southern Tier line; and Conrail's trackage rights over ALY's Erie-Corry line.

STWRB's request for relief has evolved through the course of this proceeding. *See,* STW-2 at 7-8 (filed October 21, 1997), STW-4 at 2-7 (filed February 26, 1998),[538] and STW-6 at 1-2 (filed June 3, 1998). STWRB sought, in its STW-2 comments, conditions that would have: required NS to detail its plans for the Southern Tier Extension; required Conrail to pay a certain sum said to be owed to NYDOT under the Southern Tier Agreement, or, in the alternative, required NS to enter into an extension of the Southern Tier Agreement;[539] required NS to repair the washouts at Belmont, Scio, and Alfred, NY, and to restore the Southern Tier Extension to operable status; and required the extension, through June 1, 2003, of the service and maintenance commitments in the Southern Tier Agreement. STWRB sought, in its STW-4 brief,[540] conditions that would have required NS: to honor Conrail's contractual obligations vis-à-vis the Southern Tier Extension; and to assume whatever other obligations Conrail may have vis-à-vis the Southern Tier Extension. STWRB has now advised, in its STW-6 submission, that an agreement respecting the Southern Tier Extension has been reached by STWRB, NYDOT, NS, and Conrail. STWRB asks, in its STW-6 submission: that we recognize that a voluntary agreement creating obligations has been entered into in the context of this proceeding; that we express our expectation that the commitments contained in this agreement will be honored by the parties, or that best efforts will be made to do so; and that we impose no condition that would hinder or prevent the implementation or performance of this agreement (and,

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536 STWRB is a regional planning board that represents, in this proceeding, four counties (Chautauqua, Cattaraugus, Allegany, and Steuben Counties) in Southwestern New York.

537 This connection is apparently dormant.

538 The STW-4 brief was filed 3 days late, but was accompanied by a motion (designated STW-5) for leave to file out of time. In view of the minimal delay and the lack of prejudice, the motion for leave to file out of time is being granted.

539 The reference is to a 1982 Conrail/NYDOT "Southern Tier Agreement" that was amended in 1987 and again in 1990, and that has a June 1, 1998, expiration date.

540 STWRB apparently modified (in its STW-4 brief) the relief it sought, presumably in view of the representations made by applicants in their rebuttal filing, *see,* CSX/NS-176 at 559-62, which are to the effect that NS will assume Conrail's contractual obligations (if any) under the Southern Tier Agreement and under a related agreement, and will also assume Conrail's obligations (if any) to repair any washouts at Belmont, Scio, and Alfred.

in particular, no condition that would limit or obstruct utilization of a continuous line of railroad between Erie, PA, Corry, PA, and Jamestown, NY).

SOUTHWESTERN PENNSYLVANIA REGIONAL PLANNING COMMISSION. SPRPC,[541] which fears that the CSX/NS/CR transaction may jeopardize the essential rail services now provided by W&LE, supports the imposition of competitive access trackage rights or other conditions that will assure W&LE's continued viability and preserve the rail freight service it now provides. SPRPC also supports B&LE's efforts to gain access to the Monongahela coal fields through trackage rights and appropriate haulage arrangements with CSX and/or NS.[542]

STATE OF VERMONT. The State of Vermont cites four public harms that would occur if NECR were to fail on account of the CSX/NS/CR transaction: (1) NECR would no longer be able to make available to Amtrak at reasonable cost FRA class 3 track between Palmer, MA and St. Albans, VT; (2) NECR would no longer be able to provide interchange access to Vermont shortlines at Bellows Falls, Montpelier Junction, and Burlington, VT; (3) increased highway maintenance costs would be incurred with the diversion of NECR freight traffic to the highways (I-91 and I-89) that parallel much of the NECR mainline; and (4) the competitive position of Vermont businesses that would lose access to quality rail freight service would be eroded. The State of Vermont argues that, to mitigate the consequences of the CSX/NS/CR transaction and to prevent the loss of essential rail services on the NECR rail system, including rail passenger services operated by Amtrak over the NECR rail system, we should grant NECR the trackage rights it has requested.

TRI-STATE TRANSPORTATION CAMPAIGN. TSTC, a consortium of groups working to promote an economically and environmentally sound transportation system in the New York Metropolitan Area, seeks to reduce reliance on cars and trucks throughout the region in order to reduce congestion and pollution and to support rational land use planning. TSTC contends: that it is in the public interest to reach destinations east of the Hudson by rail, because rail provides the only realistic option for the region to reduce, or reduce the rate of growth in, truck movements; that, to make rail viable east of the Hudson, it is essential that there be competitive rail options; and that the way to achieve competitive rail options east of the Hudson is to extend NS operations into that region.

(1) *Improved Cross-Harbor Car Float.* TSTC contends that, to gain competitive rail access east of the Hudson, there must be a high-quality cross-harbor car float service on the Greenville-Bay Ridge route. TSTC suggests three options. (a) Option A would require NS to operate a car float across the New York-New Jersey Harbor. (b) Option B would require NS to buy the NYCH operation and to make certain improvements intended to complement long-standing investments made by city and state agencies. (c) Option C would require NYCH and the government agencies that have invested in assets that could be used by NYCH to prepare a plan regarding management, operations, capital, and physical plant that would ensure effective service across the Harbor.

(2) *NS Trackage Rights To Bronx Yards.* TSTC asks that NS be given trackage rights (over Conrail and NYAR) to enable it to operate to Oak Point Yard and Hunts Point Market (both in the Bronx).

(3) *NS Trackage Rights To New Haven.* TSTC asks that NS be given trackage rights over the Northeast Corridor to New Haven.

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[541] SPRPC represents six Pennsylvania counties: Allegheny, Armstrong, Beaver, Butler, Washington, and Westmoreland.

[542] As previously noted, B&LE, which participated in this proceeding in its own right, withdrew after entering into a settlement.

(4) *NS Trackage Rights Through Manhattan.* TSTC asks that any residual Conrail rights to operate freight trains via the Pennsylvania Railroad tunnels through Manhattan be transferred to NS, and that NS be encouraged to route, via these tunnels, RoadRailers and other low-profile equipment. TSTC adds that, to augment this service during busy daytime hours, or in the event that NS is unable to secure rights through Penn Station, NS should operate RoadRailers on its cross-harbor car float.

(5) *CSX Intermodal Terminal At Harlem River Yard.* TSTC asks that CSX be required to operate a regular piggyback service to the Harlem River Yard.

(6) *Enhancements At Oak Island Yard.* TSTC asks that CSX and NS be required to develop a plan of specific capital improvements to enhance operations at Oak Island Yard in Newark, NJ, which is the region's sole remaining hump classification yard and which could be used to facilitate increased NS carload traffic to points east of the Hudson via the cross-harbor car float and the trackage rights TSTC has proposed.

(7) *Emphasis On Carload Freight.* TSTC asks that CSX and NS be required to conduct an assessment for New Jersey similar to a 1995 assessment for New York, which (TSTC claims) indicated a substantial untapped potential for conventional carload freight. TSTC further contends that, based on the study results, the Board should assign both carriers specific target levels for carload freight traffic, and should monitor the attainment of these levels for at least 5 years.

(8) *Retaining Activity in North Jersey SAA.* TSTC is concerned that cost increases in the North Jersey SAA might encourage shippers to relocate to more remote points. Such "dispersion" of freight activity, TSTC claims, would have adverse effects: it would lead to increases in truck movements; it would violate the land use principle that calls for concentration of economic activity in existing urban centers; and it would result in a loss of jobs in such urban centers. TSTC therefore asks: that we maintain oversight for at least 5 years to ensure that rates do not discriminate against centrally located shippers; and that, if rates in the North Jersey SAA do rise precipitously, we investigate and take appropriate action.

(9) *Arbitration of Freight-Passenger Disputes.* TSTC argues: that rail passenger operators can be expected to fund incremental investments in track and signals needed to accommodate passenger service; and that CSX and NS must be required to negotiate reasonable requirements for physical facilities and operating plans. And, TSTC contends, we should establish a formal arbitration procedure designed to permit the speedy resolution of disputes between freight carriers and passenger carriers.

UNITED STATES REPRESENTATIVE ROBERT MENENDEZ (NJ). Rep. Menendez, who represents New Jersey's 13th Congressional District, argues that the Board should address several issues. (1) Rep. Menendez contends: that applicants should be required to implement adequate noise protection for residences adjacent to rail right-of-ways; and should not be allowed to nullify preexisting agreements or court settlements respecting noise, or local noise ordinances. (2) Rep. Menendez contends: that we should insist on safety as an initial condition prior to implementation of the transaction; that applicants' revenues should be paid into escrow until there are sufficient funds to finance urgent safety improvements; and that applicants should be required to reach satisfactory resolutions to the trackage rights issues that have been raised by public transit entities. (3) Rep. Menendez contends that the Board: should require applicants to renegotiate labor contracts under the terms of the Railway Labor Act; and should not sanction transaction provisions that may have the effect of providing federal subsidies to applicants.[543] (4) Rep. Menendez contends that the

[543] This contention respecting federal subsidies has reference to a notion that applicants, by terminating Conrail employees under the auspices of the Regional Rail Reorganization Act of 1973,

(continued...)

Board should demand more definite information on the North Jersey SAA, and, in particular, should demand a definitive operating plan: outlining safety and capacity improvements; laying out timetables for construction; resolving right-of-way issues for mass transit agencies and passenger rail; and providing detailed procedures to avoid management deadlock.[544]

UNITED STATES SENATOR ARLEN SPECTER (PA). Sen. Specter has indicated that he has great concerns about the CSX/NS/CR transaction's potential impact on Pennsylvania and the entire region. Sen. Specter notes that Conrail: provides rail services throughout Pennsylvania on its 2,456 miles of Pennsylvania track; employs more than 8,100 Pennsylvania residents in 64 of Pennsylvania's 67 counties; purchases more than $430 million a year in goods and services from Pennsylvania vendors; and pays more than $30 million a year in State and local taxes. The CSX/NS/CR transaction, Sen. Specter contends, raises substantial issues with respect to the effects it will have on Conrail employees, Pennsylvania communities, shippers, the Port of Philadelphia, trucking companies, commuter and intercity passenger rail services, rail safety, and the environment.

Applicable Standards. Sen. Specter believes that our analysis should rest on the premise that it is in the public interest that Conrail's employees and Pennsylvania's communities should be no worse off under the CSX/NS/CR transaction than they would have been under the originally proposed CSX/CR transaction. Sen. Specter also believes: that the Board should review the totality of the transaction, not just individual aspects of it; and that, in light of the recent problems in the West, it is important to focus on ensuring rail safety and on whether CSX and NS can deliver on their promises of operational efficiencies.

Issues Raised. (1) Sen. Specter indicates that the location of major rail lines along the riverbanks and downtown area in the City of Pittsburgh may pose public safety risks and may limit the development potential of the City. (2) Sen. Specter contends that we should review whether CSX and NS can pay $115 per share for Conrail without either passing on that cost to shippers in the form of higher rates and/or cutting back on other costs (*e.g.*, costs incurred in connection with maintenance and safety). (3) Sen. Specter indicates that he is troubled by reports he has received that the *New York Dock* doctrine is inadequate, both because employees may not be able to prove that their employment was affected by the transaction itself and not by an intervening cause, and also because the combination of smaller seniority districts into much larger seniority districts may require affected employees to obtain jobs hundreds of miles from their homes. Sen. Specter insists that, if the transaction is approved, the Board should impose conditions to benefit employees beyond the doctrine of *New York Dock*. (4) Sen. Specter insists that the Board must ensure that there is, in Philadelphia, a significant headquarters presence for Conrail or any successor entity. (5) Sen. Specter contends that the Board must consider whether there will be, post-transaction, sufficient competition. Sen. Specter adds that, given the important role played by Pennsylvania's shortlines, the concerns of these shortlines must be accorded a high priority. (6) Sen. Specter contends that the CSX/NS/CR transaction may alter the competitiveness of the Port of Philadelphia well into the next century. (7) Sen. Specter contends that public transportation is critical to millions of Pennsylvania residents, and that the Board, in reviewing the CSX/NS/CR transaction, should ensure that SEPTA

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[543](...continued)
may be able: (i) to deprive those employees of their entitlement to *New York Dock* benefits; and (ii) to shift certain costs to the Railroad Unemployment and/or Railroad Retirement funds.

[544] Rep. Menendez's comments were filed prior to the submission of applicants' North Jersey SAA operating plan.

obtains a new trackage rights contract that will allow existing service to continue and that will also provide for various new services that SEPTA is now studying.[545]

UNITED STATES SENATOR JACK REED (RI). Sen. Reed's concerns respect the quality and cost of freight service in New England, and the serious impact the CSX/NS/CR transaction may have on New England's economic livelihood; New England's shippers, Sen. Reed warns, may face competitive disadvantages due to the potential enhancement of freight service competition in almost every other area on the East Coast. The importance of the freight rail component of the transportation infrastructure, Sen. Reed adds, is made clear by the over $100 million investment that Rhode Island, in conjunction with the Federal Railroad Administration, has made to modernize Rhode Island's freight rail system and to develop the former Quonset Point Navy Base as a world class port facility. Sen. Reed argues: that New England should be afforded the same form of competition between two Class I railroads as the New York/New Jersey area is expected to receive; that serious consideration should be accorded to the conditions requested by RIDOT; and that action should be taken to ensure that planned infrastructure improvements to the Albany-Boston line continue so that New England shippers can benefit from modern freight rail services such as double stack and tri-level carrier clearances. Sen. Reed also urges the creation of a mechanism that would allow the Board to review the impacts of the CSX/NS/CR transaction and to take steps when necessary to ensure nationally competitive rail service in terms of cost and quality for New England's ports and businesses.

VILLAGE OF RIDGEFIELD PARK, NEW JERSEY. The interests of the Village of Ridgefield Park, NJ (the Village), are focused on CSX's Sub-No. 8 proposal to construct, at Little Ferry, NJ, two connections between Conrail's Selkirk-North Bergen line and NYS&W's Paterson-Croxton line. The Village contends: that traffic on these connections, which will be constructed within the Village, will cause prolonged blocking of two thoroughfares (Mt. Vernon Street and the Bergen Turnpike), and will split the Village into two sectors; that such blockages will negatively affect a number of large industries located west of the tracks; and that, because a Department of Public Works yard (at which fire trucks and ambulances are repaired and fueled) is also located west of the tracks, the untimely blocking of Mt. Vernon Street and/or the Bergen Turnpike could make the difference between life and death in the event of a serious fire or other emergency. The Village concedes that the blocking problem it fears is already, in some measure, a reality, because, even at present, operation within the Village of NYS&W's refueling facility has been known to block the crossings at Mt. Vernon Street and/or the Bergen Turnpike for as much as 20 minutes to 1 hour at a time. The Village adds, however, that the new connections will make the present situation even worse.[546] The Village therefore contends: (a) that CSX should be required to construct the connections elsewhere;[547]

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[545] As previously noted, we were advised at the oral argument (June 3 and 4, 1998) that SEPTA (the Southeastern Pennsylvania Transportation Authority), which had participated in this proceeding in its own right, has entered into a settlement with applicants.

[546] The Village indicates that the problems posed by the new connections are aggravated by the CSX/NS buyout of the Delaware Otsego Corporation, the parent company of the NYS&W.

[547] The Village would prefer that they be constructed in the Little Ferry Yard in the Borough of Ridgefield.

(b) that NYS&W should be required to remove its refueling facility from the Village;[548] and (c) that applicants should be required to make the Conrail drawbridge over the Hackensack River moveable again, so that water traffic may once again navigate Overpeck Creek.[549]

[548] The Village claims that, at present, this facility is not being operated in accordance with applicable Environmental Protection Agency (EPA) regulations on containment of petroleum products.

[549] The Village claims: that this drawbridge, if operable, would permit water traffic to enter the eastern end of Overpeck Creek; that this drawbridge was once operable; but that Conrail has permanently closed the drawbridge by welding the track. The United States Coast Guard, the Village contends, has indicted that this drawbridge should be operable to water traffic.

APPENDIX J: REGIONAL/LOCAL INTERESTS IN THE MID-ATLANTIC

BALTIMORE AREA TRANSIT ASSOCIATION. BATA, a citizens group located in the Baltimore, MD, area, is concerned that the increases in freight traffic anticipated by CSX and NS may interfere with the passenger services now operated by MARC and Amtrak. BATA therefore urges the Board to place on CSX and NS "rules of access" intended to protect passenger rail options in the Baltimore area by allowing local transportation authorities access to Baltimore-area rail facilities.

CITIZENS ADVISORY COMMITTEE (BALTIMORE REGION). The Baltimore Region's Citizens Advisory Committee (CAC)[550] contends: (1) that, to ensure that the Port of Baltimore is not disadvantaged vis-à-vis the Ports of Philadelphia and New York, CSX and NS should be required to provide for shared facilities throughout the Port of Baltimore; (2) that, to create a second routing to the West, CSX should be required to grant, to the Maryland Midland (MM) and NS, either track or trackage rights sufficient to create an MM/NS link between Hagerstown, MD, and the Port of Baltimore; (3) that, to ensure that coal producers in Western Maryland are not disadvantaged vis-à-vis coal producers on Conrail's MGA lines, the coal producers in Western Maryland should be afforded competitive rail service, including alternate routes east to Baltimore over CSX and W&LE/MM; (4) that, to create a comparatively direct single-line connection to Canada, D&H should be granted access to the Port of Baltimore, provided that the Northeast Corridor can handle the additional traffic; and (5) that, because CSX and NS envision increased freight traffic on their lines, we should ensure that the passenger operations now conducted by the Maryland Rail Commuter Service (MARC) and by Amtrak will be able to continue at not less than their pre-transaction levels.

DELAWARE DEPARTMENT OF TRANSPORTATION. DEDOT is generally supportive of the CSX/NS/CR transaction but has raised several issues. (1) DEDOT, which is concerned that the Port of Wilmington will be placed at a disadvantage vis-à-vis the Ports of Baltimore, Philadelphia, and New York, asks that we either: (a) extend the South Jersey/Philadelphia SAA south to the Port of Wilmington; or (b) allow CSX to provide rail service to the Port of Wilmington. (2) DEDOT, which notes that there are, in the City of Newark, DE, three at-grade crossings at busy streets that are also major regional arteries, asks that we require: that, on this line, CSX must adhere to the maximum number of trains noted in its operating plan; that, if the average daily number of trains increases above the level beyond which a detailed environmental analysis would have been required in this proceeding, CSX must complete a comprehensive environmental analysis; and that grade-separated pedestrian crossings and the construction of a fully grade-separated railroad roadway crossing must be included as potential mitigation measures in this analysis. (3) DEDOT is concerned that post-transaction freight traffic increases: may adversely impact the rail passenger services now provided by Amtrak (on the Northeast Corridor) and by SEPTA (between Newark and Philadelphia, under contract to the Delaware Transit Corporation); and may complicate the establishment of rail passenger service on Conrail's New Castle and Delmarva Secondary lines. DEDOT therefore asks: that we address such matters as dispatching, maintenance, and capital investments, in order to ensure that rail passenger services will be able to continue and to develop; and that we stipulate that NS (to which Conrail's Delaware lines will be assigned) either provide or not unreasonably withhold operating rights to the State of Delaware for the purpose of reintroducing passenger service along

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[550] CAC is a body established by the Transportation Steering Committee (a Metropolitan Planning Organization) to bring public viewpoints on transportation issues to officials in Maryland's Baltimore region (the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard, and the cities of Baltimore and Annapolis).

its entire system including the New Castle and Delmarva Secondary lines. (4) DEDOT notes: that, because most Delaware shortlines intersect with Conrail's Delmarva Secondary, an intra-peninsula system connecting these shortlines could be created; and that such a system, by allowing the shortlines to move equipment between their lines, would thereby allow for a viable alternative to motor carriers for local freight flows. DEDOT therefore asks that we provide operating rights along the Delmarva Secondary to Delmarva Peninsula shortlines for the purpose of hauling local rail freight.

WEST VIRGINIA ASSOCIATION FOR ECONOMIC DEVELOPMENT. WVED, an ad hoc organization interested in the promotion of competitive rail service in West Virginia, is concerned about future access to Conrail's West Virginia Secondary, which enters West Virginia at Point Pleasant, WV (at the junction of the Kanawha River and the Ohio River), which extends into West Virginia for roughly 149 miles to Cornelia, WV, and which provides (either directly or via shortline connections) a vital link for several industrial facilities (most importantly, several chemical plants) and also for numerous coal mines. WVED claims, in essence, that these facilities and mines, which are (WVED insists) captive to Conrail pre-transaction and which will therefore be captive to NS post-transaction,[551] will be adversely impacted by the new competitive options that will exist post-transaction in the two New Jersey SAAs and along Conrail's MGA lines. WVED contends that, to "even the playing field" and to avoid harmful distortions in secondary markets, we should require NS to grant CSX shared use of the West Virginia Secondary similar to the shared use that applicants will enjoy in New Jersey and on the MGA lines.

WEST VIRGINIA STATE RAIL AUTHORITY. WVSRA supports approval of the CSX/NS/CR transaction, subject to certain modifications. (1) WVSRA contends that, in order to keep W&LE alive as a viable competitor, the transaction should be restructured to allow for access by W&LE to the West Virginia market. (2) WVSRA contends that the transaction, by creating new competition in the MGA coal fields while preserving the CSX monopoly in the B&O coal fields (in north central West Virginia), will place the B&O producers at a competitive disadvantage. WVSRA therefore asks that we require that NS be granted trackage rights access to the B&O coal fields. (3) WVSRA asks that we require that CSX be granted trackage rights on the West Virginia Secondary, between Point Pleasant and Charleston. (4) WVSRA asks that we approve an interconnection between the TERRI line at Falling Rock, WV, and the Conrail line in Charleston, WV, with a joint service opportunity with CSX and NS. (5) WVSRA asks that we institute an oversight proceeding to ensure that West Virginia's industries and jobs are not put in jeopardy by transaction-related service failures.[552]

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[551] WVED notes that there is, on the southwest side of the Kanawha River (east of Charleston, WV) an existing in-service CSX line, which (WVED concedes) might suggest that shippers located in the Kanawha River Valley have now, and will continue to have, access to two railroads (pre-transaction, CSX and Conrail; post-transaction, CSX and NS). WVED contends, however, that, as a practical matter, such shippers have access to one railroad only, because it is not possible to build spur tracks across the Kanawha River in an affordable manner.

[552] By letter dated December 3, 1997, Governor Underwood of West Virginia has informed the Board that the State of West Virginia and its rail authority support the transaction and that he rescinds any previous objections or qualifications for condition.

APPENDIX K: REGIONAL/LOCAL INTERESTS IN THE MIDWEST

BAY VILLAGE, ROCKY RIVER, AND LAKEWOOD, OH. The Cities of Bay Village, Rocky River, and Lakewood, OH (the BRL Cities) ask that we adopt as conditions the terms of the memorandum of agreement entered into on June 2, 1998, with NS.[553]

CITY OF CINCINNATI, OH. The City of Cincinnati contends that the Indiana & Ohio Railway Company (IORY) should not be granted trackage rights over NS' Riverfront Running Track in Cincinnati. The City claims that operation of trains over this out-of-service line by IORY or, indeed, by any railroad would have a material adverse impact on public safety and on a number of city, county, and state projects now underway in Cincinnati.[554]

CITY OF CLEVELAND, OH. The City of Cleveland asks that we adopt as conditions: the terms of the memorandum of agreement entered into on May 22, 1998, with NS; and the terms of the settlement agreement entered into on June 4, 1998, with CSX, both approved by the Cleveland City Counsel on June 8, 1998.[555]

CITY OF GEORGETOWN, IL. With respect to the Paris-Danville abandonment noticed in STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), the City of Georgetown has requested a 180-day public use condition and has also filed a Trails Act statement.[556]

CITY OF INDIANAPOLIS, IN. The City of Indianapolis: has indicated that its concerns vis-à-vis the CSX/NS/CR transaction have been resolved by a settlement agreement (the Indianapolis agreement) it entered into as of June 1, 1998, with CSX; and has withdrawn its request for conditions, on the further condition that we make approval of the transaction subject to the terms of the Indianapolis agreement. *See,* CI-9 (filed June 2, 1998).[557] The Indianapolis agreement provides:[558] (1) that CSX will switch for NS to/from any industries that locate, in the future, on the former Indianapolis Union Belt Railroad; (2) that, in the first 5 years, the switching charge will not exceed the lesser of (i) the switching cost determined by a joint CSX/NS cost study, subject to RCAF-U adjustments, or (ii) $250 per car, subject to RCAF-U adjustments; (3) that the City may appoint an independent auditor to be involved, as its representative, in the cost study; (4) that CSX will negotiate with NS to allow NS to build, for its exclusive use and at its own expense, trackage at Hawthorne Yard; (5a) that CSX will offer, for 10 years, a terminal switch charge for freight moving between the Central Railroad of Indiana, the Louisville & Indiana Railroad Company, and the Indiana Southern Railroad, Inc.; (5b) that CSX will offer, for 10 years, a special switch charge for traffic originating or terminating on one of those shortlines and interchanged with NS, if that traffic cannot receive single-line service from CSX; and (6) that, if existing Conrail-served shippers who would otherwise be open to switching access to NS under the Transaction Agreement but whose Conrail contracts will be allocated to CSX are dissatisfied with the service they receive from CSX, they may avail themselves of an arbitration procedure, similar to that prescribed in the NITL agreement, with a view to rebidding their traffic to other carriers.

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[553] This agreement concerns environmental matters.

[554] The comments of the City of Cincinnati were filed prior to the withdrawal of the responsive application filed by IORY in STB Finance Docket No. 33388 (Sub-No. 77).

[555] These agreements concern environmental matters.

[556] The public use condition and the Trails Act statement apply to the entire Paris-Danville line.

[557] CSX has indicated that it assumes, and consents, that it will be ordered to comply with the Indianapolis agreement in accordance with the terms thereof. *See,* CSX-151 at 4-5 (filed June 1, 1998).

[558] *See,* CSX-151, Ex. A. Our description is not exhaustive.

ENVIRONMENTAL LAW & POLICY CENTER OF THE MIDWEST. EL&PC, an environmental group that supports the concept of a Midwest High-Speed Rail Network connecting Chicago to Detroit, St. Louis, Minneapolis, and Cincinnati, asks that we consider four issues. (1) EL&PC asks that we ensure that existing rights-of-way and the track thereon are preserved for future passenger rail service. (2) EL&PC asks that we ensure that CSX and NS address, in their capital plans, the "bottleneck" that has so often delayed passenger trains approaching Chicago from the east via the south end of Lake Michigan. (3) EL&PC asks that we ensure: that passenger service has primacy, as intended by Amtrak's enabling legislation; and that CSX and NS preserve passenger access to their tracks even if Amtrak is not able to use such tracks. EL&PC adds that, if Amtrak is unable to use such tracks, the rights of primary access should be transferrable to the State Departments of Transportation or any other party designated by Amtrak. (4) EL&PC asks that we ensure that CSX and NS are capable of effectively maintaining and operating Conrail's assets. Worsened congestion east of the Mississippi River, EL&PC fears, could so erode Amtrak's ridership as to bankrupt the organization.

