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SEC

SERVICE DATE - AUGUST 12, 1998

SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423

August 10, 1998

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

NOTICE

A court action, entitled as shown below,
was instituted on or before July 31, 1998,
involved the above-entitled proceeding:

No. 98-4286

ERIE-NIAGARA RAIL STEERING COMMITTEE
v.
Surface Transportation Board
United States of America

before the
United States Court of Appeals for the Second Circuit

Vernon R. Williams

VERNON WILLIAMS
Secretary

SERVICE LIST FOR: 11-aug-1998 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATI

STEPHEN M FONTAINE
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
ONE WILBRAHAM STREET
PALMER MA 01069 US

JOHN R NADOLNY
BOSTON AND MAINE CORPORATION
IRON HORSE PARK
NORTH BILLERICA MA 01862 US

RICHARD B. KENNELLY, JR
CONSERVATION LAW FOUNDATION
62 SUMMER STREET
BOSTON MA 02110 US

JAMES E HOWARD
90 CANAL STREET
BOSTON MA 02114 US

JOHN D CIRAME, ASSISTANT SECRETARY
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPT
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

HON. EDWARD M KENNEDY
UNITES STATES SENATE
2400 JOHN F KENNEDY FEDERAL BLDG
BOSTON MA 02203 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333 US

JOHN K DUNLEAVY
ASSISTANT ATTORNEY GENERAL
133 STATE STREET STATE ADM BLDG
MONTPELIER VT 05633-5001 US

KAREN E SONGHURST
STATE OF VERMONT
133 STATE STREET
MONTPELLIER VT 05633-5001 US

JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

EDWARD J RODRIGUEZ
P.O. BOX 298
67 MAIN STREET
CENTERBROOK CT 06409 US

RICHARD C CARPENTER
1 SELLECK STREET SUITE 210
EAST NORWALK CT 06855 US

MICHAEL E STRICKLAND
NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE
300 LIGHTING WAY
SECAUCUS NJ 07094-1588 US

HONORABLE ROBERT G. TORRICELLI
UNITED STATES SENATE
1 RIVER FRONT PLAZA, 3RD FLOOR
NEWARK NJ 07102 US

J WILLIAM VAN DYKE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

PHILIP SIDO
UNION CAMP CORPORATION
1600 VALLEY ROAD
WAYNE NJ 07470 US

MARTIN T DURKIN ESQ
DURKIN & BOGGIA ESQS
PO BOX 378
71 MT VERNON STREET
RIDGEFIELD PARK NJ 07660 US

TERI LENHART
CONCERNED CITIZENS OF EAST RIVERTON
1220 BANNARD STREET
CINNAMINSON NJ 08077-1802 US

TIMOTHY G CHELIUS
18 N EAST AVENUE
VINELAND NJ 08360 US

LAWRENCE PEPPER, JR
GRUCCIO PEPPER
817 EAST LANDS AVE
VINELAND NJ 08360 US

JOHN F. MCHUGH
MCHUGH & SHERMAN
20 EXCHANGE PLACE 51ST FLOOR
NEW YORK NY 10005 US

ANTHONY BOTTALICO
UTU
420 LEXINGTON AVENUE ROOM 458-460
NEW YORK NY 10017 US

WALTER E ZULLIG JR
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3706 US

ANTHONY P. SEMANCIK
347 MADISON AVENUE
NEW YORK NY 10017-3706 US

JAMES W HARRIS
THE METROPOLITIAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

HONORABLE ALFONSE M. D'AMATO
UNITED STATES SENATE
LEO O'BRIEN OFFICE BUILDING, ROOM 420
ALBANY NY 12207 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE,INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

ANGELO J CHICK JR, LOCAL CHAIRMAN
P O BOX 908
48398 OLD GOOSE BAY ROAD
REDWOOD NY 13679 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS ,COLLINS, & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

HONORABLE ALFONSE D'AMATO
UNITED STATES SENATE
111 W. HURON STREET, ROOM 620
BUFFALO NY 14202 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

ERNEST J IERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

HENRY M. WICK, JR.
WICK, STREIFF, ET AL
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219 US

JOHN A. VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET, PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US

KURT W CARR
BUREAU FOR HISTORIC PRESERVATION
P O BOX 1026
HARRISBURG PA 17108-1026 US

HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

KRISTOPHER MICHAEL KLEMICK
RR#3 BOX 101-15
JERSEY SHORE PA 17740-9309 US

BELNAP FREEMAN
BELKNAP FREEMAN
119 HICKORY LANE
ROSEMONT PA 19010 US

D J O'CONNELL
GENERAL CHAIRPERSON UTU
410 LANCASTER AVE STE 5
HAVERFORD PA 19041 US

JOHN J GROCKI
GRA INC
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

HARRY C BARBIN
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

G CRAIG SCHELTER
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATI
2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

WILLIAM R THOMPSON
CITY OF PHILADELPHIA LAW DEPT
1600 ARCH ST 10TH FLOOR
PHILADELPH PA 19103 US

JOHN J EHLINGER JR
OBERMAYER REBMANN MAXWELL & HIPPEL
1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T
PHILADELPHIA PA 19103-1895 US

DAVID BERGER
BERGER AND MONTAGUE, P. C.
1622 LOCUST ST
PHILADELPHIA PA 19103-6305 US

JOHN J COSCIA, EXECUTIVE DIRECTOR
DELAWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

JOHN K. LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTH
1234 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-3780 US

ERIC M HOCKY
GOLLATZ GRIFFIN EWING
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

HON JOSEPH R BIDEN, JR.
UNITED STATES SENATE
844 KING STREET
WILMINGTON DE 19801 US

J E THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

E C WRIGHT
RAIL TRANSPORTATION PROCUREMENT MANAGER
1007 MARKET STREET DUPONT BLDG 3100
WILMINGTON DE 19898 US

FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

MARTIN W BERCOVICI
KELLER & HECKMAN
1001 G ST NW SUITE 500 WEST
WASHINGTON DC 20001 US

JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

BRUCE KNIGHT
NATIONAL CORN GROWERS ASSOCIATION
122 C ST NW SUITE 510
WASHINGTON DC 20001-2109 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND, ET. AL
1331 F STREET N W, 4TH FLOOR
WASHINGTON DC 20004 US

DEBRA L. WILLEN
GUERRIERI, EDMOND & CLAYMAN PC
1331 F STREET N W, 4TH FLOOR
WASHINGTON DC 20004 US

PATRICK R PLUMMER
GUERRIERI EDMOND & CLAYMAN PC
1331 F ST NW
WASH DC 20004 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

GEORGE W MAYO JR
HOGAN & HARTSON L L P
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELTH STREET NW
WASHINGTON DC 20004-1202 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1201 NEW YORK AVE., NW
WASHINGTON DC 20005 US

EDWARD WYTKIND, EXECUTIVE DIRECTOR
LARRY J WILLIS ESQ TRANSP TRADES DEPT AFLCI
1000 VERMONT AVENUE, NW STE 900
WASHINGTON DC 20005 US

KEVIN M SHEYS
OPPENHEIMER WOLFF & DONNELLY & BAYH LLP
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005 US

MARK H SIDMAN
WEINER & BRODSKY,SIDMAN & KIDER
1350 NEW YORK AVE., NW., STE. 800
WASHINGTON DC 20005 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1350 NEW YORK AVENUE NW
WASHINGTON DC 20005 US

PAUL M LAURENZA
OPPENHEIMER WOLFF & DONNELLY & BAYH LLP
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005 US

DANIEL DUFF
AMERICAN PUBLIC TRANSIT ASSOCIATION
1201 NEW YORK AV NW
WASHINGTON DC 20005 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSCHEIN NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C SAYLOR
THE AMERICAN SHORT LINE RAILROAD ASSOCIATION
1120 G STREET, N. W., SUITE 520
WASHINGTON DC 20005 US

CLARK EVANS DOWNS
JONES DAY REAVIS & POGUE
1450 G STREET NW
WASHINGTON DC 20005-2088 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

PAUL H LAMBOLEY
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005-3324 US

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

JEFFREY O. MORENO
DONELAN CLEARY WOOD MASER
1100 NEW YORK AVENUE N W, SUITE 750
WASHINGTON DC 20005-3934 US

NICHOLAS J DIMICHAEL
DONELAN CLEARY WOOD & MASER PC
1100 NEW YORK AVENUE N W STE 750
WASHINGTON DC 20005-3934 US

FREDERIC L WOOD
DONELAN CLEARY WOOD & MASER P C
1100 NEW YORK AVENUE NW SUITE 750
WASHINGTON DC 20005-3934 US

KARYN A BOOTH
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

JOHN K MASER III
DONELAN CLEARY WOOD & MASER P C
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

ANDREW P GOLDSTEIN
MCCARTHY SWEENEY HARKAWAY, PC
1750 PENNSYLVANIA AVE NW, STE 1105
WASHINGTON DC 20006 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER. LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

