

SURFACE TRANSPORTATION BOARD

06/08/98

STB FD #33888

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SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 33388

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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

+ + + + +

VOTING CONFERENCE

+ + + + +

MONDAY,

JUNE 8, 1998

+ + + + +

The above-entitled matter came on for  
hearing at 1:00 p.m.

BEFORE:

CHAIRMAN LINDA MORGAN

VICE CHAIRMAN GUS OWEN

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**PRESENT:**

VERNON WILLIAMS	Secretary
DAVID KONSCHNIK	Speaker
JULIA FARR	Speaker
LOUIS MACKALL	Speaker
MELVIN CLEMENS	Speaker
MICHAEL DALTON	Speaker
EVELYN KITAY	Panelist
PAUL MARKOFF	Panelist
MICHAEL REDISCH	Panelist
HENRI RUSH	Panelist

**ALSO PRESENT:**

WALTER ASMUTH	STB Staff
LEN BLISTEIN	STB Staff
LEO CONSTANTINE	STB Staff
WARD GINN	STB Staff
PAUL GRAHAM	STB Staff
MICHAEL MOSKO	STB Staff
PAUL NISHIMOTO	STB Staff
ANDREA RICHARDS	STB Staff
JACK VENTURA	STB Staff

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## P-R-O-C-E-E-D-I-N-G-S

(1:02 p.m.)

SECRETARY WILLIAMS: All parties please be seated and come to order. The voting conference will begin in a minute.

(Whereupon, the foregoing matter went off the record at 1:02 p.m. and went back on the record at 1:06 p.m.)

CHAIRMAN MORGAN: Good afternoon. Thank you for being here again. I hope that all of you had as full a weekend as we had. Perhaps more fun maybe; I don't know. I guarantee you that we will not be here together for as long as we were last week.

At today's voting conference the Board will consider the application of CSX and Norfolk Southern to acquire control of Conrail and divide its assets between themselves.

Last Wednesday and Thursday we held oral arguments in which some 70 parties presented their views on this matter. Today we will discuss with Board staff the issues raised, consider the staff recommendations presented, and then vote on the

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1 recommendations.

2 Before proceeding with the staff  
3 presentation let me emphasize that our deliberations  
4 today represent an important milestone in shaping the  
5 future of the nation's transportation network. The  
6 proposal before us today can be viewed as the next  
7 step in the restructuring of rail service in the  
8 Northeast which began with the creation of Conrail and  
9 evolved further with the sale of Conrail to the  
10 private sector.

11 On a personal note, some 12 years ago as  
12 a staff counsel with the Senate Commerce Committee,  
13 the sale of Conrail was one of my legislative  
14 responsibilities. I feel honored today to have the  
15 opportunity to continue this involvement in this  
16 important rail transportation issue.

17 At the oral argument last week I alluded  
18 to the unprecedented nature of this merger: its size,  
19 its range, the number of parties involved, the number  
20 of private sector agreements that have been reached,  
21 and the handling of the environmental issues involved.

22 But most importantly, what is most

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1       unprecedented about this proceeding is that the  
2       proposal before us, if approved, would inject  
3       competition throughout the East like no other merger  
4       before it has ever done.

5               Because of its broad, pro-competitive  
6       effect, this transaction is supported by thousands of  
7       shippers, hundreds of public officials, dozens of  
8       railroads, many state and local governmental  
9       interests, and various rail employees.

10              Our deliberations today will focus  
11       specifically on the benefits associated with the  
12       merger proposal and the various requests for  
13       additional conditions that have been made by shippers,  
14       railroads, local areas, and rail labor.

15              Our challenge in these deliberations will  
16       be to apply our law reasonably, pragmatically, and  
17       appropriately to ensure that the pro-competitive, pro-  
18       growth, and pro-environment objectives of the  
19       transaction are promoted.

20              In terms of staff presentation I propose  
21       that we adopt the following procedure. Staff will  
22       present an opening statement addressing the applicable

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1 statutory standards and giving an overview of the  
2 issues central to this case.

3 After that presentation, Board members may  
4 ask questions of the staff on that portion. Then the  
5 staff will present its specific recommendations which  
6 will be divided into three parts: competitive  
7 conditions, operational monitoring conditions, and  
8 environmental conditions.

9 Staff will make separate presentations in  
10 each of these areas and Board members may ask  
11 questions of the staff after each area is reviewed.  
12 Following any questions regarding the recommendations,  
13 Board members may present closing remarks and will  
14 vote on those recommendations.

15 After the voting conference, the Board and  
16 its staff will be available to answer general  
17 questions from the media.

18 Vice-Chairman, do you have anything to say  
19 before we begin?

20 VICE-CHAIRMAN OWEN: Just a short comment  
21 here. I'd like to welcome you back again and I'm sure  
22 that we won't be here that long, but this is the day

1 we've all been waiting for, and I for one, have been  
2 looking forward to this day of interaction with our  
3 merger team and its experts.

4 This is a proposed merger, vastly  
5 different from anything that has come before. We all  
6 know the scope of the analysis and the economic and  
7 legal issues that must be considered and then  
8 resolved.

9 Plainly put in the context of this merger,  
10 I am on a quest to determine what is truly in the  
11 public interest, and we have been searching that  
12 record over these last few months.

13 Accordingly, I need to hear from our  
14 experts on whether in fact, this merger will enhance  
15 competition, truly benefit shippers, promote a viable  
16 short line industry, not disproportionately impact  
17 labor, however, increase job opportunities for labor,  
18 and preserve the environment.

19 These are serious issues for us all. I'm  
20 looking forward for an insightful discussion with our  
21 team of experts. Thank you very much.

22 CHAIRMAN MORGAN: Okay. Mr. Konschnik, do



1 you want to begin?

2 MR. KONSCHNIK: Yes. Thank you and good  
3 afternoon, Chairman Morgan, Vice-Chairman Owen. With  
4 me at the table today are, beginning to my immediate  
5 right: Paul Markoff, Michael Redisch, Louis Mackall,  
6 Julia Farr, and Henri Rush.

7 Other merger team members seated in the  
8 first row are: Walter Asmuth, Paul Nishimoto, Mike  
9 Mosko, Andrea Richards, Len Blistein, Jack Ventura,  
10 Mike Dalton, Evelyn Kitay, Mel Clemens, Leo  
11 Constantine, and Paul Graham.

12 Julia Farr, Office of Proceedings chief  
13 counsel and merger team leader, will make the opening  
14 statement on behalf of the team. Ms. Farr.

15 MS. FARR: Good afternoon, Chairman  
16 Morgan, Vice-Chairman Owen.

17 By application filed June 23, 1997,  
18 applicants seek approval for CSX and Norfolk Southern  
19 to acquire control of Conrail and approval of the  
20 division of Conrail's assets by and between CSX and  
21 Norfolk Southern. In addition, applicants have filed  
22 38 related proceedings.



1           These include ten notices of exemption and  
2   12 petitions for exemption relating to construction  
3   projects, a notice of exemption for a joint relocation  
4   projects, a petition for exemption for the transfer of  
5   a line, an application and a petition for exemption  
6   for control of terminal railroads, eight notices of  
7   exemption for overhead trackage rights, and  
8   authorization to abandon, or to discontinue,  
9   operations over four line segments.

10           During the course of the proceeding,  
11   applicants have entered into settlement agreements  
12   with other parties, including over 25 freight and  
13   passenger railroads, as well as numerous shippers,  
14   shipper organizations, and labor organizations.

15           Of significance applicants have reached  
16   agreements with the United Transportation Union -- one  
17   of the largest if not the largest, labor organization  
18   in the rail industry -- and with the National  
19   Industrial Transportation League, the nation's largest  
20   trade association of shippers.

21           The terms of the NIT League settlement  
22   agreement extend beyond traditional conditions that

1 have been imposed by the Board or the ICC in previous  
2 consolidation proceedings.

3 Specifically, the agreement preserves  
4 interchanges and reciprocal switching arrangements,  
5 reduces many switching charges, and provides remedies  
6 for those shippers whose single-line service will  
7 become joint-line service as a result of the  
8 allocation of Conrail lines between CSX and Norfolk  
9 Southern.

10 Comments regarding the proposed  
11 transaction have been filed by numerous additional  
12 parties, including elected officials, government  
13 agencies, shippers, shortline railroads, and labor  
14 organizations.

15 Responsive applications and requests for  
16 imposition of conditions have been filed by freight  
17 and passenger railroads, shipper organizations,  
18 shippers of coal, chemicals plastics, grain, and other  
19 commodities, regional and local governments and  
20 related interests, numerous other protestants, and  
21 labor parties.

22 The application has been endorsed by more

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1 than 2,700 parties, including more than 2,200  
2 shippers, more than 350 public officials, more than 80  
3 railroads, and many states and local governments.

4 The proposed transaction would result in  
5 the restructuring of rail service throughout much of  
6 the Eastern United States. Conrail (which operates  
7 about 10,700 miles of track in the East) has had no  
8 Class I rail competitor throughout much of its service  
9 area since its creation in 1976.

10 CSX (which operates about 18,500 miles of  
11 track) and Norfolk Southern (which operates about  
12 14,300 miles of track) have been vigorous competitors  
13 throughout the Southeast and Midwest. After pursuing  
14 competing bids by which CSX and Norfolk Southern each  
15 sought individually to acquire Conrail, the two rail  
16 carriers reached an agreement to acquire Conrail  
17 jointly.

18 Pursuant to their application, Norfolk  
19 Southern would control about 58 percent of Conrail's  
20 assets while CSX would control about 42 percent.  
21 After the transaction, CSX and Norfolk Southern each  
22 would have over 20,000 miles of rail line, and the



1 planned division of Conrail's assets would create new  
2 competition between these two Class I railroads in  
3 many parts of the Eastern United States where only  
4 Conrail served today.

5 The statutory provisions that apply to  
6 this proceeding are codified at 49 U.S.C. 11321  
7 through 26. The statute clearly states that the  
8 "single and essential standard of approval" is that  
9 the Board find the transaction "to be consistent with  
10 the public interest".

11 To determine the public interest the Board  
12 must balance the benefits of the merger against any  
13 competitive harm that cannot be mitigated by  
14 conditions. This statutory mandate requires the Board  
15 to balance efficiency gains against competitive harm.

16 After analyzing the record and hearing the  
17 parties' oral arguments presented on June 3<sup>rd</sup> and 4<sup>th</sup>,  
18 the team believes that the proposed control  
19 transaction, subject to certain mitigating conditions  
20 that we are recommending, will clearly be in the  
21 public interest, and that any remaining competitive  
22 concerns will be heavily outweighed by the positive

1 effects and benefits of the merger.

2 We believe that many of these benefits  
3 will be passed through to shippers in terms of lower  
4 rates and better service. To the extent protestants  
5 have raised competitive or other concerns, we have  
6 addressed them with conditions where appropriate.

7 Some of the issues that the team has  
8 examined include challenges involving what is referred  
9 to as the acquisition premium, challenges involving  
10 vertical competition and the one-lump theory, requests  
11 to be served by both CSX and Norfolk Southern,  
12 requests to restore competition that existed prior to  
13 the formation of Conrail more than 20 years ago,  
14 claims of adverse impact from losing single-line  
15 service, issues involving shipper contracts and the  
16 anti-assignment clauses, and issues involving  
17 shortline railroads.

18 Several protestants have argued that the  
19 transaction is contrary to the public interest because  
20 CSX and Norfolk Southern have paid a large  
21 "acquisition premium" for the Conrail properties.

22 They have argued that both of these



1 carriers will be forced to raise their rates to  
2 captive shippers in order to make up their revenue  
3 shortfall and finance this investment.

4 We believe that these two carriers should  
5 have no difficulty in meeting their financial  
6 obligations without raising rates to captive shippers.

7 We agree with DOT's statement that, "it  
8 appears that each [applicant] will have sufficient  
9 resources to repay the acquisition debt even if they  
10 realize no traffic gains or operational cost savings  
11 and even if the projected rate compression takes  
12 place".

13 Moreover, both CSX and Norfolk Southern  
14 should ultimately be financially stronger because of  
15 the synergies that the merger permits. And those two  
16 new systems together should be more financially  
17 healthy, more efficient and more competitive than were  
18 the three carriers that previously provided service in  
19 the East.

20 In sum, we believe that the purchase price  
21 agreed to by these commercially sophisticated  
22 railroads represents the best evidence of the current



1 market value of these properties.

2 The most important public benefit  
3 resulting from the transaction will be a substantial  
4 increase in competition by allowing both CSX and  
5 Norfolk Southern to serve where only Conrail served  
6 before. This is of such a magnitude that we consider  
7 it to be a new dimension in rail merger proposals when  
8 compared to those previously reviewed by either the  
9 Board or the ICC.

10 The team views this as the most positive  
11 element of the transaction before you. This  
12 transaction will bring new competition to shippers in  
13 such markets as Southern New Jersey/Philadelphia,  
14 Northern New Jersey, Detroit, Ashtabula, and the  
15 Monongahela coalfields. Applicants estimate that \$700  
16 million worth of traffic per year will receive new  
17 two-carrier competition.

18 Applicants have demonstrated that they  
19 should be able to achieve quantifiable public  
20 benefits, including operating cost savings, logistics  
21 savings, avoided highway maintenance costs, and other  
22 public benefits, of approximately one billion dollars

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1 annually after the third year following completion of  
2 the acquisition.

3 These include \$562.6 million in operating  
4 efficiencies and cost savings, \$340.1 million in  
5 shipper logistics savings and competitive pricing  
6 benefits, and \$95.5 million in highway maintenance  
7 benefits resulting from fewer trucks being operated  
8 over public highways.

9 Given the substantial savings predicted,  
10 which we have examined and have found generally to be  
11 reasonable projects, neither CSX nor Norfolk Southern  
12 should have any difficulty financing the fixed charges  
13 resulting from the acquisition.

14 In fact, the transaction should ultimately  
15 result in improved financial ratios for the major  
16 Eastern railroads, and should result in railroad  
17 efficiencies that will get passed along to shippers.

18 The existing CSX and Norfolk Southern  
19 systems will largely connect end-to-end with the  
20 portions of Conrail that each acquiring applicant will  
21 operate. It has been our experience that end-to-end  
22 restructurings of this kind rarely result in any



1 diminished competition.

2           Rather, CSX and Norfolk Southern will be  
3 able to offer new and efficient single-line service in  
4 competition with motor carriers and with each other to  
5 thousands of shippers that only received joint-line  
6 service before.

7           This will permit these two carriers to  
8 divert a significant amount of traffic from the  
9 nation's highways, which will result in substantial  
10 new business for them and net environmental benefits  
11 in terms of reduced air pollution and highway traffic  
12 congestion.

13           The transaction also should lead to  
14 improved service and reduced transit times for  
15 thousands of shippers throughout the Eastern United  
16 States. Moreover, because of these business  
17 opportunities, CSX and Norfolk Southern plan to make  
18 substantial new investments in improving rail  
19 infrastructure: CSX plans to invest \$488 million  
20 while Norfolk Southern plans to invest \$729 million.

21           In fact, several line construction  
22 projects that the Board previously authorized are



1 already well underway. These important public  
2 interest benefits of increased competition, new  
3 single-line routes, reduced highway traffic, and  
4 increased capital investment in needed facilities, are  
5 largely uncontested.

6 We believe that the terms of the NIT  
7 League settlement agreement have addressed many of the  
8 broad concerns raised in this proceeding. We are  
9 recommending that the Board further expand several  
10 provisions of the NIT League agreement such as the  
11 oversight provision, the reciprocal switching  
12 provision, and the relief for those losing single-line  
13 service.

14 We also are recommending only a partial,  
15 temporary grant of applicants' request that we  
16 override the anti-assignment clauses that may appear  
17 in some shipper contracts.