FOUR CITY CONSORTIUM (NORTHWESTERN INDIANA). The Four City Consortium (FCC), an association of the Northwestern Indiana Cities of East Chicago, Hammond, Gary, and Whiting, has focused primarily on the two features of the CSX/NS/CR transaction that (FCC believes) will have the worst impacts: (1) the significant increases in rail traffic over certain rail lines that have numerous rail/highway grade crossings, in particular the B&OCT line between Calumet Park, IL, and Pine Jct., IN; and (2) the reinstitution by CSX of rail service on the now out-of-service NS line between Clarke Jct., IN, and Hobart, IN. FCC has submitted a two-pronged Alternative Routing Plan that, it claims, would: accommodate applicants' planned increases in rail traffic; minimize disruptions to applicants' planned post-transaction rail flows; concentrate, to the extent practicable, rail traffic on lines that are grade separated and/or have a lower incidence of rail/highway grade crossings; result in quantifiable cost savings to the public and also to applicants; and greatly mitigate the safety, socioeconomic, and environmental impacts, including environmental justice impacts, that the CSX/NS/CR transaction will otherwise have in the Four Cities region.

The first prong of the Alternative Routing Plan would reroute some CSX traffic from the B&OCT/CSX Calumet Park-Pine Jct.-Willow Creek route to an IHB/Conrail Calumet Park-Ivanhoe-Tolleston-Gary-Willow Creek route. The IHB/Conrail route would involve: IHB's grade-separated Calumet Park-Ivanhoe-Tolleston-Gary line; Conrail's (hereafter, CSX's) Gary-Willow Creek line; and a new connection in Gary. FCC claims: that the B&OCT/CSX route has 27 rail/highway grade crossings, 20 of which are located on B&OCT's Calumet Park-Pine Jct. line and are already the cause of much vehicle delay and many safety problems; and that the IHB/Conrail route runs through a less developed area with only 15 grade crossings, and would take advantage of the $25 million in government funds already invested in grade separations on the IHB corridor.

The second prong of the Alternative Routing Plan would reroute certain CSX traffic from NS' (hereafter, CSX's) Clarke Jct.-Hobart line to an EJ&E/NS Pine Jct.-Van Loon-Hobart route. The EJ&E/NS route would involve: EJ&E's Pine Jct.-Van Loon line; and NS' Van Loon-Hobart line. FCC notes that the Clarke Jct.-Hobart line cuts through the heart of Gary, has been out of service for roughly 10 years, and has 23 (now inactive) rail/highway grade crossings; and FCC claims that reinstitution of service on this line will create massive safety problems, and will interfere with expansion plans for the Gary/Chicago Airport, a Gary housing project, and lakefront development efforts.

Conditions Requested. FCC contends that, if we approve the CSX/NS/CR transaction, we must impose conditions to mitigate adverse impacts on the Four Cities region. (1) Condition #1 would require the adoption of the Alternative Routing Plan in at least two respects. Condition #1a: would require CSX to reroute its traffic off of B&OCT's Calumet Park-Pine Jct. line in at least sufficient numbers so that no more than 27.6 trains per day on a monthly average basis would traverse this line; and would require, to the extent possible, that trains rerouted off this line move over the grade-separated IHB/Conrail Calumet Park-Ivanhoe-Tolleston-Gary-Willow Creek route. Condition #1b: would require that the Clarke Jct.-Hobart line not be restored to service; and would require applicants to utilize instead either (i) the EJ&E/NS Pine Jct.-Van Loon-Hobart route, or (ii) any other route applicants prefer, provided that the Four Cities concur. (2) Condition #2 would provide that, absent agreement between NS and FCC: no more than 16 trains per day on a monthly average basis will be operated over NS' Van Loon-Hobart line; and no more than 11 trains per day will be operated over NS' Burnham Yard-Van Loon line.[559] (3) Condition #3 would require CSX and NS to work with FCC to develop additional plans to mitigate transaction-related impacts in Northwestern Indiana; and would specifically require CSX and NS to cooperate in seeking state and federal funding to facilitate the maximum utilization of grade-separated corridors, and to work with the City of Gary to facilitate the future expansion of the Gary/Chicago Airport. (4) Condition #4 would require CSX and NS to report to FCC at least quarterly, and would require their reports to contain sufficient information to confirm compliance with Conditions #1, #2, and #3. (5) Condition #5 would provide for Board oversight for 5 years to ensure compliance with Conditions #1, #2, #3, and #4.

ILLINOIS DEPARTMENT OF TRANSPORTATION. ILDOT acknowledges that the CSX/NS/CR transaction will generally benefit Illinois but asks that we modify the transaction in two respects.

The Sub-No. 9 CSX/BRC Connection. ILDOT claims, apparently with respect to the project noticed in STB Finance Docket No. 33388 (Sub-No. 9), that the construction of a CSX/BRC connection at 75th Street in Chicago will result in placing new diamonds across a track shared by NS freight trains and Chicago Metra commuter trains. ILDOT believes that, because CSX can easily reach BRC's yard at Bedford Park via existing connections or by utilizing Conrail tracks, there is no justification for running the risk that would be inherent in establishing yet another crossing point for freight traffic and commuter traffic.

Chicago Switching District Traffic Flows. ILDOT contends: that the operation of the Chicago switching district depends upon the unimpeded interchange of traffic between carriers, which in large part depends upon the existence of more-or-less neutral switching carriers; that the allocation of assets contemplated by applicants will give CSX and NS effective control of the three major switching carriers in the Chicago area; that it appears that one of these carriers, IHB, will de-emphasize its role as a switching carrier, and will become an extension of the mainlines of CSX and NS; that, in addition, large portions of the Chicago switching district will become dependent on CSX dispatching, which has been problematic for some time; and that, aside from NS, other carriers will be hampered by the consolidation of power over switching in the hands of CSX. ILDOT, citing the problems that developed in the Houston terminal in 1997, insists that it is vital that both CSX and NS continue to have free access not only to the two major western carriers and the two Canadian carriers but also to smaller railroads such as WCL, IC, and EJ&E. ILDOT therefore contends that, to preserve IHB as a neutral connection and to continue the free flow of traffic through the Chicago switching district, Conrail's 51% interest in IHB must be transferred to a neutral carrier or a group of neutral carriers.

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[559] FCC notes that its Alternative Routing Plan: assumes that CSX and NS will abide by other important aspects of their operating plans; and, in particular, assumes that NS will abide by its representations concerning its plans to reduce the daily average number of train movements over its Burnham Yard-Van Loon-Hobart line. FCC contends, in essence, that NS should be held to its representations in this regard.

ILLINOIS INTERNATIONAL PORT DISTRICT. The Illinois International Port District (the Port of Chicago), which operates a port facility known as Calumet Harbor, the tracks at which are owned by NS, indicates: that the two sides of Calumet Harbor (which we shall refer to as Calumet Harbor West and Calumet Harbor East) have independent rail service; that, at Calumet Harbor West, the Chicago, South Shore and South Bend Railroad (CSS&SB), the Chicago Rail Link (CRL), and the Indiana Harbor Belt Railway (IHB) have operating rights over the NS tracks; and that, at Calumet Harbor East, NS has exclusive operating rights. The Port of Chicago claims: that, due to the lack of competition at Calumet Harbor East, the Port of Chicago has been unable to offer, at Calumet Harbor East, services competitive with those offered at Calumet Harbor West and at other ports throughout the country; and that the CSX/NS/CR transaction will aggravate the already bad situation at Calumet Harbor East, because NS plans to reduce service at, and in due course to eliminate, the nearby Calumet Yard (at which NS now provides classification service for traffic moving from/to Calumet Harbor East), and to transfer the Calumet Yard classification functions to Elkhart, IN, some 70 miles away. The Port of Chicago, therefore, requests that we impose either or both of two conditions, which are intended to promote competition at Calumet Harbor East, and to allow the Port of Chicago to compete more effectively with East Coast and other Great Lakes ports. Condition #1 would require NS to grant, to CSS&SB and CRL, operating rights over NS' trackage at Calumet Harbor East. Condition #2, which is intended both as an alternative and a supplement to Condition #1, would require NS to grant, to CSX, operating rights over NS' trackage at Calumet Harbor East.

INDIANA PORT COMMISSION. IPC's interests are focused upon its International Port of Indiana, known as Burns Harbor, which is located at Portage in Porter County, IN, some 10 miles east of Gary, IN, on the southeastern shore of Lake Michigan. IPC has asked us to impose a number of conditions.

IHB Conditions. IPC contends: that, with the CSX/NS/CR transaction, IHB will be exploited by CSX and NS, and will be relegated to the role of a switching railroad; that the potential for an annual change in IHB management will lead to instability; that, therefore, it would be better if some or all of Conrail's IHB stock were divested or placed in a perpetual voting trust; and that a neutral carrier or group of carriers should be allowed to control IHB and to run IHB in a nondiscriminatory manner.[560] IPC further contends that we should order: that IHB must continue to provide at least daily service to Burns Harbor; that IHB must be permitted to retain its ownership interests in the nearly 1,500 gondola cars bearing its markings; that such gondola cars, when interlined with CSX and NS, must be returned empty at the junction points where they were delivered; and that IHB's Blue Island and Michigan Avenue Yards must remain under IHB control. And, IPC adds, we should: retain jurisdiction for at least 5 years to monitor implementation of the transaction; require CSX and NS to file periodic reports detailing their stewardship of IHB; and afford interested persons the opportunity to respond to such reports.[561]

Service Adequacy Conditions. IPC contends that we should: prescribe service standards; require applicants to prove, by submission of periodic reports, that they are complying with the prescribed standards; and restrain applicants from implementation of any changes in presently existing services in the affected area until such time as it is clear that prescribed service standards are being maintained consistently and reliably.

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[560] IPC notes: that Burns Harbor is served by Conrail and, pursuant to a 1993 IPC/Conrail agreement, by IHB via Conrail tracks; that, although Conrail holds a 51% interest in IHB, Conrail has allowed IHB to be operated independently; and that, therefore, Burns Harbor has enjoyed, since 1993, two-railroad competition and the benefits thereof.

[561] IPC's reporting conditions would apply if CSX and NS are allowed to control IHB in the manner contemplated in the CSX/NS/CR transaction.

Economic/Financial Conditions. IPC asks that we ascertain that the CSX/NS/CR transaction will not lead to avoidable financial debacles, and, if necessary, impose conditions intended to preclude the occurrence of financial adversity and the need for otherwise unnecessary rate increases.

Additional Conditions. IPC contends: that our decision approving the transaction should be made effective no sooner than 30 days after the date of service (July 23, 1998), and should provide for an orderly implementation of the transaction; and that applicants should be required to file, before the effective date of our decision (August 22, 1998), a timetable setting out, by specific locations and identified routes, the sequential phasing in of Conrail into CSX and NS.

OAG, ORDC, & PUCO (OHIO). The Ohio Attorney General (OAG), the Ohio Rail Development Commission (ORDC), and the Public Utilities Commission of Ohio (PUCO) maintain that the CSX/NS/CR transaction is not in the public interest and should be denied because: W&LE and AA will be confronted with substantial losses of traffic and revenue that will threaten W&LE's solvency and AA's ability to provide essential service; Centerior, Wyandot, NL&S, and MM will be deprived of single-line service;[562] ASHTA will be burdened with unnecessarily circuitous and inefficient movements of its hazardous chemical traffic; the Neomodal facility will face extinction if its only rail connection (W&LE) should fail; the re-routings contemplated by applicants will create adverse impacts throughout Ohio; and a number of Ohio-based rail employees will face the prospect of losing their jobs or of being transferred out of Ohio. OAG, ORDC, and PUCO add that the transaction should be approved only if approval is made subject to "at least" (OAG-9 at 5) the protective measures specified in their OAG-9 brief.

(1) OAG, ORDC, and PUCO argue: that the future of W&LE, a vital regional railroad, will be jeopardized if the transaction is implemented without appropriate conditions; that a W&LE bankruptcy would be particularly disruptive for major Ohio rail users; that the collapse of W&LE would isolate the Neomodal facility and foreclose this project from ever becoming a key component in the Ohio transportation system;[563] and that, for these reasons, we should adopt conditions adequate to assure that W&LE can remain fully intact as a regional carrier. OAG, ORDC, and PUCO add: that they are committed to W&LE's request for haulage/trackage rights access to industries and facilities in and around Toledo; and that direct interchange between W&LE and AA would allow each to recover revenues that it would otherwise stand to lose as a result of the transaction.

(2) OAG, ORDC, and PUCO argue: that the promotion, by CSX and NS, of intermodal terminals in the Cleveland area will adversely impact the Neomodal facility; that, at the same time, increased truck traffic in the Cleveland area will add to that area's worries in terms of air pollution and noise and added burdens on the railroad infrastructure; and that, for these reasons, we should adopt conditions adequate to assure that utilization and viability of the Neomodal facility will not be undermined as a result of the CSX/NS/CR transaction.

(3) OAG, ORDC, and PUCO argue: that the CSX/NS/CR transaction will arbitrarily skew the local electric generating market against Centerior (as its single-line hauls become joint-line hauls, and as certain of its competitors enjoy new rail competition); that, as respects the shift from single-line service to joint-line service, the NITL agreement provides no more than a 3-year "stay of execution"; and that, to promote a level playing field, we should assure Centerior of the continued availability of single-line service by obligating NS to assume trackage rights over the CSX line (now a Conrail line) between Centerior's Lake Shore Station located in Cleveland and CP 124 located east of Ashtabula.

[562] In its MMM-4 notice filed June 5, 1998, Martin Marietta Materials, Inc. (MMM), announced that it had settled with applicants and was withdrawing its comments and brief.

[563] OAG, ORDC, and PUCO add that Neomodal's dependence upon W&LE meets the "essential services" test.

(4a) OAG, ORDC, and PUCO contend: that the CSX/NS/CR transaction threatens serious "single-line to joint-line" impacts in Ohio; that the harms shippers such as Wyandot, NL&S, and MMM will suffer will not be mitigated by the NITL agreement, which does not address service inefficiency questions and which will provide, at most, a 3-year transition period; that there will be social costs as well (*i.e.*, more wear-and-tear on highways and more air pollution, because some traffic that now moves by rail will henceforth be diverted to truck); and that we should therefore (i) impose conditions adequate to preserve the service and pricing elements of the single-line service currently available to Ohio aggregate shippers, and (ii) grant in full the relief sought by Wyandot, NL&S, and MMM.

(4b) OAG, ORDC, and PUCO argue: that AA provides essential rail services in Northwestern Ohio; that, however, AA's future is in jeopardy, because AA stands to lose substantial revenues as a result of the CSX/NS/CR transaction; and that we should impose conditions adequate to ameliorate the adverse impact of a loss of traffic on AA's ability to provide adequate service.

(5) OAG, ORDC, and PUCO contend that we should prescribe reciprocal switching between CSX and NS at Ashtabula to avoid circuitous (via Buffalo) and inefficient (*i.e.*, joint-line) handling of ASHTA's hazardous chemical traffic.

(6a) OAG, ORDC, and PUCO contend that we should impose a condition requiring that applicants may not effect substantial increases in traffic over Ohio corridors and/or through Ohio communities without first having negotiated and committed to agreements with State and local officials to mitigate the adverse safety and environmental impacts that will otherwise occur.

(6b) OAG, ORDC, and PUCO contend that we should carefully consider the impact of the CSX/NS/CR transaction on affected employees and on the State, and should impose the highest level of labor protection as appropriate in the circumstances.

(7) OAG, ORDC, and PUCO contend that we should adopt pro-active oversight provisions to monitor implementation of the CSX/NS/CR transaction. OAG, ORDC, and PUCO add: that oversight should extend for at least 5 years; that we should assure that trackage rights agreements between applicants are operated in the interest of shippers; that we should impose periodic reporting requirements concerning adequacy of service, environmental, safety, and competitive issues; that we should retain authority to request additional information from applicants or any other party of record; that we should retain jurisdiction to assure that corridor and other safety and environmental mitigation agreements are fully implemented, and to ensure full compliance with employee protection conditions; that appropriate provision should be made for active participation by the Federal Railroad Administration and state agencies authorized to review and enforce safe railroad practices; that we should establish a schedule pursuant to which we will respond to progress reports; and that we should ensure that all concerned parties have access to effective post-transaction relief.

PARKS/RECREATION DEPT. OF ST. JOSEPH COUNTY, IN. With respect to the South Bend-Dillon Junction abandonment noticed in STB Docket No. AB-290 (Sub-No. 194X), the St. Joseph County Parks and Recreation Department has requested a 180-day public use condition and has also filed a Trails Act statement.[564]

STARK DEVELOPMENT BOARD. SDB's interests in this proceeding are focused upon its Neomodal Terminal,[565] an intermodal terminal located on a W&LE line in Stark County, OH, that was developed with funds awarded by the Federal Highway Administration (FHWA) and the Ohio Department of Transportation (OHDOT). SDB, a non-profit corporation organized to provide a new

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[564] The public use condition and the Trails Act statement apply to the entire South Bend-Dillon Junction line.

[565] Neomodal is owned by SDB but has been leased to a private operator (Intermodal Operators, Inc., an affiliate of W&LE).

approach to handling economic development in Stark County, claims that Neomodal: was built on a W&LE line because W&LE connects with three Class I railroads (CSX, NS, and Conrail); was meant to facilitate competitive intermodal rail service to Northeast Ohio and Western Pennsylvania; and was intended to take truck traffic off the highways, thereby reducing air pollution and saving millions of gallons of diesel fuel. SDB fears, however, that Neomodal will be adversely impacted by the CSX/NS/CR transaction. SDB claims, in fact, that the transaction, if not properly conditioned, will eliminate W&LE and Neomodal, and will thereby eliminate effective rail competition in Northeast Ohio. The main problem (as SDB describes it) is that the post-transaction CSX and the post-transaction NS will prefer to work with intermodal facilities located on their own lines. SDB claims that the anticipated construction of new terminals by CSX and NS: will result in the creation of redundant facilities (*i.e.*, Neomodal will be made redundant); will lead to predatory pricing and business practices which, in turn, will lead to an undue concentration of market power in the Northern Ohio corridor; and will be detrimental to public health and safety (because the lack of rail competition will force Northeast Ohio shippers to use over-the-road trucking). SDB insists that, in view of the environmental issues, the safety issues, the economic development issues, the competitive issues, and the political issues, and in order to allow Neomodal to continue to succeed as originally intended (*i.e.*, on a viable W&LE), certain remedies must be imposed. *See*, SDB-11 at 31-32.[566]

Conditions Requested. SDB requests that we issue the following protective conditions: (1) mandate that CSX and NS provide competitive pricing and rates, competitive and reliable scheduling, reliable and timely service, and access to markets; (2) mandate that CSX and NS work with W&LE to insure competitive pricing and rates, competitive and reliable scheduling, and reliable and timely service; (3) mandate that CSX and NS integrate Neomodal into their respective rail systems and market Neomodal as if it were their own terminal; (4) mandate that CSX and NS enter into long-term (at least 10 years) "take or pay" lift contracts with Neomodal, at a minimum level of 15,000 lifts per year; and (5) grant to W&LE trackage rights to Chicago, IL, and unrestricted trackage rights to Hagerstown, MD, with expressed guarantees and remedies.

Alternative Relief. SDB contends that, if we do not grant the conditions it has requested, we should require CSX and/or NS: (a) to purchase Neomodal and its assets, at their fair market value, as determined by appraisal; and (b) to integrate Neomodal into their respective rail systems in a manner that would continue competitive rail service to Northeast Ohio and Western Pennsylvania.

SUMMIT COUNTY PORT AUTHORITY. SCPA's interests are focused upon an 8-mile gap in the trackage rights requested by W&LE on CSX's New Castle Subdivision in Akron, OH, and on Conrail's lines in the area east of Akron. *See*, WLE-4 at 54 n.3 and 77. SCPA, an authority created under Ohio law by Summit County, argues: that it owns the lines (the Freedom Secondary between Kent and Akron, and the Akron Secondary between Hudson and Cuyahoga Falls) that make up the 8-mile gap; and that, because it is not an applicant in this proceeding, we cannot, in this proceeding, award trackage rights over these lines or otherwise alter any interests in these lines.

TLCPA & TMACOG (TOLEDO, OH). The Toledo-Lucas County Port Authority (TLCPA) and the Toledo Metropolitan Area Council of Governments (TMACOG) support the CSX/NS/CR

566 SDB argues, among other things, that actions taken by CSX and NS in 1995 "induced" SDB, W&LE, and OHDOT to proceed with the planned construction of Neomodal, and gave these entities every reason to believe that CSX and NS fully intended to provide reliable service on traffic moving from/to Neomodal.

transaction but ask that their letter agreement with NS be made part of the record in this proceeding.[567]

UNITED STATES REPRESENTATIVE DENNIS J. KUCINICH (OH). Rep. Kucinich asks[568] that we adopt as conditions: the terms of the memorandum of agreement entered into by the BRL Cities and NS; and the terms of a letter agreement entered into by the City of Berea, NS, and CSX.[569]

VILLAGE OF RIVERDALE, IL. The Village of Riverdale, a community in Cook County, IL, believes that it will be adversely impacted by a transaction-related reduction in rail employment in the Chicago Metropolitan Area.

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[567] *See,* TLCPA's TLCPA-5 pleading, filed February 23, 1998 (the NS letter, dated February 18, 1998, is an attachment thereto). *See also,* TMACOG's pleading (not designated), also filed February 23, 1998 (with the same attachment). *See also,* the discussion, in this decision, of the relief sought by NW in STB Docket No. AB-290 (Sub-Nos. 196X and 197X).

[568] Rep. Kucinich's request was made at the oral argument.

[569] These agreements concern environmental matters.

APPENDIX L: LABOR PARTIES.

ALLIED RAIL UNIONS. The American Train Dispatchers Department/BLE, the Brotherhood of Maintenance of Way Employes, the Brotherhood of Railroad Signalmen, the International Brotherhood of Electrical Workers, the Sheet Metal Workers' International Association, and the Transport Workers Union of America, participating collectively as the Allied Rail Unions (ARU),[570] contend that the CSX/NS/CR transaction should be rejected: because of its adverse effects on rail employees,[571] on the Railroad Retirement system, on the safety and adequacy of railroad operations, and on competition in the Northeast; and because applicants have not demonstrated that there will be sufficient public benefits to justify approval of the transaction given its adverse impacts and given also that Conrail currently provides adequate service.

Declarations Requested. ARU contends that, if we approve the transaction, we should issue declarations: (1) that current rates of pay, rules, and working conditions, and other rights, privileges, and benefits of applicants' employees under their CBAs, must be preserved; (2) that action at odds with existing CBAs may be taken only upon proof that such action is "necessary" (in the ordinary usage of that word) to the acquisition of control, and division, of Conrail; (3) that applicants have not demonstrated any necessity for overriding any CBA terms; and (4) that Board approval of the transaction does not constitute explicit or implicit endorsement of applicants' plans to abrogate or modify existing CBAs.

Why These Issues Must Be Addressed. (1) ARU contends that we must: identify the areas of potential conflict between the RLA and the *ICCTA;* craft our decision so as to prevent or minimize such conflict; and justify any inability to avoid such conflict. (2) ARU contends that, despite years of litigation, the law respecting potential conflict between *New York Dock*, Art. I, § 2 and *New York Dock*, Art. I, § 4, and between the RLA and the *ICCTA*, remains unclear. (3) ARU contends that, pursuant to recent ICC/STB decisions, the Board and its arbitrators are now micro-managing rail industry labor relations by providing government sanction for carrier-initiated CBA changes. ARU claims: that this unprecedented regulation of labor has been destructive to labor relations in the railroad industry; and that, given the scope of the CSX/NS/CR transaction, failure to deal with ARU's issues will extend that destruction to most rail workers east of the Mississippi.

ARU's Analytical Framework. ARU would minimize conflicts between *New York Dock*, Art. I, § 2 and *New York Dock*, Art. I, § 4 (and, similarly, between the RLA and the ICCTA) by according a broadly expansive reading to Art. I, § 2 and by according a narrowly literal reading to, and by imposing a stringent necessity predicate on, Art. I, § 4.

ARU's Constitutional Issues. ARU contends: that employees' CBA rights are property rights, which may not be taken for the private benefit of applicants; that these rights may be taken for a public purpose, but only if just compensation is provided; and that employees may not be deprived of these rights by federal action without due process of law. ARU further contends that, if the CSX/NS/CR transaction follows the pattern established in past cases: the Board, in approving the

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[570] The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and The National Conference of Firemen & Oilers/SEIU were formerly ARU members but have withdrawn from participation in ARU and in the ARU filings in this proceeding. The Brotherhood of Locomotive Engineers, which was also formerly an ARU member, has also withdrawn from participation in ARU and in the ARU filings in this proceeding, except to the extent that ARU's brief urges application of protective conditions to employees of the D&H.

[571] ARU claims, among other things, that the Railway Labor Act (RLA) and collective bargaining agreement (CBA) rights of employees, especially Conrail employees, will be abrogated.

transaction, will not determine whether any particular CBA overrides are necessary, but will instead assume that such determinations will be made by implementing agreement referees; the referees, in *New York Dock*, Art. I, § 4 arbitration, will not make such determinations either, but will instead defer to the Board's approval of the transaction; such determinations, therefore, will not be made at all; and employees will be deprived of their CBA rights without any determination that a CBA override is necessary (and, for this reason, without due process of law). And, ARU adds, such takings of employees' CBA property rights: will be for a private purpose (to allow applicants to pay off their acquisition indebtedness) and will be uncompensated (ARU insists, in essence, that the *New York Dock* conditions cannot be regarded as the quid pro quo for such takings, because such conditions are premised upon the assumption that rates of pay, rules, working conditions, and other CBA rights will be preserved).

D&H Labor Protection. ARU contends that the CSX/NS/CR transaction will have a serious impact on employees of the D&H, and that, for this reason, D&H employees must be covered by the *New York Dock* protections imposed in this proceeding.

ARU's Voting Trust Petition. The CSX/NS Voting Trust was created to prevent CSX and NS from exercising control of Conrail pending review by the Board of the CSX/NS/CR application. ARU argues, however, that, despite the voting trust, CSX and NS have already acquired control of Conrail without prior Board approval. *See,* ARU-6 (petition filed July 18, 1997). *See also,* CSX/NS-31 (response of CSX and NS, filed July 28, 1997) and CR-5 (response of Conrail, also filed July 28, 1997). ARU argues, in essence: that, by its very nature, the voting trust could not insulate CSX and NS from control of Conrail; that, at best, a voting trust can neutralize the voting power of particular shareholders, but cannot neutralize the real source of operational control (the directors); that, therefore, a voting trust cannot insulate the owners of a corporation from control thereof; that, furthermore, the fiduciary obligations of the trustee and the directors ensure that, despite the voting trust, the interests of the shareholders are paramount; that, in any event, the terms of the agreement that governs the CSX/NS Voting Trust have enabled CSX and NS to wield significant control over CRR; that, as a practical matter, CSX and NS have had complete control over CRR's day-to-day operations; and that the practicalities of business relationships and human nature have ensured that CSX and NS have had control of CRR. ARU has therefore asked that we order divestiture. ARU has asked, in the alternative: that we declare that CSX and NS have indeed acquired control of Conrail without prior Board approval; and that we impose employee protective conditions as of April 10, 1997 (the date, ARU claims, on which CSX and NS acquired control of Conrail).