FRANCIS G. MCKENNA
ANDERSON & PENDLETON
1700 K ST NW SUITE 1107
WASHINGTON DC 20006 US

ERIKA Z JONES
MAYER BROWN & PLATT
2000 PA AV NW
WASH DC 20006-1882 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOUTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

STEVEN J KALISH
MCARTHY SWEENEY & HARKAWAY
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006-4502 US

ROBERT G. SZABO
V.NESS FELDMAN
1050 THO JEFFERSON STREET,NW
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHARASCH & GARFINKLE P C
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

JOHN D HEFFNER ESQ
REA CROSS & AUCHINCLOSS
1707 L STREET, NW, STE 570
WASHINGTON DC 20036 US

ROBERT A WIMBISH ESQ
REA CROSS & AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

C MICHAEL LOFTUS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET, NW
WASHINGTON DC 20036 US

HAROLD P QUINN, JR
NATIONAL MINING ASSOCIATON
1130 17TH STREET NW
WASHINGTON DC 20036 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

ROBERT P. VOM EIGEN
HOPKINS AND SUTTER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

DANIEL J SWEENEY
MCCARTHY SWEENEY & HARKAWAY P C
1750 PENNSYLVANIA AVE NW STE 1105
WASHINGTON DC 20006 US

RICHARD A ALLEN
ZUCKERT SCOUT RASENBERGER
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
888 SIXTEENTH ST NW
WASH DC 20006-4103 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAI
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

DAVID H COBURN
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE NW
WASHINGTON DC 20036 US

HELEN M. COUSINEAU
CARLOS RODRIGUEZ & ASSOCIATES
1710 RHODE ISLAND AVENUE, NW
WASHINGTON DC 20036 US

JUDY CALDWELL
OPPNEHEIMER WOLFF & DONNELLY
1020 NINETEENTH ST NW STE 400
WASH DC 20036 US

KEITH G O'BRIEN
REA, CROSS AND AUCHINCLOSS
1707 L STREET, N.W., STE 570
WASH DC 20036 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O'DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

PAUL A CUNNINGHAM
HARKINS CUNNINGHAM
1300 NINETEENTH STREET, NW STE. 600
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE FLORY
1920 N STREET N W, SUITE 800
WASHINGTON DC 20036 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
1750 PENNSYLVANIA AVE N W SUITE 1105
WASHINGTON DC 20036 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

L PAT WYNNS
SUITE 210
1050 - 17TH STREET N W
WASHINGTON DC 20036-5503 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

ARVID E ROACH II
COVINGTON & BURLING
PO BOX 7566
1201 PENNSYLVANIA AVE N W
WASHINGTON DC 20044-7566 US

KEITH A KLINDWORTH
U S DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

THOMAS A. O'BRIEN
US DEPARTMENT OF AGRICULTURE
P O BOX 965456
WASHINGTON DC 20090-6456 US

EILEEN S STOMMES DIRECTOR T&M DIVISION
AGRICULTURAL MARKETING SERVICE USDA
P O BOX 96456
WASHINGTON DC 20090-6456 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

RICHARD E SANDERSON
OFFICE OF FEDERAL ACTIVITIES
US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON DC 20460 US

HON JOHN GLENN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. DAN COATS
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE ALFONSE M D'AMATO
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE J. ROBERT KERRY
UNITED STATES SENATE
WASH DC 20510 US

HON MIKE DEWINE
U S SENATE
WASHINGTON DC 20510 US

HONORABLE BOB GRAHAM
UNITED STATE SENATE
WASHINGTON DC 20510 US

HON. ROSA L DELAURO
U . S. HOUSE OF REPRESENTATIVES
WAHINGTON DC 20510 US

HON. JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. CHARLES ROBB
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON WILLIAM V. ROTH JR
U S SENATE
WASHINGTON DC 20510-0001 US

HON. JOHN W. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

HON CHRISTOPHER J DODD
UNITED STATE SENATE
WASH DC 20510-0702 US

HONORABLE DANIEL P. MOYNIHAN
UNITED STATE SENATE
WASHINGTON DC 20510-0903 US

HONORABLE CONNIE MACK
UNITED STATES SENATE
WASHINGTON DC 20510-0904 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510-1803 US

HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US

HON RICK SANTORUM
UNITED STATES SENATE
WASHINGTON DC 20510-3804 US

HONORABLE JOHN H. CHAFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

HON JACK REED
U S SENATE
WASHINGTON DC 20510-3903 US

SENATOR ROBERT BYRD
UNITED STATES SENATE
WASHINGTON DC 20510-6025 US

HON. LEE N. HAMILTON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PAUL GILMORE
U S HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JESSE L. JACKSON, JR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE LUIS GUTIERREZ
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE DANNY K DAVIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON RALPH REGULA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON SHERROD BROWN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ED TOWNS
U. S. HOUSE OR REPRESENTATIVES
WASHINGTON DC 20515 US

HON LOUISE M SLAUGHTER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHARLES SCHUMER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHRISTOPHER SHAYS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHARLES RANGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON THOMAS MANTON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CAROLYN B MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NITA LOWEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MAURICE HINCHEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

BEN GILMAM
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MICHAEL FORBES
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ELIOT L ENGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON GARY ACKERMAN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BOB WEYGAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON DENNIS J KUCINICH
UNITED STATES HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ED BRYANT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. LOUIS E. STOKES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TILLIE K FOWLER
US HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK MASCARA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ROBERT MENENDEZ
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HON MARCY KAPTUR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON BOB WISE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MIKE DOYLE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. JOHN J. DUNCAN
U S HOUSE OF REPRESENTATIVESS
WASHINGTON DC 20515 US

HON. JAMES L. OBERSTAR
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM O. LIPINSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. THOMAS C SAWYER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. TOM BLILEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAM GEJDENSON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM J. COYNE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON VIC FAZIO
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON DAVID L HOBSON
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK D. RIGGS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN D. DINGELL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ROBERT G TORRICELLI
UNITED STATES SENATE
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BARBARA B KENNELLY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NANCY JOHNSON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE RONALD V. DELLUMS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN J LAFALCE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTO DC 20515-1305 US

HONORABLE JAMES A. BARCIA
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HON JACK QUINN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3230 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HON PAUL E GILLMOR
HOUSE OF REPRESENTATIVES
1203 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON DC 20515-3505 US

CONG BOB CLEMEMT
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4205 US

HONORABLE TOM DAVIS
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW, ROOM 4102 C-30
WASHINGTON DC 20590 US

JOSEPH R. POMPONIO
FEDERAL RAILROAD ADMIN.
400 7TH ST SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

MITCHELL M. KRAUS
TRANSPORTATION -COMMUNICATIONS INTERNATIONAL
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

JOHN M ROBINSON
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

JOHN F WING CHAIRMAN
CITIZENS ADVISORY COMMITTEE
601 NORTH HOWARD STREET
BALTIMOTE MD 21201 US

LINDA A JANEY J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

GARRET G SMITH
MOBIL OIL CORPORATION
3225 GALLOWS RD RM 8A903
FAIRFAX VA 22037-0001 US

HENRY E. SEATON
7700 LEESBURG PIKE, STE 201
FALLS CHURCH VA 22043 US

PETER Q. NYCE, JR.
U. S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

THOMAS E. SCHICK
CHEMICAL MANUF ASSOC
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

JENNIFER BRAUN
JACKSON & JESSUP
P O BOX 1240
3426 NORTH WASHINGTON BOULEVARD
ARLINGTON VA 22210 US

GERALD W FAUTH III
G W FAUTH & ASSOCIATES INC
116 SOUTH ROYAL STREET
ALEXANDERIA VA 22314 US

KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTAITON
P. O. BOX 1475
RICHMOND VA 23218 US

HONORABLE GEORGE ALLEN
GOVERNOR, COMMONWEALTH OF VIRGINIA
STATE CAPITOL
RICHMOND VA 23219 US

GEORGE A ASPATORE
NORFOLK SOUTHERN CORP
THREE COMMEMERCIAL PLACE
NORFOLK VA 23510 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
P.O.BOX 8817
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

VAUGHN R GROVES
PITTSTON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

TERRELL ELLIS
CAEZWV
P O BOX 176
CLAY WV 25043 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US