18 As for shortline interests, we are  
19 recommending that the Board give shortline interests  
20 protections similar to those afforded shippers,  
21 including: preservation of a second Class I rail  
22 carrier connection, preservation of build-out options,

1 prevention of expansion of contractual blocking  
2 provisions, extending to shortline railroads the same  
3 relief afforded shippers by the single-line to joint-  
4 line section of the NIT League agreement, and the  
5 reciprocal switching section of the NIT League  
6 agreement where shortline railroads paid that charge  
7 to Conrail.

8 We will discuss the details later on in  
9 our presentation of the team's final recommendations.

10 In addition to these general conditions,  
11 we are recommending mitigating conditions to  
12 ameliorate specific competitive harms in the Northeast  
13 and Midwest regions, as well as to ameliorate specific  
14 harms raised by certain passenger and freight  
15 railroads, coal shippers, labor parties, environmental  
16 interests, and other protestants.

17 In light of the NIT League settlement  
18 agreement and other relief being recommended, we do  
19 not recommend granting additional requests for broad  
20 conditions. We do recommend however, an expanded 5-  
21 year oversight which addresses the request of several  
22 organizations, such as the Chemical Manufacturers'



1 Association, the Society of Plastics Industry, the  
2 American Short-Line Railroad Association, and Regional  
3 Railroads of America, as well as many individual  
4 parties for post-implementation oversight conditions  
5 to monitor the effect of the transaction on their  
6 industries or interests.

7 Other specific requests for conditions  
8 will be addressed shortly as part of our specific  
9 recommendations.

10 Before I conclude I would like to  
11 highlight the extensive environmental review  
12 undertaken by the Board's Section of Environmental  
13 Analysis (or SEA) in this proceeding that has also  
14 resulted in a number of privately negotiated  
15 agreements addressing the parties' environmental  
16 concerns.

17 The National Environmental Policy Act  
18 requires that the Board take environmental  
19 considerations into account in its decision-making.  
20 Under Board regulations, an Environment Impact  
21 Statement (or EIS) normally is not required for merger  
22 and acquisition cases, but rather the more limited



1 Environmental Assessment generally is sufficient.

2 In this case however, a full EIS was  
3 prepared in view of the nature and scope of the  
4 environmental issues, which involved 44,000 miles of  
5 rail line in 24 states and the District of Columbia,  
6 and include issues relating to passenger rail  
7 transportation and hazardous materials transport.

8 Moreover, in past mergers, neither the ICC  
9 nor the Board was called upon to address plans of  
10 applicants for safe integration of rail systems.  
11 Based on comments from the Federal Railroad  
12 Administration, the Board required applicants in the  
13 proposed Conrail acquisition to file detailed Safety  
14 Integration Plans to help assure safe implementation  
15 of this operationally complex transaction.

16 Accordingly, the Board's SEA staff  
17 conducted an extensive review with public input to  
18 evaluate the potential environmental impacts of this  
19 transaction, and for the first time in an  
20 environmental review considered safety integration  
21 issues.

22 Of the 1,022 rail line segments that the

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1 SEA staff evaluated, they found that 201 would  
2 experience reduced train traffic, 532 rail line  
3 segments would experience no change in train traffic,  
4 and the remaining 289 rail line segments would face  
5 increased train traffic.

6 On May 22, 1998, the SEA staff issued a  
7 Final EIS recommending imposition of certain  
8 environment mitigation conditions which would affect  
9 numerous communities in 19 states and the District of  
10 Columbia. A more detailed discussion of the  
11 environmental review process and recommended  
12 mitigating conditions will be presented by SEA staff.

13 In conclusion, the team finds that the  
14 merger benefits outweigh any competitive concerns of  
15 the transaction, and the conditions we are  
16 recommending will effectively mitigate the competitive  
17 harms of the merger while preserving its benefits.

18 Attorney Louis Mackall will be presenting  
19 the team's recommendations as to the primary  
20 application, broad conditions, and specific  
21 conditions. Director Mel Clemens of the Office of  
22 Compliance and Enforcement will be presenting the



1 team's recommendation regarding Operational  
2 Monitoring. And project manager Michael Dalton of the  
3 Section of Environmental Analysis will be presenting  
4 the team's recommendations as to environmental  
5 mitigating conditions proposed in the Final EIS.

6 To facilitate the discussion of issues and  
7 questions by the Board, the panel of team members  
8 seated at this table as well as some seated in the  
9 first row behind us, will be available to discuss any  
10 questions that the Board has concerning legal and  
11 economic non-environmental issues.

12 And then we will change the panel of team  
13 members for discussion and questions regarding the  
14 Operational Monitoring Plan and Environmental Issues.

15 Before Mr. Mackall proceeds, we are  
16 prepared to address your questions on the team's  
17 overall recommendations at this time.

18 CHAIRMAN MORGAN: Thank you very much, Ms.  
19 Farr. Let me just ask a couple of general questions  
20 if I might. First of all with respect to benefits, is  
21 there any dispute on the record as it relates to the  
22 benefits that you have cited in your document?



1 MS. FARR: No, and I'll let Michael  
2 Redisch elaborate more on that.

3 MR. REDISCH: The quick answer is no.  
4 Would you like me to expand on that?

5 CHAIRMAN MORGAN: If you wish.

6 MR. REDISCH: The applicants have put  
7 forward a plan; they've explained what savings they  
8 project over the next four years. And I really would  
9 like to emphasize that rail mergers are a massive  
10 undertaking as we have all become aware, and the  
11 benefits that we are discussing here are not benefits  
12 that are easily derived nor quickly come by.

13 They would be available in what the  
14 applicants referred to as the normal year, which is  
15 the third year after they begin the integration of the  
16 two rail systems.

17 The savings that they project for their  
18 own systems because of expanded service and reduced  
19 interchanges because of creation of new competition  
20 and new opportunities for shippers that will have  
21 rail/truck options that were not available prior to  
22 this merger; the savings to those of us who drive on

1 the highway and won't have to fight those trucks on  
2 the Beltway anymore, the million truck trips a year  
3 that are projected to move from the highways to rail  
4 -- all those have not been contested by any party and  
5 the staff has accepted it.

6 CHAIRMAN MORGAN: Thank you. Let me move  
7 to another general area and that is, additions to the  
8 NIT League agreement. Why is the staff recommending  
9 the additions to the NIT League agreement that you are  
10 recommending?

11 MS. FARR: I'll let Louis Mackall answer  
12 this question.

13 MR. MACKALL: Well, the first addition that  
14 we made was to expand the oversight period from three  
15 to five years. We feel that that's really necessary  
16 to let us know how this merger is going and to allow  
17 us to take care of problems that might arise.

18 It's been our experience that monitoring  
19 is very helpful in making sure that problems can be  
20 addressed when they do come up.

21 As far as reciprocal switching, the NIT  
22 League Agreement does protect Conrail switches that



1 were available to CSX and NS but not the other way  
2 around. That's one of the fairly major expansions  
3 that we made.

4 Michael, do you want to add?

5 MR. REDISCH: Sure. There were certain  
6 protections that the NIT League agreement had offered  
7 shippers, and the team believed that those protections  
8 should be offered where applicable, to shortline  
9 railroads as well -- to the Class II carriers. They  
10 were the typical switching elements of the NIT League  
11 agreement.

12 And the remedies that are offered to  
13 shippers and other shortlines whose further movements  
14 on a Class I railroad would become movements on two  
15 Class I railroads instead of movements on one Class I  
16 railroad.

17 CHAIRMAN MORGAN: Thank you. With respect  
18 to the acquisition premium -- and I think Mr. Redisch  
19 would be the one to answer this -- the claim is that  
20 because of the price of this merger proposal, the  
21 carriers involved will necessarily need to raise their  
22 rates on captive shippers and that the premium being



1 paid for this transaction will increase the asset base  
2 and have the net effect of ultimately raising rates.

3 Would you walk through that with us?

4 MR. REDISCH: Sure. We carefully  
5 considered a number of related arguments in this  
6 regard. There are some parties who feel that the new  
7 financial pressures from the acquisition debt will  
8 simply force the carriers to raise rates, and as Ms.  
9 Farr has said, we are in agreement with the Department  
10 of Transportation that even under what loosely we call  
11 a worst-case scenario, DOT has said it appears that  
12 each applicant will have sufficient resources to repay  
13 the debt in question, even if they realize no  
14 trafficking or operational cost savings, and even if  
15 the projected rate compression takes place.

16 That would be the rate compression that  
17 they themselves, are engendering by bringing new  
18 competition to areas that previously had exclusive  
19 service from Conrail.

20 But other parties are concerned, not over  
21 whether they will feel pressure to do so, but whether  
22 they will have the opportunity to raise rates because

1 of the impact that this acquisition and the accounting  
2 rules adopted by the ICC and endorsed by this Board,  
3 would affect protections that are offered captive  
4 shippers.

5 The acquisition premium will in fact, flow  
6 into the investment base of these firms under purchase  
7 accounting rules that was adopted by the Interstate  
8 Commerce Commission based on recommendations by the  
9 Rail Accounting Principles Board in conformance with  
10 GAAP, the generally accepted accounting principles.

11 It's been a curious study for the staff to  
12 go back into these historic moments because those were  
13 the days when railroads were paying less than book  
14 value for other railroads.

15 And the group that had brought the ICC to  
16 court back then was of course, the AAR who felt this  
17 would lead to a downward rate spiral, and the group  
18 that supported the ICC back then were shipper groups,  
19 particularly the National Industrial Traffic League  
20 which filed an amicus brief on the ICC's behalf.

21 We continue to believe that the ICC got it  
22 right and has been consistent throughout this process,



1 even as railroads and shippers had switched sides on  
2 this issue now that the acquisition values are higher  
3 than book values.

4 What the course said when it approved the  
5 ICC's purchase accounting rules was, Congress has  
6 required the ICC to prescribe expense and revenue  
7 accounting and reporting requirements consistent with  
8 generally accepted accounting principles, and to  
9 promulgate such rules pursuant to accounting  
10 principles established by the Railroad Accounting  
11 Principles Board. In the rule before us, the ICC did  
12 just that.

13 But there's more to it than this, and we  
14 really have given quite a bit of thought to this issue  
15 because it's been raised by so many of the parties in  
16 this proceeding and elsewhere. Many of the parties  
17 tend to disregard the benefits that will accrue to the  
18 applicants as a result of this merger if their  
19 projections are met with respect to operational cost  
20 savings and new traffic.

21 And the net effect on revenue adequacy  
22 calculations for both CSX and Norfolk Southern will



1 essentially be zero; that is, their return on  
2 investment will be the same in a normal year as it is  
3 today.

4 With respect to the jurisdictional  
5 threshold, which is of concern to many captive  
6 shippers -- that's the threshold that Congress has set  
7 at 180 percent of variable cost, which we call URCS  
8 variable cost for the Uniform Rail Costing System.  
9 There is an element in that cost that is a return on  
10 investment -- about 20 percent of URCS variable cost  
11 as a return on investment.

12 And we have projected that with no merger  
13 synergies at all, the variable cost thresholds would  
14 rise by about 4.9 percent on CSX and about 7.2 percent  
15 on Norfolk Southern. Some of the protestants have  
16 felt they would rise by quite a bit more, but they  
17 made a number of numerical mistakes.

18 The key was that they assumed that the  
19 applicants would flow this increase in book value  
20 proportionately into all their asset accounts. That's  
21 not what railroads do when they purchase other  
22 railroads. They can't write off the value of

1 equipment, which appears 100 percent in our -- you  
2 can't convince Price Waterhouse that a 5-year-old  
3 locomotive is worth twice as much as it is because  
4 it's not.

5 It has a market value, but the real  
6 property investment which was quite depressed because  
7 these are the historic book values of Conrail when it  
8 was taken over in the private sector after the  
9 bankruptcies in the East. So those were quite low.  
10 And most of the acquisition premium will flow into  
11 those property accounts and they only flow half of  
12 that amount into URCS. So that's why our numbers tend  
13 to be quite a bit less than the numbers that some of  
14 the parties have calculated on this record.

15 And then finally, we took a look at what's  
16 been happening to URCS' cost over time to see where  
17 this five percent or seven percent increase would be.  
18 And we found as we suspected, that the many  
19 productivity gains the railroads have achieved since  
20 1980 have flow fairly rapidly into our costing system.

21 So if you looked at -- and we did -- hauls  
22 of varying length and by all commodity types since



1 1985, and you ask what the URCS' variable cost per  
2 carload was, you will see in every instance, the same  
3 movement.

4 We're not talking about a different  
5 movement, we're not talking about different ownership  
6 of cars. The same movement had lower URCS' costs in  
7 1996 than it did in 1985 -- without any adjustment for  
8 inflation. The adjustment inflation has been  
9 declining by about three percent per year.

10 So in context then, this premium that  
11 we're talking about would represent about two or three  
12 year's worth of the productivity gain that railroads  
13 have flowed into the URCS' costing system, and that  
14 had been reflected in the thresholds and protections  
15 that Congress and this Board have offered captive  
16 shippers.

17 It's a long answer to a complex question.

18 I'm sorry --

19 CHAIRMAN MORGAN: Well, let me summarize -  
20 - tell me if I've got it. First of all, with respect  
21 to the asset base and how that's calculated, your  
22 conclusion is that that's the right way to go; we've



1       been doing it the right way, we'll continue to do it  
2       the right way.

3               MR. REDISCH: Correct.

4               CHAIRMAN MORGAN: That's point number one.  
5       Point number two, the cost reduction synergies that  
6       would be associated with this transaction would flow  
7       back into these numbers so that there would be no net  
8       effect on the rates as a result of the asset base from  
9       this transaction. Is that second point --

10              MR. REDISCH: Yes. It would be entirely  
11       correct with respect to revenue adequacy. There may  
12       be some de minimis effect with respect to the  
13       jurisdictional threshold.

14              CHAIRMAN MORGAN: And that even without  
15       the synergies associated with the transaction there  
16       would be little effect?

17              MR. REDISCH: Correct.

18              CHAIRMAN MORGAN: And that finally, from  
19       a financial perspective, I take it the feeling of the  
20       staff is that the financial aspects of this deal would  
21       not necessitate the carriers raising rates on captive  
22       traffic?

1 MR. REDISCH: Yes, again.

2 CHAIRMAN MORGAN: Thank you.

3 VICE-CHAIRMAN OWEN: With regard to the  
4 vertical competition, the integration seems to be very  
5 real here as a whole. I notice there's only 60 miles  
6 -- excuse me. I keep forgetting to push this little  
7 button here.

8 Going back, vertical competition and  
9 integration is very real in this particular  
10 transaction as such. But inasmuch as there was only  
11 60 miles of line scheduled for abandonment, do you  
12 anticipate greater mileage or proportion of it being  
13 abandoned at a later date, or do you think it's  
14 totally going to be utilized out of a policy, or  
15 10,700 miles?

16 MR. MACKALL: It doesn't seem -- I would  
17 respond -- it doesn't seem as though the operating  
18 plan really contemplates further abandonments, and  
19 there's very little overlap that's -- there's very  
20 little track here that's made redundant. And this is  
21 a very slight mileage here -- the 60 miles that's  
22 being abandoned. It's very low for a major merger



1 like this.

2 VICE-CHAIRMAN OWEN: One other question  
3 and maybe it should be after you get into your  
4 presentation, Mr. Mackall. I would like to have an  
5 expansion or an elaboration upon the shortline benefit  
6 as you see it and as the team sees it. And so would  
7 you care to go into your presentation at this time?