INTERNATIONAL ASSOCIATION OF MACHINISTS. IAM, which warns that the CSX/NS/CR transaction will have an adverse effect upon the employees it represents, insists: that we must rely on applicants' 1995 Labor Impact Exhibit, which projects that 173 machinist jobs will be transferred and 182 machinist jobs will be abolished; and that we should not resort to applicants' 1996/97 Labor Impact Exhibit, which projects that, although 173 machinist jobs will be transferred, a net of 24 machinist jobs will be created.

Relief Requested: Denial Of Application. IAM claims: that applicants have indicated that they intend to abrogate Conrail's CBAs, and to impose, in lieu thereof, the CSX and NS CBAs; that applicants, though arguing that it is more efficient to administer fewer agreements, have not established that overrides are necessary to effectuate the transaction; and that applicants should not be given blanket authority to override entire CBAs for the mere sake of administrative convenience. IAM claims that the approach advocated by applicants would overturn established precedent, which (IAM insists) provides: that, where work is transferred, the CBA covering the receiving location is applied to that work; and that, in the absence of a transfer of work, the existing CBA should remain in effect. IAM contends that, because overrides of its Conrail CBAs would be unjustified and would severely impair the rights of IAM-represented employees, and also because the transaction contemplated by applicants can be expected to have a deleterious effect upon public safety in general and the safety of rail labor in particular, that transaction should not be approved.

Relief Requested: Labor Protective Conditions. IAM contends that, if we approve the CSX/NS/CR transaction, approval of the primary application should be made subject to the *New York Dock* conditions and approval of the related transactions should be made subject to the *Mendocino Coast, Norfolk and Western*, and *Oregon Short Line* conditions, as appropriate.

Relief Requested: CBA Overrides. IAM contends: that, although applicants have set forth projected CBA changes, any issues regarding the modification or abrogation of existing CBAs must first be the subject of negotiation and arbitration pursuant to *New York Dock*, Art. I, § 4; that it would be premature for the Board to make, prior to the parties' exhaustion of the Art. I, § 4 procedure, any findings regarding the necessity of overriding CBA provisions to effectuate the transaction; and that, for this reason, issues regarding the modification or abrogation of existing CBAs are not properly before the Board at this time.

Relief Requested: Existing Protective Agreements. IAM notes that applicants have confirmed: that they do not propose to deny benefits under CSX's job stabilization agreements or Conrail's SUB Plan; and that they agree that protections under existing protective arrangements are preserved by *New York Dock*, Art. I, § 3. *See*, CSX/NS-176 at 603. IAM contends that any future application of the *New York Dock* conditions should be consistent with these assurances.

RETIREES (ENGELHART, ET AL.). Nine Conrail retirees (hereinafter referred to as the Engelhart Retirees)[572] have raised issues respecting Conrail's Supplemental Pension Plan (hereinafter referred to as the Supp. Plan), an overfunded, contributory defined benefit pension plan that is subject to, and governed by, the Employee Retirement Income Security Act of 1974 (ERISA). The Engelhart Retirees, who claim to represent a class (hereinafter referred to as the Retiree Class) consisting of all similarly situated Conrail retirees who are participants in, or beneficiaries of participants in, the Supp. Plan, contend that they have: (i) an interest in maintaining the financial integrity of the Supp. Plan, in order to secure the benefits payable to them thereunder; and (ii) an interest in securing a pro rata share of the surplus assets of the Supp. Plan, to the extent that such surplus is attributable to employee contributions made either to the Supp. Plan itself and/or to certain predecessor plans that were maintained by Conrail's predecessors and that were merged into the Supp. Plan after Conrail was created.

The Engelhart Retirees ask that we impose appropriate conditions to protect the interests of Supp. Plan participants in the Supp. Plan and its assets. The Engelhart Retirees ask, in addition, that we impose 12 specific conditions. These conditions: (1) would require applicants to agree to the post-transaction disposition of the Supp. Plan and its assets; (2) would provide that, if the Supp. Plan is to be amended, terminated, or merged into another plan, applicants must specify how the interests of Supp. Plan participants in the security of their pension rights and in the Supp. Plan's surplus assets are to be protected; (3) would require applicants to specify how the Supp. Plan and its assets will be administered post-transaction; (4) would require applicants to specify whether Supp. Plan assets will be used to provide severance benefits to employees of any applicant; (5) would require applicants to amend the Supp. Plan to provide adequate security for the pension benefits of the Supp. Plan's participants; (6) would require applicants to amend the Supp. Plan to determine the interests of the participants in the surplus assets, and would apparently provide that such surplus assets may not be used for any purpose other than the payment of benefits to the Retiree Class and the Supp. Plan's present participants; (7) would provide that, if the Supp. Plan is to be terminated or partially terminated, applicants must allocate and pay to the Retiree Class and the Supp. Plan's present participants their equitable share of the Supp. Plan's surplus assets; (8) would require applicants to

[572] The nine retirees are Paul J. Engelhart, William J. McIlfatrick, H. C. Kohout, Thomas F. Meehan, Jr., Lawrence Cirillo, Charles D. Nester, Jacqueline A. Mace, Donald E. Kraft, and Robert E. Graham.

amend the Supp. Plan to provide for adequate independent representation of the Supp. Plan's participants in the Supp. Plan Administration Committee, with appropriate arrangements for the selection, compensation, and reimbursement of expenses for such participants' representation; (9) would require that all commitments and agreements made by applicants shall be legally binding upon applicants and their successors and assigns, and shall be for the benefit of the Retiree Class and the participants and their beneficiaries; (10) would permit the Retiree Class to conduct all necessary discovery of applicants relating to the disposition of the Supp. Plan; (11) would require applicants to pay all legal costs and expenses, including reasonable counsel fees and expenses for the Retiree Class; and (12) would reserve to the Retiree Class the right to request further conditions, depending upon any post-brief pleadings filed in this proceeding.[573]

TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION. TCU contends that we should deny the CSX/NS/CR application. TCU further contends that, if we do not deny the application, we should impose the *New York Dock* conditions and grant the additional relief described below.

Relief Requested: Enhancements. TCU contends: that, since the mid-1970s, the sacrifices Conrail's unionized employees have made have played a crucial role in Conrail's financial recovery; that, however, these employees stand to lose the most from this transaction, while Conrail's upper and middle management will cash out with generous severance and dislocation packages; and that, in these circumstances, a truly "fair arrangement" requires enhanced *New York Dock* protection. The specific enhancements sought by TCU: (1) would grant attrition protection to any employee who faces dismissal as a result of the CSX/NS/CR transaction;[574] and (2) would provide that any employee whose work is transferred as a result of the CSX/NS/CR transaction will not be compelled to follow that work without being offered the alternative option of receiving a separation allowance comparable in value to those offered Conrail's management employees.[575]

Relief Requested: NS' Appendix A (CBA Overrides). TCU insists that NS should not be given the right to override the existing Conrail CBAs and to impose, in lieu thereof, NS' own CBAs. *See,* CSX/NS-20, Volume 3B at 354-98 (NS' "Appendix A" description of the coordinations and transfers of work that NS claims will be necessary). TCU argues that an override of an entire CBA would be unprecedented, and that the efficiencies that NS assertedly could realize if it were able to administer only one CBA per craft are illusory and/or insufficient. TCU claims: that an override that had the effect of expanding the seniority districts of clerical employees would place on these employees relocation burdens not contemplated by, and indeed contrary to, *New York Dock*; and that an override intended to secure, for carmen employees, more restrictive point seniority, as opposed to the Conrail

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[573] Applicants contend: that the Engelhart Retirees are attempting to relitigate certain claims that have already been the subject of federal court ERISA litigation; and that, even if such claims have not previously been litigated, such claims assert rights under ERISA that can only be litigated in federal court. Applicants have neither asserted nor indicated that they intend to assert a 49 U.S.C. 11321(a)-based override of any otherwise applicable ERISA rule.

[574] TCU adds: that all Class I railroads except Conrail maintain, with TCU, job stabilization agreements that cover the clerical craft; that these agreements, commonly referred to as "February 7 Protection," provide for attrition protection; and that equity requires an extension of this type of attrition protection to Conrail (the only Class I carrier that does not have such protection) and also to crafts not covered by these agreements.

[575] TCU concedes, in essence, that separation pay as an option for employees required to relocate has previously been rejected. TCU adds, however, that in the two most recent western mergers, such separation pay was provided for clerical employees in master implementing agreements.

system of combined point seniority and prior rights, would, by terminating these prior rights, create significant inequities among Conrail carmen. TCU, which asks that we reject NS' claim that NS, as the acquiring carrier, can override and replace all existing Conrail CBAs, insists: that the practice followed in prior cases should be followed here; that, as in prior cases, this will allow work to be transferred between locations on the merging carriers under *New York Dock* implementing agreements; that this will mean that, when work is transferred, the agreement at the receiving location will generally apply; that, therefore, employees who transfer to follow their work will be covered by the CBA in effect at the location receiving the work; and that, in accordance with prior practice, the existing CBAs will remain in effect at the locations at which they presently apply.

Relief Requested: CSX's Appendix A (Transfer Of Seniority Of Conrail Clerical Employees To Jacksonville Rosters). TCU claims that CSX has indicated: that it intends to transfer major clerical functions from Conrail locations to a CSX location (Jacksonville, FL) and to form five consolidated seniority districts; and that, although not all of the affected employees will be needed to follow their work, the seniority of all such employees will be transferred to a Jacksonville roster. *See,* CSX/NS-20, Volume 3A at 485-519 (CSX's "Appendix A" description of the changes that CSX claims will be required to implement its Operating Plan). TCU contends: that an employee who is "not needed" at the time his/her work is consolidated in Jacksonville will become a "dismissed" employee under *New York Dock*, unless he/she is able to hold a position in his/her original Conrail seniority district; and that, as a practical matter, few if any of the affected clerical employees will be able to hold a position in their original Conrail seniority districts. TCU further contends: that, under *New York Dock*, a "dismissed" employee is entitled to draw a dismissal allowance; that, however, as a condition of drawing protection he/she must accept available work in his/her original seniority district or comparable work in other crafts, which does not require relocation; and that CSX, by transferring the seniority of "dismissed" employees to Jacksonville without offering positions at the time of such transfer, intends that any such employee will be required to accept future available work in Jacksonville or forfeit his/her dismissal allowance. TCU insists that the transfer of an employee's seniority without offering the employee an opportunity to follow the transferred work at the time of the transfer of such work is unprecedented, and: would circumvent recent arbitration and ICC/STB decisions, *see,* TCU-6 at 16-17 and TCU-15 at 31; would markedly change *New York Dock* protections by significantly expanding employee responsibility to relocate; and would raise significant equity issues for Conrail and CSX employees as to whether such transferred seniority should be dovetailed or endtailed under the circumstances present here. TCU therefore asks that we reject CSX's proposal to transfer to CSX's Jacksonville rosters the seniority of "dismissed" Conrail employees (*i.e.*, Conrail employees who, as a result of a work transfer, will not be needed at the time of the work transfer).

Relief Requested: CSX's Appendix A (Proposal To Establish A Single Clerical Field Seniority District And To Apply The Conrail CBA To All Locations Therein). CSX intends to combine into one clerical field district the clerical field districts on the CSX-allocated portions of Conrail and on the adjacent portions of CSX, and to apply the Conrail CBA to all locations in this clerical field district. *See,* CSX/NS-20, Volume 3A at 500; CSX/NS-177, Volume 2B at 30-31. TCU contends: that the geographic scope of the district contemplated by CSX is likely to impose significant relocation burdens on clerical employees; that TCU has never entered an implementing agreement calling for such a massive consolidation of seniority rosters on acquiring and acquired carriers, particularly in the absence of work transfers;[576] and that CSX's unprecedented proposal is supported neither by arbitration awards nor by ICC/STB decisions.

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[576] TCU claims that, with the exception of a transfer of work between facilities at Walbridge and Toledo, OH, CSX plans no work transfers between locations within this district.

(1) TCU asks that we reject CSX's proposal to establish a single clerical field district. TCU claims: that CSX has not suggested how a merging of seniority rosters would cure any barrier in assigning work among employees in the new district; that CSX has not pointed to a single seniority or other rule that would have to be overridden to permit such assignments; that, because the seniority rules applicable to clerical employees do not restrict the clerical work an employee can perform, CSX clerical employees will be able to perform, under current seniority rules, any Conrail work transferred to CSX facilities; and that assignments of clerical work, particularly those that do not require the transfer of clerical employees, are routinely accomplished under *New York Dock* procedures without disturbing existing seniority districts.

(2) TCU contends that, if we do not reject CSX's proposal to establish a single clerical field district, we should at the very least reject CSX's proposal to override the applicable CSX CBA and to impose, in lieu thereof, the applicable Conrail CBA. TCU argues: that the practice generally followed in prior mergers should be followed here; that, absent a transfer of work, both CBAs should continue in effect at the locations at which they previously applied; and that, therefore, CSX clerks who remain at their pre-transaction CSX locations should continue to be covered by the CSX CBA.

Relief Requested: Confirm Applicants' Representations Respecting Job Stabilization Agreements And Supplemental Benefit Plan. TCU has asked for relief concerning certain CSX-TCU job stabilization agreements and also concerning the Conrail Supplemental Benefit Plan (SUB Plan). As respects the CSX-TCU job stabilization agreements, TCU contends that CSX employees in the field seniority district furloughed because of a reduction in force will be entitled to protection under these agreements, which provide furloughed employees what TCU calls "attrition protection" (by which TCU means that these agreements provide protection regardless of nexus to any transaction). As respects the SUB Plan, TCU contends: that Conrail employees are covered by this plan, which provides up to $40,000 in lifetime protection for furloughed employees; and that an employee need not show a connection to any particular transaction to receive SUB Plan benefits, which may be available in situations in which job stabilization benefits would not be available.[577] TCU, which was initially under the impression that CSX intended to impose a nexus requirement upon job stabilization benefits and to apply the SUB Plan only in those instances in which CSX intended to apply the Conrail CBA, and that NS did not intend to apply the SUB Plan at all, asked, in its TCU-6 comments, that we clarify that employees covered by on-property job stabilization benefits or Conrail SUB Plan benefits would be fully protected from the loss of such benefits under *New York Dock*, Art. I, § 3.

Applicants, however, have since confirmed that they are not proposing to deny benefits under CSX's job stabilization agreements or Conrail's SUB Plan, and have indicated that they agree that protections under existing protective arrangements are preserved by *New York Dock*, Art. I, § 3. *See,* CSX/NS-176 at 603. *See also,* NS-62 at 42 n.39 (NS concedes that Conrail employees will have the right to elect coverage under the SUB Plan in accordance with *New York Dock*, Art. I, § 3).[578] TCU has advised that it takes these assurances to mean that employees covered by job stabilization agreements or the SUB Plan or subsequently bargained stabilization agreements may elect protection under those agreements if adversely affected, even though they may be working under different

[577] TCU concedes that Conrail employees currently receiving SUB Plan benefits would not be eligible for *New York Dock* or job stabilization protection.

[578] Applicants have added, however, that it is their position that the mere placement of employees covered by the CSX-TCU job stabilization agreements under the Conrail CBA and of employees covered by the Conrail SUB Plan under the CSX or NS CBAs will not entitle those employees to benefits either under the protective agreements or under *New York Dock*. *See,* CSX/NS-176 at 603 n.30.

CBAs as a result of the CSX/NS/CR transaction. TCU asks that we clarify: that any application of the *New York Dock* conditions should be consistent with the assurances provided by applicants at CSX/NS-176 at 603; and that affected employees will be covered by *New York Dock*, Art. I, § 3, so as not to lose February 7, SUB, or other on-property protections.

Relief Requested: Safety. TCU contends: that any approval of the CSX/NS/CR application should be conditioned on the implementation of a safety plan devised or approved by FRA; that FRA should have responsibility for oversight and monitoring to assure compliance with that plan; that all unions, including TCU, should have an opportunity to comment on any safety plan to FRA and to participate fully in the process of adopting appropriate safety standards; and that there should be close oversight by the Board and FRA of the post-transaction operations of CSX and NS.

TRANSPORTATION TRADES DEPARTMENT. The Transportation Trades Department, AFL-CIO (TTD), which consists of unions representing millions of workers in the transportation industry, argues that, if the CSX/NS/CR transaction is approved, thousands of workers will lose their jobs, thousands more will be forced to move, CBAs will be unilaterally abrogated, safety will be jeopardized, and efficient, reliable, and competitive rail service will be threatened. TTD adds: that applicants have not stated any compelling reason why this transaction needs to occur; and that the anticipated harms to applicants' employees will not be adequately mitigated by *New York Dock* benefits.[579] The CSX/NS/CR transaction, TTD therefore insists, is contrary to the public interest and should not be approved.

UNION LOCALS. Charles D. Bolam, General Chairman for the United Transportation Union-General Committee of Adjustment (UTU-GCA) on The Alton & Southern Railway Company (A&S), and Vice President of the St. Louis Rail Labor Coalition, urges denial of the CSX/NS/CR application which, he claims, will result in yard closings and line abandonments, will have an adverse impact on rail employees, and will compromise safety as more rail cars are moved in increasingly congested corridors.[580]

Joseph C. Szabo, UTU's Illinois Legislative Director, urges denial of the CSX/NS/CR primary application and the EJ&E/I&M, WCL, and W&LE responsive applications, all of which, he contends, would adversely affect rail employees, particularly rail employees in the Chicago area.

John H. Burner, UTU's Assistant Illinois Legislative Director, urges denial of the CSX/NS/CR application. Mr. Burner contends: that the operational changes in Illinois would be dramatic; that the proposed changes for the Chicago area are particularly disturbing, because applicants seek to divert traffic away from the Chicago gateway; and that the impact upon competition, rail services, and rail employees will be adverse.

John D. Fitzgerald, General Chairman for the UTU-GCA for certain BNSF lines in the Pacific Northwest, urges denial of the CSX/NS/CR application. Mr. Fitzgerald contends: that the problems the CSX/NS/CR transaction will create in the East will be similar to, and will exacerbate, the existing problems in the West; and that the exacerbation of the existing problems in the West will have an adverse impact upon BNSF employees.

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[579] TTD notes, in this respect: that an employee seeking *New York Dock* benefits will have to prove to an arbitrator that his/her job was eliminated "as a result" of the CSX/NS/CR transaction; and that, in any event, CSX and NS will be able to get around *New York Dock* by offering an employee "comparable employment" virtually anywhere on their systems and denying benefits if the employee refuses the offer.

[580] Mr. Bolam's CDB-1 comments were filed a day late, but were accompanied by a letter-petition requesting leave to late file. In view of the minimal delay and the lack of prejudice, the request for leave to late file is being granted.

John F. Collins, BLE's New York State Legislative Chairman, urging rejection of the CSX/NS/CR transaction, contends: that CSX and NS, lacking sufficient personnel, will only be able to service their debt by raising rates and cutting employees; that, as this process plays itself out, thousands of jobs will be lost; that, furthermore, CSX and NS will spin off or abandon assertedly marginal lines; and that rail service will deteriorate as the transaction is implemented. Mr. Collins adds: that CSX and NS will use the Art. I, § 4 process to subvert the RLA and to gain through administrative fiat goals they cannot achieve in the collective bargaining process; and that the income protection provided by *New York Dock* will be illusory (CSX and NS, he warns, will assert that job losses are due to "economic conditions" and not to the transaction, and, as in past cases, employees and/or their unions will be unable to disprove this claim).[581]

Angelo J. Chick, Jr., Chairman of the Local Grievance Committee for BLE Division 227, contends: that CSX's "Northern District" will be composed entirely of former Conrail lines and former Conrail employees; that the Conrail CBAs are more than adequate to give CSX the latitude to establish any service that might be envisioned; and that we should therefore require that any Northern District seniority system recognize the equities, rights, prior rights, and prior-prior rights that exist today under the applicable Conrail CBA.

Samuel J. Nasca, UTU's New York State Legislative Board Legislative Director/Chairperson, expressing conditional opposition to the CSX/NS/CR transaction, contends: that many UTU-represented employees and their families will be uprooted and displaced to distant locations; that Conrail's already overworked employees will be asked to do even more with less; and that the consolidation of dispatching forces far from the dispatched territories will create safety problems by exacerbating the potential for dispatcher error. Mr. Nasca adds that, because UTU-represented D&H employees will be adversely affected when NS acquires Conrail's Southern Tier line and uses NS crews in place of D&H crews, we should impose labor protective conditions to protect the D&H employees.

UNITED RAILWAY SUPERVISORS ASSOCIATION. URSA claims: that CSX and NS have indicated that, except as respects the SAAs, they intend to abrogate URSA's Conrail CBAs; that NS intends to make all URSA-represented employees non-agreement employees; that CSX intends to make some URSA-represented employees non-agreement employees, and to substitute the American Railway and Airway Supervisors Association (ARASA) as the representative for other URSA-represented employees; and that, in this manner, applicants intend to disregard National Mediation Board (NMB) certifications issued to URSA under the RLA, and to circumvent the NMB's exclusive jurisdiction to determine representational questions involving rail carriers. URSA contends that, because the CBA overrides CSX and NS seek would adversely impact URSA-represented employees and would violate the RLA, the CSX/NS/CR transaction should not be approved. URSA further contends that the CSX/NS/CR transaction can be expected to have a deleterious effect upon public safety in general and the safety of rail labor in particular, and, for these reasons also, should not be approved.

Relief Requested: Labor Protective Conditions. URSA contends that, if we approve the CSX/NS/CR transaction, approval of the primary application should be made subject to the *New York Dock* conditions and approval of the related transactions should be made subject to the *Mendocino Coast, Norfolk and Western,* and *Oregon Short Line* conditions, as appropriate.

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[581] Mr. Collins further contends that CSX and NS have exercised premature control over Conrail. *See,* Mr. Collins' statement filed October 21, 1997, at 4 (claim that CSX and NS removed local operating authority from Conrail officials and began the takeover process).

Relief Requested: CBA Overrides. URSA contends: that, although applicants have set forth projected CBA changes, any issues regarding the modification or abrogation of existing CBAs must first be the subject of negotiation and arbitration pursuant to *New York Dock*, Art. I, § 4; that it would be premature for the Board to make, prior to the parties' exhaustion of the Art. I, § 4 procedure, any findings regarding the necessity of overriding CBA provisions to effectuate the transaction; and that, for this reason, issues regarding the modification or abrogation of existing CBAs are not properly before the Board at this time.

Subsequent Filings. By letter dated March 17, 1998, an URSA general chairman (Lawrence M. Daugherty) advised that his general committee, having reached an implementing agreement with applicants, now supports approval of the transaction. By letter dated April 2, 1998, four URSA general chairmen (W. P. Hernan, Jr., R. A. Kerr, A. J. Mazzarella, and B. E. Hedges) advised that URSA has reached an implementing agreement with applicants and that their membership now supports approval of the transaction.

UNITED TRANSPORTATION UNION. UTU contends: that the CSX/NS/CR transaction will create two strong rail networks that will compete vigorously throughout the Eastern United States; that this will be in the best long-term interests of rail labor, and will create the possibility of long-term job growth; that the immediate adverse job impact that UTU members will experience will be ameliorated by certain conditions to which applicants have committed; and that, for these reasons (and particularly on account of the commitments applicants have made), UTU supports the CSX/NS/CR transaction[582] and asks that we condition approval of the transaction upon applicants' commitments.

(1) CSX, NS, and Conrail have committed: (a) to grant automatic certification as adversely affected by the transaction to the 461 train service employees and the 25 UTU-represented yardmasters projected to be adversely affected in the Labor Impact Exhibit and to all other train service employees and UTU-represented yardmasters and hostlers identified in the service of any Section 4 notice; (b) to grant automatic certification to any engineers adversely affected by the transaction who are working on properties where engineers are represented by UTU; and (c) to supply UTU with the names and TPA's of such employees as soon as possible upon implementation of the transaction.

(2) CSX, NS, and Conrail have committed to the foregoing on the basis of UTU's agreement to utilize its best efforts to negotiate agreements implementing the Operating Plans and the related Appendices A's before the date that the transaction is orally approved by the Board, contingent on Board approval. Applicants and UTU have agreed: that, if implementing agreements have not been reached prior to the Board's approval, the parties will meet within 5 days of such date in an effort to conclude the necessary agreements; that, should the parties fail to reach agreement, arbitration will commence within 10 days of receipt of the Board's written decision; and that, to facilitate arbitration, the parties will either agree on an arbitrator or arrange for the immediate appointment of an arbitrator by the NMB, and will schedule the arbitration hearing for as soon as practicable after the anticipated approval date.

(3) CSX and NS have committed that, in any notice served in this transaction, CSX and NS will propose only those changes to existing CBAs that are necessary to implement the proposed transaction, by which is meant changes that are necessary to implement operational changes that will

[582] UTU notes, however, that it has reserved the right to seek labor protection for D&H employees.

produce a public transportation benefit not based solely on savings achieved by agreement changes.[583]

(4) CSX, NS, and Conrail have further committed that, if at any time UTU's International President or his representative believes that the application of the *New York Dock* conditions by CSX, NS, or Conrail is inconsistent with applicants' commitments, UTU and CSX, NS, or Conrail personnel will meet within 5 days of notice from the UTU International President or his representative and agree to expedited arbitration pursuant to the *New York Dock* conditions with a written agreement within 10 days after the initial meeting if the matter is not resolved, which agreement will contain, among other things, the full description for neutral selection, timing of hearing, and time of issuance of Award(s).

(5a) With regard to rights eligible UTU-represented Conrail employees have respecting "flowback" opportunities to and/or from Amtrak pursuant to Section 1165 of the Northeast Rail Service Act of 1981 (NERSA), CSX, NS, and Conrail have committed that these rights, subject to their terms and conditions, will continue to be available to eligible Conrail employees if they either continue coverage under the Conrail-UTU CBA or become subject to coverage under either the CSX or NS CBAs as a consequence of STB Finance Docket No. 33388.

(5b) With regard to rights eligible UTU-represented employees have from Metro-North Commuter Railroad Company (MNCR) and New Jersey Transit Rail Operations, Inc. (NJTRO), respecting remaining one-time flowback opportunities to Conrail pursuant to NERSA Section 1145, CSX, NS, and Conrail have committed that these rights, subject to their terms and conditions, will continue to be available to such eligible commuter authority employees to either Conrail (in SAAs), NS, or CSX as the seniority provisions with UTU may indicate, upon the approval and implementation of STB Finance Docket No. 33388.

(5c) With regard to rights eligible UTU-represented Amtrak yardmaster employees have from Conrail regarding remaining one-time flowback opportunities to Conrail if they are "deprived of employment" on Amtrak pursuant to and as defined in letters of agreement dated December 8, 1982, May 3, 1984, and April 4, 1986, applicants have apparently committed[584] that these rights, subject to their terms and conditions, will continue to be available to such Amtrak employees to either Conrail (in SAAs), NS, or CSX as the seniority provisions with UTU may indicate, upon the approval and implementation of STB Finance Docket No. 33388.

(6) Regarding the use of leases and/or trackage rights to implement the CSX/NS/CR transaction, CSX, NS, and Conrail have committed to reach an implementing agreement to effectuate the transaction as described in the CSX, NS, and SAA 3-year Operating Plans under the *New York Dock* conditions.[585]

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[583] CSX and NS, however, have noted: that they have stated that a unified workforce and single CBA within each proposed district or hub are necessary to implement this transaction; and that, in their Operating Plans and Appendices, they have selected CBAs for each proposed district or hub.