WILLIAM T BRIGHT
P O BOX 149
200 GREENBRIER ROAD
SUMMERSVILLE WV 26651 US

FRANK N JORGENSEN
THE ELK RIVER RAILROAD INC
P O BOX 460
SUMMERSVILLE WV 26651 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALIEGH NC 27604-1640 US

E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

PAUL R. HITCHCOCK
CSX TRANSPORTATION LAW DEPARTMENT
500 WATER STREET SC J-150
JACKSONVILLE FL 32202 US

J L RODGERS
GENERAL CHAIRMAN UTU
480 OSCEOLA AVENUE
JACKSONVILLE FL 32250 US

J T REED
GENERAL CHAIRPERSON UTU
7785 BAYMEADOWS WAY STE 109
JACKSONVILLE FL 32256 US

PHILLIP L BELL
ERIE LACKAWANNA RAILROAD CO
PO BOX 1482
TALLAHASSEE FL 32302 US

HONORABLE LAWTON CHILES
OFFICE OF THE GOVERNOR
THE CAPITOL
TALLAHASSEE FL 32399-0001 US

JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPORT TN 37662 US

WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

J R BARBEE
GENERAL CHAIRPERSON UTU
P.O. BOX 9599
KNOXVILLE TN 37940 US

HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

WILLIAM P HERNAN JR GENERAL CHAIRMAN
P O BOX 180
HILLIARD OH 43026 US

F R PICKELL
GENERAL CHAIRPERSON UTU
6797 NORTH HIGH ST STE 108
WORTHINGTON OH 43085 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
30 E BROAD STREET 16TH FLOOR
COLUMBUS OH 43215 US

HONORABLE DEBORAH PRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

HONORABLE JOHN GLENN
U. S. SENATE ATTN: DAN EMERINE
200 N HIGH STREET S-600
COLUMBUS OH 43215-2408 US

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
1238 CASS ROAD
MAUMEE OH 43537 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

DAVID DYSARD
TMACOG
PO BOX 9508
300 CENTRAL UNION PLAZA
TOLEDO OH 43697-9508 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
R D #2
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

C L LITTLE
UNITED TRANSPORTATION UNION
14600 DETROIT AVE
CLEVELAND OH 44107 US

CLINTON J MILLER III GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

C V MONIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 ONTARIO STREET
CLEVELAND OH 44113 US

CHRISTOPHER C MCCRACKEN
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINETH STREET SUITE 900
CLEVELAND OH 44114-1538 US

DAVID J MATTY
CITY OF ROCKY RIVER
21012 HILLIARD ROAD
ROCKY RIVER OH 44116-3398 US

MICHAEL J GARRIGAN
BP CHEMICALS INC
4440 WARRENSVILLE CTR RD
CLEVELAND OH 44128 US

C D WINEBRENNER
GENERAL CHAIRPERSON UTU
27801 EUCLID AV RM 200
EUCLID OH 44132 US

GARY A EBERT
CITY OF BAY VILLAGE
350 DOVER CENTER ROAD
BAY VILLAGE OH 44140 US

CHARLES ZUMKEHR
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLEY ROAD
AKRON OH 44320 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

RANDALL C. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E KERTH
CHAMPION INTERNAT'L CORP
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

BRAD F HUSTON
CYPRUS AMAX COAL SALES CORP
400 TECHNECENTER DRIVE STE 320
MILFORD OH 45150 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

THOMAS R RYDMAN PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

MICHAEL P MAXWELL JR
MCHALE, COOK & WELCH
320 N MERIDIAN ST 1100 CHAMBER OF COMMERCE BL
INDIANAPOLIS IN 46204 US

HONORABLE DAN COATS,
UNITED STATES SENATE
1180 MARKET TOWER, 10 WEST MARKET STREET
INDIANAPOLIS IN 46204 US

J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

MICHAEL CONNELLY
CITY OF EAST CHICAGO
4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

HAMILTON L CARMOUCHE, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

HONORABLE PETER J. VISCLOSKY
U. S. HOUSE OF REPRESENTATIVES
215 WEST 35TH AVENUE
GARY IN 46408 US

CARL FELLER
DEKALB AGRA INC
P. O. BOX 127
4743 COUNTY ROAD 28
WATERLOO IN 46793-0127 US

CHRISTOPHER J BURGER, PRESIDENT
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
PO BOX 554
KOKOMO IN 46903-0554 US

WILLIAM A BON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
26555 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

NICOLE HARVEY
THE DOW CHEMICAL COMPANY
2020 DOW CENTER
MIDLAND MI 48674 US

JAMES E SHEPHERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US

LARRY B. KARNES
TRANSPORTATION BUILDING
PO BOX 30050
425 WEST OTTAWA
LANSING MI 48909 US

HON JOHN ENGLER
OFFICE OF THE GOVERNOR
P O BOX 30050
LANSING MI 48933 US

T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BLDG 405 SIXTH AVENUE
DES MOINES IA 50309 US

BYRON D OLSEN
FELHABER LARSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH 4200 FIRST BANK PLACE
MINNEAPOLIS MN 55402-4302 US

LEO J WASESCHA
GOLD MEDAL DIVISON - GENERAL MILLS OPERATION
P.O.BOX 1113
NUMBER ONE GENERAL MILLS BULEVARD
MINNEAPOLIS MN 55440 US

THOMAS R BOBAK
313 RIVER OAKS DRIVE
CALUMET CITY IL 60409 US

GERALD J. VINCI
PRAIRIE GROUP
P. O.BOX 1123
7601 WEST 79TH STREET
BRIDGEVIEW IL 60455 US

RICHARD A GAVRIL
16700 GENTRY LANE NO 104
TINLEY PARK IL 60477 US

WILLIAM F. COTTRELL
ASST. ATTORNEY GENERAL
100 W RANDOLPH ST - 12TH FLOOR
CHICAGO IL 60601 US

CHRISTINE H. ROSSO
IL ASSISTANT ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FLOOR
CHICAGO IL 60601 US

KEVIN BRUBAKER
ENVIRONMENTAL LAW AND POLICY CENTER OF THE MI
203 NORTH LASALLE ST, SUITE 1390
CHICAGO IL 60601 US

WILLIAM C SIPPEL
OPPENHEIMER WOLFF & DONNELLY
180 N STETSON AVE TWO PRUDENTIAL PLAZA 45TH F
CHICAGO IL 60601 US

RICHARD F FRIEDMAN
INTERNATIONAL PORT DISTRICT (PORT F CHICAGO)
111 W WASHINGTON STREET SUITE 1700
CHICAGO IL 60602 US

RICHARD F. FRIEDMAN, ESQ
EARL L NEAL & ASSOCIATES
111 WEST WASHINGTON STREET, STE 1700
CHICAGO IL 60602-2766 US

EDWARD C MCCARTHY
INLAND STEEL INDUSTRIES INC
30 WEST MONROE STREET
CHICAGO IL 60603 US

ROGER A. SERPE
INDIANA HARBOR BELT RR
175 WEST JACKSON BOULEVARD SUITE 1460
CHICAGO IL 60604 US

SANDRA J. DEARDEN
MDCO CONSULTANTS, INC.
407 SOUTH DEARBORN, SUITE 1260
CHICAGO IL 60605 US

SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

THOMAS F MCFARLAND JR
MCFARLAND & HERMAN
20 NORTH WACKER DRIVE, SUITE 1330
CHICAGO IL 60606-3101 US

MYLES L TOBIN
ILLINOIS CENTRAL RAILROAD
455 NORTH CITYFRONT PLAZA DRIVE
CHICAGO IL 60611-5504 US

CHARLES D BOLAM
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4666 FARIES PARKWAY
DECATUR IL 62525 US

MERRILL L TRAVIS
ILLINOIS DEPT OF TRANSPORTATION
2300 S DIRKSEN PARKWAY RM 302
SPRINGFIELD IL 62703-4555 US

R A GRICE
GENERAL CHAIRPERSON UTU
11017-F GRAVOIS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

IAN MUIR
BUNGE CORPORATION
P O BOX 28500
ST LOUIS MO 63146 US

JOHN JAY ROSACKER
KS, DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

HENRY T DART
PLAINTIFF MANGEMENT COMMITTEE
3748 NORTH CAUSEWAY BLVD SUITE 301
METAIRIE LA 70002 US

MIKE SPAHIS
FINA OIL & CHEMICAL CO.
8350 NORTH CENTRAL EXPRESSWAY, STE. 1620
DALLAS TX 75206 US

DENNIS A. GUTH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
13103 FM 1960 WEST, SUITE 204
HOUSTON TX 77065-4069 US

MICHAEL P. FERRO
MILLENNIUM PETROCHEM. CALS, INC.
P O BOX 2583
1221 MCKINNEY STREET SUITE 1600
HOUSTON TX 77252-2583 US

STEVE M COULTER
EXXON COMPANY USA
PO BOX 3272
HOUSTON TX 77253-3272 US

MONTY L PARKER
CMC STEEL GROUP
P O BOX 911
SEGUIN TX 78156 US

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
110 WEST OCEAN BLVD STE C
LONG BEACH CA 90802 US

J D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 360

STB FD-33469 8-10-98 C ID-29517

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SERVICE DATE - AUGUST 10, 1998

SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423

August 6, 1998

STB Finance Docket No. 33469

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER 49 U.S.C. 24308(A)--UNION PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC TRANSPORTATION COMPANY

NOTICE

A court action, entitled as shown below, was instituted on or before July 21, 1998, involved the above-entitled proceeding:

No. 98-1328

Association of American Railroads

v.