8 MR. MACKALL: If there are no further  
9 questions.

10 VICE-CHAIRMAN OWEN: Oh, she's not  
11 finished yet.

12 CHAIRMAN MORGAN: I just wanted to follow-  
13 up with Mr. Redisch for one moment. With respect to  
14 the oversight condition that the staff is  
15 recommending, to what extent will this issue of rates  
16 as it relates to the subject you and I were just  
17 discussing, will be looked at in the context of this  
18 general matter?

19 MR. REDISCH: Well, the very issues that  
20 I've discussed -- how this merger will affect  
21 calculation of revenue adequacy and of the  
22 jurisdictional threshold -- we will recommend be



1 incorporated in the Board's oversight in this  
2 proceeding.

3 CHAIRMAN MORGAN: Thank you. Now you may  
4 proceed, Mr. Mackall.

5 MR. MACKALL: Good afternoon, Chairman  
6 Morgan and Vice-Chairman Owen. I would like to echo  
7 what Julia Farr has said; that we are very pleased to  
8 have the opportunity to recommend that the Board  
9 approve this application.

10 The transaction should yield substantial,  
11 competitive benefits throughout much of the Eastern  
12 United States, allowing both CSX and NS to serve at  
13 many locations where only Conrail served before.

14 It should also yield almost a billion  
15 dollars a year in quantifiable public benefits,  
16 beginning three years from the completion of the  
17 acquisition of Conrail.

18 I'm going to go through a number of  
19 particular recommendations we're making, and I beg  
20 your patience because it's fairly long.

21 The first item of business is the embraced  
22 proceedings in this case. We're recommending that the

1 Board approve the 38 embraced proceedings which  
2 include: authorizations relating to 22 construction  
3 projects to carry out applicants' operating plans;  
4 various trackage rights to preserve two railroad  
5 competition in certain areas; and certain limited  
6 abandonment requests covering about 60 miles of track.

7 We're also recommending that the Board  
8 impose the NIT League settlement agreement with  
9 certain modifications that we've already discussed  
10 somewhat. That agreement requires CSX and NS  
11 immediately to begin coordinating with shippers  
12 through a Conrail Transaction Council, and to complete  
13 their computerized information systems and obtain  
14 labor implement agreements before Day 1.

15 Day 1 which we'll be referring to quite a  
16 bit in this hearing, is the date NS and CSX actually  
17 begin integrating Conrail into their respective rail  
18 systems.

19 The NIT League agreement calls for carrier  
20 reporting and Board oversight, and creates certain  
21 safeguards for shippers who have contracts with  
22 Conrail, who use facilities that will become



1 incorporated within Shared Asset Areas, who use  
2 reciprocal switching provided by Conrail, or will have  
3 Conrail single-line service replaced by CSX/NS joint-  
4 line service.

5 Now as I said, we're recommending several  
6 modifications to the NIT League agreement.  
7 Specifically, we're recommending expansion of the 3-  
8 year oversight to five years; we're recommended  
9 expansion of the section affording remedies for  
10 shippers whose pre-transaction single-line Conrail  
11 service will become post-transaction joint-line CSX/NS  
12 service.

13 What we're doing is recommending that  
14 these remedies apply to and benefit, Class II rail  
15 carriers at the option of the Class III carrier.

16 We're recommending expansion of the  
17 reciprocal switching provisions to require  
18 preservation of switching agreements in both  
19 directions -- NS and CSX over Conrail and Conrail over  
20 NS and CSX. Similarly, we're recommending expansion  
21 of the reciprocal switching provisions to Class III  
22 railroads that pay switching charges to Conrail.



1           One of the items that was very important  
2           in the two days of hearings we've had was the request  
3           by the applicants to override certain anti-assignment  
4           clauses in shipper contracts. We're recommending that  
5           the Board restrict its approval of applicants'  
6           override proposal so that anti-assignment clauses in  
7           shipper contracts would only be overridden as follows.

8           Applicants may override anti-assignment  
9           clauses in non-assignable shipper contracts and assume  
10          the terms of the those contracts but only for a period  
11          of 180 days from Day 1.

12          Applicants should be required to give 14  
13          days prior notice to all shippers and the Board of the  
14          date being designated as Day 1.

15          And finally, after 180 days, if the  
16          unassignable contract has not already expired, the  
17          shipper may elect to continue the contract until its  
18          expiration under the same terms with the same carrier,  
19          or without making any showing -- such as the NIT  
20          League agreement requires now for changing service  
21          under contracts -- the shipper may terminate the  
22          contract provided it gives 30 days written notice to

1 the carrier serving it.

2 The applicants have recently filed an  
3 application requesting that we give immediate access  
4 to contracts. And we're recommending that the Board  
5 immediately issue a decision granting applicants'  
6 motion to modify the protective order to allow CSX and  
7 NS to examine Conrail contracts.

8 We think this action is necessary to allow  
9 the applicants to work out the details as much in  
10 advance as possible of Day 1, to permit a smooth  
11 transition.

12 We further recommend that the Board  
13 require applicants to adhere to their representations  
14 at oral argument and in their proffered conditions to  
15 protect the contractual terms of APL Limited from  
16 disclosure to CSX's water carrier and intermodal  
17 affiliates.

18 Those are the general conditions we're  
19 recommending and now I'll turn to ones that affect  
20 particular regions.

21 With regard to service East of the Hudson,  
22 we recommend that the Board impose a condition

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1 requiring CSX to cooperate with the New York interests  
2 in studying the feasibility of upgrading cross harbor  
3 float and tunnel operations to facilitate cross harbor  
4 movements and alleviate motor vehicle traffic  
5 congestion and air pollution in New York City.

6 Specifically, they should participate in  
7 New York City's Cross Harbor Freight Movement Major  
8 Investment Study. We further recommend that the Board  
9 oversee these issues under its 5-year monitoring  
10 program.

11 The second recommendation for New York:  
12 we recommend the Board impose a condition requiring  
13 CSX to negotiate an agreement with CP to permit either  
14 haulage rights not restricted as to commodity or  
15 geographic scope, or unrestricted trackage rights over  
16 CSX's line from Fresh Pond (in Queens) to Selkirk  
17 (near Albany), under terms agreeable to the parties,  
18 taking into account the investment that needs to  
19 continue to be made to the line.

20 If the parties have not reached agreement  
21 within 60 days, the Board should initiate a proceeding  
22 to resolve this issue.

1           We recommend also that the Board require  
2 CSX to offer to the City of New York to establish a  
3 committee of the development of rail traffic to and  
4 from the City, with particular emphasis on the Hudson  
5 Line, as set forth in applicants' list of proffered  
6 conditions.

7           Next, we recommend that the Board require  
8 CSX to discuss with Providence and Worcester the  
9 possibility of expanded P&W service over trackage or  
10 haulage rights from Fresh Pond to New Haven,  
11 Connecticut, focusing on operational and ownership  
12 impediments related to service over that line.

13           Finally, we recommend that the Board  
14 impose a condition requiring applicants immediately to  
15 begin monitoring origins, destinations, and routings  
16 for the truck traffic at their intermodal terminals in  
17 Northern New Jersey and in Massachusetts.

18           The purpose of the study is to permit the  
19 Board to determine the accuracy of its assessment that  
20 the transaction will not result in substantial  
21 increased traffic over the George Washington Bridge.

22           The next area of concern is



1 Buffalo/Niagara Falls. The first condition: we  
2 recommend that the Board find that the \$250 maximum  
3 reciprocal switching charge negotiated as part of the  
4 NIT League agreement should be applied to certain  
5 points in the Niagara Falls area where Conrail  
6 recently replaced its switching charges with what it  
7 refers to as equivalent "line haul" moves and charges.

8 Next, we recommend that the Board require  
9 that CSX's existing trackage rights over the Buffalo  
10 Creek line be transferred to Norfolk Southern.

11 We recommend that the Board initiate a 3-  
12 year rate study to assess whether Buffalo-area  
13 shippers have been subjected to higher rates because  
14 of this transaction.

15 We recommend that the Board require CSX to  
16 meet with regional and local authorities in the  
17 Buffalo area to establish a committee for development  
18 of rail traffic to and from the Buffalo area.

19 We recommend that the Board require CSX to  
20 adhere to its agreements with CN and CP providing for  
21 lower switching fees in the Buffalo area.

22 Finally, with regard to Buffalo, we

1 recommend that the Board hold CSX to its  
2 representations regarding investment in new  
3 connections and upgraded facilities in the Buffalo  
4 area.

5 Moving on to Rochester, we recommend that  
6 the Board grant the responsive application filed by  
7 Livonia, Avon, and Lakeville Railroad to the extent  
8 necessary, to permit it to cross Conrail's Genesee  
9 Junction Yard to forge a new connection with NS via a  
10 short movement on the Rochester and Southern Railroad.

11 This should give an option for RS/NS  
12 service instead of CSX/NS interline movements for rail  
13 customers of this carrier.

14 Moving on to the Chicago Switching  
15 District, we recommend that the Board require that  
16 applicants adhere to their representations that IHB  
17 will continue to be managed as a neutral switching  
18 carrier.

19 Also, as part of the 5-year monitoring  
20 that we're recommending, we recommend that the Board  
21 carefully monitor this particular area.

22 Turning now to individual railroad, port,

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1 and shipper issues. With regard to Amtrak and  
2 passenger railroads, as requested by Amtrak and  
3 applicants in their joint settlement agreement, we  
4 recommend that the Board monitor transaction-related  
5 impacts on Amtrak's passenger operations as part of  
6 the general 5-year oversight.

7 Pursuant to DOT's request, we also  
8 recommend that the Board impose a general, regional  
9 rail passenger monitoring condition as part of its  
10 oversight. The Board should indicate that it expects  
11 applicants to carry through on the commitment to  
12 continue to negotiate with commuter authorities such  
13 as Metro-North and Virginia Railway Express on issues  
14 of mutual importance.

15 With regard to shortline, we recommend  
16 that the Board prevent contractual blocking  
17 provisions. These are provisions that make it more  
18 costly for shortline carriers to route over Class I  
19 carriers other than those from which they have been  
20 spun off.

21 We recommend preventing those provisions  
22 from having greater force as a result of this

1 transaction. We have already recommended that the  
2 Board extend to shortline carriers the single-line to  
3 joint-line and reciprocal switching relief of the NIT  
4 League agreement.

5 The New England Central Railroad. We  
6 recommend that the Board require that applicants grant  
7 NECR trackage rights between Palmer, Massachusetts and  
8 Springfield, Massachusetts, to facilitate joint-line  
9 movements with its affiliate, Connecticut Southern  
10 Railroad, to ensure NECR's continued viability in  
11 providing service to its shippers and providing rail  
12 facilities for Amtrak.

13 Illinois Central Railroad. We recommend  
14 that the Board impose a condition directing CSX and  
15 Illinois Central to negotiate a dispatching plan for  
16 the short segment of CSX's Memphis line over which  
17 Illinois Central has trackage rights.

18 We further recommend that the parties  
19 submit their agreement to the Board within 30 days for  
20 the Board's approval.

21 Wheeling and Lake Erie. We recommend that  
22 the applicants provide certain remedies to W&LE to



1 ensure W&LE's viability and its continued service to  
2 facilities such as the Neomodal Terminal, as follows.

3 First, overhead haulage or trackage rights  
4 access to Toledo, Ohio, with connections to the Ann  
5 Arbor Railroad and other railroads there.

6 Second, extension of W&LE's lease for the  
7 Huron Docks.

8 Third, overhead haulage or trackage rights  
9 to Lima, Ohio, including a connection to the I&O  
10 Railroad.

11 We also will require that applicants  
12 negotiate with W&LE concerning mutually beneficial  
13 arrangements, including allowing W&LE to provide  
14 service to aggregate shippers or to serve shippers  
15 along CSX's line from Benwood to Brooklyn Junction,  
16 West Virginia.

17 Ann Arbor Railroad. We recommend that the  
18 Board impose a condition to ensure that Ann Arbor's  
19 quality interline service under its new Chrysler  
20 contract is continued and that this contract is not  
21 undermined.

22 As already mentioned, we are recommending

1 that applicants' settlement agreement with W&LE must  
2 include a new connection for Ann Arbor with W&LE at  
3 Toledo, which should help improve Ann Arbor's position  
4 as well.

5 R.J. Corman. We recommend that the Board  
6 impose a condition requiring CSX to maintain R.J.  
7 Corman's current favorable switching charge of \$60 for  
8 five years.

9 Gateway Western. We recommend that the  
10 Board refuse applicants' request to override the  
11 assignment restrictions in Gateway's Cahokia/Willows  
12 trackage rights agreements.

13 Philadelphia Belt Line. We recommend  
14 simply that the Board grant this carrier's request for  
15 a declaration that the Philadelphia Belt Line  
16 principle -- whatever that is -- will not be pre-  
17 empted by Board approval of this transaction.

18 The Elk River Railroad. We recommend that  
19 the Board require NS to adhere to representations that  
20 it will work with Elk River to establish an  
21 appropriate interchange if Elk River completes its  
22 proposed build-out, and to discuss rehabilitating or



1 selling to that carrier the line between Falling rock  
2 and Charleston.

3 Housatonic Railroad. We recommend that  
4 the Board hold applicants to their representations  
5 made at oral argument regarding their dealings with  
6 the Housatonic Railroad.

7 Now we're turning to some of the shipper  
8 issues. The first one is Indianapolis Power and  
9 Light. We recommend that the Board follow the  
10 recommendation of the Department of Justice and impose  
11 a condition giving Indianapolis Power and Light the  
12 choice of having its Stout plant served by NS directly  
13 or via switching by INRD.

14 The Board should further require the  
15 creation of a new interchange between NS and Indiana  
16 Southern Railroad, at a place known as milepost 6,  
17 which permits IP&L's plants to have independent access  
18 to nearby coal mines that are served by Indiana  
19 Southern.

20 PSI Energy. We recommend that the Board  
21 follow Department of Justice's recommendation and  
22 require that Conrail's dormant trackage rights be

1 transferred to CSX rather than to NS.

2 Aggregate shippers. We recommend that the  
3 Board hold applicants to their representations to  
4 provide single-line service by either CSX or NS for  
5 the existing movements of certain Ohio aggregate  
6 shippers. And these are National Lime and Stone and  
7 Wyandot Dolomite. This would follow the agreement  
8 that applicants have made with Martin Marietta  
9 Company.

10 With regard to Monongahela Coal, we  
11 recommend that the Board hold applicants to the  
12 representation and the application that although  
13 Norfolk Southern will have operational control of  
14 Conrail's lines here, CSX will have equal, perpetual  
15 access to all current and future facilities in the  
16 area.

17 AK Steel Corporation. We recommend that  
18 the Board hold applicants to their assurance that both  
19 NS and CSX will be available to handle AK Steel's  
20 shipments of iron ore moving through the Toledo docks.

21 Joseph Smith & Sons. We recommend that  
22 the Board preserve that shipper's option to build-out



1 and receive service from NS, which will be operating  
2 over nearby lines.

3 Millennium Petrochemicals. We recommend  
4 that the Board require applicants to adhere to their  
5 representation to discuss alleged problems in serving  
6 the Finderne, New Jersey facility.

7 Ashta Chemical. We recommend that the  
8 Board require applicants to consult with Ashta  
9 concerning the routing of its hazardous materials  
10 shipments.

11 Port of Wilmington. The Board should  
12 direct applicants to discuss with the Port any  
13 problems concerning switching services and charges,  
14 and report back to the Board within 60 days.

15 Now we're turning to an issue that's  
16 always controversial in these proceedings -- labor  
17 conditions. First of course, we're recommending that  
18 the Board impose the New York Dock conditions.

19 We're also recommending something that's  
20 really new in this case and that we've never done  
21 before. And that is that the Board make a clear  
22 statement that approval of this transaction does not

1 indicate approval or disapproval of any of the  
2 collective bargaining agreement overrides that  
3 applicants have argued are necessary to carry out this  
4 transaction.