[584] As of February 18, 1998, this commitment had been drafted but not executed.

[585] Applicants have qualified this commitment: by noting that this commitment is entirely without prejudice to applicants' position that the appropriate protective conditions for leases and trackage rights are the conditions set out in (1) *Mendocino Coast Ry., Inc.--Lease and Operate*, 360 I.C.C. 653 (1980), and (2) *Norfolk and Western Ry. Co.--Trackage Rights--BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980), respectively; and by stating that such protective conditions shall be applicable to any leases or trackage rights subsequent to the initial implementing agreement.

D&H Labor Protection. UTU contends: that, in three specific corridors (Binghamton, NY-Buffalo, NY; Binghamton, NY-Montreal, PQ; and Binghamton, NY-Allentown/Philadelphia, PA), D&H handles overhead traffic for CSX and NS; that, in the Binghamton-Buffalo corridor, D&H operates via trackage rights over Conrail's Southern Tier line; that, because this line will be allocated to NS, it is obvious that, post-transaction, NS will operate the relevant trains itself, with NS crews; and that, in consequence, UTU-represented D&H employees on these trains will be adversely affected by the CSX/NS/CR transaction. UTU therefore asks that we impose labor protective conditions (either *New York Dock* or *Mendocino Coast*) to protect the D&H employees. UTU contends that, although employees of third-party carriers generally do not receive labor protection as a result of merger or control transactions, protection is warranted here because the D&H situation presents a unique factual circumstance, in that NS is acquiring territory over which D&H has trackage rights.

APPENDIX M: FEDERAL PARTIES

UNITED STATES DEPARTMENT OF AGRICULTURE. USDA indicates: that the anticompetitive effects likely to flow from the CSX/NS/CR transaction are neither large nor widespread; that, in fact, the transaction may promote competition by breaking up Conrail's "monopoly" in the Northeast and by creating new single-line service options for agricultural shippers moving eastern Cornbelt grain and feed products to a number of markets; and that, for these reasons, USDA, though it does not support the transaction, does not oppose it either. USDA suggests, however, that, if we approve the transaction, we should: (1) adopt a "go-slow" approach to implementation; and (2) grant ISRR access to Indianapolis, in order to maintain intramodal competition in the greater Indianapolis region.[586]

UNITED STATES DEPARTMENT OF JUSTICE. DOJ contends that, in two relevant markets and perhaps also in a third, the CSX/NS/CR transaction will have 2-to-1 impacts.

Indianapolis Power & Light. DOJ argues: that IP&L's Stout plant is now served both by CSX[587] and also by Conrail in a joint movement with ISRR, using INRD switch services; that, therefore, CSX and Conrail now compete for coal shipments to Stout; and that it necessarily follows that the acquisition by CSX of Conrail's lines into Indianapolis will eliminate this competition. DOJ insists that the problem will not be solved by the NS trackage rights provided for by applicants because (DOJ claims) these rights will not allow NS to assume Conrail's position as an effective competitor at Stout. DOJ contends: that, because NS will not be able to connect with ISRR at Indianapolis, NS will not have Conrail's convenient access to Indiana coal; that the post-transaction NS/CSX interchange is likely to be worse than the pre-transaction Conrail/INRD interchange (because NS traffic will have to move via Hawthorne Yard); and that CSX may be able to use biased dispatching or excessive switching fees to impede NS' ability to compete. DOJ adds that, although Conrail must also depend on its competitor (INRD) for switching services to Stout, Conrail has an important lever that NS will lack: the ability to receive a build-out from Stout. DOJ therefore argues, that, to maintain the status quo, we should grant to NS rights: to connect with ISRR at ISRR MP 6.0, to run over CSX tracks to INRD, and to run over INRD tracks to Stout, without interchanging with INRD at Hawthorne Yard; and to run over CSX tracks to serve any build-out that IP&L may make to any existing Conrail line.

Potomac Electric Power Company. DOJ's concerns vis-à-vis PEPCO concern the CSX vs. Conrail competition that assertedly exists today at two of PEPCO's coal-fired plants, Dickerson Station in Montgomery County, MD (rail-served only by CSX) and Morgantown Station near Woodzell, MD (rail-served only by Conrail). DOJ argues: that Dickerson and Morgantown are PEPCO's most efficient and heavily utilized plants, and each is the other's closest substitute; that

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[586] USDA adds that, in cases decided by the ICC/STB in recent years, too much weight has been placed on efficiency and too little weight has been placed on competition. USDA argues: that, in reviewing rail mergers, we should give at least as much weight to safeguarding competition as to reducing costs; that we should be sensitive to the possibility of competitive harm to shippers of all types, and to agricultural and bulk shippers in particular, and should use our conditioning power to advance the public's interest in competition; and that, when a merger is likely to exacerbate long-standing problems, we should impose conditions that promote effective competition. USDA also suggests that a 5-year oversight condition should be imposed on our approval of any major transaction.

[587] DOJ insists that, given that CSX holds a controlling interest in INRD, CSX and INRD should be viewed as one entity for purposes of competition analysis.

power from Dickerson can be readily substituted for power from Morgantown, and vice versa; and that it therefore follows that PEPCO likely could defeat an anticompetitive rate increase by CSX at Dickerson or by Conrail at Morgantown by threatening to shift generation from one plant to the other. DOJ is concerned, however, that this competitive option will be eliminated by the CSX/NS/CR transaction, which envisions the acquisition, by CSX, of the Conrail line to Morgantown. DOJ therefore contends that, to maintain the status quo, we should require either that NS rather than CSX acquire the Conrail line to Morgantown or that NS be granted trackage rights on the Conrail line to Morgantown.[588]

PSI Energy, Inc. DOJ argues: that much of the coal burned at PSI's Gibson plant at Carol, IN, comes from a mine located at or near Keensburg, IL; that, at present, NS originates this coal, and delivers it to Gibson over the only active rail line to Gibson; that the primary application filed on June 23, 1997, indicates that Conrail has trackage rights over this line; that it necessarily follows that, if Conrail has such rights, it can compete with NS in delivering coal from Keensburg to Gibson; and that, because the CSX/NS/CR transaction contemplates the transfer of Conrail's Keensburg-Gibson rights to NS, the transaction will eliminate the Conrail vs. NS competition that PSI appears to enjoy at Gibson. Applicants, arguing that Gibson does not have two-carrier access today, claim: that Conrail's Keensburg-Gibson rights were contractually terminated in 1996, when NS accepted Conrail's proposal to terminate these rights; that only NS presently has access to Gibson; and that, although certain statements in the primary application imply that Conrail still has access to Gibson, these statements merely reflect the fact that the termination of the Conrail trackage rights had not yet been filed with the Board. DOJ concedes, in its brief, that, if Conrail's rights were indeed terminated in 1996, Gibson is not a 2-to-1 point. DOJ adds, however, that, if the termination agreement is not valid, Gibson is a 2-to-1 point, and, in order to maintain the status quo, we should require that CSX rather than NS receive Conrail's Keensburg-Gibson trackage rights.[589]

UNITED STATES DEPARTMENT OF TRANSPORTATION. DOT contends that, although the CSX/NS/CR transaction will generally extend competition, increase productivity, and enhance efficiency, the transaction should be approved only if appropriate conditions are imposed to mitigate threatened public harms.

Oversight. DOT contends that, to ensure that the CSX/NS/CR transaction is consistent with the public interest, we must retain jurisdiction, monitor the consequences of the transaction, and remain open to the imposition of mitigation measures, where appropriate. DOT therefore recommends a significant period of oversight.

Safety. DOT contends: that the detailed safety integration plans (SIPs) applicants have filed and the commitments applicants have made have adequately addressed DOT's safety concerns; that, if we approve the transaction, FRA will monitor implementation of the SIPs; and that, if necessary, FRA will work with applicants to revise the SIPs to address new safety issues presented by any mitigation measures we impose. DOT suggests that, because FRA intends to monitor safety, "safety is no longer an issue with which the Board need be concerned." DOT-6 at 12. DOT adds, however, that we should clarify that it is applicants' responsibility to provide safe and reliable service.

Community Impacts: Ohio/Indiana. DOT contends that, if the relevant parties cannot agree on mitigation in the Cleveland area, we should impose necessary measures to mitigate identified

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[588] PEPCO participated in this proceeding in its own right, and sought certain conditions of its own. *See,* PEPCO's PEPC-4/-5 comments and its PEPC-8/-9 brief. PEPCO has since: settled with applicants; withdrawn its request for conditions; and withdrawn as a party of record. *See,* PEPCO's PEPC-10 notice.

[589] PSI has not participated in this proceeding in its own right.

environmental impacts without adversely affecting rail service and safety. And, DOT adds, oversight will be necessary to ensure that all significant impacts have been addressed and mitigated.

Community Impacts: New York City. DOT contends: that we should require applicants to work with affected communities to produce a plan to mitigate adverse environmental impacts east of the Hudson; and that, if applicants and these communities cannot agree on such a plan, we should order specific corrective action. DOT suggests, in this respect, that we should require applicants to submit specific proposals to develop a viable rail system, including a viable cross-harbor float operation, east of the Hudson.

Rail Passenger Operations. DOT supports a 5-year oversight period to ensure that rail passenger service does not suffer as a result of the CSX/NS/CR transaction.

SAAs: Oversight. DOT contends that we should retain jurisdiction for 5 years over the commercial implementation of the CSX/NS/CR transaction, and that we should impose reporting requirements to monitor developments in the SAAs.

SAAs: Responsibility. DOT contends: that no technically independent corporate structures should be allowed to limit or avoid applicants' exposure to liability in the event of future SAA difficulties; and that, in the event of failure, shippers, rail passenger operators, and communities should be able to turn to CSX, NS, and Conrail for full recourse.

Labor Impacts: Negotiation/Arbitration Process. DOT claims that significant numbers of railroad employees appear to believe that railroads have been including ever more detailed references to labor agreements in their ICC/STB merger applications, and, by so doing, have been gaining an advantage in the bargaining and arbitration process that follows regulatory approval. DOT adds that, in its view, past application of the standard protective provisions has resulted in less protection for railway employees than was intended. DOT therefore recommends that, if we approve the CSX/NS/CR transaction, we should clarify the nature and extent of such approval, and further clarify that such approval: does not imply prejudgment of the CBA changes proposed by applicants; and is not tantamount to a finding regarding the necessity of overriding any Conrail CBA provisions to effectuate the transaction.

Labor Impacts: Transferred Employees. DOT contends: that, if the CSX/NS/CR transaction is approved, Conrail's clerical employees will be asked to relocate to distant points such as Jacksonville, FL, and Atlanta, GA; that failure to accept such relocation offers will result in forfeiture of all *New York Dock* benefits; and that, by contrast, employees who actually lose their jobs will have the option of up to 6 years of income and fringe benefit protection or a separation allowance equal to approximately 1 year's earnings. DOT adds that, in its view, a Conrail employee who must transfer to a position a significant distance away as a direct result of the transaction should receive at least some of the benefits that an employee who loses his/her job following the transaction will receive. DOT therefore recommends that we modify *New York Dock*, Art. I, § 7 to the extent necessary to provide an employee subject to forced relocation the option of a separation allowance equivalent to the separation allowance currently available to a dismissed employee.

Competitive Impacts: Wabash County, IN. DOT claims that, because both NS and Conrail can serve shippers in Wabash County, IN, the CSX/NS/CR transaction, which contemplates the acquisition by NS of Conrail's Wabash County line, will result in a loss of intramodal competition in Wabash County. DOT therefore recommends that we impose a condition requiring continued two-railroad service in Wabash County.

Competitive Impacts: IP&L. DOT recommends that we preserve IP&L's Stout build-out option by granting NS overhead rights to the point to which the build-out could be constructed.

Competitive Impacts: Single-Line Service. DOT asks that CSX and NS be held to their representation that "[t]he needs of each customer impacted by the loss of single system CR service will be addressed specifically in the months ahead in order to minimize adverse effects to the greatest extent possible." CSX/NS-18 at 550.

Competitive Impacts: SAAs. DOT contends: that intramodal competition is not the only form of competition; that, although a shipper may have access to but a single railroad, that railroad's "monopoly power" will be constrained by competing truck and water carriers and by the geographic and product competition facing its shippers; that CSX and NS realize that, if the non-SAA shippers served only by CSX or only by NS do not receive rates and services that allow them to compete with shippers in the SAAs, the non-SAA shippers will lose business to their SAA-competitors; and that, given the realities of this "competitive dynamism," non-SAA shippers can expect to receive a spill-over benefit from the new intramodal competition that will exist in the SAAs. DOT adds that, in any event, the CSX/NS/CR transaction will not affect the rights of shippers to seek relief from the Board if confronted with unreasonable rail rates or discrimination.

Competitive Impacts: The Acquisition Premium. DOT claims that, if CSX and NS are found revenue inadequate and their system average variable costs increase, it would seem that both CSX and NS would have, in certain circumstances, the opportunity to increase rates without risking regulatory scrutiny. DOT believes, however, that, because this matter has implications for future transactions and the industry at large, it would be inappropriate to condition the CSX/NS/CR transaction by excluding the acquisition premium from the CSX and NS investment bases. DOT recommends instead: that we institute a separate proceeding to address these concerns; and that we make applicable to all railroads any standards established in that proceeding.

Competitive Impacts: Assignment Of Contracts. DOT believes that care must be taken in the exercise of our authority to override antiassignment provisions in contracts that shippers have entered into with Conrail. (1) DOT contends that, if only CSX or only NS can perform the terms of an existing shipper contract, it makes sense to assign that contract for its duration to the only carrier capable of providing the service previously provided by Conrail, notwithstanding the presence of an antiassignment clause. (2) DOT adds, however, that, if both CSX and NS can perform a Conrail contract, we should either (i) preserve the shipper's ability to void its contract by exercising its contracted-for nonassignability option, or (ii) impose a condition that would allow the shipper to determine which of CSX and NS will in fact perform the terms originally contracted for with Conrail. DOT believes that, as between these two choices, the second choice is probably the best, particularly given DOT's understanding that the contracts at issue are for relatively short terms.

APPENDIX N: EFFECTS OF THE TRANSACTION ON NS' AND CSX'S VARIABLE COSTS

Table 1

Effects of Transaction on NS' Variable Costs

		Before Purchase Accounting Adjust.			After Purchase Accounting.	
	Notes	NS-Base	Con-Base 58%	Combined Base	Purchase Accounting	Combined Base
Oper. Revenue	1	4,011.8	2,080.2	6,092.0	N/A	6,092.0
Oper. Expense	2	2,950.0	1,657.0	4,607.0	N/A	4,607.0
Total Variable Expense (Exclusive of ROI)	3	2,069.3	1,183.7	3,253.0	N/A	3,253.0
% of Total Expense		70.1%	71.4%	70.6%	N/A	70.6%
Net Investment Base	4	8,693.9	3,501.0	12,194.8	5,687.9	17,882.8
- Accum. Deferred Taxes	5	2,525.0	808.7	3,333.7	2,101.0	5,434.7
= Adjusted Net Inv. Base		6,168.9	2,692.3	8,861.2	3,586.9	12,448.1
W&S Investment Net	6	5,968.9	2,831.5	8,800.4	5,669.0	14,469.3
- Accum. Deferred Taxes	7	1,733.6	654.1	2,387.6	2,094.0	4,397.3
= Adjusted W&S Net Inv.		4,235.3	2,177.5	6,412.8	3,575.0	10,072.0
% W&S to Total	8	68.66%	80.88%	72.16%	99.67%	80.91%
Equip. Investment Net	9	2,725.1	669.5	3,394.5	19.0	3,413.5
- Accum. Deferred Taxes	10	791.5	154.6	946.1	7.0	1,037.4
= Adjusted W&S Net Inv.		1,933.6	514.8	2,448.4	12.0	2,376.1
% Equip. to Total	11	31.34%	19.12%	27.84%	0.33%	19.09%
Total W&S ROI	12	720.0	370.2	1,090.2	607.7	1,712.2
Total Equip ROI	13	328.7	87.5	416.2	2.0	403.9
Variable W&S ROI	14	360.0	185.1	545.1	303.9	856.1
Variable Equip. ROI	15	328.7	87.5	416.2	2.0	403.9
Total Variable ROI		688.7	272.6	961.3	305.9	1,260.1
Total Variable Cost (Including ROI)		2,758.0	1,456.3	4,214.3	305.9	4,513.0
Rev/Variable Cost Ratio	16	1.45	1.43	1.45		1.35
% Increase in Var Cost						7.26%

Notes on next page

Notes (NS-Conrail)

1. Base year data from 1995 R-1, Sch. 210. Using 58% of Conrail's figures. Years 1 through Normal Year use increases as shown in pro forma income statements. Assumes that all pro forma increases flow through to the railroad entity.

2. Base year data from 1995 R-1, Sch. 210. Using 58% of Conrail's figures. Years 1 through Normal Year use increases as shown in pro forma income statements. Assumes that all pro forma increases flow through to the railroad entity. Conrail's 1995 expenses exclude special charges.

3. Base year data from 1995 URCS runs. Using 58% of Conrail's figures. Years 1 through Normal Year use increases in expenses shown in pro forma income statements allocated on the basis of the base year percentage of variable to total expenses as shown in the combined base year column.

4. Investment in way and structures (W&S) and equipment, net of depreciation, but before adjustment for accumulated deferred income tax credits. Base year data from 1995 R-1, Scheds. 330 and 335. Using 58% of Conrail's figures. Purchase accounting adjustments from Whitehurst's Exhibit WWW-5 (also using 58% of Conrail's figures). Year 1 through Normal Year use increases as shown in pro forma balance sheets. Assumes that all increases flow through to railroad entity.

5. Base year data from 1995 R-1, Sch. 200. Using 58% of Conrail's figures. Purchase accounting adjustment from pro forma balance sheet (also using 58% of Conrail's figures). Years 1 through Normal Year use increases as shown in pro forma balance sheets. Purchase accounting and all pro forma data assume that all increases in accumulated deferred taxes flow through to railroad entity.

6. Investment in way and structures (W&S), net of depreciation, but before adjustment for accumulated deferred income tax credits. Base year data from 1995 R-1, Schedules. 330 and 335. Using 58% of Conrail's figures. Purchase accounting adjustments from Whitehurst's Exhibit WWW-5 (also using 58% of Conrail's figures). Year 1 through Normal Year use total increases in investment as shown in pro forma balance sheets, prorated between W&S and equipment using base year ratios (*see,* notes 8 and 11). Assumes that all increases flow through to railroad entity.

7. Base year data from 1995 R-1, Sch. 200. Using 58% of Conrail's figures. Purchase accounting adjustment from pro forma balance sheet (also using 58% of Conrail's figures). Years 1 through Normal Year use increases as shown in pro forma balance sheets. Purchase accounting and all pro forma data assume that all increases in accumulated deferred taxes flow through to railroad entity. These data also use deferred taxes prorated between W&S and equipment using base year ratios (*see,* notes 8 and 11). Assumes that all increases flow through to railroad entity.

8. This is the ratio of W&S Investment Net (before adjustment for deferred taxes) to total net investment, also before adjustment for deferred taxes. Combined base year figure is used for prorating Year 1 through Normal Year.

9. Investment in equipment, net of depreciation, but before adjustment for accumulated deferred income tax credits. Base year data from 1995 R-1, Schedules. 330 and 335. Using 58% of Conrail's figures. Purchase accounting adjustments from Whitehurst's Exhibit WWW-5 (also using 58% of Conrail's figures). Year 1 through Normal Year use total increases in investment as shown in pro forma balance sheets prorated between W&S and equipment using base year ratios (*see,* notes 8 and 11). Assumes that all increases flow through to railroad entity.

10. Base year data from 1995 R-1, Sch. 200. Using 58% of Conrail's figures. Purchase accounting adjustment from pro forma balance sheet (also using 58% of Conrail's figures). Years 1 through Normal Year use increases as shown in pro forma balance sheets. Purchase accounting and all pro forma data assume that all increases in accumulated deferred taxes flow through to railroad entity. These data also use deferred taxes prorated between W&S and equipment using base year ratios (*see*, notes 8 and 11). Assumes that all increases flow through to railroad entity.

11. This is the ratio of equipment investment net (before adjustment for deferred taxes) to total net investment, also before adjustment for deferred taxes. Combined base year figure is used for prorating Year 1 through Normal Year.

12. W&S investment (net of deferred taxes) times 17% (1995 pre-tax cost of capital rate used in URCS).

13. Equipment investment (net of deferred taxes) times 17% (1995 pre-tax cost of capital rate used in URCS).

14. 50% of W&S ROI.

15. 100% of Equipment ROI

16. Operating Revenue divided by total variable costs (including ROI).

Table 2

Effects of Transaction on CSX's Variable Costs

	Notes	Before Purchase Accounting Adjust. CSX-Base	Con-Base 42%	Combined Base	After Purchase Accounting Purchase Accounting	Combined Base
Oper. Revenue	1	4,819.0	1,506.3	6,325.3	N/A	6,325.3
Oper. Expense	2	4,157.8	1,199.9	5,357.7	N/A	5,357.7
Total Variable Expense	3					
(Exclusive of ROI)		2,855.2	857.1	3,712.4	N/A	3,712.4
% of Total Expense		68.7%	71.4%	69.3%	N/A	69.3%
Net Investment Base	4	8,742.6	2,535.2	11,277.8	4,118.9	15,396.7
- Accum. Deferred Taxes	5	2,264.7	585.6	2,850.3	1,466.0	4,316.3
= Adjusted Net Inv. Base		6,477.9	1,949.6	8,427.5	2,652.9	11,080.4
W&S Investment Net	6	6,318.2	2,050.4	8,368.6	4,105.1	12,473.8
- Accum. Deferred Taxes	7	1,636.7	473.6	2,110.3	1,461.1	3,496.9
= Adjusted W&S Net Inv.		4,681.6	1,576.8	6,258.3	2,644.0	8,976.9
% W&S to Total	8	72.27%	80.88%	74.20%	99.67%	81.02%
Equip. Investment Net	9	2,424.4	484.8	2,909.2	13.8	2,922.9
- Accum. Deferred Taxes	10	628.0	112.0	740.0	4.9	819.4
= Adjusted W&S Net Inv.		1,796.4	372.8	2,169.2	8.9	2,103.5
% Equip. to Total	11	27.73%	19.12%	25.80%	0.33%	18.98%
Total W&S ROI	12	795.9	268.1	1,063.9	449.5	1,526.1
Total Equip ROI	13	305.4	63.4	368.8	1.5	357.6
Variable W&S ROI	14	397.9	134.0	532.0	224.7	763.0
Variable Equip. ROI	15	305.4	63.4	368.8	1.5	357.6
Total Variable ROI		703.3	197.4	900.7	226.2	1,120.6
Total Variable Cost						
(Including ROI)		3,558.6	1,054.6	4,613.1	226.2	4,833.0
Rev/Variable Cost Ratio	16	1.35	1.43	1.37		1.31
% Increase in Var Cost						4.90%

Notes on next page

Notes (CSX-Conrail)

1. Base year data from 1995 R-1, Sch. 210. Using 42% of Conrail's figures. Years 1 through Normal Year use increases as shown in pro forma income statements. Assumes that all pro forma increases flow through to the railroad entity.

2. Base year data from 1995 R-1, Sch. 210. Using 42% of Conrail's figures. Years 1 through Normal Year use increases as shown in pro forma income statements. Assumes that all pro forma increases flow through to the railroad entity. Conrail's 1995 expenses exclude special charges.

3. Base year data from 1995 URCS runs. Using 42% of Conrail's figures. Years 1 through Normal Year use increases in expenses shown in pro forma income statements allocated on the basis of the base year percentage of variable to total expenses as shown in the combined base year column.

4. Investment in way and structures (W&S) and equipment, net of depreciation, but before adjustment for accumulated deferred income tax credits. Base year data from 1995 R-1, Scheds. 330 and 335. Using 42% of Conrail's figures. Purchase accounting adjustments from Whitehurst's Exhibit WWW-5 (also using 42% of Conrail's figures). Year 1 through Normal Year use increases as shown in pro forma balance sheets. Assumes that all increases flow through to railroad entity.

5. Base year data from 1995 R-1, Sch. 200. Using 42% of Conrail's figures. Purchase accounting adjustment from pro forma balance sheet (also using 42% of Conrail's figures). Years 1 through Normal Year use increases as shown in pro forma balance sheets. Purchase accounting and all pro forma data assume that all increases in accumulated deferred taxes flow through to railroad entity.

6. Investment in way and structures (W&S), net of depreciation, but before adjustment for accumulated deferred income tax credits. Base year data from 1995 R-1, Scheds. 330 and 335. Using 42% of Conrail's figures. Purchase accounting adjustments from Whitehurst's Exhibit WWW-5 (also using 42% of Conrail's figures). Year 1 through Normal Year use total increases in investment as shown in pro forma balance sheets, prorated between W&S and equipment using base year ratios (*see*, notes 8 and 11). Assumes that all increases flow through to railroad entity.

7. Base year data from 1995 R-1, Sch. 200. Using 42% of Conrail's figures. Purchase accounting adjustment from pro forma balance sheet (also using 42% of Conrail's figures). Years 1 through Normal Year use increases as shown in pro forma balance sheets. Purchase accounting and all pro forma data assume that all increases in accumulated deferred taxes flow through to railroad entity. These data also use deferred taxes prorated between W&S and equipment using base year ratios (*see*, notes 8 and 11). Assumes that all increases flow through to railroad entity.

8. This is the ratio of W&S Investment Net (before adjustment for deferred taxes) to total net investment, also before adjustment for deferred taxes. Combined base year figure is used for prorating Year 1 through Normal Year.

9. Investment in equipment, net of depreciation, but before adjustment for accumulated deferred income tax credits. Base year data from 1995 R-1, Schedules. 330 and 335. Using 42% of Conrail's figures. Purchase accounting adjustments from Whitehurst's Exhibit WWW-5 (also using 42% of Conrail's figures). Year 1 through Normal Year use total increases in investment as shown in pro forma balance sheets prorated between W&S and equipment using base year ratios (*see*, notes 8 and 11). Assumes that all increases flow through to railroad entity.

10. Base year data from 1995 R-1, Sch. 200. Using 42% of Conrail's figures. Purchase accounting adjustment from pro forma balance sheet (also using 42% of Conrail's figures). Years 1 through Normal Year use increases as shown in pro forma balance sheets. Purchase accounting and all pro forma data assume that all increases in accumulated deferred taxes flow through to railroad entity. These data also use deferred taxes prorated between W&S and equipment using base year ratios (*see*, notes 8 and 11). Assumes that all increases flow through to railroad entity.

11. This is the ratio of equipment investment net (before adjustment for deferred taxes) to total net investment, also before adjustment for deferred taxes. Combined base year figure is used for prorating Year 1 through Normal Year.

12. W&S investment (net of deferred taxes) times 17% (1995 pre-tax cost of capital rate used in URCS).

13. Equipment investment (net of deferred taxes) times 17% (1995 pre-tax cost of capital rate used in URCS).

14. 50% of W&S ROI.