Surface Transportation Board
United states of America

before the

United States Court of Appeals for the District of Columbia Circuit

Vernon A. Williams

VERNON WILLIAMS
Secretary

SERVICE LIST FOR: 07-aug-1998 STB FD 33469 0 NATIONAL RAILROAD PASSENGER CORPORAT

ARTHUR B SHENEFELT
AMTRAK-FOR-PROFIT
1200 NEW RODGERS ROAD
BRISTOL PA 19007 US

RICHARD A MEHLEY
CONSOLIDATED RAIL CORPORATION
P O BOX 41416
2001 MARKET STREET 16A
PHILADELPHIA PA 19101 US

LOUIS P WARCHOT
ASSOCIATION OF AMERICAN RAILROADS
50 F STREET NW
WASHINGTON DC 20001 US

KENNETH P KOLSON
ASSOCIATION OF AMERICAN RAILROADS
50 F STREET NW
WASHINGTON DC 20001 US

M DIANE ELLIOTT
AMERICAN ASSOC OF PRIVATE RR CAR OWNERS INC
106 NORTH CAROLINA AV SE
WASH DC 20003 US

GEORGE W MAYO JR
HOGAN & HARTSON L L P
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

PAUL H LAMBOLEY
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005-3324 US

JANICE G BARBER
MAYER BROWN & PLATT
2000 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20006 US

EDWARD D GREENBERG
GALLAND KHARASCH & GARFINKLE P C
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

DAVID L MEYER
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE N W
WASHINGTON DC 20044-7566 US

HON CONRAD BURNS
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RON WYDEN
ATTN: RAY WIKESON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

CONRAD BURNS
US SENATE

WASHINGTON DC 20515-2603 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW, ROOM 4102 C-30
WASHINGTON DC 20590 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030 US

DAVID R WILLSON
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE
NORFOLK VA 23510-9241 US

JAMES W MCFARLAND
AL ASSOC OF RR PASSENGERS
325 SKYLAND BOULEVARD EAST
TUSCALOOSA AL 35405 US

MAYOR JOHN ROBERT SMITH
PO BOX 1430
MERIDIAN MS 39302 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

DANIEL R ELLIOTT III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107 US

HON JOHN J H SCHWARZ M.D.
P.O. BOX 30036
LANSING MI 48909-7536 US

ALLYN LEPESKA
WI DEP OF TRANSPORTATION
P O BOX 7910
4802 SHEBOYGAN AVENUE ROOM 115B
MADISON WI 53707 US

JOHN W. GOHMANN
MINNESOTA COMMERCIAL RY
14047 PETRONELLA DRIVE SUITE 201
LIBERTYVILLE IL 60048-1500 US

ROBERT MOONEY
25663 PLANTATION
PLAINFIELD IL 60544 US

THOMAS J. LITWILER
OPPENHEIMER WOLFF & DONNELLY
180 N STETSON AVE 45TH FLOOR
CHICAGO IL 60601 US

MAYOR AUDREY KARIEL
CITY OF MARSHALL
P O BOX 698
MARSHALL TX 75671 US

MAYOR CELIA SCOTT BOSWELL
P.O. BOX 179
MINEOLA TX 75773 US

THOMAS A GRIEBEL
TEXAS DOT
125 E 11TH ST
AUSTIN TX 78701 US

L RAY MICKELSON
PO BOX 7129
BOISE ID 83707-1129 US

ANTHONY HASWELL
3935 CALLE DE JARDIN
TUCSON AZ 85711 US

JOHN R SCHWARZE
DEPT OF REGIONAL PLANNING

LOS ANGELES CA 90063 US

CLAUDIA L. HOWELLS
OREGON DEPARTMENT OF TRANSPORTATION
555 13TH STREET N E MILL CREEK OFFICE BLDG
SALEM OR 97310-1333 US

SALLY CRAIGER
308 SCORPIO DRIVE
LA GRANDE OR 97850 US

KENNETH M UZNANSKI JR
TRANSPORTATION BUILDING
P O BOX 47300
OLYMPIA WA 98504-7300 US

LLOYD H FLEM
2516 THURSTON AVE NE
OLYMPIA WA 98506-4878 US

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SERVICE DATE - AUGUST 7, 1998

SURFACE TRANSPORTATION BOARD

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. 90

Decided: August 6, 1998

This decision addresses the motion by APL Limited (APL) (designated as APL-25) filed on July 29, 1998, requesting a 20-day extension of time, until September 1, 1998, to file a petition for clarification and/or a petition for reconsideration with respect to our Decision No. 89, served July 23, 1998.[1] In support of its motion, APL states that it is analyzing Decision No. 89 in an attempt to determine its effect on APL's future relationship with CSX and NS. APL is particularly concerned over our provision for a limited override of antiassignment clauses in transportation contracts and avers that, at a minimum, it may find it necessary to ask us to clarify this condition. APL indicates that it has sought the opinions of both CSX and NS regarding the contract override condition, but that neither applicant has provided it with a definitive response. APL contends that an extension would not prejudice any party because it does not seek to postpone the control date for the transaction.

CSX replied in opposition to the motion. CSX asserts that APL's motion is vague and not based on a particular position. CSX maintains that, although it received inquiries from APL regarding contractual terms and termination rights under APL's existing contracts with Conrail, the matters raised by APL are not discussed or mentioned in its motion and, because they are essentially contract interpretation issues, they are not within the purview of the Board. According to CSX, there is no ambiguity in the contract override condition inasmuch as Ordering Paragraph 10 of Decision No. 89 provides a very precise statement of the provision.

APL's extension request will be denied. Contrary to APL's claim, we do not find any ambiguity or inconsistency in our provision for a limited override of antiassignment clauses. While we discuss the condition at various places in our decision, there is nothing in the language in those

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[1] In Decision No. 89, we approved, subject to conditions, the applications by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

pages that alters the terms of, or is contrary to, the override condition we formally imposed in this proceeding. See Ordering Paragraph 10, Decision No. 89, slip op. at 175. Although not mentioned in its motion here, it is apparent that APL's underlying position is continued opposition to our resolution of this contract override issue. See Petition to Stay of APL Limited (APL-26) filed July 31, 1998. APL has already made its position clear and it has not demonstrated that it needs an extension of time to further study the impact of our decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The extension request in APL-25 is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

STEPHEN M FONTAINE
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
ONE WILBRAHAM STREET
PALMER MA 01069 US

JOHN R NADOLNY
BOSTON AND MAINE CORPORATION
IRON HORSE PARK
NORTH BILLERICA MA 01862 US

RICHARD B. KENNELLY, JR
CONSERVATION LAW FOUNDATION
62 SUMMER STREET
BOSTON MA 02110 US

JAMES E HOWARD
90 CANAL STREET
BOSTON MA 02114 US

JOHN D CIRAME, ASSISTANT SECRETARY
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPT
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

HON. EDWARD M KENNEDY
UNITES STATES SENATE
2400 JOHN F KENNEDY FEDERAL BLDG
BOSTON MA 02203 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333 US