5 We believe that those issues should be  
6 negotiated first if possible, or arbitrated if that is  
7 necessary. The Board is available to decide issues  
8 like that only as a last resort, giving a lot of  
9 deference to arbitrators.

10 Next, the Board should rule that, under  
11 New York Dock, applicants may not require the transfer  
12 of seniority rosters for clerical employees to  
13 Jacksonville or other points that require employees to  
14 move their place of residence, unless those employees  
15 are actually being offered positions in those places.

16 Issues relating to attrition protection  
17 and separation allowances should be dealt with in the  
18 implementing agreement process, consistent with the  
19 handling of those issues in other recent merger  
20 proceedings.

21 Finally, we recommend that applicants be  
22 directed, as suggested by UTU, to meet with labor

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1 representatives and to form a council or councils for  
2 purpose of promoting management-labor dialogue  
3 concerning implementation and safety issues.

4 The next issue has to do with  
5 representations that have been made during this  
6 proceeding. Applicants have made numerous  
7 representations -- and some of them we've pointed out,  
8 others we may have missed -- that certain issues will  
9 be addressed, certain services will be provided, and  
10 so on. And we're recommending a general condition  
11 requiring applicants to adhere to all of those.

12 I've already mentioned oversight but I'd  
13 like to give a few details about that. We recommend  
14 that oversight specifically include monitoring of the  
15 effect of the acquisition premium on the Board's  
16 jurisdictional threshold and rate complaints.

17 In addition, we recommend specific  
18 oversight relative to Buffalo, New York City truck  
19 traffic, the Chicago Switching District, Amtrak, and  
20 other passenger services and with regard to smaller  
21 railroads.

22 Finally, I'd like to turn just briefly, to

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1 environmental conditions. We're recommending that the  
2 Board impose the various mitigation measures  
3 recommended by the Section of Environmental Analysis  
4 in its Final Environmental Impact Statement, and this  
5 will be further addressed by the next panel.

6 This concludes the presentation of the  
7 team's final recommendations. I know it's long. I  
8 think you very much for your patience, and we would be  
9 pleased to answer any questions.

10 CHAIRMAN MORGAN: Well first of all, that  
11 was very well done. Thank you. Vice-Chairman Owen,  
12 you had a question. Why don't we -- I want to start  
13 with you. I think you had a question on shortlines.

14 VICE-CHAIRMAN OWEN: Right. I wanted to  
15 have you elaborate on the benefit for the shortline,  
16 if you would.

17 MR. MACKALL: Well, one of the conditions  
18 we've imposed is to expand the NIT League agreement so  
19 that if a shortline connects now with Conrail, and  
20 after the transaction it's connecting with -- in order  
21 to do this movement -- it's connecting with CSX and NS  
22 or NS and CSX, it will be able to invoke the remedies



1 that were crafted by NIT League, and I think what is  
2 a very creative solution that they've created for this  
3 situation.

4 If the shortline carrier wants to invoke  
5 those protections that are in the NIT League agreement  
6 it may do so. And basically that freezes the rates in  
7 that situation for three years -- for the protection  
8 of those shippers.

9 And there are also provisions for the  
10 carriers to work out efficient moves to provide  
11 efficient service for those same particular shippers  
12 that are affected by that kind of situation.

13 VICE-CHAIRMAN OWEN: So in the final  
14 analysis then, they would be able to attract other  
15 shippers to their lines, possibly, and have a little  
16 bit of economic benefit from that?

17 MR. MACKALL: Well, I think what it would  
18 do is enable them to preserve their traffic better  
19 than they would have been able to otherwise.

20 VICE-CHAIRMAN OWEN: Thank you.

21 CHAIRMAN MORGAN: Let me just run through  
22 a couple of issues with you. Start out with the issue

1 of contracts. We heard during the oral arguments a  
2 concern about managing the contracts through the  
3 transition period operationally.

4 The staff has recommended a period of six  
5 months during which time the contracts will remain in  
6 existence. Is that intended to address the  
7 operational concerns that were raised during the oral  
8 argument?

9 MR. MACKALL: Yes, it is. It's kind of a  
10 compromise in that it allows the applicants to sort  
11 out their contracts and get their operations started,  
12 but it also gives the shippers the ability after that  
13 six months period to take advantage of increased  
14 competition between two carriers in the shared assets  
15 areas. So it is a compromise in that respect.

16 MR. REDISCH: And to make it clearer, the  
17 shippers that could take advantage after six months  
18 are those with anti-assignment clauses in their  
19 contracts.

20 CHAIRMAN MORGAN: And I recall from the  
21 oral arguments that some of the shippers, I think  
22 Chemical shippers in particular, were seeking this



1 sort of option, at some point?

2 MR. REDISCH: Yes, the Chemical  
3 Manufacturer's Association were very strong proponents  
4 toward the end of this proceeding. Certain individual  
5 shippers such as APL, Limited, and Eastman Kodak  
6 initially brought the issue to light that many  
7 shippers on Conrail had anti-assignment clauses that  
8 gave shippers the option of voiding the contract if  
9 Conrail was no longer able to fulfill its contractual  
10 obligation because it had been sold or its assets  
11 acquired by another carrier.

12 And what finally drove the staff on this  
13 issue was that the Act permits us to override the  
14 contracts. There is some controversy on that, but I  
15 think that that was our assessment of course. But  
16 only when it's necessary to carry out the transaction.

17 And we became convinced that beyond six  
18 months after the integration of the facilities, while  
19 it would be a convenience for the applicants to have  
20 that override opportunity, it would not be necessary  
21 for them to have it.

22 CHAIRMAN MORGAN: So that during the six

1 month period the contracts with non-assignability  
2 clauses would be handled in the same way that the  
3 other contracts would be handled?

4 MR. REDISCH: Exactly so. They would be  
5 considered assets of Conrail that are being acquired  
6 by CSX and Norfolk Southern.

7 CHAIRMAN MORGAN: And then at the end of  
8 that six month period then, the competitive  
9 opportunities would kick in and a shipper would have  
10 the option to do as he or she wished?

11 MR. REDISCH: Yes.

12 CHAIRMAN MORGAN: Now, how does this  
13 proposal relate to the NIT League agreement?  
14 Obviously at the end of the six month period for non-  
15 assignability clauses you need not prove service in  
16 order to switch your contract.

17 MR. REDISCH: That is correct. The NIT  
18 League agreement provides additional safeguards for  
19 shippers who do not have non-assignability clauses.  
20 It permits CSX and Norfolk Southern to treat those  
21 contracts again, as assets of Conrail and to divide  
22 them in such a way as to provide efficient service



1 after Day 1 -- after the day in which they begin to  
2 integrate their combined systems.

3 So that those contracts that could go only  
4 to points served by CSX will be assigned to CSX, and  
5 those going only to points served by Norfolk Southern  
6 and those that could go to either one, the railroads  
7 would have the opportunity to divide up based on  
8 certain criteria that NIT League has approved.

9 If a shipper is unhappy with the service  
10 and he has a non-assignment clause, he would still  
11 have a remedy under the NIT League agreement. But if  
12 he has a non-assignment clause after six months he  
13 would have a remedy without having to raise the  
14 service issue.

15 CHAIRMAN MORGAN: Okay. Thank you. Let  
16 me move on to East of the Hudson. One of the concerns  
17 that has been raised in the East of the Hudson, New  
18 York City area, is truck traffic and encouraging rail  
19 traffic to get trucks off the road from an  
20 environmental perspective.

21 Now, you've run through the conditions  
22 that have been imposed in the New York City area. To

1 what extent do they address this concern about truck  
2 traffic?

3 MR. MACKALL: Well, this was an issue that  
4 the Environmental Impact Statement looked at very  
5 closely, and the Section of Environmental Analysis  
6 concluded that truck traffic over the George  
7 Washington Bridge would only be slightly increased.

8 But we wanted to make sure that was  
9 actually the case so we've imposed a condition that  
10 requires monitoring so that we can look and see what  
11 happens to that traffic and see that it is true that  
12 only a slight increase in traffic actually takes  
13 place.

14 We've also required the railroad to engage  
15 in consultation as they have offered to do in many  
16 respects, with the City and with other authorities to  
17 try to craft a long-term solution for the problem of  
18 this heavy congestion in New York City by trying to  
19 find other railroads that might possibly alleviate the  
20 traffic problem.

21 CHAIRMAN MORGAN: And then as the staff  
22 see it, what else is your proposal doing relative to



1 encouraging increased rail traffic? In other words,  
2 taking trucks off the road, in the context of the  
3 conditions that you've recommended?

4 MR. MACKALL: Well, we've also recommended  
5 an access for CP to come down on the East Side of the  
6 Hudson, and come down to Fresh Pond and Queens, which  
7 we feel could stimulate further rail traffic that  
8 might otherwise be on the roads. So that's a third  
9 thing we've done and I think could be very helpful in  
10 improving the competitive balance there.

11 CHAIRMAN MORGAN: Now, how about the Fresh  
12 Pond and New Haven line? We're sending that into  
13 discussion?

14 MR. MACKALL: That's correct.

15 CHAIRMAN MORGAN: There are concerns about  
16 the operational issues I gather, from your document?

17 MR. MACKALL: Well, there are concerns  
18 about operations and about ownership, because the line  
19 is owned -- the first portion of the line from Fresh  
20 Pond is owned by Metro-North and the rest of the line  
21 is owned by the State of Connecticut. So obviously,  
22 any solution there would have to have those people as

1 parties as well.

2 There's also very heavy passenger  
3 transportation -- I think there's something like 192  
4 trains a day running over that line. So any solution  
5 that we would want to impose we would want to make  
6 sure that we're not creating an operational problem  
7 with all this heavy traffic.

8 CHAIRMAN MORGAN: Now with respect to both  
9 of these lines that you have discussed, the parties  
10 are to report back to us as it relates to their  
11 discussions and resolutions --

12 MR. MACKALL: That's correct.

13 CHAIRMAN MORGAN: -- and then we will take  
14 it from there?

15 MR. MACKALL: That's correct.

16 CHAIRMAN MORGAN: Is that how I read that?  
17 Moving on to Buffalo/Niagara. What is the, as it  
18 relates to -- prior to this application, what is the  
19 competitive situation in Buffalo today? Not with your  
20 added recommendations.

21 MR. MACKALL: This was mostly a very  
22 heavily Conrail market. There was some participation



1 by other carriers but Conrail was handling most of the  
2 traffic in Buffalo.

3 MR. REDISCH: Well over 50 percent.  
4 Unlike some other areas which -- like Detroit which  
5 will become a shared asset area if the Board approves  
6 this transaction. There Conrail had just over 30  
7 percent of the traffic, but in Buffalo it was far more  
8 dominant, and it had over 50 percent.

9 CHAIRMAN MORGAN: But this proposal that's  
10 before us brings a new carrier into the area?

11 MR. REDISCH: Correct. It brings the  
12 Norfolk Southern into the area to take over the Erie  
13 Lackawana lines that the final system plan had hoped  
14 to offer to another carrier back in the days before  
15 Conrail was created.

16 CHAIRMAN MORGAN: And then in terms of the  
17 additions that you're recommending now -- the Buffalo  
18 Creek Line, for example -- who suggested that in the  
19 record?

20 MR. REDISCH: Yes. The two additions that  
21 we're recommending were suggested by the Erie and the  
22 Aqua Chickagua Rail Steering Committee. And the

1 arguments they presented seemed convincing with  
2 respect to the Buffalo Creek line. It was an unusual  
3 set of circumstances.

4 CSX had ownership rights to two sets of  
5 trackage rights over this line. And when it sold off  
6 some of its properties to the Buffalo and Pittsburgh  
7 Railroad some time ago it sold off one of those sets  
8 of trackage rights but not the other.

9 And so shippers on that line today have  
10 the option of choosing Conrail or Buffalo and  
11 Pittsburgh. And they also had CSX, although they may  
12 not have known it because CSX was not actively  
13 pursuing those rights.

14 But what the Erie and Agua Rail Steering  
15 Committee convinced us that even though this was not  
16 exactly a 2-to-1 situation because shippers after CSX  
17 would acquire the Conrail lines would continue to have  
18 access to the Buffalo and Pittsburgh, that that was  
19 not nearly the same as having access to two Class I  
20 systems with their large and efficient outreaches  
21 throughout the East.

22 So we believe that those trackage rights



1 had transferred to Norfolk southern. Similarly with  
2 respect to the Niagara Falls area, what the Steering  
3 Committee told us on record was that there was a  
4 switching charge available from Conrail as recently as  
5 1995 and '96 for rail movements that would come over  
6 from Canada by CSX over the suspension bridge and into  
7 Niagara Falls.

8 And that when new arrangements were made  
9 to take that traffic over the international bridge  
10 closer to Buffalo and into Frontier Yard, that even  
11 though the origin and destinations of those movements  
12 were the same, all affecting Niagara Falls, that  
13 Conrail suddenly started participating in those  
14 movements through a division of the line haul rather  
15 than a switch.

16 And they canceled their switches but even  
17 more recently, the applicant said on record that new  
18 arrangements were being made yet again and that these  
19 movements may go over suspension bridge directly into  
20 Niagara Falls; it may go over the international bridge  
21 and be switched at Frontier Yard. In either case they  
22 plan to continue collecting Conrail's revenues as line

1 haul divisions rather than as switching charges.

2 But we felt that this was really the  
3 equivalent of the switching service that Conrail had  
4 in effect very recently, and that those shippers in  
5 Niagara Falls, as requested by the  
6 Erie/Niagara/Chickagua Rail Steering Committee, should  
7 be afforded the same remedies and relief as other  
8 shippers who have current reciprocal shipping under  
9 the NIT League agreement.

10 And the shippers who actually get the most  
11 relief perhaps in all of America are those in Buffalo.  
12 And the reason for that is that Conrail switching  
13 charges in Buffalo are so high.

14 They are running between \$390 and \$450 for  
15 a car, and under the agreement negotiated with NIT  
16 League, those switching charges will fall to \$250 for  
17 five years and will remain in place as switching  
18 charges for at least ten years.

19 CHAIRMAN MORGAN: So then the net effect  
20 of -- just to summarize where I think we are relative  
21 to Buffalo -- is that NS has a presence under the  
22 application?



1 MR. REDISCH: Oh, yes indeed, a strong  
2 presence. Not as strong as some parties would like,  
3 but a strong presence in terms of reaching a number of  
4 shippers, in terms of having the opportunity to locate  
5 new industries, honest lines, and have them served, in  
6 terms of a presence strong enough to do all the things  
7 that rail lines can do to constrain rates of other  
8 shippers that would remain exclusively served -- first  
9 by Conrail and then by CSX.

10 CHAIRMAN MORGAN: And the line that NS is  
11 getting under the application is the line that would  
12 have gone to a competitor had the proposal been  
13 finally adopted?

14 MR. REDISCH: That is correct.

15 CHAIRMAN MORGAN: And then you are, in  
16 addition to that, increasing NS's presence in Buffalo  
17 --

18 MR. REDISCH: Yes.

19 CHAIRMAN MORGAN: -- by some of the  
20 proposals, and also impacting the reciprocal switching  
21 rates in Buffalo further?

22 MR. REDISCH: Yes.

1 CHAIRMAN MORGAN: Is that a good summary  
2 of where we are in the Buffalo area?

3 MR. REDISCH: Yes, it is. Yes.

4 CHAIRMAN MORGAN: The New England Central,  
5 the recommendation there has its origins, where?

6 MR. REDISCH: Well, it was a combination  
7 of the New England Central's concerns about its own  
8 financial viability, but we of course, look beyond  
9 what a railroad says. At oral argument the State of  
10 Vermont came in and it expressed its strong concern  
11 that the transaction threatened the financial  
12 viability of the New England Central.