15. 100% of Equipment ROI

16. Operating Revenue divided by total variable costs (including ROI).

APPENDIX O: VARIABLE COST TREND ANALYSIS

1996 URCS Variable Cost as a Percentage of 1985 URCS Variable Cost
Eastern Region

Single Car Distance Block	Percent	Multiple Car Distance Block	Percent	Unit Train Distance Block	Percent
200	62.79	200	63.86	200	61.81
400	65.43	400	66.48	400	64.48
600	66.78	600	67.68	600	65.71
800	67.59	800	68.37	800	66.42
1000	68.14	1000	68.82	1000	66.88
1200	68.53	1200	69.13	1200	67.20
1400	68.83	1400	69.36	1400	67.44
1600	69.06	1600	69.54	1600	67.62
1800	69.24	1800	69.68	1800	67.77
2000	69.39	2000	69.80	2000	67.89

Nominal Dollars

Single Car Distance Block	Percent	Multiple Car Distance Block	Percent	Unit Train Distance Block	Percent
200	88.78	200	90.29	200	87.40
400	92.52	400	94.00	400	91.17
600	94.42	600	95.70	600	92.91
800	95.57	800	96.67	800	93.91
1000	96.34	1000	97.30	1000	94.56
1200	96.90	1200	97.74	1200	95.02
1400	97.31	1400	98.07	1400	95.35
1600	97.64	1600	98.32	1600	95.61
1800	97.90	1800	98.52	1800	95.82
2000	98.11	2000	98.69	2000	95.99

1996 URCS Variable Cost as a Percentage of 1985 URCS Variable Cost
Western Region

Single Car Distance Block	Percent	Multiple Car Distance Block	Percent	Unit Train Distance Block	Percent
200	61.55	200	59.02	200	57.86
400	61.58	400	59.97	400	58.65
600	61.60	600	60.42	600	59.03
800	61.61	800	60.68	800	59.25
1000	61.61	1000	60.85	1000	67.48
1200	61.62	1200	60.97	1200	59.50
1400	61.62	1400	61.05	1400	59.57
1600	61.63	1600	61.12	1600	59.63
1800	61.63	1800	61.18	1800	59.68
2000	61.63	2000	61.22	2000	59.72

Nominal Dollars

Single Car Distance Block	Percent	Multiple Car Distance Block	Percent	Unit Train Distance Block	Percent
200	89.03	200	85.38	200	83.70
400	89.08	400	86.76	400	84.84
600	89.10	600	87.40	600	85.38
800	89.12	800	87.77	800	85.70
1000	89.13	1000	88.02	1000	97.62
1200	89.14	1200	88.19	1200	86.06
1400	89.14	1400	88.32	1400	86.18
1600	89.15	1600	88.42	1600	86.26
1800	89.15	1800	88.50	1800	86.33
2000	89.15	2000	88.56	2000	86.39

URCS Variable Cost Trend Analysis
Eastern Region

Single Car Movements

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	580.21	200	595.41	200	592.33	200	597.69
400	896.76	400	923.33	400	917.40	400	924.46
600	1,213.30	600	1,251.24	600	1,242.47	600	1,251.23
800	1,529.85	800	1,579.15	800	1,567.55	800	1,578.00
1000	1,846.39	1000	1,907.06	1000	1,892.62	1000	1,904.77
1200	2,162.94	1200	2,234.96	1200	2,217.70	1200	2,231.54
1400	2,479.48	1400	2,562.87	1400	2,542.77	1400	2,558.31
1600	2,796.03	1600	2,890.79	1600	2,867.84	1600	2,885.09
1800	3,112.57	1800	3,218.70	1800	3,192.92	1800	3,211.86
2000	3,429.12	2000	3,546.61	2000	3,517.99	2000	3,538.63

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	604.62	200	611.66	200	588.08	200	588.69
400	934.79	400	945.96	400	907.90	400	907.77
600	1,264.96	600	1,280.25	600	1,227.71	600	1,226.85
800	1,595.13	800	1,614.55	800	1,547.53	800	1,545.94
1000	1,925.30	1000	1,948.86	1000	1,867.35	1000	1,865.02
1200	2,255.47	1200	2,283.16	1200	2,187.17	1200	2,184.10
1400	2,585.64	1400	2,617.45	1400	2,506.98	1400	2,503.19
1600	2,915.81	1600	2,951.75	1600	2,826.80	1600	2,822.27
1800	3,245.98	1800	3,286.06	1800	3,146.62	1800	3,141.35
2000	3,576.15	2000	3,620.36	2000	3,466.43	2000	3,460.44

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	541.46	200	549.26	200	622.63	200	653.57
400	831.25	400	856.57	400	947.69	400	969.29
600	1,121.04	600	1,163.87	600	1,272.76	600	1,285.02
800	1,410.83	800	1,471.18	800	1,597.82	800	1,600.75
1000	1,700.62	1000	1,778.48	1000	1,922.89	1000	1,916.48
1200	1,990.41	1200	2,085.79	1200	2,247.95	1200	2,232.21
1400	2,280.20	1400	2,393.09	1400	2,573.02	1400	2,547.93
1600	2,569.99	1600	2,700.40	1600	2,898.09	1600	2,863.66
1800	2,859.78	1800	3,007.70	1800	3,223.15	1800	3,179.39
2000	3,149.57	2000	3,315.01	2000	3,548.22	2000	3,495.12

URCS Variable Cost Trend Analysis
Eastern Region

Multiple Car Movements

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	481.21	200	494.41	200	485.84	200	493.14
400	797.76	400	822.32	400	810.91	400	819.91
600	1,114.31	600	1,150.22	600	1,136.00	600	1,146.69
800	1,430.87	800	1,478.14	800	1,461.06	800	1,473.46
1000	1,747.41	1000	1,806.05	1000	1,786.12	1000	1,800.23
1200	2,063.95	1200	2,133.95	1200	2,111.22	1200	2,127.01
1400	2,380.49	1400	2,461.88	1400	2,436.27	1400	2,453.77
1600	2,697.03	1600	2,789.78	1600	2,761.36	1600	2,780.54
1800	3,013.57	1800	3,117.68	1800	3,086.43	1800	3,107.33
2000	3,330.12	2000	3,445.60	2000	3,411.49	2000	3,434.09

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	499.80	200	509.26	200	485.87	200	488.12
400	829.97	400	843.56	400	805.68	400	807.20
600	1,160.14	600	1,177.86	600	1,125.49	600	1,126.29
800	1,490.31	800	1,512.14	800	1,445.31	800	1,445.37
1000	1,820.48	1000	1,846.44	1000	1,765.14	1000	1,764.45
1200	2,150.63	1200	2,180.74	1200	2,084.96	1200	2,083.53
1400	2,480.80	1400	2,515.06	1400	2,404.76	1400	2,402.62
1600	2,810.97	1600	2,849.34	1600	2,724.58	1600	2,721.70
1800	3,141.16	1800	3,183.65	1800	3,044.39	1800	3,040.79
2000	3,471.32	2000	3,517.95	2000	3,364.23	2000	3,359.86

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	444.76	200	455.53	200	499.85	200	532.94
400	734.55	400	762.83	400	824.91	400	848.67
600	1,024.33	600	1,070.14	600	1,149.99	600	1,164.40
800	1,314.13	800	1,377.45	800	1,475.05	800	1,480.13
1000	1,603.91	1000	1,684.75	1000	1,800.11	1000	1,795.86
1200	1,893.72	1200	1,992.04	1200	2,125.18	1200	2,111.59
1400	2,183.48	1400	2,299.35	1400	2,450.25	1400	2,427.30
1600	2,473.30	1600	2,606.67	1600	2,775.31	1600	2,743.04
1800	2,763.08	1800	2,913.95	1800	3,100.36	1800	3,058.78
2000	3,052.87	2000	3,221.28	2000	3,425.43	2000	3,374.48

URCS Variable Cost Trend Analysis
Eastern Region

Unit Train Movements

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	357.07	200	337.06	200	362.57	200	371.52
400	590.27	400	614.31	400	605.30	400	619.78
600	823.47	600	858.57	600	848.03	600	868.04
800	1,056.67	800	1,102.83	800	1,090.76	800	1,116.30
1000	1,289.87	1000	1,347.09	1000	1,333.49	1000	1,364.56
1200	1,523.07	1200	1,591.35	1200	1,576.22	1200	1,612.82
1400	1,756.28	1400	1,835.61	1400	1,818.96	1400	1,861.08
1600	1,989.48	1600	2,079.87	1600	2,061.69	1600	2,109.34
1800	2,222.67	1800	2,324.13	1800	2,304.42	1800	2,357.60
2000	2,455.88	2000	2,568.39	2000	2,547.15	2000	2,605.86

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	378.15	200	386.73	200	368.41	200	366.19
400	630.19	400	643.97	400	612.72	400	609.01
600	882.24	600	901.20	600	857.03	600	851.84
800	1,134.28	800	1,158.44	800	1,101.34	800	1,094.66
1000	1,386.33	1000	1,415.67	1000	1,345.65	1000	1,337.49
1200	1,638.37	1200	1,672.91	1200	1,589.96	1200	1,580.31
1400	1,890.42	1400	1,930.15	1400	1,834.27	1400	1,823.14
1600	2,142.46	1600	2,187.39	1600	2,078.58	1600	2,065.97
1800	2,398.60	1800	2,448.85	1800	2,327.08	1800	2,312.81
2000	2,646.55	2000	2,701.86	2000	2,567.20	2000	2,551.62

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	336.95	200	347.50	200	377.27	200	408.55
400	557.19	400	580.31	400	619.16	400	647.44
600	777.43	600	813.11	600	861.05	600	886.32
800	997.67	800	1,045.91	800	1,102.95	800	1,125.20
1000	1,217.91	1000	1,278.71	1000	1,344.84	1000	1,364.08
1200	1,438.15	1200	1,511.51	1200	1,586.73	1200	1,602.96
1400	1,658.39	1400	1,744.32	1400	1,828.63	1400	1,841.84
1600	1,878.64	1600	1,977.12	1600	2,070.52	1600	2,080.72
1800	2,098.88	1800	2,209.93	1800	2,312.41	1800	2,319.60
2000	2,319.12	2000	2,442.73	2000	2,554.31	2000	2,558.48

URCS Variable Cost Trend Analysis
Western Region

Single Car Movements

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	575.47	200	579.48	200	557.99	200	570.37
400	843.00	400	860.15	400	829.97	400	857.95
600	1,110.53	600	1,140.83	600	1,101.96	600	1,145.53
800	1,378.07	800	1,421.51	800	1,373.95	800	1,433.11
1000	1,645.61	1000	1,702.18	1000	1,645.93	1000	1,720.69
1200	1,913.14	1200	1,982.86	1200	1,917.92	1200	2,008.27
1400	2,180.68	1400	2,263.54	1400	2,189.91	1400	2,295.85
1600	2,448.21	1600	2,544.21	1600	2,461.89	1600	2,583.43
1800	2,715.75	1800	2,824.89	1800	2,733.88	1800	2,871.01
2000	2,983.28	2000	3,105.57	2000	3,005.86	2000	3,158.59

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	567.33	200	600.22	200	577.50	200	587.80
400	859.45	400	897.88	400	869.86	400	871.42
600	1,151.57	600	1,195.53	600	1,162.22	600	1,155.05
800	1,443.70	800	1,493.19	800	1,454.57	800	1,438.67
1000	1,735.82	1000	1,790.84	1000	1,746.93	1000	1,722.30
1200	2,027.94	1200	2,088.49	1200	2,039.29	1200	2,005.92
1400	2,320.07	1400	2,386.15	1400	2,331.65	1400	2,289.54
1600	2,612.19	1600	2,683.80	1600	2,624.01	1600	2,573.17
1800	2,904.31	1800	2,981.45	1800	2,916.37	1800	2,856.79
2000	3,196.43	2000	3,279.11	2000	3,208.73	2000	3,140.41

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	571.71	200	559.60	200	588.48	200	646.36
400	839.40	400	831.52	400	880.57	400	946.34
600	1,107.08	600	1,103.44	600	1,172.66	600	1,246.33
800	1,374.77	800	1,375.35	800	1,464.75	800	1,546.32
1000	1,642.46	1000	1,647.27	1000	1,756.85	1000	1,846.31
1200	1,910.15	1200	1,919.19	1200	2,048.94	1200	2,146.29
1400	2,177.84	1400	2,191.11	1400	2,341.03	1400	2,446.28
1600	2,445.53	1600	2,463.03	1600	2,633.13	1600	2,746.27
1800	2,713.22	1800	2,734.95	1800	2,925.22	1800	3,046.25
2000	2,980.90	2000	3,006.87	2000	3,217.31	2000	3,346.24

URCS Variable Cost Trend Analysis
Western Region

Multiple Car Movements

1996 Distance Block	1996 Average Cost Per Car	1995 Distance Block	1995 Average Cost Per Car	1994 Distance Block	1994 Average Cost Per Car	1993 Distance Block	1993 Average Cost Per Car
200	452.04	200	463.74	200	444.30	200	456.81
400	719.58	400	744.42	400	716.28	400	744.39
600	987.10	600	1,025.10	600	988.28	600	1,031.98
800	1,254.65	800	1,305.76	800	1,260.24	800	1,319.56
1000	1,522.19	1000	1,586.44	1000	1,532.24	1000	1,607.13
1200	1,789.73	1200	1,867.12	1200	1,804.23	1200	1,894.72
1400	2,057.26	1400	2,147.79	1400	2,076.22	1400	2,182.30
1600	2,324.78	1600	2,428.49	1600	2,348.19	1600	2,469.87
1800	2,592.33	1800	2,709.15	1800	2,620.18	1800	2,757.46
2000	2,859.84	2000	2,989.82	2000	2,892.17	2000	3,045.03

1992 Distance Block	1992 Average Cost Per Car	1991 Distance Block	1991 Average Cost Per Car	1990 Distance Block	1990 Average Cost Per Car	1989 Distance Block	1989 Average Cost Per Car
200	459.42	200	495.27	200	478.63	200	486.83
400	751.55	400	792.93	400	770.99	400	770.45
600	1,043.65	600	1,090.57	600	1,063.34	600	1,054.07
800	1,335.78	800	1,388.25	800	1,355.71	800	1,337.71
1000	1,627.92	1000	1,685.91	1000	1,648.06	1000	1,621.33
1200	1,920.03	1200	1,983.54	1200	1,940.43	1200	1,904.95
1400	2,212.17	1400	2,281.19	1400	2,232.78	1400	2,188.58
1600	2,504.28	1600	2,578.83	1600	2,525.14	1600	2,472.20
1800	2,796.40	1800	2,876.51	1800	2,817.51	1800	2,755.81
2000	3,088.51	2000	3,174.16	2000	3,109.87	2000	3,039.46

1988 Distance Block	1988 Average Cost Per Car	1987 Distance Block	1987 Average Cost Per Car	1986 Distance Block	1986 Average Cost Per Car	1985 Distance Block	1985 Average Cost Per Car
200	469.78	200	463.09	200	483.46	200	529.44
400	737.47	400	735.00	400	775.56	400	829.43
600	1,005.15	600	1,006.93	600	1,067.64	600	1,129.41
800	1,272.84	800	1,278.84	800	1,359.75	800	1,429.40
1000	1,540.53	1000	1,550.75	1000	1,651.84	1000	1,729.40
1200	1,808.23	1200	1,822.68	1200	1,943.92	1200	2,029.37
1400	2,075.92	1400	2,094.59	1400	2,236.03	1400	2,329.37
1600	2,343.59	1600	2,366.52	1600	2,528.13	1600	2,629.33
1800	2,611.28	1800	2,638.43	1800	2,820.21	1800	2,929.34
2000	2,878.98	2000	2,910.34	2000	3,112.28	2000	3,229.33

URCS Variable Cost Trend Analysis
Western Region

Unit Train Movements

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	321.21	200	338.37	200	324.02	200	325.85
400	501.86	400	536.03	400	518.07	400	524.83
600	682.50	600	733.68	600	712.12	600	723.83
800	863.15	800	931.34	800	906.17	800	922.82
1000	1,185.95	1000	1,256.75	1000	1,233.83	1000	1,262.69
1200	1,224.45	1200	1,326.66	1200	1,294.26	1200	1,320.79
1400	1,405.09	1400	1,524.32	1400	1,488.31	1400	1,519.78
1600	1,585.74	1600	1,721.97	1600	1,682.36	1600	1,718.77
1800	1,766.39	1800	1,919.63	1800	1,876.41	1800	1,917.76
2000	1,947.04	2000	2,117.29	2000	2,070.45	2000	2,116.75

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	328.14	200	361.08	200	344.93	200	349.69
400	530.90	400	566.89	400	549.46	400	546.29
600	733.66	600	772.71	600	753.99	600	742.89
800	936.43	800	978.52	800	958.51	800	939.50
1000	1,139.19	1000	1,184.34	1000	1,163.04	1000	1,136.10
1200	1,341.95	1200	1,390.15	1200	1,367.56	1200	1,332.71
1400	1,544.71	1400	1,595.96	1400	1,572.09	1400	1,529.31
1600	1,747.48	1600	1,801.78	1600	1,776.62	1600	1,725.91
1800	1,950.24	1800	2,007.59	1800	1,981.14	1800	1,922.52
2000	2,153.00	2000	2,213.41	2000	2,185.67	2000	2,119.12

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	337.54	200	338.68	200	346.19	200	383.74
400	523.20	400	532.48	400	553.53	400	591.53
600	708.86	600	726.27	600	760.87	600	799.33
800	894.53	800	920.06	800	968.20	800	1,007.12
1000	1,080.19	1000	1,113.85	1000	1,175.54	1000	1,214.92
1200	1,265.85	1200	1,307.64	1200	1,382.88	1200	1,422.71
1400	1,451.51	1400	1,501.44	1400	1,590.22	1400	1,630.50
1600	1,637.17	1600	1,695.23	1600	1,797.56	1600	1,838.30
1800	1,822.84	1800	1,889.02	1800	2,004.89	1800	2,046.09
2000	2,008.50	2000	2,082.81	2000	2,212.23	2000	2,253.88

URCS Variable Cost Trend Analysis
Eastern Region
Single Car Movements
Constant Dollar (1996 = 100)

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	580.21	200	622.89	200	645.49	200	666.93
400	896.76	400	965.93	400	999.73	400	1,031.56
600	1,213.30	600	1,308.97	600	1,353.98	600	1,396.19
800	1,529.85	800	1,652.01	800	1,708.23	800	1,760.82
1000	1,846.39	1000	1,995.05	1000	2,062.48	1000	2,125.45
1200	2,162.94	1200	2,338.09	1200	2,416.73	1200	2,490.08
1400	2,479.48	1400	2,681.13	1400	2,770.98	1400	2,854.70
1600	2,796.03	1600	3,024.17	1600	3,125.23	1600	3,219.33
1800	3,112.57	1800	3,367.21	1800	3,479.48	1800	3,583.96
2000	3,429.12	2000	3,710.25	2000	3,833.73	2000	3,948.59

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	685.41	200	698.64	200	696.88	200	728.61
400	1,059.71	400	1,080.49	400	1,075.87	400	1,123.53
600	1,433.99	600	1,462.33	600	1,454.86	600	1,518.45
800	1,808.29	800	1,844.18	800	1,833.84	800	1,913.38
1000	2,182.57	1000	2,226.02	1000	2,212.83	1000	2,308.30
1200	2,556.87	1200	2,607.87	1200	2,591.82	1200	2,703.22
1400	2,931.16	1400	2,989.71	1400	2,970.81	1400	3,098.15
1600	3,305.44	1600	3,371.55	1600	3,349.80	1600	3,493.07
1800	3,679.73	1800	3,753.40	1800	3,728.78	1800	3,887.99
2000	4,054.02	2000	4,135.24	2000	4,107.77	2000	4,282.92

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	700.97	200	748.91	200	873.11	200	924.08
400	1,076.13	400	1,167.92	400	1,328.95	400	1,370.49
600	1,451.29	600	1,586.93	600	1,784.79	600	1,816.90
800	1,826.45	800	2,005.93	800	2,240.63	800	2,263.31
1000	2,201.61	1000	2,424.94	1000	2,696.47	1000	2,709.73
200	2,576.77	1200	2,843.95	1200	3,152.30	1200	3,156.14
1400	2,951.93	1400	3,262.96	1400	3,608.14	1400	3,602.54
1600	3,327.09	1600	3,681.97	1600	4,063.98	1600	4,048.96
1800	3,702.25	1800	4,100.97	1800	4,519.82	1800	4,495.37
2000	4,077.41	2000	4,519.98	2000	4,975.66	2000	4,941.77

URCS Variable Cost Trend Analysis
Eastern Region
Multiple Car Movements
Constant Dollar (1996 = 100)

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	481.21	200	517.22	200	529.44	200	550.27
400	797.76	400	860.26	400	883.68	400	914.90
600	1,114.31	600	1,203.29	600	1,237.95	600	1,279.54
800	1,430.87	800	1,546.35	800	1,592.19	800	1,644.16
1000	1,747.41	1000	1,889.38	1000	1,946.42	1000	2,008.79
1200	2,063.95	1200	2,232.41	1200	2,300.70	1200	2,373.43
1400	2,380.49	1400	2,575.47	1400	2,654.92	1400	2,738.04
1600	2,697.03	1600	2,918.50	1600	3,009.19	1600	3,102.68
1800	3,013.57	1800	3,261.54	1800	3,363.44	1800	3,467.32
2000	3,330.12	2000	3,604.58	2000	3,717.67	2000	3,831.94

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	566.58	200	581.68	200	575.76	200	604.13
400	940.88	400	963.53	400	954.74	400	999.06
600	1,315.16	600	1,345.37	600	1,333.72	600	1,393.99
800	1,689.46	800	1,727.20	800	1,712.71	800	1,788.90
1000	2,063.75	1000	2,109.04	1000	2,091.72	1000	2,183.83
1200	2,438.02	1200	2,490.89	1200	2,470.70	1200	2,578.74
1400	2,812.31	1400	2,872.75	1400	2,849.67	1400	2,973.67
1600	3,186.59	1600	3,254.58	1600	3,228.66	1600	3,368.60
1800	3,560.91	1800	3,636.43	1800	3,607.65	1800	3,763.53
2000	3,935.18	2000	4,018.27	2000	3,986.66	2000	4,158.43

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	575.78	200	621.11	200	700.94	200	753.52
400	950.94	400	1,040.11	400	1,156.77	400	1,199.94
600	1,326.09	600	1,459.13	600	1,612.63	600	1,646.35
800	1,701.27	800	1,878.14	800	2,068.46	800	2,092.76
1000	2,076.41	1000	2,297.14	1000	2,524.29	1000	2,539.18
1200	2,451.59	1200	2,716.13	1200	2,980.14	1200	2,985.59
1400	2,826.71	1400	3,135.14	1400	3,435.98	1400	3,431.98
1600	3,201.92	1600	3,554.17	1600	3,891.81	1600	3,878.41
1800	3,577.06	1800	3,973.15	1800	4,347.63	1800	4,324.84
2000	3,952.22	2000	4,392.18	2000	4,803.47	2000	4,771.21

URCS Variable Cost Trend Analysis
Eastern Region
Unit Train Movements
Constant Dollar (1996 = 100)

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	357.07	200	352.61	200	395.10	200	414.56
400	590.27	400	642.65	400	659.62	400	691.58
600	823.47	600	898.18	600	924.14	600	968.61
800	1,056.67	800	1,153.72	800	1,188.66	800	1,245.63
1000	1,289.87	1000	1,409.24	1000	1,453.17	1000	1,522.65
1200	1,523.07	1200	1,664.77	1200	1,717.69	1200	1,799.67
1400	1,756.28	1400	1,920.31	1400	1,982.21	1400	2,076.69
1600	1,989.48	1600	2,175.83	1600	2,246.72	1600	2,353.71
1800	2,222.67	1800	2,431.37	1800	2,511.24	1800	2,630.73
2000	2,455.88	2000	2,686.90	2000	2,775.76	2000	2,907.76

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	428.68	200	441.73	200	436.58	200	453.23
400	714.41	400	735.55	400	726.09	400	753.77
600	1,000.13	600	1,029.37	600	1,015.60	600	1,054.31
800	1,285.85	800	1,323.19	800	1,305.11	800	1,354.85
1000	1,571.58	1000	1,617.01	1000	1,594.62	1000	1,655.39
1200	1,857.30	1200	1,910.83	1200	1,884.12	1200	1,955.93
1400	2,143.03	1400	2,204.65	1400	2,173.63	1400	2,256.47
1600	2,428.75	1600	2,498.48	1600	2,463.14	1600	2,557.01
1800	2,719.12	1800	2,797.13	1800	2,757.62	1800	2,862.52
2000	3,000.20	2000	3,086.12	2000	3,042.16	2000	3,158.09

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	436.21	200	473.82	200	529.04	200	577.66
400	721.33	400	791.24	400	868.25	400	915.41
600	1,006.46	600	1,108.66	600	1,207.45	600	1,253.17
800	1,291.58	800	1,426.09	800	1,546.66	800	1,590.93
1000	1,576.70	1000	1,743.51	1000	1,885.87	1000	1,928.68
1200	1,861.82	1200	2,060.94	1200	2,225.08	1200	2,266.44
1400	2,146.94	1400	2,378.36	1400	2,564.28	1400	2,604.19
1600	2,432.07	1600	2,695.79	1600	2,903.49	1600	2,941.95
1800	2,717.19	1800	3,013.21	1800	3,242.70	1800	3,279.70
2000	3,002.31	2000	3,330.64	2000	3,581.90	2000	3,617.46

URCS Variable Cost Trend Analysis
Western Region
Single Car Movements
Constant Dollar (1996 = 100)

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	575.47	200	600.32	200	606.60	200	625.58
400	843.00	400	891.08	400	902.28	400	941.00
600	1,110.53	600	1,181.86	600	1,197.96	600	1,256.42
800	1,378.07	800	1,472.63	800	1,493.64	800	1,571.83
1000	1,645.61	1000	1,763.40	1000	1,789.31	1000	1,887.25
1200	1,913.14	1200	2,054.16	1200	2,085.00	1200	2,202.67
1400	2,180.68	1400	2,344.93	1400	2,380.68	1400	2,518.09
1600	2,448.21	1600	2,635.70	1600	2,676.35	1600	2,833.51
1800	2,715.75	1800	2,926.47	1800	2,972.03	1800	3,148.92
2000	2,983.28	2000	3,217.24	2000	3,267.71	2000	3,464.34

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	624.27	200	689.02	200	697.53	200	748.36
400	945.71	400	1,030.71	400	1,050.65	400	1,109.46
600	1,267.15	600	1,372.40	600	1,403.78	600	1,470.55
800	1,588.59	800	1,714.09	800	1,756.91	800	1,831.65
1000	1,910.04	1000	2,055.78	1000	2,110.03	1000	2,192.75
1200	2,231.48	1200	2,397.47	1200	2,463.16	1200	2,553.84
1400	2,552.92	1400	2,739.16	1400	2,816.28	1400	2,914.94
1600	2,874.36	1600	3,080.85	1600	3,169.41	1600	3,276.04
1800	3,195.80	1800	3,422.54	1800	3,522.54	1800	3,637.14
2000	3,517.25	2000	3,764.23	2000	3,875.66	2000	3,998.23