JOHN K DUNLEAVY
ASSISTANT ATTORNEY GENERAL
133 STATE STREET STATE ADM BLDG
MONTPELIER VT 05633-5001 US

KAREN E SONGHURST
STATE OF VERMONT
133 STATE STREET
MONTPELLIER VT 05633-5001 US

JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

EDWARD J RODRIGUEZ
P.O. BOX 298
67 MAIN STREET
CENTERBROOK CT 06409 US

RICHARD C CARPENTER
1 SELLECK STREET SUITE 210
EAST NORWALK CT 06855 US

MICHAEL E STRICKLAND
NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE
300 LIGHTING WAY
SECAUCUS NJ 07094-1588 US

HONORABLE ROBERT G. TORRICELLI
UNITED STATES SENATE
1 RIVER FRONT PLAZA, 3RD FLOOR
NEWARK NJ 07102 US

J WILLIAM VAN DYKE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

PHILIP SIDO
UNION CAMP CORPORATION
1600 VALLEY ROAD
WAYNE NJ 07470 US

MARTIN T DURKIN ESQ
DURKIN & BOGGIA ESQS
PO BOX 378
71 MT VERNON STREET
RIDGEFIELD PARK NJ 07660 US

TERI LENHART
CONCERNED CITIZENS OF EAST RIVERTON
1220 BANNARD STREET
CINNAMINSON NJ 08077-1802 US

TIMOTHY G CHELIUS
18 N EAST AVENUE
VINELAND NJ 08360 US

LAWRENCE PEPPER, JR
GRUCCIO PEPPER
817 EAST LANDS AVE
VINELAND NJ 08360 US

JOHN F. MCHUGH
MCHUGH & SHERMAN
20 EXCHANGE PLACE 51ST FLOOR
NEW YORK NY 10005 US

ANTHONY BOTTALICO
UTU
420 LEXINGTON AVENUE ROOM 458-460
NEW YORK NY 10017 US

WALTER E ZULLIG JR
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3706 US

ANTHONY P. SEMANCIK
347 MADISON AVENUE
NEW YORK NY 10017-3706 US

JAMES W HARRIS
THE METROPOLITIAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

HONORABLE ALFONSE M. D'AMATO
UNITED STATES SENATE
LEO O'BRIEN OFFICE BUILDING, ROOM 420
ALBANY NY 12207 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE,INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

ANGELO J CHICK JR, LOCAL CHAIRMAN
P O BOX 908
48398 OLD GOOSE BAY ROAD
REDWOOD NY 13679 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS ,COLLINS, & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

HONORABLE ALFONSE D'AMATO
UNITED STATES SENATE
111 W. HURON STREET, ROOM 620
BUFFALO NY 14202 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

ERNEST J IERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

HENRY M. WICK, JR.
WICK, STREIFF, ET AL
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219 US

JOHN A. VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET, PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US

KURT W CARR
BUREAU FOR HISTORIC PRESERVATION
P O BOX 1026
HARRISBURG PA 17108-1026 US

HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

KRISTOPHER MICHAEL KLEMICK
RR#3 BOX 1C1-15
JERSEY SHORE PA 17740-9309 US

BELNAP FREEMAN
BELKNAP FREEMAN
119 HICKORY LANE
ROSEMONT PA 19010 US

D J O'CONNELL
GENERAL CHAIRPERSON UTU
410 LANCASTER AVE STE 5
HAVERFORD PA 19041 US

JOHN J GROCKI
GRA INC
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

HARRY C BARBIN
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

G CRAIG SCHELTER
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATI
2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

WILLIAM R THOMPSON
CITY OF PHILADELPHIA LAW DEPT
1600 ARCH ST 10TH FLOOR
PHILADELPH PA 19103 US

JOHN J EHLINGER JR
OBERMAYER REBMANN MAXWELL & HIPPEL
1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T
PHILADELPHIA PA 19103-1895 US

DAVID BERGER
BERGER AND MONTAGUE, P. C.
1622 LOCUST ST
PHILADELPHIA PA 19103-6305 US

JOHN J COSCIA, EXECUTIVE DIRECTOR
DELAWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

JOHN K. LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTH
1234 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-3780 US

ERIC M HOCKY
GOLLATZ GRIFFIN EWING
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

HON JOSEPH R BIDEN, JR.
UNITED STATES SENATE
844 KING STREET
WILMINGTON DE 19801 US

J E THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

E C WRIGHT
RAIL TRANSPORTATION PROCUREMENT MANAGER
1007 MARKET STREET DUPONT BLDG 3100
WILMINGTON DE 19898 US

FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

MARTIN W BERCOVICI
KELLER & HECKMAN
1001 G ST NW SUITE 500 WEST
WASHINGTON DC 20001 US

JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

BRUCE KNIGHT
NATIONAL CORN GROWERS ASSOCIATION
122 C ST NW SUITE 510
WASHINGTON DC 20001-2109 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND, ET. AL
1331 F STREET N W, 4TH FLOOR
WASHINGTON DC 20004 US

DEBRA L. WILLEN
GUERRIERI, EDMOND & CLAYMAN PC
1331 F STREET N W, 4TH FLOOR
WASHINGTON DC 20004 US

PATRICK R PLUMMER
GUERRIERI EDMOND & CLAYMAN PC
1331 F ST NW
WASH DC 20004 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

GEORGE W MAYO JR
HOGAN & HARTSON L L P
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELTH STREET NW
WASHINGTON DC 20004-1202 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1201 NEW YORK AVE., NW
WASHINGTON DC 20005 US

EDWARD WYTKIND, EXECUTIVE DIRECTOR
LARRY J WILLIS ESQ TRANSP TRADES DEPT AFLCI
1000 VERMONT AVENUE, NW STE 900
WASHINGTON DC 20005 US

KEVIN M SHEYS
OPPENHEIMER WOLFF & DONNELLY & BAYH LLP
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005 US

MARK H SIDMAN
WEINER & BRODSKY,SIDMAN & KIDER
1350 NEW YORK AVE., NW., STE. 800
WASHINGTON DC 20005 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1350 NEW YORK AVENUE NW
WASHINGTON DC 20005 US

PAUL M LAURENZA
OPPENHEIMER WOLFF & DONNELLY & BAYH LLP
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005 US

DANIEL DUFF
AMERICAN PUBLIC TRANSIT ASSOCIATION
1201 NEW YORK AV NW
WASHINGTON DC 20005 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSCHEIN NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C SAYLOR
THE AMERICAN SHORT LINE RAILROAD ASSOCIATION
1120 G STREET, N. W., SUITE 520
WASHINGTON DC 20005 US

CLARK EVANS DOWNS
JONES DAY REAVIS & POGUE
1450 G STREET NW
WASHINGTON DC 20005-2088 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

PAUL H LAMBOLEY
1350 EYE STREET, N.W., STE 200
WASHINGTON DC 20005-3324 US

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

JEFFREY O. MORENO
DONELAN CLEARY WOOD MASER
1100 NEW YORK AVENUE N W, SUITE 750
WASHINGTON DC 20005-3934 US

NICHOLAS J DIMICHAEL
DONELAN CLEARY WOOD & MASER PC
1100 NEW YORK AVENUE N W STE 750
WASHINGTON DC 20005-3934 US

FREDERIC L WOOD
DONELAN CLEARY WOOD & MASER P C
1100 NEW YORK AVENUE NW SUITE 750
WASHINGTON DC 20005-3934 US

KARYN A BOOTH
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

JOHN K MASER III
DONELAN CLEARY WOOD & MASER P C
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

ANDREW P GOLDSTEIN
MCCARTHY SWEENEY HARKAWAY, PC
1750 PENNSYLVANIA AVE NW, STE 1105
WASHINGTON DC 20006 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER. LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

FRANCIS G. MCKENNA
ANDERSON & PENDLETON
1700 K ST NW SUITE 1107
WASHINGTON DC 20006 US

ERIKA Z JONES
MAYER BROWN & PLATT
2000 PA AV NW
WASH DC 20006-1882 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
888 SIXTEENTH ST NW
WASH DC 20006-4103 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAI
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

C MICHAEL LOFTUS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET, NW
WASHINGTON DC 20036 US

HAROLD P QUINN, JR
NATIONAL MINING ASSOCIATON
1130 17TH STREET NW
WASHINGTON DC 20036 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

ROBERT P VOM EIGEN
HOPKINS AND SUTTER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

JAMES P WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

DANIEL J SWEENEY
MCCARTHY SWEENEY & HARKAWAY P C
1750 PENNSYLVANIA AVE NW STE 1105
WASHINGTON DC 20006 US

RICHARD A ALLEN
ZUCKERT SCOUT RASENBERGER
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

STEVEN J KALISH
MCARTHY SWEENEY & HARKAWAY
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006-4502 US

ROBERT G. SZABO
V.NESS FELDMAN
1050 THO JEFFERSON STREET,NW
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHARASCH & GARFINKLE P C
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

JOHN D HEFFNER ESQ
REA CROSS & AUCHINCLOSS
1707 L STREET, NW, STE 570
WASHINGTON DC 20036 US

DAVID H COBURN
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE NW
WASHINGTON DC 20036 US