13 Vermont has a financial arrangement  
14 whereby it offers subsidies to Amtrak to run its  
15 Vermonter passenger service over the New England  
16 Central's lines. And Vermont was concerned that any  
17 significant financial losses to this small railroad  
18 would lead it to defer maintenance and harm Amtrak  
19 service, as well as threaten the shippers on its line.

20 And so we have crafted a remedy that we  
21 hope will ensure that continued and uninterrupted  
22 service for freight and passengers on that line.



1 CHAIRMAN MORGAN: And that was requested  
2 by the New England Central?

3 MR. REDISCH: And by the State of Vermont,  
4 yes.

5 CHAIRMAN MORGAN: Wheeling and Lake Erie  
6 and Ann Arbor, your recommendations there?

7 MR. REDISCH: Yes. That again, had strong  
8 support in the local community. There were a number  
9 of shortline railroads that really found that the best  
10 way to get our ear is not to simply tell us how an  
11 application will affect them but to have their  
12 communities and their shippers tell us.

13 In the case of the Wheeling and Lake Erie  
14 it was really the Office of the Ohio Attorney General,  
15 the Ohio Rail Development Commission, and the Public  
16 Utility Commissions of Ohio, who explained that -- and  
17 I'll give a quick quote here -- "with 450 of its route  
18 miles in Ohio, Wheeling and Lake Erie is large enough  
19 to offer big railroad services yet small enough that  
20 many of its customers deal directly with top  
21 management".

22 And those three offices, all Ohio public

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1 offices, explained that the advent of the W&LE  
2 bankruptcy would be particularly disruptive for major  
3 Ohio rail users, including steel, stone, plastic, and  
4 coal producers.

5 So we were struggling with how to craft a  
6 remedy for the W&LE. It had asked for a number of  
7 conditions but it really hadn't prioritized them. The  
8 State of Ohio had suggested alluding to Toledo for the  
9 Wheeling/Lake Erie would be useful, not just for W&LE  
10 but for the connection it would permit with the Ann  
11 Arbor.

12 And when Norfolk Southern offered that at  
13 oral argument, Wheeling gave a public statement in  
14 which it said that that one option would not totally  
15 solve the problem but is a step in the right  
16 direction. And we agreed with that and we have  
17 constructed several other remedies that should permit  
18 Wheeling to continue to offer its service to shippers  
19 in the Ohio and West Virginia area.

20 The Ann Arbor as well had the strong  
21 support in Ohio. We've given it -- if you accept our  
22 recommendation -- a new connection with Wheeling and

1 Lake Erie. Its other concern was a new Chrysler  
2 contract in which it performs switching services for  
3 Chrysler -- I've crossed into Ann Arbor.

4 MR. MACKALL: I'm sorry.

5 CHAIRMAN MORGAN: We all get along here.

6 MR. MACKALL: Sorry, Michael.

7 MR. REDISCH: That's okay. The link here  
8 right now is they both have the strong support of the  
9 Ohio public parties. In addition to its connection  
10 with the Wheeling and Lake Erie, the Ann Arbor was  
11 concerned that its contract with Chrysler which is a  
12 long-term contract but which has a -- could be dropped  
13 if performance is poor -- that somehow this contract  
14 might be undermined by its Class I connections.

15 And so we have recommended that you impose  
16 a condition to ensure that that, in fact, does not  
17 happen. Thank you.

18 CHAIRMAN MORGAN: But the connection at  
19 Toledo was recommended by the State of Ohio and also  
20 as I recall, was --

21 MR. REDISCH: Correct.

22 CHAIRMAN MORGAN: -- agreed to, or at

1 least --

2 MR. REDISCH: By Norfolk Southern at oral  
3 argument. Yes, it was the Ohio Attorney General, the  
4 Ohio Rail Development Commission, and the Public  
5 Utilities Commission of Ohio that had first suggested  
6 that to us -- the first party -- other than the  
7 Wheeling and Lake Erie itself. And Norfolk Southern  
8 had agreed to that one component at oral argument,  
9 yes.

10 CHAIRMAN MORGAN: And then we are, as I  
11 see in this document, suggesting further conversations  
12 between the -- among the railroads, the applicants in  
13 Wheeling and Lake Erie regarding other --

14 MR. REDISCH: Regarding stone movements in  
15 Ohio, regarding certain movements on CSX. And we're  
16 also recommending that you require applicants to  
17 extend the Wheeling/Lake Erie lease on Huron Dock and  
18 also to offer them haulage and trackage rights to  
19 Lima, Ohio.

20 CHAIRMAN MORGAN: And then with respect to  
21 Ann Arbor and the Chrysler contract, we will be  
22 monitoring that performance, is that your suggestion?



1 MR. REDISCH: Yes.

2 CHAIRMAN MORGAN: Department of Justice  
3 made some recommendations to us. Are we fixing them?  
4 Fixing their concerns?

5 MR. MACKALL: I believe so. We have --  
6 they're recommended that we impose conditions with  
7 regard to Indianapolis Power and Light, which we're  
8 imposing exactly as they asked with regard to PSI  
9 Energy which we are imposing. And they did also  
10 recommend that we adopt a condition for PEPCO, but  
11 PEPCO has settled and are no longer a party, and we  
12 don't believe it's appropriate to impose that  
13 particular condition. So we believe they will be  
14 satisfied --

15 CHAIRMAN MORGAN: So we are addressing the  
16 concerns --

17 MR. MACKALL: Yes, we will.

18 CHAIRMAN MORGAN: -- that the Department  
19 of Justice raised?

20 MR. MACKALL: Yes, we will.

21 CHAIRMAN MORGAN: With respect to the  
22 aggregate shippers, you've mentioned those already as

1 it relates to Wheeling and Lake Erie, but the specific  
2 suggestion that you are making as far as in general  
3 addressing those shippers, you are from what I gather,  
4 taking an agreement that has already been reached with  
5 one of those shippers and applying it to the others,  
6 is that accurate?

7 MR. REDISCH: Yes.

8 CHAIRMAN MORGAN: Let me turn to labor for  
9 a minute and Mr. Rush, maybe you can walk me through  
10 a couple of things as it relates to labor.

11 First of all, with respect to collective  
12 bargaining agreements, as Mr. Mackall indicated we are  
13 including something here -- you are proposing that we  
14 include something here that we have never included  
15 before, is that correct?

16 MR. RUSH: That's correct.

17 CHAIRMAN MORGAN: And what this means is  
18 that the issue of necessity is to be negotiated and  
19 arbitrated? That would be the result?

20 MR. RUSH: That's exactly right.

21 CHAIRMAN MORGAN: Through the process. Is  
22 this the way that the Board has always intended that

1 this issue be addressed?

2 MR. RUSH: This is certainly the way it  
3 has been intended. We are told it hasn't always  
4 worked out that way.

5 CHAIRMAN MORGAN: And then finally, I know  
6 that the Department of Transportation raised this  
7 particular issue. Is the way the staff is  
8 recommending this be responsive to their suggestion?

9 MR. RUSH: We believe this satisfies their  
10 recommendation on that subject, yes.

11 CHAIRMAN MORGAN: Transfer of seniority.  
12 Mr. Mackall explained the recommendation earlier. Can  
13 this issue of transfer of seniority be bargained away,  
14 as you understand it?

15 MR. RUSH: Well, let me say, I think it's  
16 important to understand that this relates to dismissed  
17 employees; that there is no inherent vice to the  
18 transfer of seniority. That probably can be a matter  
19 for the implementing agreements.

20 The problem is if you dismiss an employee  
21 in Philadelphia or Pittsburgh and we ask him to report  
22 to Jacksonville against the threat of losing his



1 benefits if he refuses to do so. That I view as a  
2 bottom line, New York Dock protection that that cannot  
3 be accomplished by whatever the mechanism is by which  
4 it's tried.

5 I would not want the Board to be on record  
6 as saying that the seniority could not be transferred  
7 as part of an implementing agreement, provided that it  
8 is not used in the fashion I just indicated to you.  
9 And the requirement to report or lose your benefits I  
10 do not believe can appropriately be bargained away.  
11 No, I think that's basic New York Dock.

12 CHAIRMAN MORGAN: So in other words, you  
13 can't transfer the seniority without the job, is  
14 basically what -- without transferring the job? Is  
15 that the bottom line?

16 MR. RUSH: No. You can't transfer the  
17 seniority and require the employee, once dismissed, to  
18 report to that location, under the threat of losing  
19 his protective payments. The transfer of seniority in  
20 itself would appear to be unobjectionable so long as  
21 it's not used to require an employee to move or lose  
22 his benefits -- a dismissed employee.

1 CHAIRMAN MORGAN: So it relates to what  
2 they would get under New York Dock in the normal  
3 course --

4 MR. RUSH: That's correct.

5 CHAIRMAN MORGAN: -- and the impact that  
6 that would have on what they would get in the normal  
7 course?

8 MR. RUSH: There was some concern that New  
9 York Dock would be undercut by this transfer of  
10 seniority. And that's why the decision we recommend  
11 should contain the statement that you can't avoid the  
12 requirement of dismissed employees not being required  
13 to move, by transferring the seniority. That's really  
14 the bottom line.

15 CHAIRMAN MORGAN: Okay. Thank you. Two  
16 other questions. The NIT League agreement -- I sort  
17 of asked this question earlier but let me ask it a  
18 little differently.

19 The staff is recommending additions to the  
20 NIT League agreement. Why is that?

21 MR. MACKALL: Well --

22 CHAIRMAN MORGAN: It's a good thing?

1 MR. MACKALL: We think it's a really  
2 creative and very valuable agreement that really does  
3 some things that we might not have thought of. But we  
4 thought there were some areas where we could improve  
5 it slightly without undoing that deal -- one of which  
6 was increasing the amount of oversight.

7 And we also expanded the single-  
8 line/joint-line protections and the reciprocal  
9 switching protections. Other than that though, the  
10 agreement was very helpful to us in being able to  
11 recommend that this particular transaction is in the  
12 public interest.

13 CHAIRMAN MORGAN: And then finally with  
14 respect to oversight, you're suggesting a 5-year  
15 oversight. You are also suggesting several specific  
16 things that we would look at specifically as it  
17 relates to that oversight.

18 One is, Amtrak, another is -- after I'm  
19 finished you can tell me if I've missed anything --  
20 passenger rates in Buffalo for a 3-year period, the  
21 jurisdictional threshold and revenue adequacy  
22 determinations, New York City truck traffic, Chicago



1 Switching District, and impact on smaller railroads in  
2 general.

3 Is that -- have I covered the --

4 MR. MACKALL: I think that's amazing.  
5 You've covered every single one of them.

6 CHAIRMAN MORGAN: Just wanted to make  
7 sure. Okay, thank you. Vice-Chairman.

8 VICE-CHAIRMAN OWEN: Yes. Thank you. Mr.  
9 Rush, back to the labor agreement there if you could.  
10 You're saying then basically, that either New York  
11 Dock is the floor --

12 MR. RUSH: That's correct.

13 VICE-CHAIRMAN OWEN: And they can  
14 negotiate more if they so desire?

15 MR. RUSH: Yes, indeed.

16 VICE-CHAIRMAN OWEN: So they could  
17 negotiate away the portion here of transferring  
18 seniority to another place, if they could do that?

19 MR. RUSH: As I said, I believe the  
20 transfer of seniority is unobjectionable as a part of  
21 the implementing process. I do not believe they can  
22 negotiate the issue of requiring separated employees,

1 dismissed employees, to report to a different  
2 location.

3 VICE-CHAIRMAN OWEN: Along the labor line,  
4 does anyone of the Board here now know what the  
5 process is or where we're at right now in the labor  
6 implementing agreement?

7 CHAIRMAN MORGAN: I'm sure --

8 VICE-CHAIRMAN OWEN: Can anyone answer  
9 that?

10 CHAIRMAN MORGAN: People in the audience  
11 who I'm sure could, but we're not there yet.

12 MR. RUSH: There are reports that a number  
13 have been arrived at. We're asking that as the others  
14 are completed that we be advised of them. But in  
15 terms of exactly where they are today, no, I don't  
16 know.

17 VICE-CHAIRMAN OWEN: And according to the  
18 terms that were outlined in here we're saying that Day  
19 1 cannot occur until all the implemented agreements  
20 have been agreed to, is that correct?

21 MR. RUSH: That's correct.

22 VICE-CHAIRMAN OWEN: Thank you. Back to

1 the economics of some of the situations here. Maybe  
2 you could walk me through the fees to the Hudson/New  
3 England area, Buffalo area here. We have proposed --  
4 or you have proposed -- trackage rights for multiple,  
5 shortline railroads as set to make it more  
6 competitive.

7 What type of economic impact do you think  
8 that might have upon a Class I carrier, and do you  
9 feel that those shortlines then -- or regional as they  
10 may call as they're expanded -- will pick up enough  
11 traffic to warrant it?

12 MR. MACKALL: Well, right now the traffic  
13 -- the rail traffic on the lines that we're talking  
14 about -- the freight traffic -- is extremely light,  
15 and we're hoping that it can be developed somewhat.  
16 Therefore, we don't believe it will have a tremendous  
17 impact on CSX or any of the Class I carriers.

18 The second question was whether there was  
19 enough traffic. We've addressed that issue by  
20 suggesting that CP be given the option -- either to  
21 have haulage rights or trackage rights. And if the CP  
22 were to believe that it would be in its interest to



1 use haulage rights rather than trackage rights, then  
2 CSX would be actually performing the service.

3 And that would alleviate some of the  
4 problems about traffic density because there would  
5 just be -- I mean, there would only be one train  
6 freight that was for the account of CP and for the  
7 account of CSX.

8 MR. REDISCH: There was quite a bit in the  
9 record on exactly how much traffic currently moves on  
10 the Conrail line east of the Hudson and how much might  
11 be available to it under an aggressive marketing  
12 campaign from an efficient rail carrier.

13 At the moment, Conrail is running one  
14 through train a day five or six days a week and has a  
15 local and service coming up from New York a little  
16 bit, and a local coming down from Albany maybe two or  
17 three days a week.

18 In deposition, the New York parties who  
19 were very much interested in new trackage rights tenet  
20 had identified really only 50 carloads of freight  
21 coming into the city that might be attracted to that  
22 tenet and none going out. So we were concerned about

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1 the imbalanced loads there. We thought that haulage  
2 might be the way to go, but we wanted the carriage to  
3 have that opportunity to use either haulage or  
4 trackage rights if the track does develop and the  
5 traffic builds as the New York parties hope. Then  
6 they would have the opportunity to have two strong  
7 carriers, not a Class 3 carrier, but actually CP or  
8 CSX operating over that line and could end up being a  
9 win-win-win for the carriers, for the area and for the  
10 shippers and for those people who would be pleased to  
11 get some of that truck traffic off the road as well.

12 MR. KONSCHNIK: I would simply like to add  
13 that the conditions we're recommending would empower  
14 short lines and other railroads to work with the  
15 applicant here to draw traffic off the highways. It  
16 should provide an opportunity for the short lines to  
17 preserve the services they're providing and to expand  
18 on those in conjunction with these applicants and  
19 other railroads and largely to create new competitive  
20 opportunities for shippers, especially vis-a-vis truck  
21 transportation.

22 VICE CHAIRMAN OWEN: I hope that's the

1 case. The other question is with the short lines  
2 coming in and picking up some trackage rights and  
3 going for other customers in there and competing, head  
4 on with CSX. Is there enough financial motivation  
5 there for CSX to go ahead and invest in the  
6 infrastructure.