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	758.91	200	781.53	200	850.37	200	935.01
400	1,114.26	400	1,161.30	400	1,272.46	400	1,368.96
600	1,469.60	600	1,541.05	600	1,694.54	600	1,802.92
800	1,824.94	800	1,920.81	800	2,116.62	800	2,236.88
1000	2,180.29	1000	2,300.57	1000	2,538.71	1000	2,670.83
1200	2,535.63	1200	2,680.33	1200	2,960.79	1200	3,104.79
1400	2,890.97	1400	3,060.09	1400	3,382.88	1400	3,538.74
1600	3,246.32	1600	3,439.85	1600	3,804.96	1600	3,972.70
1800	3,601.66	1800	3,819.61	1800	4,227.05	1800	4,406.65
2000	3,957.00	2000	4,199.38	2000	4,649.13	2000	4,840.61

URCS Variable Cost Trend Analysis
Western Region
Multiple Car Movements
Constant Dollar (1996 = 100)

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	452.04	200	480.42	200	483.00	200	501.03
400	719.58	400	771.19	400	778.68	400	816.45
600	987.10	600	1,061.96	600	1,074.37	600	1,131.88
800	1,254.65	800	1,352.71	800	1,370.03	800	1,447.29
1000	1,522.19	1000	1,643.49	1000	1,665.72	1000	1,762.70
1200	1,789.73	1200	1,934.26	1200	1,961.40	1200	2,078.13
1400	2,057.26	1400	2,225.03	1400	2,257.08	1400	2,393.55
1600	2,324.78	1600	2,515.82	1600	2,552.75	1600	2,708.95
1800	2,592.33	1800	2,806.57	1800	2,848.43	1800	3,024.38
2000	2,859.84	2000	3,097.33	2000	3,144.11	2000	3,339.78

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	505.53	200	568.55	200	578.11	200	619.81
400	826.98	400	910.23	400	931.24	400	980.91
600	1,148.40	600	1,251.92	600	1,284.35	600	1,341.99
800	1,469.84	800	1,593.63	800	1,637.49	800	1,703.11
1000	1,791.30	1000	1,935.33	1000	1,990.61	1000	2,064.21
1200	2,112.73	1200	2,276.99	1200	2,343.75	1200	2,425.30
1400	2,434.19	1400	2,618.68	1400	2,696.87	1400	2,786.39
1600	2,755.63	1600	2,960.36	1600	3,049.99	1600	3,147.49
1800	3,077.06	1800	3,302.07	1800	3,403.13	1800	3,508.57
2000	3,398.49	2000	3,643.76	2000	3,756.25	2000	3,869.70

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	623.61	200	646.74	200	698.62	200	765.88
400	978.96	400	1,026.50	400	1,120.71	400	1,199.84
600	1,334.29	600	1,406.27	600	1,542.78	600	1,633.79
800	1,689.63	800	1,786.02	800	1,964.89	800	2,067.74
1000	2,044.98	1000	2,165.77	1000	2,386.97	1000	2,501.72
1200	2,400.33	1200	2,545.55	1200	2,809.03	1200	2,935.64
1400	2,755.68	1400	2,925.30	1400	3,231.14	1400	3,369.62
1600	3,111.00	1600	3,305.07	1600	3,653.24	1600	3,803.54
1800	3,466.35	1800	3,684.83	1800	4,075.31	1800	4,237.53
2000	3,821.71	2000	4,064.57	2000	4,497.35	2000	4,671.48

URCS Variable Cost Trend Analysis
Western Region
Unit Train Movements
Constant Dollar (1996 = 100)

1996		1995		1994		1993	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	321.21	200	350.54	200	352.24	200	357.39
400	501.86	400	555.30	400	563.20	400	575.64
600	682.50	600	760.07	600	774.15	600	793.89
800	863.15	800	964.83	800	985.11	800	1,012.14
1000	1,185.95	1000	1,301.95	1000	1,341.32	1000	1,384.92
1200	1,224.45	1200	1,374.36	1200	1,407.01	1200	1,448.65
1400	1,405.09	1400	1,579.13	1400	1,617.96	1400	1,666.90
1600	1,585.74	1600	1,783.90	1600	1,828.91	1600	1,885.15
1800	1,766.39	1800	1,988.66	1800	2,039.87	1800	2,103.40
2000	1,947.04	2000	2,193.42	2000	2,250.82	2000	2,321.65

1992		1991		1990		1989	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	361.07	200	414.50	200	416.63	200	445.21
400	584.19	400	650.76	400	663.66	400	695.51
600	807.30	600	887.02	600	910.70	600	945.82
800	1,030.41	800	1,123.29	800	1,157.74	800	1,196.13
1000	1,253.52	1000	1,359.55	1000	1,404.78	1000	1,446.43
1200	1,476.64	1200	1,595.81	1200	1,651.81	1200	1,696.74
1400	1,699.75	1400	1,832.08	1400	1,898.85	1400	1,947.04
1600	1,922.86	1600	2,068.34	1600	2,145.88	1600	2,197.35
1800	2,145.97	1800	2,304.60	1800	2,392.92	1800	2,447.66
2000	2,369.09	2000	2,540.87	2000	2,639.96	2000	2,697.97

1988		1987		1986		1985	
Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car	Distance Block	Average Cost Per Car
200	448.07	200	473.01	200	500.26	200	555.11
400	694.52	400	743.65	400	799.87	400	855.70
600	940.98	600	1,014.30	600	1,099.48	600	1,156.29
800	1,187.44	800	1,284.95	800	1,399.09	800	1,456.88
1000	1,433.89	1000	1,555.60	1000	1,698.70	1000	1,757.47
1200	1,680.35	1200	1,826.25	1200	1,998.31	1200	2,058.07
1400	1,926.81	1400	2,096.90	1400	2,297.92	1400	2,358.66
1600	2,173.27	1600	2,367.55	1600	2,597.53	1600	2,659.24
1800	2,419.72	1800	2,638.20	1800	2,897.14	1800	2,959.83
2000	2,666.18	2000	2,908.85	2000	3,196.76	2000	3,260.42

APPENDIX P: FINANCIAL RATIOS

Table 1
CSX/Conrail
Various Pro Forma Financial Ratios
(Dollars in Millions)

	Base Year	Year 1	Year 2	Year 3	Normal Year
I. Pro Forma Fixed Charge Coverage Ratio					
1. Income Available For Fixed Charges	$1,815	$1,845	$1,965	$2,096	$2,118
2. Fixed Charges	351	641	632	609	579
3. Times Fixed Charge Coverage (L1/L2)	5.2	2.9	3.1	3.4	3.7
II. Pro Forma Cash Throw-Off-To-Debt Ratio					
1. Net Income	$919	$753	$833	$929	$961
2. Depreciation and Amortization	723	828	835	837	835
3. Deferred Income Taxes	145	156	154	147	139
4. Other Operating Activities	146	111	114	130	140
5. Net Cash Provided By Operating Activities (L1+L2+L3+L4)	1,933	1,848	1,936	2,043	2,075
6. Current Maturities of Long-Term Debt	562	562	562	562	562
7. Cash Throw-Off-To-Debt Ratio (L5/L6)	3.4	3.29	3.44	3.64	3.69
III. Pro Forma Operating Ratio					
1. Operating Revenue	$11,852	$12,022	$12,162	$12,266	$12,266
2. Operating Expense	10133	10273	10293	10,266	10244
3. Operating Ratio (L2/L1)	85.5%	85.5%	84.6%	83.7%	83.5%
IV. Pro Forma Return on Equity					
1. Net Income	$919	$753	$833	$929	$961
2. Stockholders' Equity	4351	4888	5527	6262	7029
3. Return on Equity (L1/L2)	21.1%	15.4%	15.1%	14.8%	13.7%
V. Pro Forma Long-Term Debt to Long-Term Debt Plus Equity Ratio					
1. Long-Term Debt (excluding current maturities)	$7,302	$7,301	$6,982	$6,490	$5,915
2. Stockholders' Equity	4,351	4,888	5,527	6,262	7,029
3. Long-Term Debt Plus Equity	11,653	12,189	12,509	12,752	12,944
4. Ratio of Long-Term Debt to Long-Term Debt Plus Equity (L1/L3)	62.7%	59.9%	55.8%	50.9%	45.7%

Notes to Table 1

Sources of Data

The data in this table were derived and computed from information contained in the following submissions by applicant: (1) Volume 1 of the Application, Exhibit 16 (pro forma balance sheets for the base year, the first 3 years after the Division, and the normal year); (2) Volume 1 of the Application, Exhibit 17 (pro forma income statements for the base year, the first 3 years after the Division, and the normal year); and (3) Volume 1 of the Application, Exhibit 18 (pro forma sources and application of funds (statement of cash flows) for the base year, the first 3 years after the Division, and the normal year).

Base Year Data

The data shown in this table for the base year represent 1995 information as reported or derived from the Form 10-K annual reports for CSX and Conrail adjusted to eliminate the effects of non-recurring transactions, to reflect the permanent annual cost savings of Conrail's 1996 voluntary separation program in the base year, and to give effect to CSX's purchase accounting and the related increase in debt arising from the joint acquisition and division of Conrail.

Data Subsequent to Base Year

Data subsequent to the base year (*i.e.*, data for the first 3 years after the Division and the normal year) give effect to the estimated benefits from combined CSX and Conrail operations (increased revenues and traffic and cost savings), including joint operations with NS. The data also include non-recurring expenditures necessary to implement the operating plan and apply net increases in cash flow as a reduction of long-term debt.

Other

Acquisition debt maturities commence in the Year 2002 and therefore do not affect current maturities of long-term debt due during the forecast period.

Table 2
NS/Conrail
Various Pro Forma Financial Ratios
(Dollars in Millions)

	Base Year	Year 1	Year 2	Year 3	Normal Year
I. Pro Forma Fixed Charge Coverage Ratio					
1. Income Available For Fixed Charges	$1,801	$1,799	$2,058	$2,182	$2,185
2. Fixed Charges	226	620	606	576	535
3. Times Fixed Charge Coverage (L1/L2)	8.0	2.9	3.4	3.8	4.1
II. Pro Forma Cash Throw-Off-To-Debt Ratio					
1. Net Income	$997	$746	$915	$1,011	$1,038
2. Depreciation and Amortization	584	735	742	743	742
3. Deferred Income Taxes	219	229	176	172	170
4. Other Operating Activities	(94)	(124)	(109)	(99)	(93)
5. Net Cash Provided By Operating Activities (L1+L2+L3+L4)	1,706	1,586	1,724	1,827	1,857
6. Current Maturities of Long-Term Debt	191	191	191	191	191
7. Cash Throw-Off-To-Debt Ratio (L5/L6)	8.9	8.3	9.0	9.6	9.7
III. Pro Forma Operating Ratio					
1. Operating Revenue	$7,045	$7,122	$7,362	$7,457	$7,457
2. Operating Expense	5461	5,540	5,521	5,492	5,489
3. Operating Ratio (L2/L1)	77.5%	77.8%	75.0%	73.6%	73.6%
IV. Pro Forma Return on Equity					
1. Net Income	$997	$746	$915	$1,011	$1,038
2. Stockholders' Equity	4849	5,315	5,980	6,741	7,529
3. Return on Equity (L1/L2)	20.6%	14.0%	15.3%	15.0%	13.8%
V. Pro Forma Long-Term Debt to Long-Term Debt Plus Equity Ratio					
1. Long-Term Debt (excluding current maturities)	$8,589	$8,452	$8,165	$7,609	$6,960
2. Stockholders' Equity	4,849	5,315	5,980	6,741	7,529
3. Long-Term Debt Plus Equity	13,438	13,767	14,145	14,350	14,489
4. Ratio of Long-Term Debt to Long-Term Debt Plus Equity (L1/L3)	63.9%	61.4%	57.7%	53.0%	48.0%

Notes to Table 2

Sources of Data:

The data in this table were derived and computed from information contained in the following submissions by applicant: (1) Volume 1 of the Application, Exhibit 16 (pro forma balance sheets for the base year, the first 3 years after the Division, and the normal year); (2) Volume 1 of the Application, Exhibit 17 (pro forma income statements for the base year, the first 3 years after the Division, and the normal year); and (3) Volume 1 of the Application, Exhibit 18 (pro forma sources and application of funds (statement of cash flows) for the base year, the first 3 years after the Division, and the normal year).

Base Year Data:

The data shown in this table for the base year represent 1995 information as reported or derived from the Form 10-K annual reports for NS and Conrail adjusted to eliminate the effects of non-recurring transactions, to reflect the permanent annual cost savings of Conrail's 1996 voluntary separation program in the base year, and to give effect to NS' purchase accounting and the related increase in debt arising from the joint acquisition and division of Conrail.

Data Subsequent to Base Year:

Data subsequent to the base year (*i.e.*, data for the first 3 years after the Division and the normal year) give effect to the estimated benefits from combined NS and Conrail operations (increased revenues and traffic and cost savings), including joint operations with CSX. The data also include non-recurring expenditures necessary to implement the operating plan and apply net increases in cash flow as a reduction of long-term debt.

APPENDIX Q: ENVIRONMENTAL CONDITIONS

I. GENERAL ENVIRONMENTAL CONDITIONS

Safety: Highway/Rail At-grade Crossings

Condition 1(A). For each of the public highway/rail at-grade crossings on the 44 rail line segments identified below as having an increase in traffic of 8 or more trains per day or a 100% increase in annual gross ton miles, Applicants shall provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique highway/rail at-grade crossing identification number. The toll-free number shall be answered 24 hours per day by Applicant personnel. Where Applicant rights-of-way are in close proximity, Applicants shall coordinate and communicate with each other regarding reported accidents and crossing malfunctions. Applicants shall certify to the Board that they have complied with this condition within 3 months of Day One on each of these rail line segments as a result of the proposed Conrail Acquisition.

RAIL LINE SEGMENTS WITH AN INCREASE IN TRAFFIC OF 8 OR MORE TRAINS PER DAY OR 100% GROSS TON MILES PER DAY[a]

Between (City, State)	And (City, State)	Rail Line Segment[b]
Proposed CSX Rail Line Segments		
Barr Yard, IL	Blue Island Jct., IL	C-010
Adams, IN	Ft. Wayne, IN	C-020
Willow Creek, IN	Pine Jct., IN	C-027
Point of Rocks, MD	Harpers Ferry, WV	C-036
Carleton, MI	Toledo, OH	C-040
Berea, OH	Greenwich, OH	C-061
Bucyrus, OH	Adams, IN	C-062
Crestline, OH	Bucyrus, OH	C-064
Deshler, OH	Toledo, OH	C-065
Deshler, OH	Willow Creek, IN	C-066
Greenwich, OH	Crestline, OH	C-067

RAIL LINE SEGMENTS WITH AN INCREASE IN TRAFFIC OF 8 OR MORE TRAINS PER DAY OR 100% GROSS TON MILES PER DAY[a]

Between (City, State)	And (City, State)	Rail Line Segment[b]
Greenwich, OH	Willard, OH	C-068
Marion, OH	Fostoria, OH	C-070
Marion, OH	Ridgeway, OH	C-071
Mayfield, OH	Marcy, OH	C-072
Short, OH	Berea, OH	C-074
Willard, OH	Fostoria, OH	C-075
Rankin Jct., PA	New Castle, PA	C-082
Sinns, PA	Brownsville, PA	C-085
Sinns, PA	Rankin Jct., PA	C-086
Proposed NS Rail Line Segments		
Tilton, IL	Decatur, IL	N-033
Alexandria, IN	Muncie, IN	N-040
Butler, IN	Ft. Wayne, IN	N-041
Ft. Wayne, IN	Peru, IN	N-044
Lafayette Jct., IN	Tilton, IL	N-045
Peru, IN	Lafayette Jct., IN	N-046
Ebenezer Jct., NY	Buffalo, NY	N-061
Buffalo FW, NY	Ashtabula, OH	N-070
Bucyrus, OH	Bellevue, OH	N-071
Vermilion, OH	Bellevue, OH	N-072
Fairgrounds (Columbus), OH	Bucyrus, OH	N-073
Cleveland (Cloggsville), OH	CP-190, OH	N-074
Ashtabula, OH	Cleveland (Cloggsville),	N-075

RAIL LINE SEGMENTS WITH AN INCREASE IN TRAFFIC OF 8 OR MORE TRAINS PER DAY OR 100% GROSS TON MILES PER DAY[a]

Between (City, State)	And (City, State)	Rail Line Segment[b]
Oak Harbor, OH	Miami, OH	N-077
Oak Harbor, OH	Bellevue, OH	N-079
White, OH	Cleveland, OH	N-081
Alliance, OH	White, OH	N-084
Bellevue, OH	Sandusky Dock, OH	N-085
Miami, OH	Airline, OH	N-086
CP-190, OH	Berea, OH	N-293
Rutherford, PA	Harrisburg, PA	N-090
Harrisburg, PA	Riverton Jct., VA	N-091
Riverton Jct., VA	Roanoke, VA	N-100
Proposed Shared Assets Areas Rail Line Segments		
Carleton, MI	Ecorse, MI	S-020

[a] Several other rail line segments would meet the criterion of 8 or more trains per day, but these segments do not have at-grade crossings and therefore are not included on this table.

[b] These site identification numbers relate to specific rail line segments and railroad facilities, such as rail yards, that are discussed throughout the Final EIS. In these rail line segment identification numbers, "C" represents CSX Transportation, Inc., and CSX Corporation (CSX); "N" represents Norfolk Southern (NS); and "S" represents proposed Shared Assets Areas of CSX, NS, and Conrail, as well as Amtrak's Northeast Corridor (NEC) that would also be shared by CSX and NS. For example, the Carleton, Michigan to Toledo, Ohio rail line segment is currently owned by CSX and is designated "C-040."

Condition 1(B). On the 44 rail line segments listed in Condition No. 1(A), Applicants shall install temporary notification signs or message boards on railroad property at each public highway/rail at-grade crossing clearly advising motorists of the impending increase in train traffic (and train speeds if appropriate) displaying a crossing safety advisory message. The format and lettering of these signs shall comply with the U.S. Department of Transportation, Federal Highway Administration's Manual on Uniform Traffic Control Devices and shall be in place no less than 30 days before, and 6 months after, any actual Acquisition-related increase in train traffic occurs. Applicants shall certify to the Board that they have complied with this condition prior to increasing train traffic on these rail line segments as a result of the proposed Conrail Acquisition.

Condition 1(C). At each of the public highway/rail at-grade crossings on the 44 rail line segments listed in Condition No. 1(A), Applicants shall enhance crossing safety by promptly conducting the maintenance required to attain compliance with all applicable Federal, state, and local regulations. This maintenance could include, but is not limited to trimming vegetation on railroad property that obscures visibility of oncoming trains, assuring that rail, railroad ties, track fastenings, and ballast material are in good repair, and assuring that warning devices operate properly and are legible.

Condition 1(D). Applicants shall make Operation Lifesaver programs available to communities, schools, and other organizations located along the 44 rail line segments listed in Condition No. 1(A).

Safety: Hazardous Materials Transport

Condition 2. Applicants shall comply with the current Association of American Railroads (AAR) "key train" guidelines and any subsequent revisions. (*See,* "Recommended Railroad Operating Practices for Transportation of Hazardous Materials," AAR Circular No. OT-55-B.) Key trains are defined in the guidelines as any trains with 5 or more tank carloads of chemicals classified as a Poison Inhalation Hazard (PIH), or any train with a total of 20 rail cars with any combination of PIHs, flammable gases, explosives, or environmentally sensitive chemicals. The AAR key train guidelines include measures for a maximum operating speed of 50 mph and full train inspections by the train crew whenever a train is stopped by an emergency application of the train air brake, or as a result of a reported defect by a wayside defect detector. If an Applicant has or adopts more stringent requirements than those provided by the AAR key train guidelines, Applicants shall comply with its own more stringent requirements.

II. REGIONAL ENVIRONMENTAL CONDITIONS

Safety: Passenger Rail Operations

Condition 3. For the five rail line segments listed below, where SEA identified a potential increase in train collision accident risk, CSX shall consult with the Federal Railroad Administration (FRA) and the affected passenger service agencies [MARC (the Maryland Mass Transit Administration's commuter rail service), Amtrak, and Virginia Railway Express (VRE)] to develop operational strategies and apply technology improvements to ensure that after the proposed Conrail Acquisition the safety of passenger trains is maintained at or above current levels, while operating on the same track as CSX freight trains. This consultation shall be consistent with FRA's Final Rule on Passenger Train Emergency Preparedness, issued on May 4, 1998 (49 CFR Parts 223 and 239). CSX shall report to the Board on the results of its consultations, with copies to FRA and the affected passenger service agencies, within 1 year of the effective date of the Board's final decision.

RAIL LINE SEGMENTS THAT WARRANT
PASSENGER SAFETY MITIGATION

Proposed Owner	Rail Line Segment Description	Passenger Service Agency	Rail Line Segment ID
CSX	Washington, DC to Point of Rocks, MD	MARC, Amtrak	C-003
CSX	Savannah, GA to Jesup, GA	Amtrak	C-346
CSX	Weldon, NC to Rocky Mount, NC	Amtrak	C-334
CSX	Fredericksburg, VA to Potomac Yard, VA	Amtrak, VRE	C-101
CSX	S. Richmond, VA to Weldon, NC	Amtrak	C-103

Safety: Hazardous Materials Transport

Condition 4(A). Before increasing the number of rail cars carrying hazardous materials on the 44 rail line segments listed below that would become "key routes" as a result of the proposed Conrail Acquisition, and for a period of at least 3 years from the effective date of the Board's decision, Applicants shall certify to the Board compliance with Association of American Railroads (AAR) key route guidelines on these rail line segments. (*See*, "Recommended Railroad Operating Practices for Transportation of Hazardous Materials," AAR Circular No. OT-55-B.)

RAIL LINE SEGMENTS THAT WARRANT
HAZARDOUS MATERIALS (KEY ROUTE) MITIGATION

Proposed Owner	Route and Segment(s)	Rail Line Segment ID
	Manchester, Georgia—Parkwood, Alabama	
CSX	La Grange, GA to Parkwood, AL	C-376
CSX	Manchester, GA to La Grange, GA	C-377
	Relay, Maryland—Washington, D.C.	
CSX	Relay, MD to Jessup, MD	C-037

RAIL LINE SEGMENTS THAT WARRANT
HAZARDOUS MATERIALS (KEY ROUTE) MITIGATION

Proposed Owner	Route and Segment(s)	Rail Line Segment ID
CSX	Jessup, MD to Alexandria Jct., MD	C-034
CSX	Alexandria Jct., MD to Washington, DC	C-031
CSX	Trenton, NJ to Port Reading, NJ	C-769
CSX	Ashley Junction, SC to Yemassee, SC	C-344
	Quaker, Ohio—Berea, Ohio	
CSX	Quaker, OH to Mayfield, OH	C-073
CSX	Mayfield, OH to Marcy, OH	C-072
CSX	Marcy, OH to Short, OH	C-069
CSX	Short, OH to Berea, OH	C-074
CSX	NJ Cabin, KY to Columbus, OH	C-230
	Columbus, Ohio—Toledo, Ohio	
CSX	Columbus, OH to Marion, OH	C-229
CSX	Marion, OH to Fostoria, OH	C-070
CSX	Fostoria, OH to Toledo, OH	C-228
CSX	Deshler, OH to Toledo, OH	C-065
	West Falls, Pennsylvania—Trenton, New Jersey	
CSX	West Falls, PA to CP Newton Jct., PA	C-766
CSX	CP Newton Jct., PA to CP Wood, PA	C-767
CSX	CP Wood, PA to Trenton, NJ	C-768
	Salisbury, North Carolina—Leadvale, Tennessee	
NS	Salisbury, NC to Asheville, NC	N-360
NS	Asheville, NC to Leadvale, TN	N-361

RAIL LINE SEGMENTS THAT WARRANT
HAZARDOUS MATERIALS (KEY ROUTE) MITIGATION

Proposed Owner	Route and Segment(s)	Rail Line Segment ID
NS	New Line, TN to Leadvale, TN	N-392
NS	Bulls Gap, TN to Frisco, TN	N-399
NS	Frisco, TN to Kingsport, TN	N-406
	Suffern, New York—Buffalo, New York	
NS	Suffern, NY to Campbell Hall, NY	N-062
NS	Campbell Hall, NY to Port Jervis, NY	N-063
NS	Port Jervis, NY to Binghamton, NY	N-245
NS	Binghamton, NY to Waverly, NY	N-246
NS	Waverly, NY to Corning, NY	N-247
NS	Corning, NY to Buffalo, NY	N-065
NS	Ebenezer Jct., NY to Buffalo, NY	N-061
NS	Butler, IN to Fort Wayne, IN	N-041
NS	Alexandria, IN to Muncie, IN	N-040
NS	Moberly, MO to CA Junction, MO	N-478
	Buffalo FW, New York—Cleveland, Ohio	
NS	Buffalo FW, NY to Ashtabula, OH	N-070
NS	Ashtabula, OH to Cleveland (Cloggsville), OH	N-075
NS	Cleveland (Cloggsville), OH to CP-190, OH	N-074
	Vermilion, Ohio—Oak Harbor, OH	
NS	Vermilion, OH to Bellevue, OH	N-072
NS	Oak Harbor, OH to Bellevue, OH	N-079
NS	Bethlehem, PA to Allentown, PA	N-203
NS	Reading, PA to Reading Belt Jct., PA	N-216

RAIL LINE SEGMENTS THAT WARRANT
HAZARDOUS MATERIALS (KEY ROUTE) MITIGATION

Proposed Owner	Route and Segment(s)	Rail Line Segment ID
NS	Poe ML, VA to Petersburg, VA	N-432
	Park Junction, Pennsylvania—Camden, New Jersey	
Shared	Park Jct., PA to Philadelphia Frankford Jct., PA	S-232
Shared	Philadelphia Frankford Jct., PA to Camden, NJ	S-233

Condition 4(B). Applicants shall distribute to each local emergency response organization or coordinating body in the communities along the 44 rail line segments classified as "key routes" listed in Condition 4(A) above and the 20 rail line segments classified as "major key routes" listed in Condition 4(C) below, a copy of Applicants' current Hazardous Materials Emergency Response Plans. Applicants shall certify to the Board compliance with this condition before increasing hazardous materials traffic on these rail line segments as a result of the proposed Conrail Acquisition. In addition, Applicants shall distribute the Plans at least once every 3 years during the Board's oversight period, or whenever Applicants materially change them in a manner that affects Applicants' interface with the local emergency response organizations.

Condition 4(C). For each local emergency response organization or coordinating body in the communities along the 20 rail line segments listed below, Applicants shall develop and provide a local Hazardous Materials Emergency Response Plan, to be implemented in coordination with Applicants' own Hazardous Materials Emergency Response Plans. The individual plans shall be consistent with the National Response Team Guidance documents NRT-1 (Planning guide), NRT1A (Criteria for Plan Review), and the U.S. Environmental Protection Agency's Technical Guidance for Hazardous Analysis or other equivalent documents that are used by the affected community's local emergency response organization or coordinating body. Applicants shall certify to the Board compliance with this condition before increasing hazardous materials traffic on these rail line segments as a result of the proposed Conrail Acquisition.