HELEN M. COUSINEAU
CARLOS RODRIGUEZ & ASSOCIATES
1710 RHODE ISLAND AVENUE, NW
WASHINGTON DC 20036 US

JUDY CALDWELL
OPPNEHEIMER WOLFF & DONNELLY
1020 NINETEENTH ST NW STE 400
WASH DC 20036 US

KEITH G O'BRIEN
REA, CROSS AND AUCHINCLOSS
1707 L STREET, N.W., STE 570
WASH DC 20036 US

ROBERT A WIMBISH ESQ
REA CROSS & AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O'DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

PAUL A CUNNINGHAM
HARKINS CUNNINGHAM
1300 NINETEENTH STREET, NW STE. 600
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE FLORY
1920 N STREET N W, SUITE 800
WASHINGTON DC 20036 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
1750 PENNSYLVANIA AVE N W SUITE 1105
WASHINGTON DC 20036 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

L PAT WYNNS
SUITE 210
1050 - 17TH STREET N W
WASHINGTON DC 20036-5503 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

ARVID E ROACH II
COVINGTON & BURLING
PO BOX 7566
1201 PENNSYLVANIA AVE N W
WASHINGTON DC 20044-7566 US

KEITH A KLINDWORTH
U S DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

THOMAS A. O'BRIEN
US DEPARTMENT OF AGRICULTURE
P O BOX 965456
WASHINGTON DC 20090-6456 US

EILEEN S STOMMES DIRECTOR T&M DIVISION
AGRICULTURAL MARKETING SERVICE USDA
P O BOX 96456
WASHINGTON DC 20090-6456 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

RICHARD E SANDERSON
OFFICE OF FEDERAL ACTIVITIES
US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON DC 20460 US

HON JOHN GLENN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. DAN COATS
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE ALFONSE M D'AMATO
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE J. ROBERT KERRY
UNITED STATES SENATE
WASH DC 20510 US

HON MIKE DEWINE
U S SENATE
WASHINGTON DC 20510 US

HONORABLE BOB GRAHAM
UNITED STATE SENATE
WASHINGTON DC 20510 US

HON. ROSA L DELAURO
U . S. HOUSE OF REPRESENTATIVES
WAHINGTON DC 20510 US

HON. JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. CHARLES ROBB
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON WILLIAM V. ROTH JR
U S SENATE
WASHINGTON DC 20510-0001 US

HON. JOHN W. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

HON CHRISTOPHER J DODD
UNITED STATE SENATE
WASH DC 20510-0702 US

HONORABLE DANIEL P. MOYNIHAN
UNITED STATE SENATE
WASHINGTON DC 20510-0903 US

HONORABLE CONNIE MACK
UNITED STATES SENATE
WASHINGTON DC 20510-0904 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510-1803 US

HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US

HON RICK SANTORUM
UNITED STATES SENATE
WASHINGTON DC 20510-3804 US

HONORABLE JOHN H. CHAFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

HON JACK REED
U S SENATE
WASHINGTON DC 20510-3903 US

SENATOR ROBERT BYRD
UNITED STATES SENATE

WASHINGTON DC 20510-6025 US

HON. LEE N. HAMILTON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PAUL GILMORE
U S HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JESSE L. JACKSON, JR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE LUIS GUTIERREZ
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE DANNY K DAVIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON RALPH REGULA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON SHERROD BROWN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ED TOWNS
U. S. HOUSE OR REPRESENTATIVES
WASHINGTON DC 20515 US

HON LOUISE M SLAUGHTER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHARLES SCHUMER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHRISTOPHER SHAYS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHARLES RANGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON THOMAS MANTON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CAROLYN B MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NITA LOWEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MAURICE HINCHEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

BEN GILMAM
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MICHAEL FORBES
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ELIOT L ENGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON GARY ACKERMAN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BOB WEYGAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON DENNIS J KUCINICH
UNITED STATES HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ED BRYANT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. LOUIS [illegible]. STOKES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TILLIE K FOWLER
US HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK MASCARA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ROBERT MENENDEZ
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HON MARCY KAPTUR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON BOB WISE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MIKE DOYLE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN D. DINGELL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. JOHN J. DUNCAN
U S HOUSE OF REPRESENTATIVESS
WASHINGTON DC 20515 US

HON. JAMES L. OBERSTAR
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM O. LIPINSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. THOMAS C SAWYER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. TOM BLILEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAM GEJDENSON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM J. COYNE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON VIC FAZIO
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON DAVID L HOBSON
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK D. RIGGS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ROBERT G TORRICELLI
UNITED STATES SENATE
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BARBARA B KENNELLY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NANCY JOHNSON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE RONALD V. DELLUMS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN J LAFALCE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTO DC 20515-1305 US

HONORABLE JAMES A. BARCIA
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HON JACK QUINN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3230 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HON PAUL E GILLMOR
HOUSE OF REPRESENTATIVES
1203 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON DC 20515-3505 US

CONG BOB CLEMEMT
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4205 US

HONORABLE TOM DAVIS
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW, ROOM 4102 C-30
WASHINGTON DC 20590 US

JOSEPH R. POMPONIO
FEDERAL RAILROAD ADMIN.
400 7TH ST SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

MITCHELL M. KRAUS
TRANSPORTATION -COMMUNICATIONS INTERNATIONAL
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

JOHN M ROBINSON
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

JOHN F WING CHAIRMAN
CITIZENS ADVISORY COMMITTEE
601 NORTH HOWARD STREET
BALTIMOTE MD 21201 US

LINDA A JANEY J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

GARRET G SMITH
MOBIL OIL CORPORATION
3225 GALLOWS RD RM 8A903
FAIRFAX VA 22037-0001 US

HENRY E. SEATON
7700 LEESBURG PIKE, STE 201
FALLS CHURCH VA 22043 US

PETER Q. NYCE, JR.
U. S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

THOMAS E. SCHICK
CHEMICAL MANUF ASSOC
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

JENNIFER BRAUN
JACKSON & JESSUP
P O BOX 1240
3426 NORTH WASHINGTON BOULEVARD
ARLINGTON VA 22210 US

GERALD W FAUTH III
G W FAUTH & ASSOCIATES INC
116 SOUTH ROYAL STREET
ALEXANDERIA VA 22314 US

KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTAITON
P. O. BOX 1475
RICHMOND VA 23218 US

HONORABLE GEORGE ALLEN
GOVERNOR, COMMONWEALTH OF VIRGINIA
STATE CAPITOL
RICHMOND VA 23219 US

GEORGE A ASPATORE
NORFOLK SOUTHERN CORP
THREE COMMEMERCIAL PLACE
NORFOLK VA 23510 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
P.O.BOX 8817
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

VAUGHN R GROVES
PITTSTON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

TERRELL ELLIS
CAEZWV
P O BOX 176
CLAY WV 25043 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US

WILLIAM T BRIGHT
P O BOX 149
200 GREENBRIER ROAD
SUMMERSVILLE WV 26651 US

FRANK N JORGENSEN
THE ELK RIVER RAILROAD INC
P O BOX 460
SUMMERSVILLE WV 26651 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALIEGH NC 27604-1640 US

E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

PAUL R. HITCHCOCK
CSX TRANSPORTATION LAW DEPARTMENT
500 WATER STREET SC J-150
JACKSONVILLE FL 32202 US

J L RODGERS
GENERAL CHAIRMAN UTU
480 OSCEOLA AVENUE
JACKSONVILLE FL 32250 US

J T REED
GENERAL CHAIRPERSON UTU
7785 BAYMEADOWS WAY STE 109
JACKSONVILLE FL 32256 US

PHILLIP L BELL
ERIE LACKAWANNA RAILROAD CO
PO BOX 1482
TALLAHASSEE FL 32302 US

HONORABLE LAWTON CHILES
OFFICE OF THE GOVERNOR
THE CAPITOL
TALLAHASSEE FL 32399-0001 US

JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPORT TN 37662 US

WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

J R BARBEE
GENERAL CHAIRPERSON UTU
P.O. BOX 9599
KNOXVILLE TN 37940 US

HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

WILLIAM P HERNAN JR GENERAL CHAIRMAN
P O BOX 180
HILLIARD OH 43026 US

F R PICKELL
GENERAL CHAIRPERSON UTU
6797 NORTH HIGH ST STE 108
WORTHINGTON OH 43085 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
30 E BROAD STREET 16TH FLOOR
COLUMBUS OH 43215 US