7 MR. REDISCH: Well, we have every reason  
8 to believe that there is, Vice Chairman Owen. Again,  
9 this is an area where there's not a fixed pie. If you  
10 look at New York City and you look at the traffic  
11 going into and out of it, only about 2.5 percent is  
12 coming by rail right now. Ninety-seven percent is  
13 coming by truck and it's also very imbalanced.  
14 There's a lot going in and very little going out, so  
15 there's a tremendous opportunity for the railroads to  
16 take some of that truck traffic and really have a win  
17 for all the railroads involved in this process, for  
18 the shippers and for the people who would like to get  
19 those trucks off the road. So that's our hope and  
20 aspiration here.

21 VICE CHAIRMAN OWEN: I agree. I would  
22 like to refer back to one of your statements a little



1 bit earlier though where maybe I misheard you or you  
2 misspoke, where you were going to take all of the  
3 trucks off the freeway? I thought that was pretty  
4 good. I would like to see that. Thank you. I have  
5 no other questions.

6 CHAIRMAN MORGAN: Just one follow up. In  
7 your document here, I see that you -- with respect to  
8 the Selkirk to Fresh Pond line, that the negotiations  
9 between CP and CSX would take into account whatever  
10 investment needs might be necessary for that line. Is  
11 that correct?

12 MR. REDISCH: Yes, it is. So we would  
13 fully expect that CSX would be compensated for that.  
14 We -- and the record, there were two parties, two New  
15 York parties who were given an opportunity by Judge  
16 Levanthal to take a look at an earlier version of a CP  
17 agreement and there was the New York parties' feeling  
18 that CP had settled for two high a rate, that they  
19 were paying for these haulage conditions, but when we  
20 look, we weren't making a real judgment here. All  
21 we're saying is that it looked like a costing experts  
22 that the New York parties had hired, failed to take

1 into account that it really is an imbalanced traffic  
2 flow on that line with everything coming in and  
3 nothing going out and the costing procedures that you  
4 would apply to it, to determine what the needs are  
5 even before you started talking about additional  
6 investment, those costing procedures should take  
7 account of the imbalance flow in the line.

8 MR. MACKALL: And of course, of the  
9 additional, any additional investments that might have  
10 to be made to make that line able to carry all that  
11 traffic, if there is any such investment.

12 MR. REDISCH: One investment which is not  
13 quite done which has been subsidized by New York State  
14 is a turn near New York where the lines from  
15 Connecticut and the lines from Albany merge. There's  
16 some dispute in the record about whether it's  
17 completed, but when it will become operational, you  
18 really wouldn't want to have a lot of new traffic on  
19 that line until that turn is complete. Because  
20 while the line itself has a lot of capacity, a lot of  
21 it is quadruple track. You don't want to throw a lot  
22 of new traffic down around that junction point, right

1 there just above the city. So, we would expect that  
2 that investment as well would be taken into  
3 consideration by the parties as they negotiate their  
4 investment.

5 CHAIRMAN MORGAN: And of course, this is  
6 also part of the studies that are going on relative to  
7 the float operation and the tunnel operation and that  
8 we would direct the parties here to be part of.

9 MR. REDISCH: Yes.

10 CHAIRMAN MORGAN: So we're looking at the  
11 entire infrastructure in the area.

12 MR. REDISCH: Yes.

13 CHAIRMAN MORGAN: Thank you very much. I  
14 think we now are ready to move to the next group, so  
15 we will have a quick shift of a few people, so that we  
16 can turn to the operational issues and the  
17 environmental issues.

18 Thank you, Mr. Mackall and thank you, Mr  
19 Redisch. Thank you, Mr. Markoff.

20 Mr. Clemens, I believe you will now  
21 discuss the recommendations regarding the operations?

22 MR. CLEMENS: Chairman Morgan, Vice



1 Chairman Owen, good afternoon. I'm pleased to present  
2 the staff recommendation for operational monitoring.  
3 As part of the staff recommendation that the Board  
4 approve this transaction, we believe that operational  
5 monitoring is essential and that it should be a  
6 condition of the Board's approval.

7 Moreover, because it's important that we  
8 pay close attention to the operational aspects of  
9 mergers from the start, we propose that certain  
10 aspects of operational monitoring begin with the  
11 effective date of the decision.

12 The purpose of the operational monitoring  
13 is to provide the Board with information that would  
14 help us make a timely evaluation of and response to  
15 any operations-related issues that arise during the  
16 implementation of the transaction. The monitoring  
17 plan we're recommending includes reviews of the  
18 implementation of various operational aspects of the  
19 transaction. While this monitoring will require  
20 periodic status reports and progress reports from CSX,  
21 Norfolk Southern and Conrail, we do not believe that  
22 it will unduly burden the applicants or the Board.

1           We propose that this monitoring include  
2 developmental areas, ongoing prior to day 1 for these  
3 areas which include labor implementing agreements,  
4 construction and capital projects, information  
5 technology and customer service monitoring will begin  
6 on the effective date of the decision.

7           For other operational categories, division  
8 of power and rolling stock, car management, crew  
9 management and dispatching, the shared assets areas,  
10 Cleveland operations, Chicago gateway operations and  
11 yard and terminal operations, we recommend that  
12 applicants begin reporting on the implementation date  
13 of the transaction day 1.

14           Finally, we proposed to require reporting  
15 on certain of the applicant's own initiatives, such as  
16 the Conrail Transaction Council and labor councils.  
17 The proposed reporting would provide the Board with  
18 timely information on operationally related areas  
19 encompassed by the transaction and for implementing  
20 measures that may directly affect operations.

21           We recognize that under applicants  
22 agreement with NIT League the transaction council will

1 recommend to the Board measurable standards for  
2 quarterly reporting. While the details of that  
3 reporting have not yet been determined, we have  
4 determined what we believe the Board itself needs to  
5 monitor the operational issues.

6 Therefore, we recommend that the Board  
7 adopt operational monitoring as a condition and  
8 require that monitoring to begin immediately. We note  
9 that the operational information required to be  
10 prepared by the Board would also be useful to the  
11 applicants in their preparation of the recommended  
12 standards and the respective quarterly reports.

13 For two reasons we also recommend that  
14 this informational monitoring should be handled  
15 separately from oversight of the transaction. First,  
16 it may be that as a result of our experience or  
17 changed circumstances particular aspects of this  
18 monitoring should be changed or eliminated. Second,  
19 unlike oversight which will extend for five years  
20 after the transaction is implemented, it is entirely  
21 likely that at least a portion of the operational  
22 monitoring could and will be phased out upon



1 successful implementation of the transaction.

2 The specific reporting requirements that  
3 we recommend I'll summarize now. Labor implementing  
4 agreements as of the effective date of the decision,  
5 applicants should provide monthly reports about the  
6 status of each of their labor implementing agreements  
7 and affected area, geographical or technical, until  
8 all agreements are complete.

9 Construction and other capital projects.  
10 Monthly, from the effective date of the decision, CSX  
11 and Norfolk Southern should report on their respective  
12 projects including any plan for the shared assets  
13 areas, whether or not specifically approved by the  
14 Board. Also, applicants should report on their  
15 progress in implementing other planned investments in  
16 the infrastructure such as the Chicago terminal area.

17 Information technology. To insure timely  
18 integration of the applicants' information systems  
19 with those of the former Conrail and the training of  
20 all personnel who will use the new computer systems,  
21 applicants should report monthly as to the progress of  
22 system integration and personnel training. These

1 reports should identify the principal systems,  
2 affected operating area, implementation schedules and  
3 training schedules and completion and should note any  
4 delays either in planned implementation or in  
5 training.

6 Customer service. To achieve and maintain  
7 customer service confidence in the transaction, and to  
8 insure the full and timely integration of Conrail into  
9 the centralized customer service centers of CSX and of  
10 Norfolk Southern, we recommend that applicants report  
11 monthly on that transition along with the staffing and  
12 training of personnel. Reporting should also include  
13 information as to efforts undertaken to familiarize  
14 customers with any new processes that they may  
15 encounter in using the systems.

16 Power and rolling stock. As soon as  
17 possible after the effective date of the decision,  
18 applicants should provide a report covering the  
19 apportionment of the Conrail locomotive and freight  
20 car fleets. This report should categorize the freight  
21 and locomotive equipment by type and should indicate  
22 the number of each type assumed by each applicant.

1           Car management, crew management and  
2           dispatching. Critical to an efficient and safety  
3           operational transition are the areas of car  
4           management, crew management and train dispatching.  
5           These areas of concern include information regarding  
6           the consolidation of car management functions into the  
7           respective operating systems, crew training to  
8           familiarize employees with new operating territories  
9           and with different locomotives and other equipment,  
10          and employee timekeeping. Also critical is complete  
11          familiarization with potentially new train and traffic  
12          control systems. We recommend that applicants be  
13          required to certify as of day 1 that all employees  
14          have been fully trained and qualified to operate over  
15          the Conrail territories they will be assigned, that  
16          employees are qualified to access and operate the  
17          information management systems related to crew  
18          management, time keeping and train dispatching and  
19          that train and traffic control and car management  
20          systems are in place, fully operational and fully  
21          staffed.

22                   Shared assets areas.       The proposed



1 operating arrangements for the shared assets areas,  
2 North Jersey, South Jersey, Philadelphia and Detroit  
3 present the Board with many unique situations  
4 requiring close scrutiny. We recommend that  
5 applicants be required to detail the operations for  
6 all of these three shared assets areas as follows.  
7 Provide each Monday, daily status reports sometimes  
8 referred to as morning reports for each of the three  
9 shared assets areas for the previous seven day period.  
10 For each yard and each respective shared assets areas,  
11 reports are to include information on the status of  
12 the fluid yard capacity, cars on hand loaded and  
13 empty, cars switched per day, rail time for switched  
14 cars, number of through cars handled daily not  
15 requiring switching or classification, number of  
16 loaded cars on hand greater than 36 hours, 48 hours,  
17 72 hours and the date of the oldest car on hand,  
18 loaded car, that is.

19 Each Monday for the previous seven days  
20 applicants should provide daily train arrival and  
21 departure information as measured against current  
22 published schedules for the respective shared assets

1 area and yard and local crew assignment performance by  
2 location in comparison to the plan for that area.

3 Cleveland operations. The Cleveland area  
4 presents a mix of yard and belt and mainline trackage  
5 located in industrialized areas and areas which are  
6 heavily populated with numerous at grade crossings.  
7 CSX and Norfolk Southern have modified their original  
8 operating plans to address concerns regarding  
9 operating density in the greater Cleveland area and we  
10 think we should monitor the Cleveland area to insure  
11 the success of these commitments.

12 Construction projects that should be  
13 monitored include the Claggsville connection, the  
14 Rockport yard realignment and the construction of  
15 connections and cross overs in the Cohen Road area in  
16 Vermillion, Ohio which are critical to Norfolk  
17 Southern.

18 Progress reports for these projects should  
19 be included in the monthly construction and capital  
20 project reporting. Operating activity at Cleveland's  
21 rail facilities by CSX and Norfolk Southern should be  
22 subject to weekly monitoring reports beginning on day

1 1. Specifically, we recommend that Norfolk Southern  
2 be required to report on East 55th Street Yard and  
3 Rockport, Brookport and Motor Yards.

4 We recommend that CSX be required to  
5 report on Collinwood and Clark Avenue Yards. These  
6 reports should provide the same type of daily status  
7 information required for the shared assets areas.

8 In addition, applicants should provide a  
9 summary of the number of trains operated through these  
10 facilities and the on time performance for each train  
11 based on train departure times for the previous seven  
12 days. These reports should be submitted each Monday.

13 Chicago gateway. We recommend beginning  
14 day 1 that applicants be required to report weekly on  
15 the number of preblocked, runthrough trains delivered  
16 to western carriers via the Chicago gateway and  
17 including Streeter, Illinois. These reports should  
18 indicate whether the connections were on time, based  
19 on the current schedules and should note the trains  
20 which failed to maintain their schedules. Significant  
21 delays should be noted separately and explained.

22 Yards and terminals. We recommend that



1 applicants be required beginning day 1 to report on  
2 the activity of major yard facilities. Information  
3 provided should include a daily status report, morning  
4 report, for each yard for one day, Thursday, to be  
5 submitted with other required reporting each Monday.  
6 These reports should include those informational items  
7 requested for the shared assets areas and in addition,  
8 the terminal reporting should include a summary of on  
9 time performance based on train departure times for  
10 several yards that would identify the timeliness of  
11 the performance of the various types of trains, along  
12 with the reason for any tardiness, for example, held  
13 for crews, held for power, delayed at connection.

14 We would require more specific breakout on  
15 a weekly basis of information regarding performance of  
16 manifest trains involving specific points that will be  
17 identified in the decision.

18 The Conrail Transaction Council. The  
19 Transaction Council will be asked to report monthly on  
20 its meetings and on specific elements of the  
21 transaction that where the subject of discussion or  
22 are of concern. This is particularly the case for the

1 areas of information technology, shared assets, and  
2 customer service.

3 Labor councils. We recommend monthly  
4 reporting on the establishment of labor councils by  
5 the applicants along with an explanation of their  
6 objectives and initiatives.

7 Data submission procedure. We recommend  
8 that the data reported should be submitted for board  
9 review. Although we would not make the information  
10 publicly available, unless a proceeding is instituted  
11 for service failure, we would expect the applicants to  
12 share information with the transaction council and as  
13 appropriate with labor councils as well.

14 That concludes my presentation. Madam  
15 Chairman, I'll be happy to answer questions you or the  
16 Vice Chairman may have.

17 CHAIRMAN MORGAN: Thank you, Mr. Clemens.  
18 Let me just run through a couple of issues with you.  
19 First of all, as you see it, Mr. Clemens, what is the  
20 overall objective of the set of recommendations that  
21 you are putting before us?

22 MR. CLEMENS: Our objective would be,

1 Madam Chairman, to assure the Board that we have in  
2 place an early warning system for problems that may  
3 arise and that we have a system in place while not  
4 unnecessarily burdensome to either the Board or the  
5 applicants that would provide us with information that  
6 would indicate where certain types of problems may be  
7 beginning, in certain yard operations, in the shared  
8 assets territories or in other locations, thereby  
9 assuring the public that we can focus and ask the  
10 applicants to focus on any of these noted problems.

11 CHAIRMAN MORGAN: The data that you are  
12 and I think the some 11 areas that you are suggesting  
13 be filed with us is already available in some form or  
14 another or should be available to carriers.

15 MR. CLEMENS: It is our expectation that  
16 this data is readily available to the applicants. The  
17 morning reports, for instance, that we noted, the  
18 daily status reports, this is a contemporary practice  
19 on the railroad to identify the condition of the  
20 railroad each morning for the benefit of management  
21 and so we think that kind of reporting is readily  
22 available, yes.



1 CHAIRMAN MORGAN: And the reporting that  
2 you're suggesting, how does that dovetail with the  
3 other monitoring implementation plans that are in the  
4 rest of this proposal before us?

5 MR. CLEMENS: Well, as I noted in the  
6 presentation, one, we believe that any of the data  
7 that is provided to the Board under this operational  
8 monitoring would be readily useful to the applicants  
9 in preparing their quarterly reports. So there is no  
10 duplicative factor there as far as we would see it.

11 Secondly, we believe that this kind of  
12 reporting would readily dovetail with, for instance,  
13 the safety integration plans which will be made a part  
14 of this process.

15 CHAIRMAN MORGAN: And then also I noted  
16 that there were several areas that would be of labor  
17 interest specifically which according to your  
18 recommendation would be incorporated into the labor  
19 council dialogue and initiative.

20 MR. CLEMENS: That is correct. We would  
21 encourage the applicants to make as broad a use of the  
22 data that they would be providing us even though we

1 would use the data for our own review and monitoring  
2 purposes. We would encourage them to make use of that  
3 data as broadly as they find beneficial.