RAIL LINE SEGMENTS THAT WARRANT HAZARDOUS MATERIALS EMERGENCY RESPONSE (MAJOR KEY ROUTE) MITIGATION

Proposed Owner	Route and Segment(s)	Rail Line Segment ID
	Marion, Ohio—Toledo, Ohio	
CSX	Marion, OH to Fostoria, OH	C-070
CSX	Fostoria, OH to Toledo, OH	C-228
	Quaker, Ohio—Fostoria, Ohio	
CSX	Quaker, OH to Mayfield, OH	C-073
CSX	Mayfield, OH to Marcy, OH	C-072
CSX	Marcy, OH to Short, OH	C-069
CSX	Short, OH to Berea, OH	C-074
CSX	Berea, OH to Greenwich, OH	C-061
CSX	Greenwich, OH to Willard, OH	C-068
CSX	Willard, OH to Fostoria, OH	C-075
CSX	Deshler, OH to Willow Creek, IN	C-066
	Butler, Indiana—Tilton, Illinois	
NS	Butler, IN to Fort Wayne, IN	N-041
NS	Fort Wayne, IN to Peru, IN	N-044
NS	Peru, IN to Lafayette Jct., IN	N-046
NS	Lafayette Jct., IN to Tilton, IL	N-045
	Buffalo FW, New York—Cleveland, Ohio	
NS	Buffalo FW, NY to Ashtabula, OH	N-070
NS	Ashtabula, OH to Cleveland (Cloggsville), OH	N-075
NS	Cleveland (Cloggsville), OH to CP-190, OH	N-074
NS	Oak Harbor, OH to Bellevue, OH	N-079

RAIL LINE SEGMENTS THAT WARRANT HAZARDOUS MATERIALS EMERGENCY RESPONSE (MAJOR KEY ROUTE) MITIGATION

Proposed Owner	Route and Segment(s)	Rail Line Segment ID
NS	White, OH to Cleveland, OH	N-081
Shared	PN, NJ to Bayway, NJ	S-032

Condition 4(D). Applicants shall implement a real-time or desktop simulation emergency response drill with the voluntary participation of local emergency response organizations or coordinating bodies in affected communities along each major key route identified in Condition No. 4(C). Applicants shall certify to the Board compliance with this condition within 2 years of the effective date of the Board's final decision.

Condition 5(A). Applicants shall provide dedicated toll-free telephone numbers to the emergency response organizations or coordinating bodies responsible for each community located along the 44 rail line segments identified in Condition No. 4(A), and the 20 rail line segments identified in Condition No. 4(C). These telephone numbers shall provide access to personnel at Applicants' dispatch centers 24 hours per day, 7 days per week, where local emergency response personnel can quickly obtain and provide information regarding the transport of hazardous materials on a given train and appropriate emergency response procedures in the event of a train accident or hazardous materials release. Applicants are not required to provide these telephone numbers to the general public. Applicants shall certify to the Board that they have complied with this condition before increasing hazardous materials traffic on these rail line segments as a result of the proposed Conrail Acquisition.

Condition 5(B). As requested by the U.S. Fish and Wildlife Service (USFWS), Applicants shall notify USFWS, and the appropriate state departments of natural resources, in the event of a reportable hazardous materials release with the potential to affect wetlands or wildlife habitat(s).

Condition 6. Applicants shall establish a formal Failure Mode and Effects Analysis (FMEA), or an equivalent program designed to identify and prevent potential causes of accidents or hazardous materials releases. Applicants shall establish such a program for the 15 rail yards and 24 intermodal facilities listed below where activity increases would meet or exceed the Board's threshold for environmental analysis, resulting in an increased potential risk of accidents and hazardous materials releases. The FMEA program, or its equivalent, shall be designed to reduce the risk of hazardous materials releases by identifying the potential causes and consequences of both stored and transported hazardous materials, and eliminating or reducing the likelihood of the potential causes prior to an incident. Applicant shall certify to the Board compliance with this Condition with 1 year of the effective date of the Board's final decision.

RAIL YARDS AND INTERMODAL FACILITIES THAT WARRANT HAZARDOUS MATERIALS (FMEA) MITIGATION

Proposed Owner	Facility	Location (City)	County	State	Site ID
Rail Yards					
CSX	Boyles	Birmingham	Jefferson	Alabama	CY01
CSX	Curtis	Gary	Lake	Indiana	CY02
CSX	Rougemere	Detroit	Wayne	Michigan	CY03
CSX	Stanley	Toledo	Wood	Ohio	CY04
CSX	Leewood	Memphis	Shelby	Tennessee	CY05
NS	Doraville	Doraville	DeKalb	Georgia	NY01
NS	Colehour	Chicago	Cook	Illinois	NY02
NS	Ft. Wayne	Ft. Wayne	Allen	Indiana	NY03
NS	Luther	St. Louis	St. Louis	Missouri	NY04
NS	Bison	Buffalo	Erie	New York	NY05
NS	Conneaut	Conneaut	Ashtabula	Ohio	NY06
NS	Homestead	Toledo	Lucas	Ohio	NY07
NS	Airline	Toledo	Lucas	Ohio	NY08
NS	Harrisburg	Harrisburg	Dauphin	Pennsylvania	NY09
Shared Assets Area	Greenwich	Philadelphia	Philadelphia	Pennsylvania	SY01
Intermodal Facilities					
CSX	Hulsey	Atlanta	Fulton	Georgia	CM01
CSX	59th Street	Chicago	Cook	Illinois	CM02
CSX	Little Ferry	Little Ferry	Bergen	New Jersey	CM03
CSX	South Kearny	South Kearny	Hudson	New Jersey	CM04
CSX	Greenwich	Philadelphia	Philadelphia	Pennsylvania	CM05

RAIL YARDS AND INTERMODAL FACILITIES THAT WARRANT HAZARDOUS MATERIALS (FMEA) MITIGATION

Proposed Owner	Facility	Location (City)	County	State	Site ID
NS	Inman	Atlanta	Fulton	Georgia	NM01
NS	Landers	Chicago	Cook	Illinois	NM02
NS	47th Street	Chicago	Cook	Illinois	NM03
NS	Buechel	Louisville	Jefferson	Kentucky	NM04
NS	Oliver	New Orleans	Orleans	Louisiana	NM05
NS	E. Lombard St.	Baltimore	Baltimore	Maryland	NM06
NS	Melvindale	Detroit	Wayne	Michigan	NM07
NS	Voltz	Kansas City	Clay	Missouri	NM08
NS	Luther	St. Louis	St. Louis	Missouri	NM09
NS	E-Rail	Elizabeth	Union	New Jersey	NM10
NS	Sandusky	Sandusky	Erie	Ohio	NM11
NS	Discovery Park	Columbus	Franklin	Ohio	NM12
NS	New AmeriPort/ South Philadelphia	Philadelphia	Philadelphia	Pennsylvania	NM13
NS	Allentown	Allentown	Lehigh	Pennsylvania	NM14
NS	Rutherford	Harrisburg	Dauphin	Pennsylvania	NM15
NS	Morrisville	Morrisville	Bucks	Pennsylvania	NM16
NS	Pitcairn	Pittsburgh	Allegheny	Pennsylvania	NM17
NS	Forrest	Memphis	Shelby	Tennessee	NM18
Shared Assets Area	Portside	Elizabeth	Union, Essex	New Jersey	SM01

Safety: Freight Rail Operations

Condition 7. To reduce the risk of train accidents and derailments, applicants shall comply with the requirements in the Federal Railroad Administration's (FRA) Proposed Rule for "gross ton-mile based" inspections (49 CFR Part 213.237, Docket No. RST-90-1) on the eight rail line segments listed below.

FRA's Proposed Rule includes a provision that specifically requires railroads to conduct track inspections to detect rail flaws on a rail line segment at least once every 40 million gross ton-miles of rail traffic, or annually, whichever is more frequent. If FRA's Final Rule imposes a different inspection standard, then applicants shall comply with the standard in the Final Rule.

RAIL LINE SEGMENTS THAT WARRANT FREIGHT SAFETY MITIGATION

Proposed Owner	State	Counties	Description	Rail Line Segment ID
CSX	OH	Cuyahoga, Lorain, and Huron	Berea, OH to Greenwich, OH	C-061
CSX	OH	Huron	Greenwich, OH to Willard, OH	C-068
CSX	OH	Huron and Seneca	Willard, OH to Fostoria, OH	C-075
NS	IN	Lake	CP 501, IN to Indiana Harbor, IN	N-042
NS	OH	Ottawa, Wood, and Lucas	Oak Harbor, OH to Miami, OH	N-077
NS	OH	Lucas	Miami, OH to Airline, OH	N-086
NS	OH	Cuyahoga	CP-190, OH to Berea, OH	N-293
NS	PA	Dauphin	Rutherford, PA to Harrisburg, PA	N-090

III. LOCAL OR SITE-SPECIFIC ENVIRONMENTAL CONDITIONS

Safety: Highway/Rail At-grade Crossings

Condition 8(A). To address potential safety impacts at highway/rail at-grade crossings, Applicants shall upgrade existing warning devices at 86 public highway/rail at-grade crossings as listed below. To the extent practicable, Applicants shall prioritize for improvement those highway/rail at-grade crossings that have the greatest level of projected train traffic increases. If Applicants execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation, they may implement alternate safety improvements in the vicinity of these identified highway/rail at-grade crossings that achieve at least an equivalent level of safety enhancement. Applicants shall complete these upgrades or improvements within 2 years of the effective date of the Board's decision, and shall certify to the Board such completion on a quarterly basis during this 2-year period.

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
CSX					
IN	CR 9, Elkhart, Nappanee	155419P	C-066	Passive	Flashing Lights
IN	Seventh St., Kosciusko, Syracuse	155391B	C-066	Flashing Lights	Gates
IN	Huntington St., Kosciusko, Syracuse	155392H	C-066	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
	Main/Syr-Web, Kosciusko Syracuse	155394W	C-066	Flashing Lights	Gates
IN	Oak St., Kosciusko, Syracuse	155395D	C-066	Passive	Gates
IN	CR 875 E., La Porte, Walkerton	155484V	C-066	Passive	Flashing Lights

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
IN	500 W., La Porte, Union Mills	155496P	C-066	Passive	Gates
IN	Countyline Rd., Lake, Gary	155632M	C-027	Flashing Lights	Gates
IN	Hobart Rd., Lake, Gary	155633U	C-027	Flashing Lights	Gates
IN	Lake St., Lake, Gary	155637W	C-027	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
IN	Clarke Rd., Lake, Gary	155645N	C-027	Flashing Lights	Gates
IN	First Rd., Smith, Marshall, Teegarden	155465R	C-066	Passive	Gates
IN	Thorn Rd., Marshall, Walkerton	155476D	C-066	Passive	Gates
	CR 500 W., Noble, Kimmell	155372W	C-066	Passive	Gates
IN	900 W., Noble, Cromwell	155380N	C-066	Passive	Flashing Lights
IN	900 N., Porter, Portage	155615W	C-066	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
OH	Marsh Rd., Hardin	518382H	C-071	Passive	Flashing Lights
OH	Main St., Henry, Deshler	155755Y	C-065	Flashing Lights	Gates
	North St., Henry, Deshler	155760V	C-065	Passive	Gates
OH	Townline Rd., Huron, New London	514488D	C-061	Passive	Gate

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
OH	Main St., Seneca, Fostoria	228774H	C-070	Passive	Flashing Lights
OH	TWP 0180, Seneca, Fostoria	228780L	C-070	Passive	Gates
OH	Range Line Rd., Wood, Bowling Green	155789T	C-065	Passive	Flashing Lights
OH	Kellogg Rd., Wood, Bowling Green	155794P	C-065	Passive	Gates
OH	Washington St., Wood, Tontogony	155798S	C-065	Passive	Flashing Lights
OH	Tontogany Rd., Wood Tontogany	155799Y	C-065	Passive	Flashing Lights
OH	Middletown Pike, Wood, Haskins	155804T	C-065	Passive	Flashing Lights
OH	Fire Point Rd., Wood, Perrysburg	155812K	C-065	Passive	Flashing Lights
OH	Roachton Rd., Wood, Perrysburg	155814Y	C-065	Passive	Flashing Lights
OH	Eckel Jct. Rd., Wood, Perrysburg	155818B	C-065	Passive	Flashing Lights
OH	Eckel Rd., Wood, Perrysburg	155819H	C-065	Passive	Flashing Lights
OH	Eckel Rd., Wood, Perrysburg	155820C	C-065	Passive	Flashing Lights
	W. Boundary St., Wood, Perrysburg	155821J	C-065	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
OH	Ford Rd., Wood, Rossford	155838M	C-065	Passive	Gates
OH	Bates Rd., Wood, Rossford	155839U	C-065	Passive	Gates
OH	Schrick Rd., Wood, Rossford	155840N	C-065	Passive	Flashing Lights
NS					

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
IL	TR 145, Piatt, Ivesdale	479957T	N-033	Passive	Flashing Lights
IN	Notestine Rd., Allen, Graybill	478188C	N-041	Passive	Flashing Lights
	Estella Ave., Allen, New Haven	478216D	N-041	Flashing Lights	Gates
IN	Anthony Blvd., Allen, Ft. Wayne	478226J	N-041	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
IN	Engle Rd., Allen, Ft. Wayne	478240E	N-044	Flashing Lights	Gates
IN	Washington St./CR 100 E., Carroll, Burrows	484246J	N-046	Passive	Flashing Lights
IN	Meridian Line, Carroll, New Waverly	484248X	N-046	Passive	Flashing Lights
IN	Cedar St., Cass, Logansport	484216S	N-046	Passive	Flashing Lights
IN	18th St., Cass, Logansport	484229T	N-046	Flashing Lights	Gates
IN	Briant St., Huntington, Huntington	478270W	N-044	Flashing Lights	Gates
	CR 100 E., Madison, Alexandria	474598M	N-040	Passive	Flashing Lights
IN	CR 250 W., Miami, eru	484209G	N-046	Passive	Flashing Lights
IN	Smith St., Tippecanoe, West Point	484311M	N-046	Flashing Lights	Gates
IN	CR 400 S., Tippecanoe, West Point	484319S	N-045	Passive	Flashing Lights
IN	CR 172, Tippecanoe, West Point	484323G	N-045	Passive	Gates

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
IN	4th Street/US 231, Tippecanoe, Lafayette	484309L	N-046	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
IN	5th St., Tippecanoe, Lafayette	484308E	N-046	Passive	Gates
IN	Romig St., Tippecanoe, Lafayette	484306R	N-046	Flashing Lights	Gates
	7th St., Tippecanoe, Lafayette	484303V	N-046	Flashing Lights	Gates
IN	8th St., Tippecanoe, Lafayette	484302N	N-046	Passive	Gates
IN	Union St., Tippecanoe, Lafayette (Note: Because this is a one-way street, four-quadrant gates or median barriers are not appropriate mitigation for this crossing; therefore SEA recommends this alternative mitigation.)	484294Y	N-046	Gates	Alternative Mitigation such as adding or improving pavement markings or installing additional warning signs
IN	17th & Salem, Tippecanoe, Lafayette	484293S	N-046	Flashing Lights	Gates
IN	18th St., Tippecanoe, Lafayette	484292K	N-046	Flashing Lights	Gates
	Greenbush St., Tippecanoe, Lafayette	484291D	N-046	Flashing Lights	Gates
IN	CR 500 E., Tippecanoe, Buck Creek	484282E	N-046	Passive	Flashing Lights
IN	CR 700 N., Tippecanoe, Colburn	484269R	N-046	Passive	Gates
IN	CR 900 N., Tippecanoe, Colburn	484267C	N-046	Passive	Gates

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
IN	Olive St., Wabash, Wabash	478313M	N-044	Passive	Gates
MD	Reiff Church Rd., Washington, Mauginsville	534883D	N-091	Passive	Flashing Lights
MD	Shawley Dr., Washington, Mauginsville	534887F	N-091	Passive	Flashing Lights
NY	Loomis St., Chautauqua, Ripley	471825F	N-070	Passive	Flashing Lights
OH	Andrews, Crawford, Bucyrus	481572C	N-071	Passive	Gates
OH	Hopley, Crawford, Bucyrus	481561P	N-073	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
OH	Bradshar, Erie, Sandusky	481659T	N-085	Passive	Flashing Lights
OH	Skadden/CR 42, Erie, Sandusky	481660M	N-085	Passive	Flashing Lights
OH	Galion-Marseilles, Marion, Marion	481546M	N-073	Passive	Flashing Lights
OH	Scott Twp. Rd. 190, Marion, Marion	481547U	N-073	Passive	Flashing Lights
OH	Kilbourne, Sandusky, Bellevue	473668W	N-079	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
OH	CR 292, Sandusky, Bellevue	473673T	N-079	Passive	Flashing Lights
OH	Fangboner Road, Sandusky, Kingsway	473726P	N-079	Passive	Flashing Lights

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT SAFETY MITIGATION

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Post-Acquisition Device
PA	York Rd./SR 74, Cumberland, Mechanicsburg	592290T	N-091	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
PA	Criswall, Cumberland, Mechanicsburg	592295C	N-091	Passive	Flashing Lights
PA	Mill, Cumberland, Mechanicsburg	592320H	N-091	Passive	Flashing Lights
PA	Lucas Road, Erie, Erie	471940M	N-070	Passive	Flashing Lights
PA	Guilford Springs Rd., Franklin, Guilford Springs	535146X	N-091	Passive	Flashing Lights
PA	Alleman, Franklin, Marion	535151U	N-091	Passive	Flashing Lights
	Hayes Rd., Franklin, Milner	535163N	N-091	Passive	Flashing Lights
VA	SR 7, Clarke, Berryville	468599F	N-091	Gates	4-Quadrant Gates, or Alternative Mitigation such as Median Barriers
VA	Rockland Rd., Warren, Winchester	468634S	N-091	Flashing Lights	Gates
Shared					
MI	Pennsylvania Rd., Wayne, Taylor	511027V	S-020	Flashing Lights	Gates

[a] Recommendation from highway/rail at-grade crossing delay analysis.

Condition 8(B). Applicants shall complete any negotiations with the State of Ohio regarding highway/rail at-grade crossing improvements within 120 days of the effective date of the Board's decision.

Transportation: Highway/Rail At-grade Crossing Delay

Condition 9. CSX shall continue negotiations with De Kalb County, Indiana; the City of Garrett, Indiana; and the Indiana Department of Transportation for the expeditious implementation of a grade separation at CSX's Randolph Street highway/rail at-grade crossing in Garrett. If the parties have not reached agreement within 6 months following the effective date of the Board's decision on the proposed Conrail Acquisition, CSX shall, with the concurrence of the other parties, participate in and assume the cost of binding arbitration or mediation. Because of the significant impact of Acquisition-related actions on traffic delay, the Board believes that the CSX share of the costs for design and construction of the grade separation should be substantially more than the traditional railroad share for similar projects, which is 5% for Indiana. The results of the negotiations or arbitration shall be final and binding on CSX, and without further involvement or review by the Board. CSX shall notify the Board within 30 days of completing the negotiations or arbitration.

Condition 10. Applicants shall develop and implement railroad operational improvements for the portions of the rail line segments located near the seven highway/rail at-grade crossings listed below. Applicants shall implement such railroad operational improvements to materially reduce the total amount of time that these highway/rail at-grade crossings are blocked by trains. These improvements could include, but are not limited to, installing constant warning time devices, increasing train speeds, improving track infrastructure, and removing conditions that require a train to stop while blocking the roadway crossing or to travel at speeds slower than the timetable speed limit—all to be implemented in a manner consistent with safe operating practices.

HIGHWAY/RAIL AT-GRADE CROSSINGS
THAT WARRANT TRAFFIC DELAY MITIGATION

State	County, City	Crossing Name	Current Warning Device Type	Level of Service Change	Proposed Owner	Rail Line Segment ID	FRA Crossing ID
IL	Cook, Blue Island	Dixie Hwy.	Gates	B to D	CSX	C-010	163415H
IL	Cook, Blue Island	Broadway - 135th St.	Gates	B to D	CSX	C-010	163416P
IN	Madison, Alexandria	SR 9	Flashing Lights	> 30-second delay	NS	N-040	474600L
IN	Madison, Alexandria	Harrison St.	Gates	> 30-second delay	NS	N-040	474601T
KY	Hopkins, Madisonville	W. Noel Ave.	Flashing lights	C to D	CSX	C-021	345331S
OH	Butler, Hamilton	Vine St.	Gates	C to D	CSX	C-063	152407K
OH	Hamilton, Cincinnati	Township Ave.	Gates	C to D	CSX	C-063	152355V

Noise

Condition 11. Applicants shall mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on the rail line segments listed below within the noise contour boundary established for each segment. With the written concurrence of the responsible local government(s), Applicants shall mitigate wayside noise with measures such as noise barriers or building sound insulation treatments, including air-conditioning if appropriate. The design goal for noise mitigation shall be a 10-decibel (dBA) noise reduction. The minimum noise reduction achieved shall be 5 dBA. Noise barrier performance shall be determined in accordance with ANSI S12.8-1987, *American National Standard Methods for Determination of Insertion Loss of Outdoor Noise Barriers*. Sound insulation performance shall be determined in accordance with ASTM 966-90, *Standard Guide For Field Measurements of Airborne Sound Insulation of Building Facades and Facade Elements*. Applicants shall certify compliance with this condition within 2 years of the effective date of the Board's final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities' environmental concerns.

Should noise mitigation be selected at locations identified as containing structures that are potentially eligible for listing on the National Register of Historic Places, Applicants shall consult with the appropriate State Historic Preservation Officer to assess effects and implement appropriate mitigation measures.

RECEPTORS THAT MEET WAYSIDE NOISE MITIGATION CRITERIA

Rail Line Segment Description (Communities)	Distance to 70 dBA L_{dn} Noise Contour (in feet)	Affected by Horn Sounding		Total Number of Receptors	Rail Line Segment ID
		No	Yes		
CSX					
Warsaw, IN to Tolleston, IN (Etna Green, Plymouth)	56	0	3	3	C-026
Berea, OH to Greenwich, OH (Eaton Estates CDF, Grafton, Lagrange, Wellington, Rochester, New London)	246	10	195	205	C-061
Deshler, OH to Toledo, OH (Perrysburg, Haskins, Tontogany, Weston, Milton Center, Custer, Deshler)	108	6	71	77	C-065
Mayfield, OH to Marcy, OH (Cuyahoga Heights)	218	1	0	1	C-072
Short, OH to Berea, OH (Middleburg Heights)	229	31	40	71	C-074
Sinns, PA to Brownsville, PA (McKeesport, Glassport, Lincoln, Elizabeth, Bunola, Elkhorn, East Monongahela, Manown, Gallatin, Sunny Side, Milesville, Webster, Belle Vernon, Fayette, Newell)	91	58	91	149	C-085

RECEPTORS THAT MEET WAYSIDE NOISE MITIGATION CRITERIA

Rail Line Segment Description (Communities)	Distance to 70 dBA L_{dn} Noise Contour (in feet)	Affected by Horn Sounding		Total Number of Receptors	Rail Line Segment ID
		No	Yes		
NS					
Alexandria, IN to Muncie, IN (Alexandria, Muncie)	72	0	6	6	N-040
Oak Harbor, OH to Bellevue, OH (Kingsway, Booktown, Clyde)	122	2	39	41	N-079
Bellevue, OH to Sandusky Dock, OH (Weyers, Parkertown)	76	0	2	2	N-085
Riverton Junction, VA to Roanoke, VA (Front Royal, Bentonville, Kimball, Luray, Stanley, Ingham, Shenandoah, Elkton, Lynnwood, Grottoes, Crimora, Waynesboro, Lyndhurst, Cold Spring, Vesuvius, Midvale, Cornwall, Buena Vista, Glasgow, Buchanan, Lithia, Troutville, Cloverdale, Hollins)	73	16	47	63	N-100
Fola Mine, WV to Deepwater, WV (Jefferson, Gauley Bridge, Falls View)	24	3	0	3	N-111
Shared					
Carleton, MI to Ecorse, MI (Lincoln Park, Allen Park, Taylor, Brownstown, Huron, Carleton)	93	15	12	27	S-020
Total Number of Receptors		142	506	648	

Cultural Resources

Condition 12. CSX shall undertake no construction of a new rail line connection in Exermont, Illinois, until completion of the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) in connection with the Mees-Notcha archaeological site.

Condition 13. CSX shall, with concurrence from the Ohio State Historic Preservation Office, complete cultural resource documentation for the Lake Shore & Michigan Southern Railroad (New York Central Railroad) Shops District in the Collinwood rail yard in Cleveland, Ohio, as soon as practicable.

Condition 14. CSX shall not alter the historic integrity of the 75th Street Interlocking Tower in Chicago, Illinois, until completion of the consultation process as agreed upon with the Illinois State Historic Preservation Officer.

Condition 15. NS shall not alter the historic integrity of the Shellpot Bridge in Wilmington, Delaware, until completion of the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470f, as amended). NS shall conduct a feasibility study including preliminary design for the rehabilitation of the Shellpot Bridge. NS shall provide the Delaware State Historic Preservation Office a copy of this study for its review within 180 days following the effective date of the Board's final decision.

Natural Resources

Condition 16. Before initiating any construction of the proposed rail line connection in Vermilion, Ohio, NS shall coordinate with the U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources to determine the potential presence of the endangered Indiana bat and any other Federally listed endangered or threatened species. If such species are found to be present and potentially adversely affected, NS shall proceed with applicable measures to comply with Section 7 of the Endangered Species Act.

Chicago, Illinois

Condition 17. CSX shall comply with mitigation provisions included in its permit applications approved by the City of Chicago for the proposed 59th Street intermodal facility.

Tolono, Illinois

Condition 18. As stated in its Primary Application filed June 23, 1997, NS shall limit construction of the Tolono Connection to within the existing railroad right-of-way, so as to avoid permanent, adverse effects on Daggy Street or nearby residential properties.

Alexandria, Indiana

Condition 19. As agreed to by NS, NS shall install flashing lights and gates at highway/rail at-grade crossings at Berry, Broadway, and Washington Streets.

Attica, Indiana

Condition 20(A). NS shall, with the advice and consent of City of Attica, Indiana, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Attica. NS shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 20(B). NS shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Attica. NS shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 20(C). As agreed to by NS, NS shall fund participation in a training session at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for the City of Attica, Indiana.

East Chicago, Hammond, Gary, and Whiting, Indiana (Four City Consortium)

Condition 21. CSX shall alleviate Acquisition-related highway/rail at-grade crossing traffic delay and safety concerns in East Chicago, Hammond, Gary, and Whiting, Indiana, through operational improvements and safety measures, as follows:

a) CSX shall upgrade the highway/rail at-grade crossing signal warning systems with constant warning time circuits to reduce crossing blockage time and the likelihood of motorists driving around the gate at the highway/rail at-grade crossings listed below on the Pine Junction-to-Barr Yard rail line segment (C-023) and the Tolleston-to-Clark Junction rail line segment (C-024).