HONORABLE DEBORAH PRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

HONORABLE JOHN GLENN
U. S. SENATE ATTN: DAN EMERINE
200 N HIGH STREET S-600
COLUMBUS OH 43215-2408 US

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
1238 CASS ROAD
MAUMEE OH 43537 US

ROBERT E GREENBESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

DAVID DYSARD
TMACOG
PO BOX 9508
300 CENTRAL UNION PLAZA
TOLEDO OH 43697-9508 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
R D #2
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

C L LITTLE
UNITED TRANSPORTATION UNION
14600 DETROIT AVE
CLEVELAND OH 44107 US

CLINTON J MILLER III GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

C V MONIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 ONTARIO STREET
CLEVELAND OH 44113 US

CHRISTOPHER C MCCRACKEN
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINETH STREET SUITE 900
CLEVELAND OH 44114-1538 US

DAVID J MATTY
CITY OF ROCKY RIVER
21012 HILLIARD ROAD
ROCKY RIVER OH 44116-3398 US

MICHAEL J GARRIGAN
BP CHEMICALS INC
4440 WARRENSVILLE CTR RD
CLEVELAND OH 44128 US

C D WINEBRENNER
GENERAL CHAIRPERSON UTU
27801 EUCLID AV RM 200
EUCLID OH 44132 US

GARY A EBERT
CITY OF BAY VILLAGE
350 DOVER CENTER ROAD
BAY VILLAGE OH 44140 US

CHARLES ZUMKEHR
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLEY ROAD
AKRON OH 44320 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

RANDALL C. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E KERTH
CHAMPION INTERNAT'L CORP
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

BRAD F HUSTON
CYPRUS AMAX COAL SALES CORP
400 TECHNECENTER DRIVE STE 320
MILFORD OH 45150 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

HONORABLE ROB PORTMAN
U. S. HOUSE OF REPRESENTATIVES
8044 MONTGOMERY ROAD, ROOM 540
CINCINNATI OH 45236 US

THOMAS R RYDMAN PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

MICHAEL P MAXWELL JR
MCHALE, COOK & WELCH
320 N MERIDIAN ST 1100 CHAMBER OF COMMERCE BL
INDIANAPOLIS IN 46204 US

HONORABLE DAN COATS,
UNITED STATES SENATE
1180 MARKET TOWER, 10 WEST MARKET STREET
INDIANAPOLIS IN 46204 US

J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

MICHAEL CONNELLY
CITY OF EAST CHICAGO
4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

HAMILTON L CARMOUCHE, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

HONORABLE PETER J. VISCLOSKY
U. S. HOUSE OF REPRESENTATIVES
215 WEST 35TH AVENUE
GARY IN 46408 US

CARL FELLER
DEKALB AGRA INC
P. O. BOX 127
4743 COUNTY ROAD 28
WATERLOO IN 46793-0127 US

CHRISTOPHER J BURGER, PRESIDENT
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
PO BOX 554
KOKOMO IN 46903-0554 US

WILLIAM A BON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
26555 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

NICOLE HARVEY
THE DOW CHEMICAL COMPANY
2020 DOW CENTER
MIDLAND MI 48674 US

JAMES E SHEPHERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US

LARRY B. KARNES
TRANSPORTATION BUILDING
PO BOX 30050
425 WEST OTTAWA
LANSING MI 48909 US

HON JOHN ENGLER
OFFICE OF THE GOVERNOR
P O BOX 30050
LANSING MI 48933 US

T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BLDG 405 SIXTH AVENUE
DES MOINES IA 50309 US

BYRON D OLSEN
FELHABER LARSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH 4200 FIRST BANK PLACE
MINNEAPOLIS MN 55402-4302 US

LEO J WASESCHA
GOLD MEDAL DIVISON - GENERAL MILLS OPERATION
P.O.BOX 1113
NUMBER ONE GENERAL MILLS BULEVARD
MINNEAPOLIS MN 55440 US

THOMAS R BOBAK
313 RIVER OAKS DRIVE
CALUMET CITY IL 60409 US

GERALD J. VINCI
PRAIRIE GROUP
P. O.BOX 1123
7601 WEST 79TH STREET
BRIDGEVIEW IL 60455 US

RICHARD A GAVRIL
16700 GENTRY LANE NO 104
TINLEY PARK IL 60477 US

WILLIAM F. COTTRELL
ASST. ATTORNEY GENERAL
100 W RANDOLPH ST - 12TH FLOOR
CHICAGO IL 60601 US

CHRISTINE H. ROSSO
IL ASSISTANT ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FLOOR
CHICAGO IL 60601 US

KEVIN BRUBAKER
ENVIRONMENTAL LAW AND POLICY CENTER OF THE MI
203 NORTH LASALLE ST, SUITE 1390
CHICAGO IL 60601 US

WILLIAM C SIPPEL
OPPENHEIMER WOLFF & DONNELLY
180 N STETSON AVE TWO PRUDENTIAL PLAZA 45TH F
CHICAGO IL 60601 US

RICHARD F. FRIEDMAN
INTERNATIONAL PORT DISTRICT (PORT F CHICAGO)
111 W WASHINGTON STREET SUITE 1700
CHICAGO IL 60602 US

RICHARD F. FRIEDMAN, ESQ
EARL L NEAL & ASSOCIATES
111 WEST WASHINGTON STREET, STE 1700
CHICAGO IL 60602-2766 US

EDWARD C MCCARTHY
INLAND STEEL INDUSTRIES INC
30 WEST MONROE STREET
CHICAGO IL 60603 US

ROGER A. SERPE
INDIANA HARBOR BELT RR
175 WEST JACKSON BOULEVARD SUITE 1460
CHICAGO IL 60604 US

SANDRA J. DEARDEN
MDCO CONSULTANTS, INC.
407 SOUTH DEARBORN, SUITE 1260
CHICAGO IL 60605 US

SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

THOMAS F MCFARLAND JR
MCFARLAND & HERMAN
20 NORTH WACKER DRIVE, SUITE 1330
CHICAGO IL 60606-3101 US

MYLES L TOBIN
ILLINOIS CENTRAL RAILROAD
455 NORTH CITYFRONT PLAZA DRIVE
CHICAGO IL 60611-5504 US

CHARLES D BOLAM
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4666 FARIES PARKWAY
DECATUR IL 62525 US

MERRILL L TRAVIS
ILLINOIS DEPT OF TRANSPORTATION
2300 S DIRKSEN PARKWAY RM 302
SPRINGFIELD IL 62703-4555 US

R A GRICE
GENERAL CHAIRPERSON UTU
11017-F GRAVOIS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

IAN MUIR
BUNGE CORPORATION
P O BOX 28500
ST LOUIS MO 63146 US

JOHN JAY ROSACKER
KS, DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

HENRY T DART
PLAINTIFF MANGEMENT COMMITTEE
3748 NORTH CAUSEWAY BLVD SUITE 301
METAIRIE LA 70002 US

MIKE SPAHIS
FINA OIL & CHEMICAL CO.
8350 NORTH CENTRAL EXPRESSWAY, STE. 1620
DALLAS TX 75206 US

DENNIS A. GUTH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
13103 FM 1960 WEST, SUITE 204
HOUSTON TX 77065-4069 US

MICHAEL P. FERRO
MILLENNIUM PETROCHEMICALS, INC.
P O BOX 2583
1221 MCKINNEY STREET SUITE 1600
HOUSTON TX 77252-2583 US

STEVE M COULTER
EXXON COMPANY USA
PO BOX 3272
HOUSTON TX 77253-3272 US

MONTY L PARKER
CMC STEEL GROUP
P O BOX 911
SEGUIN TX 78156 US

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
110 WEST OCEAN BLVD STE C
LONG BEACH CA 90802 US

J D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 360

29337 SERVICE DATE - JULY 23, 1998

This decision will be included in the bound volumes
of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

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.

TABLE OF CONTENTS

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

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]

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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

(continued...)

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, 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

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[4](...continued)
(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 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.

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 (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.

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

[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.

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.

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.

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[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.

[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.

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 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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[18] NYDOT and NYCEDC filed jointly and separately.

[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 Trades Department (TTD),[25] the United Railway Supervisors

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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.

[25] TTD is a department of the American Federation of Labor and Congress of Industrial

(continued...)

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 transactions at issue in the

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[25](...continued)
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
(continued...)

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 are requiring applicants to monitor origins, destinations, and routings for the truck traffic at their intermodal

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[28](...continued)
Conrail s Trackage Agreements.

[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.

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 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

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

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 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

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[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 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.

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 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

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[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.

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

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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.

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 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

[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.

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, 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"):

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

(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 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

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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.