4 CHAIRMAN MORGAN: So you don't perceive  
5 this data as unduly burdensome?

6 MR. CLEMENS: I do not.

7 CHAIRMAN MORGAN: Now how does this, we  
8 heard a lot of concern raised from various groups of  
9 shippers regarding implementation, if this merger were  
10 approved. How does the specific monitoring that  
11 you're suggesting respond to the concerns that have  
12 been raised in that regard?

13 MR. CLEMENS: It is my thought that this  
14 type of monitoring responds directly because what it  
15 suggests is that it is our goal to assure shippers  
16 that we will be alert to any problems which may occur  
17 which may bear on their surface levels and this  
18 monitoring should provide us with the opportunity to  
19 be alert of those problems.

20 CHAIRMAN MORGAN: So for example, a  
21 chemical shipper is very concerned about the shared  
22 assets areas. Do you feel that the recommendation

1 that's before us now adequately responds to that as  
2 far as operational integration is concerned?

3 MR. CLEMENS: I do. We will be monitoring  
4 the shared assets areas individually. We will be  
5 monitoring yards within those shared assets areas  
6 individually and so like other aspects of the  
7 operation to be assumed, we should be quickly alert to  
8 any problems.

9 As I indicated also, we have also asked  
10 the Conrail Transaction Council to respond to us  
11 monthly and to give us an indication of any areas of  
12 concern that they may have so that that would have  
13 advance our alertness.

14 CHAIRMAN MORGAN: So in other words, it's  
15 our monitoring in conjunction with the private sector  
16 monitoring that has already been proposed and  
17 presumably together we can have in place a pretty good  
18 early warning system. Is that a summary of your  
19 recommendation?

20 MR. CLEMENS: That's my hope and my plan.

21 CHAIRMAN MORGAN: Thank you.

22 MR. CLEMENS: Thank you.



1 CHAIRMAN MORGAN: Vice Chairman.

2 VICE CHAIRMAN OWEN: Based upon the  
3 assumptions and presentation made by Mr. Snow and Mr.  
4 Goode and their staff everything will go smoothly and  
5 I would assume then that our monitoring would phase  
6 out quite rapidly if that's the case. Is that the  
7 case? You said that the --

8 MR. CLEMENS: Yes, that too would be my  
9 hope.

10 VICE CHAIRMAN OWEN: they wouldn't have to  
11 buy an awful lot of pencils and erasers?

12 (Laughter.)

13 MR. CLEMENS: No, I think that they're  
14 probably well stocked with pencils and erasers at this  
15 point and probably everything else that they need to  
16 do this. It will only be with our help that we all  
17 come to the same conclusion quickly.

18 VICE CHAIRMAN OWEN: I think it's an  
19 excellent program for early warning. I just hate to  
20 see more burdensome paperwork imposed upon the  
21 industry and the fact that you are sunseting it as  
22 soon as it's not needed is great now. Thank you.

1 MR. CLEMENS: Thank you, sir. I think  
2 that you and the Chairman have articulated numerous  
3 times what our role should be in these areas and  
4 certainly that would not be an imposition that we  
5 would plan beyond the earliest time that it could be  
6 eliminated.

7 VICE CHAIRMAN OWEN: Very good. I have no  
8 other questions.

9 CHAIRMAN MORGAN: Thank you very much, Mr.  
10 Clemens.

11 Mr. Dalton, you are to present the  
12 environmental conditions.

13 MR. DALTON: Good afternoon, Chairman  
14 Morgan, Vice Chairman Owen. With me at the table is  
15 Evelyn Kitay from the General Counsel's office. As  
16 has been stated several times recently the proposed  
17 Conrail acquisition is unprecedented in geographic  
18 size and environmental scope. The three railroad  
19 systems encompass over 44,000 miles of track in 24  
20 states and D.C. The applicants propose substantial  
21 train and traffic increases on numerous rail line  
22 segments and other rail activity changes in intermodal

1 facilities and rail years. They also propose 22 new  
2 rail line constructions and four abandonments.

3 In accordance with the National  
4 Environmental Policy Act and the Board's environmental  
5 regulations, the Section of Environmental Analysis or  
6 SEA, conducted a comprehensive and exhaustive review  
7 of the potential environmental impacts resulting from  
8 the rail activity changes of the proposed Conrail  
9 acquisition. This is the only rail acquisition for  
10 which the Board has directed that a full environmental  
11 statement, an EIS, be prepared.

12 In its environmental review process, SEA  
13 first issued a notice of intent to prepare an EIS.  
14 SEA proposed and sought comments on a draft scope for  
15 the EIS. SEA then published a final scope. A draft  
16 EIS was issued for public review and comment. More  
17 than 250 comments on the draft EIS were received,  
18 addressing over 1,000 issues. SEA received comments  
19 from a broad range of interests that include federal,  
20 state and local agencies, elected officials,  
21 communities, businesses and associations, commuter  
22 services and the general public.



1           In preparing the final EIS and making its  
2 recommendations on conditions to reduce or eliminate  
3 potential environmental impacts, SEA conducted an  
4 extensive independent environmental analysis, reviewed  
5 all the public comments and consulted with federal,  
6 state and local agencies.

7           In the final EIS, SEA recommended 65  
8 mitigation measures to address safety and other  
9 environmental impacts. Most of SEA's recommended  
10 environmental mitigation measures addressed railroad  
11 operating safety concerns such as hazardous materials  
12 transport and freight and passenger rail operations.

13           For the first time in an environmental  
14 review, SEA recommended measures to address safety  
15 integration issues that could result from combining  
16 three separate railroads. SEA's mitigation measures  
17 also addressed community impacts such as noise, and  
18 highway rail at grade crossing safety in the  
19 communities that could be most affected by the  
20 proposed Conrail acquisition.

21           In its analysis, SEA identified both  
22 beneficial and adverse environmental impacts that

1 could be result from the proposed Conrail acquisition.  
2 On a systemwide basis, SEA identified important  
3 environmental benefits that could result from overall  
4 improvements in rail operating efficiency. These  
5 benefits include reduced air pollution emissions and  
6 reduced energy consumption, reduced likelihood of rail  
7 accidents involving hazardous materials and decreases  
8 in highway accidents due to reduced truck traffic on  
9 interstate highways.

10 SEA also noted regional and local  
11 environmental benefits that could result from reduced  
12 train traffic along certain rail line segments and  
13 reduced activity at certain rail yards in intermodal  
14 facilities. These benefits could include reduced  
15 noise impacts and improvements in safety and traffic  
16 delay and highway rail at grade crossings.

17 SEA further concluded that the proposed  
18 Conrail acquisition would have no significant adverse  
19 environmental impacts in other areas like hazardous  
20 waste sites, passenger rail service capacity, roadway  
21 systems, navigation and land use.

22 SEA also identified adverse environmental

1 impacts that could be result from acquisition related  
2 changes in rail activity. These potential adverse  
3 impacts include safety impacts related to hazardous  
4 materials transport and freight and passenger rail  
5 operations along certain rail corridors.

6 SEA identified community and local impacts  
7 related to noise, highway rail, at grade crossing  
8 safety and delay, emergency response vehicle delay,  
9 natural resources and cultural resources.

10 SEA also analyzed environmental justice  
11 issues and identified potential environmental impacts  
12 that would be disproportionally high and adverse for  
13 minority and low income populations in several cities  
14 unless mitigated.

15 In developing mitigation to address  
16 potential significant adverse environmental impacts,  
17 SEA focused on the potential environmental impacts  
18 that could result from changes in rail activity on  
19 existing rail lines and facilities as a result of the  
20 proposed Conrail acquisition.

21 SEA developed extensive environmental  
22 mitigation on a general or system-wide basis as well



1 as on a regional or local level. SEA also recommended  
2 mitigation measures to address specific impacts in  
3 numerous communities with unique circumstances and  
4 developed focus mitigation to address disproportionate  
5 impacts on minority and low income populations.

6 With the exception of the NS proposed  
7 Claggsville alternative routing that would affect the  
8 greater Cleveland area, none of SEA's recommended  
9 environmental mitigation would require changes in the  
10 applicants' operating plans.

11 In many cases the applicants have entered  
12 into mutually acceptable negotiated agreements with  
13 the affected communities or other organizations to  
14 address local environmental concerns.

15 These are generally more far-reaching than  
16 environmental measures SEA unilaterally could  
17 recommend.

18 I'd like to briefly summarize the major  
19 environmental mitigation recommendations in the final  
20 EIS. As I mentioned earlier, most of SEA's mitigation  
21 recommendations address safety related impacts. To  
22 address the significant increase in the movement of

1 hazardous materials on 64 rail line segments, SEA  
2 recommends that the applicants implement various  
3 measures such as installing train defect detectors,  
4 developing and distributing local hazardous material  
5 emergency response plans, conducting track inspections  
6 and conducting simulation, emergency response drills  
7 with local emergency response organizations.

8 To address the increased safety risk at  
9 hundreds of highway rail at grade crossings resulting  
10 from acquisition related train increases, SEA  
11 recommends that the applicants install notification  
12 signs to warn motorists about an imminent increase in  
13 the number of trains over that crossing and to install  
14 upgraded warning devices such as flashing lights or  
15 gates at 89 crossings.

16 To mitigate the potential safety risk from  
17 increased freight rail operations on eight rail line  
18 segments, SEA recommends that the applicants be  
19 required to inspect the tracks on a usage basis in  
20 this case every 40 million gross ton miles, rather  
21 than simply annually.

22 To provide for safer passenger rail

1 operations on five rail lines segments, SEA recommends  
2 that CSX consult with FRA and three passenger service  
3 agencies to develop operational strategies and apply  
4 technology improvements to insure the safety of  
5 passenger train operations as maintained.

6 To address potential safety integration  
7 issues, the Board and FRA recently signed a memorandum  
8 of understanding to establish an on-going safety  
9 monitoring process during implementation of the  
10 proposed Conrail acquisition. DOT concurred in this  
11 MOU.

12 The MOU means that not only has safety  
13 been given unprecedented consideration in addressing  
14 the proposed transaction, but also that the safety  
15 integration plans of applicants will be monitored  
16 until it is clear that the transaction has been  
17 implemented safely if the Board approves the proposed  
18 Conrail acquisition.

19 SEA recommends that the Board require the  
20 applicants to cooperate with the monitoring process  
21 and to comply with their safety integration plans.

22 SEA's other local mitigation includes a



1 recommendation that the applicants mitigate train  
2 locomotive engine and wheel rail noise in certain  
3 communities. This mitigation would require the  
4 applicants to reduce noise levels by 10 decibels by  
5 using either noise barriers or building sound  
6 insulation treatments.

7 Finally, in the area of passenger train  
8 preference, I'd like to clarify an issue that was  
9 raised that SEA is well aware that by law the  
10 passenger train preference is given only to Amtrak and  
11 not to the Virginia Railway Express and that therefore  
12 no part of SEA's analysis of VRE is dependent upon the  
13 assumption that VRE was entitled to passenger train  
14 preference.

15 Now I'd like to mention here the fluid  
16 nature of the environmental mitigation process.  
17 First, because of NS's proposed rerouting of 11 trains  
18 per day away from the East Cleveland area, SEA stated  
19 in the final EIS that those communities that would be  
20 adversely impacted by this rerouting would have an  
21 additional opportunity to comment on this issue and  
22 that they should make their comments to the Board by

1 June 28, 1998.

2 I would like to note that SEA analyzed the  
3 effects of this rerouting in the final EIS addendum  
4 and included appropriate mitigation in Chapter 7 of  
5 the final EIS to address any significant adverse  
6 environmental impacts. However, mitigation cannot be  
7 considered final for the affected communities until  
8 the comments have been filed and considered.

9 Secondly, both NS and CSX filed on June  
10 2nd comments on the final EIS where they're requesting  
11 clarification and modification of certain conditions  
12 SEA recommended. CSX also stated that it would  
13 provide to the Board by July 1, 1998 additional  
14 information in several areas such as grade crossing  
15 safety and hazardous materials transport.

16 Third, both NS and CSX have entered into  
17 additional negotiated agreements with various  
18 communities since the final EIS was issued and may yet  
19 enter more agreements with other communities. This  
20 would be a good point for me to note that negotiated  
21 agreements may be substituted for any of SEA's  
22 recommended environmental mitigation, provided that

1 the parties certified that the agreement satisfies  
2 their environmental concerns.

3 For these reasons, SEA believes the  
4 environmental mitigation process should continue to be  
5 flexible. Therefore, if the Board approves the  
6 proposed Conrail acquisition, SEA recommends that the  
7 Board impose the mitigation measures SEA proposed in  
8 the final EIS.

9 SEA also recommends that the Board reserve  
10 the right to fine tune SEA's recommended conditions  
11 and make technical changes in the Board's final  
12 written decision based on the continuing environmental  
13 input the Board will receive over the next few weeks.

14 Adopting this approach will not prejudice  
15 any party. Every party will have an opportunity to  
16 address the environmental conditions imposed by the  
17 Board in its final written decision by filing an  
18 administrative appeal of that decision after it is  
19 issued.

20 Thank you and I'm available for any  
21 questions.

22 CHAIRMAN MORGAN: Thank you, Mr. Dalton.



1 And before I begin with a few couple of questions I  
2 should recognize that Ms. Kaiser who is also part of  
3 your team is not with us today. She has more  
4 important things to tend to. Her son is graduating  
5 from school which with all due respect is more  
6 important probably than anything we're doing here  
7 today, but in any event I wanted to recognize her  
8 involvement in this effort, along with you, Mr. Dalton  
9 and you and your activities.

10 Let me ask a couple of questions. First  
11 of all, under NEPA we are required to take a hard look  
12 at the environmental issues presented by transactions  
13 that are before us. I presume you feel we have taken  
14 a hard look?

15 MR. DALTON: Since we're running into the  
16 gas station on empty, yes, I think we've taken a hard  
17 look.

18 CHAIRMAN MORGAN: Okay. Ms. Kitay, do you  
19 have any more legal answer to it than that?

20 MS. KITAY: No, but I think the 3,000 page  
21 by the EIS was pretty comprehensive.

22 CHAIRMAN MORGAN: Well, I think we're all

1 running on empty, so I sort of relate to that. No air  
2 pollution there at all.

3 A couple of specific issues that you  
4 mentioned in your statement, operating plans. There  
5 have been suggestions made through this process that  
6 certain of the operating plans put forth by the  
7 applicants should be changed to accommodate  
8 environmental impacts. I think I heard you say that  
9 the EIS does not make any such recommendations. Is  
10 that correct?

11 MR. DALTON: Except for the Claggsville  
12 connection.

13 CHAIRMAN MORGAN: Right.

14 MR. DALTON: Which NS proposed.

15 CHAIRMAN MORGAN: Now that leads me to one  
16 issue that does involve operating plans and that is  
17 the Four Cities, Indianapolis area. Would you explain  
18 in a little more detail how the EIS addresses the Four  
19 Cities issue?

20 MR. DALTON: We did take quite an  
21 extensive look at the Four Cities. It is crossed by  
22 a number of CSX and NS rail line segments, some of

1 which have large train increases, some have had  
2 smaller train increases, some have decreases. In  
3 looking at it, there were a couple of factors  
4 involved. First of all, the Four Cities proposed two  
5 alternative routes, both of which would involve some  
6 operational difficulties. There were trackage rights  
7 issues that they would have to run over. Basically,  
8 it was the CSX rerouting that they were proposing.  
9 They would have to reroute over trackage rights over  
10 all the carriers. There would be other constructions  
11 necessary. There were certain difficulties.