- Sheffield Avenue (C-023)
- Hohman Avenue (C-023)
- Calumet Avenue (C-023)
- Columbia Avenue (C-023)
- Indianapolis Boulevard (C-023)
- Railroad Avenue (C-023)
- Kennedy Avenue (C-023)
- 5th Avenue (U.S. 20) (C-024)

b) CSX shall make Operation Lifesaver programs available to schools and other community organizations in the vicinity of the Pine Junction-to-Barr Yard rail line segment (C-023), Tolleston-to-Clark Junction rail line segment (C-024), and the Tolleston-to-Hobart portion of the Warsaw-to-Tolleston rail line segment (C-026).

c) As agreed to by CSX, CSX shall upgrade the track structure and signal systems to allow 40 mph train operations, consistent with safe operating practices, between Pine Junction and Barr Yard.

d) CSX shall install temporary notification signs or message boards consistent with Condition No. 1(B) at least 30 days before initiating new train traffic between the Tolleston and Clark Junction rail line segment (C-024), and the Hobart-to-Tolleston portion of the Warsaw-to-Tolleston rail line segment (C-026). CSX shall certify to the Board that it has complied with this condition before increasing traffic on these rail line segments.

e) CSX shall improve coordination between Pine Junction and Barr Yard at Indiana Harbor Belt Railroad interlockings where CSX rail lines cross or join, to reduce railroad congestion and blockage at highway/rail at-grade crossings to the extent practicable.

f) As agreed to by CSX, CSX shall reroute train traffic as much as practicable from the Pine Junction-to-Barr Yard rail line segment (C-023) to other rail lines in the area.

g) As agreed to by CSX, CSX shall instruct its train crews not to stop trains in positions where they would block major highway/rail at-grade crossings identified by the Four City Consortium on the Pine Junction-to Barr Yard rail line segment whenever practicable and consistent with safe operating practices.

h) As agreed to by CSX, CSX shall work with the Four City Consortium to better coordinate train movements and emergency response. If practicable, CSX shall install a train location system by interconnecting the grade crossing warning devices to nearby traffic signals, and provide a display in the local emergency response center showing the position of the grade crossing warning signals.

i) Applicants shall attend regularly scheduled meetings with representatives of the Four City Consortium for 3 years following the effective date of the Board's final decision. Representatives of the Indiana Harbor Belt Railroad shall also be invited. These meetings would provide a forum for assessing traffic delay, emergency response, and driver compliance with railway grade crossing warning systems through improved education and enforcement.

Lafayette, Indiana

Condition 22(A). NS shall, with the advice and consent of the City of Lafayette, Indiana, adapt and modify the local component of its required Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the vicinity of its rail line segment(s) in Lafayette. NS shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 22(B). NS shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Lafayette. NS shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 22(C). As agreed to by NS, NS shall fund participation in a training session at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for the City of Lafayette, Indiana.

New Orleans, Louisiana

Condition 23. As agreed to by CSX, CSX shall develop, in coordination with the City of New Orleans, Louisiana, a hazardous materials emergency response program.

Dunkirk, New York

Condition 24. As agreed to by NS, NS shall implement its Trespasser Abatement Program to reduce trespassing along the NS right-of-way in the City of Dunkirk, New York, and make Operation Lifesaver presentations available to Dunkirk schools and community organizations.

Ashtabula, Ohio

Condition 25. With the concurrence of the City of Ashtabula, Ohio, NS shall provide, install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching. At a minimum, the system shall use appropriate technology to detect trains approaching the city on NS rail line segments N-070, N-075, and N-082 and shall display the train locations at an emergency response center to be specified by the City.

Greater Cleveland Area, Ohio

Condition 26(A). As agreed to by NS, NS shall implement and fund the track structure and signal system modifications necessary for its proposed Cloggsville routing alternative. Also, NS shall implement its proposed train routing according to its revised Operating Plan as specified in its "Norfolk Southern Mitigation Proposal for Train Frequencies in Greater Cleveland and Vicinity, Environmental Report," dated April 15, 1998.

Condition 26(B). Applicants shall each assign to or appoint within the Greater Cleveland Area fully trained supervisory personnel with sufficient authority to mobilize additional Applicant or contractor emergency response personnel and equipment and to coordinate with local authorities in the event of a rail accident or hazardous materials release. These personnel shall be locally stationed, available 24 hours a day, 7 days a week, and shall be prepared to initiate a response within 30 minutes of notification.

Condition 26(C). Applicants shall install and maintain additional train defect detection devices to scan all their trains entering the Greater Cleveland Area, as specified below.

ENHANCED TRAIN DEFECT DETECTION - GREATER CLEVELAND AREA

Proposed Owner	Nearest Community	Rail Line Segment	Approx. Railroad Milepost (MP)	Proposed Improvements at Existing Defect Detector Locations		Proposed New Defect Defector Locations & Improvements
				Existing Detection	Proposed Detection	-
CSX	Wickliffe*	C-060	165*	HBD DED	HWI WILD	-
CSX	Collinwood	C-060	179	HBD DED	NONE	-
CSX	Olmsted Falls	C-061	19	HBD DED	HWI WILD	-

ENHANCED TRAIN DEFECT DETECTION - GREATER CLEVELAND AREA

Proposed Owner	Nearest Community	Rail Line Segment	Approx. Railroad Milepost (MP)	Proposed Improvements at Existing Defect Detector Locations		Proposed New Defect Defector Locations & Improvements
				Existing Detection	Proposed Detection	-
CSX	Marcy	C-069	10	-	-	HBD DED
NS	Wickliffe	N-075	169	HBD DED	HWI WILD	-
NS	Cloggsville	N-075	185	See **	-	Track 2: HBD DED
NS	Bay Village	N-080	201	HBD DED	HWI WILD	-
NS	Cleveland	N-293	186	-	-	HBD DED
NS	Olmsted Falls	N-293	200	HBD DED	HWI WILD	-
NS	White	N-081	113	Track 1: HBD DED	Track 1: HWI WILD	Track 2: HBD HWI DED WILD

HBD = Hot Bearing Detector
DED = Dragging Equipment Detector
HWI = Shifted Load/High-Wide Indicator
WILD = Wheel Impact Load Detector

* Exact location to be determined by Applicants' engineering and operations departments, but at a distance no greater than 20 miles from the Greater Cleveland Area. Coverage on all main tracks is required.

** Detector at milepost 185 to be relocated from existing location (now at milepost 186). Relocation is necessary to monitor trains using both the Cloggsville and West Shore corridors. HBD and DED are required on both tracks at this location.

Condition 26(D). Applicants shall implement the following actions for those rail line segments that would experience an Acquisition-related increase in traffic within the Greater Cleveland Area and for cities along those segments that do not have executed Negotiated Agreements with Applicants:

a) Where practicable, Applicants shall install continuous welded rail in all new rail construction and or rail replacement programs and implement a program to eliminate existing jointed rail in residential areas affected by noise.

b) Applicants shall install rail lubrication systems at curves where doing so would result in effective noise abatement for residential or other sensitive receptors.

c) Applicants shall inspect all railroad bridges and overpasses to determine their condition, and take necessary action to ensure the bridges are structurally sound and well maintained.

d) Applicants shall establish a community liaison to address local environmental concerns, develop cooperative solutions, and offer periodic public outreach meetings to address community concerns.

Cleveland Heights, Ohio

Condition 27(A). Applicants shall, with the advice and consent of the City of Cleveland Heights, Ohio, adapt and modify the local component of their required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations in the vicinity of their rail line segments near Cleveland Heights. Applicants shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 27(B). Applicants shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations in the vicinity of their rail line segments near Cleveland Heights. Applicants shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 27(C). As agreed to by Applicants, Applicants shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Cleveland Heights.

Conneaut, Ohio

Condition 28. With the concurrence of the City of Conneaut, Ohio, NS shall provide, install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching. At a minimum, the system shall use appropriate technology to detect trains approaching the city on NS rail line segment N-070 and shall display the train locations at an emergency response center to be specified by the City.

Defiance, Ohio

Condition 29(A). CSX shall install warning signs with a flashing hazard light to notify motorists in advance that they are approaching the highway/rail at-grade crossing at U.S. Route 24. These signs shall comply with the Federal Highway Administration's Manual on Uniform Traffic Control Devices and shall be installed with the concurrence of the Ohio Department of Transportation. CSX shall certify to the Board compliance with the condition within 6 months of the effective date of the Board's decision regarding the proposed Conrail Acquisition.

Condition 29(B). CSX shall, with the advice and consent of the City of Defiance, Ohio, adapt and modify the local component of their required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations in the vicinity of their rail line segment(s) near Defiance. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 29(C). CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations in the vicinity of their rail line segment(s) near Defiance. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 29(D). As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Defiance, Ohio.

Euclid, Ohio

Condition 30(A). NS shall, with the advice and consent of the City of Euclid, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Euclid. NS shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 30(B). NS shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Euclid. NS shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 30(C). As agreed to by NS, NS shall fund participation in a training session at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for the City of Euclid.

Fostoria, Ohio

Condition 31(A). With the written concurrence of the City of Fostoria, Ohio, Applicants shall provide and maintain a state-of-the-art real-time train monitoring system, such as an electronic display board at the Fostoria Emergency Response Dispatch Center. This system shall show the location of trains on rail line segments (C-070, C-075, C-206, C-228, and N-467) within 5 miles of Fostoria Tower to provide the Center's staff with information regarding train movements to aid their emergency response dispatching.

Condition 31(B). Applicants shall install and maintain constant warning time circuits at all of their highway/rail at-grade crossings in Fostoria that are currently equipped with active warning devices, and at those crossings where active warning devices would be added as a result of other Board conditions or voluntary actions.

Condition 31(C). With the written concurrence of the City of Fostoria, Ohio, CSX shall install a direct voice hotline between Fostoria's Emergency Response Dispatch Center and the CSX operator controlling train movements in the Fostoria area (Tower F operator). Alternatively, Applicants, with the written concurrence of the City, shall install and maintain closed circuit television cameras over or near the rail line, along with a corresponding video monitor at the Center. The monitoring will continuously show real-time train traffic conditions on Applicants' rights-of-way through Fostoria.

Condition 31(D). To the extent practicable, Applicants shall hold trains in areas to minimize trains blocking major highway/rail at-grade crossings in Fostoria.

Condition 31(E). CSX shall, with the advice and consent of the City of Fostoria, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Fostoria. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 31(F). CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Fostoria. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 31(G). As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Fostoria.

Holgate, Ohio

Condition 32(A). CSX shall, with the advice and consent of the Holgate Village, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Holgate. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 32(B). CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Holgate. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 32(C). As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Holgate.

Mentor, Ohio

Condition 33. If FRA promulgates new regulations related to local alternatives to train horn sounding within 5 years of the effective date of the Board's final decision, NS shall inform the City of Mentor, Ohio, of these regulations and assist the community in identifying alternative safety measures to eliminate the need to sound train horns in the city. Applicants shall also assist the community in seeking and receiving FRA approval for these alternative safety measures.

New London, Ohio

Condition 34(A). To enhance safety, CSX shall interconnect the operation of its warning devices at its highway/rail at-grade crossing of State Route 162 in New London, Ohio, with the device of Wheeling and Lake Erie Railroad at the same location so that the devices on both crossings operate for trains on either rail line. CSX shall certify to the Board compliance with this condition within 6 months of the effective date of the Board's decision regarding the proposed Conrail Acquisition.

Condition 34(B). CSX shall, with the advice and consent of the City New London, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in New London. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 34(C). CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in New London. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 34(D). As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of New London.

North Ridgeville, Ohio

Condition 35. NS shall consult with the town of North Ridgeville, Ohio and report to the Board in writing in on its progress to resolve local concerns within 6 months of the effective date of the Board decision.

Oak Harbor, Ohio

Condition 36(A). NS shall construct, with the written concurrence of Ottawa County, a new highway/rail at-grade crossing at Toussaint-Portage Road, in accordance with the design that NS submitted to SEA, to minimize differences between the elevations of the existing roadway and the rail line. NS shall install conventional gates at this crossing.

Condition 36(B). With the concurrence of the City of Oak Harbor, Ohio, NS shall provide, install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching. At a minimum, the system shall use appropriate technology to detect trains approaching the city on NS rail line segments N-079, N-077, N-294, and N-483 and shall display the train locations at an emergency response center to be specified by the City.

Oxford Township, Ohio

Condition 37. NS shall upgrade its warning devices from passive to flashing light devices at its highway/rail at-grade crossing of Thomas Road in Oxford Township, Ohio. NS shall certify to the Board compliance with this condition within 6 months of the effective date of the Board's decision.

Tiffin, Ohio

Condition 38(A). CSX shall, with the advice and consent of the City of Tiffin, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Tiffin. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 38(B). CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Tiffin. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 38(C). As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Tiffin.

Vermilion, Ohio

Condition 39. If the new NS rail line connection at Vermilion, Ohio requires a new highway/rail at-grade crossing of Coen Road, NS shall design and construct, with the written concurrence of Erie County, the new crossing to minimize differences between the elevations of the existing roadway and the rail line. This design shall provide drivers with proper sight distances approaching and crossing the rail line segment.

Wellington, Ohio

Condition 40. CSX shall consult with the town of Wellington, Ohio and report to the Board in writing in on its progress to resolve local concerns within 6 months of the effective date of the Board decision.

Willard, Ohio

Condition 41(A). CSX shall, with the advice and consent of the City of Willard, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Willard. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 41(B). CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Willard. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision.

Condition 41(C). As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Willard.

Erie, Pennsylvania

Condition 42(A). Applicants shall comply with the terms and conditions of their agreement, as described in their Primary Application filed June 23, 1997, to relocate NS traffic onto new tracks in the CSX right-of-way through Erie, Pennsylvania.

Condition 42(B). Prior to the demolition, removal, or other alteration of its 19th Street facilities and pending Pennsylvania State Historic Preservation Officer concurrence, NS shall document the two guard shanties and five bridges with black and white photographs, and relocate one guard shanty, eligible for listing on the National

Register of Historic Places, to the Lake Shore Railway Historical Museum in Erie, Pennsylvania.

Seneca Nation (located in western New York)

Condition 43(A). NS shall, with the advice and consent of the Seneca Nation, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of Native American populations adjacent to or in the immediate vicinity of their rail line segments in the Seneca Nation. As agreed to by NS, NS shall work with the Seneca Nation to provide training in hazardous materials emergency response to appropriate tribal personnel.

Condition 43(B). NS shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving Cattaraugus Reservation adjacent to or in the immediate vicinity of their rail line segments in the Seneca Nation.

IV. ENVIRONMENTAL CONDITIONS FOR CONSTRUCTIONS AND ABANDONMENTS

The following environmental conditions apply to the construction and abandonment activities listed below, as appropriate, to reduce or avoid the potential for environmental impacts as a result of the Conrail transaction:

PROPOSED CONSTRUCTION PROJECTS

State	Location	County	Length (feet)	Site ID
CSX				
Illinois	75th Street, Chicago	Cook	1,640	CC01
Illinois	Exermont	St. Clair	3,590	CC02
Illinois	Lincoln Avenue, Chicago	Cook	840	CC03
New Jersey	Little Ferry[a]	Bergen	1,080	CC04
Ohio	Collinwood Yard, Cleveland	Cuyahoga	Expand existing rail yard to accommodate intermodal facility.	CR03

PROPOSED CONSTRUCTION PROJECTS

State	Location	County	Length (feet)	Site ID
NS				
Delaware	Wilmington	New Castle	Renovate Shellpot Bridge	NR01
Illinois	Kankakee	Kankakee	1,000	NC01
Illinois	Tolono	Champaign	1,600	NC03
Indiana	Butler	De Kalb	1,700	NC05
Indiana	Tolleston	Lake	900	NC06
Maryland	Hagerstown	Washington	800	NC07
Michigan	Ecorse Junction	Wayne	400	NC08
New York	Buffalo (Blasdell)	Erie	5,200	NC09
New York	Buffalo (Gardenville Junction)	Erie	1,700	NC10
Ohio	Columbus	Franklin	1,400	NC12
Ohio	Oak Harbor	Ottawa	5,000	NC13
Ohio	Vermilion	Erie	5,400	NC14

[a] CSX proposes two separate connections (600 and 480 feet in length) at Little Ferry.

PROPOSED ABANDONMENTS

State	Between	And	Length (Miles)	Docket No.	Site ID (Owner)
Illinois	Paris	Danville	29.0	CSX No. AB-167 (Sub-No. 1181X), CR No. AB-55 (Sub-No. 551X)	CA01 (CSX)
Indiana	Dillon Jct.	South Bend	21.5	No. AB-290 (Sub-No. 194X)	NA02 (NS)
Ohio	Toledo	Maumee	7.5	No. AB-290 (Sub-No. 196X)	NA03 (NS)

Condition 44. For all proposed Acquisition-related constructions and abandonments, Applicants shall employ the Best Management Practices presented in Attachment A.

Condition 45. For all proposed Acquisition-related constructions and abandonments, Applicants shall comply with the Federal, state, and/or local regulations listed below, which have particular applicability in mitigating potential environmental impacts:

Hazardous and Solid Waste Handling

a) Applicants shall observe all applicable Federal, state, and local regulations regarding the handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction or abandonment-related activities. In the event of a hazardous waste spill resulting from proposed construction or abandonment activities, Applicants shall implement the appropriate emergency response procedures and remediation measures required by applicable Federal, state, and local regulations. At the request of the U.S. Fish and Wildlife Service, Applicants shall immediately notify the Service and the appropriate state departments of natural resources in the event of a reportable hazardous materials release.

b) Applicants shall transport all hazardous materials generated by any proposed construction or abandonment-related activities in compliance with the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 179).

c) Applicants shall dispose of all materials that cannot be reused in accordance with applicable Federal, state, and local solid waste management regulations.

Dust Control

d) Applicants shall comply with all applicable Federal, state, and local regulations to control and minimize fugitive dust emissions resulting from construction or abandonment-related activities. This may involve the use of such control methods as water spraying, installation of wind barriers, or chemical treatment.

Water Resources Protection

e) Applicants shall obtain all necessary Federal, state, and local permits for alteration of wetlands, ponds, lakes, streams, or rivers, or if a likelihood exists for construction or abandonment-related activities to cause soil or other materials to wash into these water resources. Applicants also shall use Best Management Practices (see Attachment A) to minimize other potential environmental impacts on water bodies, wetlands, and navigation.

Stormwater Discharge

f) Applicants shall obtain all necessary Federal, state, and local permits for stormwater discharge, including National Pollutant Discharge Elimination System permits, during construction or abandonment-related activities.

Use of Herbicides

g) Applicants shall use only Environmental Protection Agency-approved herbicides and qualified personnel or contractors for application of right-of-way maintenance herbicides, and shall limit such applications to the extent necessary for rail operations.

Seven Separate Connections[590]

The following environmental conditions address rail operations over three of the seven separate connections:

- Willow Creek, Indiana, Finance Docket No. 33388 (Sub No. 2).
- Greenwich, Ohio, Finance Docket No. 33388 (Sub No. 3).
- Bucyrus, Ohio, Finance Docket No. 33388 (Sub No. 7).

Condition 46. CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency response organizations or coordinating bodies with copies of all applicable Hazardous Materials Emergency Response Plans, and participate in the training of local emergency staff (upon request) for coordinated responses to potential incidents. In case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in its Hazardous Materials Emergency Response Plans.

Condition 47. If wheel squeal occurs during operation of the connections, CSX shall use rail lubrication to minimize noise levels.

Condition 48. NS shall retain its interest in and take no steps to alter the historic integrity of sites identified at Bucyrus, Ohio until completion of the Section 106 process of the National Historic Preservation Act.

[590] Potential environmental impacts of the physical construction of the Seven Separate Connections at issue in STB Finance Docket No. 33388 (Sub Nos. 1 through 7) were addressed in separate Environmental Assessments that SEA prepared prior to and separate from the Final EIS. By a decision issued November 25, 1997, the Board approved, subject to certain environmental conditions, the physical construction of the seven connections totaling approximately 4 miles in the States of Indiana and Ohio.

V. SAFETY INTEGRATION CONDITIONS

Condition 49(A). Applicants shall comply with the Safety Integration Plans, which may be modified and updated as necessary to respond to evolving conditions.

Condition 49(B). Applicants shall participate and fully cooperate with the ongoing regulatory activities associated with the safety integration process, as described in the Memorandum of Understanding agreed to by the Board and FRA with the concurrence of the U.S. Department of Transportation, until FRA affirms to the Board in writing that the integration of Applicants' systems has been completed safely and satisfactorily.

VI. MONITORING AND ENFORCEMENT CONDITION

Condition 50. If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions in this Decision, and upon petition by any party who demonstrates such material changes, the Board may review the continuing applicability of its final mitigation, if warranted.

VII. NEGOTIATED AGREEMENTS

Condition 51. Applicants shall comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. The following list provides the Negotiated Agreements received by the Board to date:

CSX

1. State of Maryland, dated September 24, 1997.
2. Commonwealth of Pennsylvania and the City of Philadelphia, dated October 21, 1997.
3. City of East Cleveland, Ohio, dated February 11, 1998.
4. City of Brook Park, Ohio, dated February 17, 1998.
5. Village of Greenwich and the Board of Huron County, Ohio, dated March 23, 1998.
6. City of Newark, Delaware, and the University of Delaware, dated May 12, 1998.
7. National Railroad Passenger Corporation (Amtrak), "The principles of cooperation between Amtrak and CSX Transportation associated with the Conrail Acquisition," dated May 14, 1998.
8. City of Indianapolis, Indiana, dated June 1, 1998.
9. City of Cleveland, Ohio, dated June 4, 1998.

NS

1. Commonwealth of Pennsylvania and the City of Philadelphia, dated September 21, 1997.
2. State of Maryland, dated September 24, 1997.
3. Toledo-Lucas County Port Authority and Toledo Metropolitan Area Council of Governments, dated February 18, 1998.
4. City of Erie, Pennsylvania, dated April 9, 1998.
5. City of Tilton, Illinois, dated April 14, 1998.
6. City of Fremont, Ohio, dated April 15, 1998.
7. City of Bellevue, Ohio, dated April 22, 1998.
8. City of East Cleveland, Ohio, dated April 27, 1998.
9. City of Danville, Illinois, dated May 5, 1998.
10. National Railroad Passenger Corporation (Amtrak), "Memorandum of Understanding between NS and Amtrak," dated May 14, 1998.
11. City of Cleveland, Ohio, dated May 22, 1998.
12. Cities of Bay Village, Rocky River, and Lakewood Ohio, dated June 2, 1998.

CSX and NS

1. Cities of Brook Park and Olmsted Falls, Ohio, dated February 24, 1998.
2. New Jersey Department of Transportation/ New Jersey Transit Corporation, dated March 20, 1998.
3. National Railroad Passenger Corporation (Amtrak), "The principles of cooperation concerning the Northeast Corridor," dated May 14, 1998.
4. Southeastern Pennsylvania Transportation Authority (SEPTA), dated June 1, 1998.
5. City of Berea, Ohio, dated June 1, 1998.

ATTACHMENT A

Best Management Practices for Environmental Conditions Nos. 44 and 45

1. Applicants shall restore any adjacent properties disturbed during right-of-way construction or abandonment-related activities to pre-construction or pre-abandonment conditions.

2. Applicants shall encourage regrowth in disturbed areas and stabilize disturbed soils according to standard construction practices or as required by construction permits.

3. Applicants shall use appropriate signs and barricades to control traffic disruptions during construction or abandonment-related activities at or near any highway/rail at-grade crossings.

4. Applicants shall restore roads disturbed during construction or abandonment-related activities to conditions required by state and local jurisdictions.

5. Applicants shall control temporary noise from construction or abandonment-related equipment through the use of work-hour controls, operation and maintenance of muffler systems on machinery, and/or other noise reduction methods.

6. If Applicants find previously unknown archeological remains during construction or abandonment-related activities, they shall immediately cease excavation work in the area and contact the appropriate State Historic Preservation Office for guidance and coordination.

7. Applicants shall use appropriate technologies, such as silt screens and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during construction or abandonment-related activities. Applicants shall disturb the smallest area possible around any streams and tributaries, and shall consult with the appropriate state agent to properly revegetate disturbed areas immediately following construction or abandonment-related activities.

8. Applicants shall ensure that all culverts are clear of debris to avoid potential flooding and stream flow alteration.

9. Applicants shall design and construct proposed construction/abandonment activities so as to preserve effective drainage to maintain the quality of adjacent prime farmland.

10. Applicants shall use appropriate techniques to minimize potential environmental impacts on water bodies, wetlands, and navigation, including the following specific measures:

    a) If necessary, Applicants shall avoid impacts or losses to wetlands wherever possible. If wetland impacts are unavoidable, Applicants must demonstrate that there are no practicable alternatives available that would avoid or further minimize impacts to wetlands. Applicants shall compensate for unavoidable wetland losses at ratios determined by the U.S. Army Corps of Engineers and

U.S. Fish and Wildlife Service as to type of wetland affected on a site-by-site basis.

b) If necessary, Applicants shall design and replicate compensatory wetlands to match as closely as possible the specific mix of types, functions, and values of the affected wetlands. The compensatory wetlands shall be established via the process of restoration to the extent feasible, and they shall be located in an area as close as practicable to the affected wetlands.

11. Applicants shall ensure that abandonment-related activities are designed to preserve land forms and drainage patterns that may provide flood protection.

12. Applicants shall ensure that for any construction project, new lighting fixtures installed in new parking and security areas adjacent to residential zoned areas shall be cut off or shielded to avoid effects to residences.

13. Applicants shall compensate for trees removed during project activities. Trees shall be replaced with native saplings, if practicable, at a minimum ratio of 1:1, and replacement shall occur as close as possible to the affected areas.

14. Applicants shall establish a staging area for construction equipment in environmentally nonsensitive areas to control erosion and spills.

15. Should project activities affect previously unidentified threatened or endangered species and/or their habitat, Applicants shall immediately cease project activities and contact the U.S. Fish and Wildlife Service and the appropriate State Department of Natural Resources for guidance and coordination.

16. Applicants shall use established standards for recycling or reuse of construction materials such as ballast and rail ties. When recycling construction materials is not a viable option, Applicants shall specify disposal methods of materials such as rail ties and potentially contaminated surrounding soils and ballast materials to ensure compliance with applicable solid and hazardous waste regulations.

17. Applicants shall develop a Construction Noise and Vibration Specification for any proposed construction activities associated with the proposed Conrail Acquisition. Applicants shall designate a noise control engineer to develop the Specification whose qualifications include at least 5 years of experience with major construction noise projects, and board certification membership with the Institute of Noise Control Engineering or registration as a Professional Engineer in Mechanical Engineering or Civil Engineering.

APPENDIX R: OPERATIONAL MONITORING — YARDS AND TERMINALS

CSX YARDS :

ILLINOIS
- Barr Yard-Chicago, IL

INDIANA
- Avon Yard-Indianapolis, IN

MARYLAND
- Bay View Yard-Baltimore, MD
- Cumberland Yard-Cumberland, MD

MICHIGAN
- Rouge Mere Yard-Detroit, MI

NEW YORK
- DeWitt Yard-Syracuse, NY
- Frontier Yard-Buffalo, NY
- Selkirk Yard-Albany, NY

OHIO
- Stanley Yard-Toledo, OH
- Queensgate Yard-Cincinnati, OH
- Walbridge Yard-Toledo, OH
- Willard Yard-Willard, OH

NS YARDS:

ILLINOIS
- Decatur Yard-Decatur, IL

INDIANA
- Elkhart Yard-Elkhart, IN

OHIO
- Airline Yard-Toledo, OH
- Bellevue Yard-Bellevue, OH
- Buckeye Yard-Columbus, OH
- Gest Street Yard-Cincinnati, OH

PENNSYLVANIA
- Allentown Yard-Allentown, PA
- Conway Yard-Pittsburgh, PA
- Harrisburg/Rutherford Yard-Harrisburg, PA

IHB YARDS:

ILLINOIS
- Blue Island Yard-Chicago, IL

INDIANA
- Gibson Yard-Hammond, IN