(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"):

(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

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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).

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.

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

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[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).

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 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.

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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).

(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 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 [illegible]ead 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

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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).

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

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[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.

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

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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.

[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

(continued...)

(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 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

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[49](...continued)
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.

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 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

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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.

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 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]

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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), slip op. 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.

[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.

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-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

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[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.

[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.

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 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]

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[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.

[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

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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 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.

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[62](...continued)
in the related filings as a whole, including proposed operations over the Bucyrus connection track, are addressed in the present decision.

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

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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.

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 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-

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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.

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]

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:

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[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 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.

(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 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

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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).

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):

> 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]

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[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.

[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).

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 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).

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[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.

[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.

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.

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 Corporation, Union Pacific

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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.

Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (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.

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.

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[80] The official cite to this decision is Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996), but full pagination of that decision is not yet complete. As a result, we will cite the slip opinion page numbers for that decision throughout this document. UPRR was authorized to take control of the "SP" rail carriers formerly controlled by the Southern Pacific Rail Corporation.

[81] See Rail Service in the Western United States, STB Ex Parte No. 573, and Joint Petition for Service Order, STB Service Order No. 1518 (STB served Feb. 17, 1998) (STB Service Order No. 1518), slip op. at 6-7.

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

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

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 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.

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[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.

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

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).

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[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.

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]

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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, STB Ex

(continued...)

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.

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

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[86](...continued)
Parte No. 575 (STB served Apr. 17, 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.

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 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-

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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.

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]

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

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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.

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, Decision No. 44, slip op. at 145. 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, Decision No. 44, slip op. at 106. 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.

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

[92] See UP/SP, Decision No. 44 (STB served August 12, 1996), slip op. at 145-46.

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 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

[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.

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 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,

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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.

supported by NITL and others, was judicially affirmed. See Association of American Railroads v. ICC, 978 F.2d 737 (D.C. Cir. 1992).

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

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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.

asset classes, we have allocated the acquisition premium based on applicants' planned 58/42% split of Conrail's assets. Our calculations, detailed 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.

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

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[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.

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 Cstar 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 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]

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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).

[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, (continued...)

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 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.

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[103](...continued)
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 Oct. 10, 1991).

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

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

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[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.

[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

(continued...)

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, slip op. at 99, the ICC denied relief to Bunge Corporation, which claimed that it would be harmed solely because the 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.

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[107](...continued)
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, Inc. & Burlington Northern R.R.—Control & Merger—Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Finance Docket No. 32549 (ICC served Aug. 23, 1995) (BNSF), slip op. at 74, 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.

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 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.

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

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 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-

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[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, 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.

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 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,

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[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.

[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.

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 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

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[116] As a general matter, the contracts of those shippers that will be solely served by CSX outside (continued...)

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.

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

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[116](...continued)
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.

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 oeprations 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

[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.

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, slip op. at 17, 94.

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, slip op. at 94, 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.

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[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.

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 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

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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, slip op. at 97.

[121] See UP/CNW, slip. op. 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.

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.

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.

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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.

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 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 352 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 must

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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.

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-a-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.

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,

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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.

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 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

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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.

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 impediments related to additional freight service over the

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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.

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 (ENRSC),[133]

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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.

[133] ENRSC is an ad hoc committee representing businesses located in the New York State

(continued...)

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](...continued)
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, Decision No. 44, slip op. at 106, 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.

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

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[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.

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 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

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

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.

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

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

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

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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.

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 the service date of this decision. 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 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

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[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 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.

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 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.

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[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.

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

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.

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

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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.

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.

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

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[148] CSX/NS-18, Vol. 1. 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.

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 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

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

[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.

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 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

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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).

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.

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

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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

(continued...)

before imposing any such conditions, we would have to study thoroughly the effect of the requested conditions on applicants' freight 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.

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[156](...continued)
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).

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 three efficient routes, one over NS and two over Conrail, and that, after the transaction, NS and CSX 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.

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[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.

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 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, Decision No. 44, slip op. at 170. 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 antiassignment provisions in Gateway's Cahokia/Willows trackage rights agreements would be necessary before that relief could be granted. Applicants

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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.").

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 the effective date of this decision.

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, slip op. at 15-16 & 93-94. 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 this decision, 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 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.

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[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.

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

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 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 the effective date of this decision.

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

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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.

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."

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

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[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.

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 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.

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[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.

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 the service date of this decision, 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:

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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.

> [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 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.

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

[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.

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 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 role 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

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[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.

have accorded to ensure W&LE's continued viability 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.

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

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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.

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.

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.

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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.

[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.

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 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.

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

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 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.

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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, (continued...)

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]

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]

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[178](...continued)
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.

[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.

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 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

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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.

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 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.

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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.

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.

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

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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 Feb. 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.

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 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

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[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.

PJM system have excess capacity,[190] Dickerson, Cha[illegible]oint 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 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

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[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.

[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.

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 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

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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.

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.

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 agreement before a transaction such as this is carried out. If prompt agreement cannot be reached, these matters are subject to binding

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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.

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. 1989).[199] We will resolve them only as a last resort, giving deference to the arbitrator. Specifically, this means that our approval

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[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).

[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.

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 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 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

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[200] See, e.g., UP/CNW, slip op. 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.

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 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

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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).

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.

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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.

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 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	[illegible]9.1	$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 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

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[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.

[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.

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.

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

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[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%

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]

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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 (continued...)

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.

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).

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[208](...continued)
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 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 Oct. 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

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[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).

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 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]

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[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 workable 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.

[214] See UP/SP, Decision No. 44, slip op. at 141.

[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.

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 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]

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[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.

[217] In the Sub-No. 1 docket, we served on July 11, 1997, and published that day in the Federal Register (62 FR 37331), 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 that day in the Federal Register (62 FR 39591-602), 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 FR 39577 (July 23, 1997), we will not publish separate Federal

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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 the effective date of this decision.

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.

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

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[218](...continued)
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.

[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.

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 meet these criteria and that the acquisitions will not be implemented until after the effective date of this decision. 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 the effective date of our decision here.

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

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[221] The trackage rights notices of exemption were filed in: Sub-Nos. 25, 27, 28, 29, 30, 32, 33, and 34.

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 that day in the Federal Register at 62 FR 39577, 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, slip op. 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

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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 in the Federal Register on July 23, 1997 (62 FR 39587). We note, however, that in STB Docket No. AB-290 (Sub-No. 197X), NW now proposes only discontinuance and not abandonment.

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 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 in the Federal Register on July 23, 1997 (62 FR 39587).

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, 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.

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

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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.

[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

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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 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

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[227](...continued)
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.

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 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

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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.

[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.

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 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]

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[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.

[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,

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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 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

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[237](...continued)
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.

[241] Regional and general mitigation for those communities will remain applicable.

[242] These negotiated agreements would substitute for, and supersede, local environmental mitigation.

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 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

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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.

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 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

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[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.

[245] The Final EIS, Chapter 6, "Summary of Safety Integration Plan Comments, Responses, and Analysis" contains more information regarding the MOU.

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]

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

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[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 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.

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 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

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[249] Executive Order No. 12898 of 1994 (EO) directs federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their programs, policies, and activities on minority and low-income populations in the United States. EO 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.

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]

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

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[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.

[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.

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 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 the effective date of this decision.

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.

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[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.

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 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

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[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.

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 (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.

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[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.

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 report 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 twelve 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

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[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

(continued...)

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 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.

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[259](...continued)
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.

[260] See CSX/NS-25, Volume 8B at 110-21.

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 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).

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[261] See CSX/NS-18 at 216-24.

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 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.

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 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

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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).

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.

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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.

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 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 B ffalo 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.

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

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[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.

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. 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]

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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.

[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).

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 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.

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[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.

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.

Vernon A. Williams
Secretary

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

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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.

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.

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),

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[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 Mar. 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 Feb. 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.

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 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]

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[274] B&LE announced at the oral argument (on June 3, 1998) that it was withdrawing its Sub-No. 61 responsive application.

[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, slip op. at 3 n.2 (noting that there are two responsive applicants but only one responsive application).

[276] By letter dated Nov. 25, 1997, Belvidere & Delaware River Railway and the Black River & Western Railroad withdrew their Sub-No. 72 responsive application.

[277] By pleading dated Feb. 25, 1998, Indiana & Ohio Railway Company withdrew its Sub-No. 77 responsive application.

[278] By pleading dated Feb. 23, 1998, Canadian National Railway Company and Grand Trunk Western Railroad Incorporated withdrew their Sub-No. 81 responsive application.

[279] By pleading dated Feb. 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