12 In addition, CSX is making substantial  
13 modifications in the Four Cities area. Actually, in  
14 the Chicago area, terminal area, to address a number  
15 of their operating concerns which I believe they're  
16 related to all last week. Those operational  
17 improvements would flow into the Four Cities area and  
18 also in response to the Four Cities concerns, CSX did  
19 offer up certain voluntarily mitigation of proposals  
20 including rerouting a few trains away from the key  
21 line segment that was at issue between Pine Junction  
22 and Barr Yard.



1           Given the -- in addition, the section of  
2           environmental analysis proposed additional mitigation  
3           measures on CSX in the Four Cities area. So given the  
4           operational improvements that the CSX will be making  
5           in the area, the mitigation measures they will be  
6           imposing of themselves or recommended themselves and  
7           the ones we are recommending, we did not see any  
8           environmental driving reason to search out an  
9           alternative or to adopt, certainly, an alternative.  
10          We felt that the solutions proposed by the carrier and  
11          by the section on environmental analysis would  
12          certainly address the issues that were raised.

13               CHAIRMAN MORGAN: And by the way, I think  
14          in the Four Cities, I said Indianapolis, that's my  
15          geography. I'm not good on that. I meant Chicago.

16               So from your perspective then what we have  
17          done with the Four Cities, addresses the environmental  
18          impacts from the proposed transaction?

19               MR. DALTON: Yes, it does.

20               MR. RUSH: I think it would be fair to say  
21          that the changes that have been made are suggested  
22          largely voluntarily will more than offset the

1 incremental increase in traffic that will be going  
2 over the line. So that it's a net plus  
3 environmentally.

4 CHAIRMAN MORGAN: What is the increased  
5 traffic going over that lien right now? Actually,  
6 there are two lines involved there, right?

7 MR. DALTON: Yes, the major lines was  
8 through East Chicago was one of the largest ones that  
9 was contentious was initially almost a six train  
10 increase. In its efforts to mitigate CSX did propose  
11 to reroute several of the trains on a couple different  
12 line segments and brought that down to two trains a  
13 day increase which would be a small increase based on  
14 the 30 trains a day that currently go through that  
15 area. Plus, as I said, they're going to be putting in  
16 significant capital improvements in the Chicago  
17 terminal area and along that line segment, including  
18 increasing the speeds to a certain extent, plus  
19 putting in, as we're recommending, warning time  
20 devices and other improvements that should decrease  
21 the delays that were incurred in that Four Cities area  
22 and raise the safety elevation.

1 CHAIRMAN MORGAN: Thank you. In terms of  
2 safety, you mentioned safety integration plans. How  
3 many of the 65 environmental conditions that EIS  
4 recommends be imposed are safety related?

5 MR. DALTON: I don't have a count and  
6 because some of the 65 have As, Bs and Cs attached to  
7 them and things of that nature, I would just say based  
8 on the summary I presented and if you look at the  
9 mitigations overall, the predominance of the  
10 mitigations are addressed toward safety related  
11 impacts, be it HazMat transport or grade crossing  
12 safety, even rail, freight operational safety. As I  
13 mentioned the 40 million gross ton inspections on  
14 certain rail lines, passenger rail safety and the  
15 safety integration plan. So a lot of the areas just  
16 keep coming back to safety related, so they're very,  
17 very predominantly safety related.

18 CHAIRMAN MORGAN: With respect to grade  
19 crossing warning signs which is something that you  
20 mentioned in your document and there's been some  
21 discussion of possibly delaying the implementation  
22 date by which those warning signs are to go up,



1 related to increased traffic through the grade  
2 crossing area. Do you have any comment on the  
3 suggestion of moving that date?

4 MR. DALTON: The section of environmental  
5 analysis feels it's critical, obviously, to warn  
6 motorists before the trains are increased that there  
7 will be a train increase. It won't do a lot of good  
8 to put a sign up after the trains have already  
9 increased telling people they're going to increase.  
10 It's a warning technique, just like when you have  
11 highway construction, they put up notices, big orange  
12 signs, construction area, things of that nature. So  
13 it's basically a warning sign to let the people who  
14 aren't aware of some of the train traffic increases  
15 and some of these routes are going to have substantial  
16 20, 30 and 40 train a day increases. It's important  
17 to know that people are used to smaller amounts of  
18 trains that there might be substantial increases in  
19 train traffic on that particular crossing, so it's  
20 important to let them know ahead of time.

21 CHAIRMAN MORGAN: And then the last area  
22 I just wanted to review with you is noise. Could you

1 go over in a little bit more detail what the EIS  
2 includes as it relates to noise mitigation.

3 MR. DALTON: As I mentioned in there,  
4 basically we're gearing toward a performance based  
5 standard of a 10 decibel reduction and it's flexible  
6 enough, certainly, to allow the carriers to implement  
7 various noise mitigation measures in order to achieve  
8 that 10 decibel reduction. They can do whatever  
9 options are available. In addition, as I may have  
10 mentioned or certainly alluded to in the final EIS,  
11 the carriers can always reach agreement as they have  
12 recently with several communities to address noise  
13 abatement programs and those negotiated agreements  
14 would take precedence over our particular noise  
15 mitigation that we're recommending.

16 CHAIRMAN MORGAN: Thank you. I have, as  
17 the Vice Chairman knows, something to go through, but  
18 I wanted to let you ask some questions first.

19 VICE CHAIRMAN OWEN: I really don't have  
20 an awful lot let on the table after that. But what I  
21 would like to do is commend your section on  
22 environmental assessment because you have done an

1 excellent job working on an EIS and bringing in the  
2 safety factor, the SIP at a later date and  
3 coordinating that throughout the States. And so do  
4 you think that that was the thing that brought people  
5 to the table to a greater degree, the EIS and the SIP  
6 so that they were happy to sit down and negotiate and  
7 try to come to some compromise?

8 MR. DALTON: You're talking about the  
9 various communities and the applicants?

10 VICE CHAIRMAN OWEN: Right.

11 MR. DALTON: There were a number of  
12 driving forces, but I would say that was part of it.

13 VICE CHAIRMAN OWEN: And now the next step  
14 is that some communities will take, instead of  
15 utilizing just as the Chairman and you were talking  
16 about, utilizing certain guidelines on noise abatement  
17 or whatever and may strike other deals which will  
18 override the --

19 MR. DALTON: I think it's entirely  
20 possible other communities would be talking to the  
21 railroads.

22 MR. RUSH: To address your concern, Mr.



1 Vice Chairman, I think there's a misapprehension that  
2 there's a preference for noise barriers. There is  
3 not. It's just that where there is substantial  
4 increase in noise, a significant mitigation must be  
5 provided, but no particular mode is preferred over the  
6 other.

7 MS. KITAY: Right, as Mr. Dalton said,  
8 it's a performance standard that would require 10  
9 decibel decrease and how they achieve that is really  
10 up to them and it's suggested -- various things are  
11 suggested including the possibility of noise barriers  
12 or sound walls, but if they can come to some other  
13 agreement either with the community or some other  
14 process by which the noise would decrease by 10  
15 decibels, I think that would be consistent with the  
16 recommended condition.

17 MR. DALTON: We did mention in the final  
18 EIS, there are other mitigation strategies and I think  
19 the applicants raise that also in some of their  
20 concerns that things like putting in continuous welded  
21 rail can reduce the noise of the wheels. Because what  
22 we're talking basically here is wheel rail noise. So

1 by putting in -- you lose the old clickety-clack that  
2 a lot of people used to like to hear. I guess they  
3 don't like to hear it as much any more, but that would  
4 reduce the noise by having continuous welded rail.

5 VICE CHAIRMAN OWEN: I noticed that in  
6 housing insulation. My only caveat to this is that  
7 whatever we do here, we're going to need to continue  
8 to refine it because we're going to see more and more  
9 traffic on the rail lines throughout the nation, so we  
10 just need to continue to work at it.

11 Thank you very much. I have no further  
12 questions of you.

13 CHAIRMAN MORGAN: Well, let me then, I  
14 think this would be an appropriate time before we move  
15 to final vote on the merger application then before us  
16 with all of the staff recommendations for me to  
17 specifically offer a recommendation as it relates to  
18 the final EIS which, of course, we must do because EIS  
19 was a staff document and not a Board issued document.  
20 So let me just lay out the recommendation which then  
21 will be part of the final package if we approve the  
22 rest of the recommendations before us today.

1 First of all, I recommend that we adopt  
2 the mitigation proposed by the section of  
3 environmental analysis in the EIS as modified by  
4 negotiated agreements arrived at later, as necessary  
5 by comments that you referenced on the Claggsville  
6 connection in the Cleveland area, and as necessary, by  
7 request for clarification.

8 Let me go through a couple of specific  
9 issues. With respect to environmental justice, while  
10 we do not disavow the legal finding upon which SEA  
11 based its recommendations which carries with it no  
12 moral or civic judgment the decision adopting the  
13 mitigation will make clear that by willingly complying  
14 with the recommended mitigation, the transaction will  
15 not and cannot be viewed as disproportionately  
16 impacting minority and low income areas.

17 With respect to negotiated agreements and  
18 their imposition, those entered into to date will be  
19 imposed as a condition unless both parties to an  
20 agreement within two weeks advise us that they do not  
21 want that settlement agreement imposed. For those  
22 imposed, clearly the Board does not intend to, nor

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1 will it, go beyond its jurisdiction in enforcing those  
2 agreements and with respect to the terms of the  
3 negotiated agreements imposed, there is no  
4 precedential effect associated with those terms in the  
5 context of appropriate mitigation for future cases.

6 With respect to noise, the Board by  
7 approving noise mitigation as part of the EIS, is not  
8 indicating a preference for sound barriers. However,  
9 noise mitigation must be adequate and certainly any  
10 negotiated agreements addressing noise would control.

11 With respect to grade crossing upgrading,  
12 mitigation can be governed by a negotiated agreement.

13 With respect to real time monitoring for  
14 emergency response delay, mitigation also can be by  
15 mutual agreement.

16 With respect to monitoring of mitigation,  
17 that monitoring ends with the overall oversight of the  
18 transaction.

19 I further recommend that the Board direct  
20 conversations between the applicants and Wellington  
21 and North Ridgeville, Ohio, about their environmental  
22 concerns.

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1           One hundred twenty day period has been  
2 requested by the State of Ohio for negotiation with  
3 the applicants on 29 grade crossing upgrades based on  
4 a corridor approach. This recommendation is not  
5 inconsistent with the SEA's recommendations in the EIS  
6 and I recommend that we adopt that approach. We  
7 encourage other States to continue to negotiate with  
8 applicants on grade crossing protection within the two  
9 year period provided in the environmental impact  
10 statement.

11           There have been questions raised as to  
12 when negotiated agreements are an acceptable  
13 alternative to what is proposed in the EIS. Whether  
14 or not the EIS specifically provides for this  
15 alternative, the Board clarifies that this alternative  
16 is always available. Any other substantive  
17 suggestions for modification in the environmental  
18 mitigation being adopted today must be submitted in  
19 the form of an administrative appeal following the  
20 issuance of our final written decision.

21           In connection with any changes that we  
22 make in accordance with this motion that I am offering

1 today, if adopted, there will be an opportunity to  
2 comment by way of administrative appeal.

3 I presume that the Vice Chairman will  
4 second my recommendation since there's no one else  
5 here to do it.

6 VICE CHAIRMAN OWEN: I'll second it.

7 CHAIRMAN MORGAN: Okay, well then I think  
8 that motion passes pending the big vote that we must  
9 now take.

10 Since there are only two of us, we will  
11 dispense with the formalities. We have in front of us  
12 a set of staff recommendations that have been  
13 thoroughly explained and about which many questions  
14 have been asked. You also have my recommendation  
15 pending the specific requests, recommendations made by  
16 the environmental staff through the EIS, so that is  
17 now before us. And I will turn to the Vice Chairman  
18 for his statement and vote and then I will give my  
19 statement and vote.

20 VICE CHAIRMAN OWEN: Thank you very much,  
21 Madam Chairman. It's with great pleasure that I'm  
22 here today to participate in this proceeding. Since



1 1920 it has been the public policy of this nation to  
2 encourage railroad mergers that are in the public  
3 interest. The public interest, just what does that  
4 expression mean? We are instructed via the statute,  
5 Agency precedent and the courts that in the context of  
6 a proposed merger that expression should mean  
7 increased competitive options and reasonable rail  
8 service for shippers. For railroads, it should mean  
9 growth, better returns on investments, greater and  
10 efficiency use of assets and infrastructure  
11 improvements. For labor, it should mean fair working  
12 conditions, wages, enhanced job security. And last,  
13 but not least, for impacted communities it should mean  
14 fair and equitable arrangements and enhancement of the  
15 environment and the quality of life.

16 I find that in the context of this  
17 proposed merger that in view of the quality of the  
18 arguments and evidence that this is indeed a proposed  
19 merger in the public interest. I vote to approve it.  
20 With everything being said and done, I cannot help but  
21 conclude that the public benefits are compelling.  
22 Chiefly among which is that, in my opinion, this

1 merger as approved and conditioned approximates as  
2 closely as possible what was envisioned as far back as  
3 the final system plan for viable, two carrier  
4 competition in the East.

5 I believe that the public overall should  
6 be pleased as a result of what we do here today.  
7 Conrail has been replaced by two viable, efficient and  
8 quality carriers who promise to compete vigorously.  
9 Such competition cannot help but inure to the public  
10 benefit and interest. Concomitantly, the nation's  
11 communities and highways will be rid of hundreds, if  
12 not thousands of trucks. Let us hope it's thousands.  
13 Is it a perfect plan? Perhaps not. Will there be  
14 some competitive harm in important markets? Perhaps  
15 so. But I find that the evidence is compelling that  
16 approval of this merger, as conditioned, will ease and  
17 in some cases completely eliminate the harm of a  
18 competitive imbalance that has gone on for too long.

19 The debate consisted of many diverse  
20 views, but I truly believe that what we do here today,  
21 will in the long run achieve the greatest good with a  
22 minimum amount of harm. In this regard, I would

1 commend the applicants and the National Transportation  
2 League for sitting down at the table in advance of  
3 these proceedings, for seeing meaningful dialogue and  
4 reaching exceptional and novel resolutions. That was  
5 truly an example of the private marketplace regulating  
6 itself better than any governmental body could do. I  
7 would also commend the role of other federal agencies  
8 such as the FRA in matters of safety and the DOT and  
9 DOJ for their valuable input regarding some of the  
10 competitive and operational issues in and advancement  
11 of the process.

12 Let me stress to the skeptics, however,  
13 that this Agency intends on being an alert watchdog,  
14 the reason for all of the monitoring. We will not  
15 hesitate for a moment to exercise our authority to  
16 come back into this merger and grant competitive  
17 and/or operational relief when necessary.

18 I can assure you that this Agency is  
19 predisposed to doing just that, without pause.  
20 Accordingly, I will hold the applicants to their  
21 promises and commitments, keep and fulfill them,  
22 please. I beg of you to do that.

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1                   Lastly, I would be remiss if I did not  
2                   take a moment here and thank the Board's staff. I  
3                   must admit I came here from the private sector and  
4                   looked at Civil Service bureaucracy as maybe marginal,  
5                   some competency there. But let me tell you, that  
6                   these civil servants that have worked on this project  
7                   here and the previous mergers that we have been  
8                   involved in are outstanding, each and every one of  
9                   them, dedicated, knowledgeable, some of the most  
10                  knowledgeable transportation people in the nation.  
11                  They take their work home with them in the evening,  
12                  work here on Saturdays and Sundays many hours. And it  
13                  could be due to the fact that the Chairman has a  
14                  bullwhip out, but the Agency possesses some of the  
15                  finest and competent transportation specialists in the  
16                  world. I thank them all, the merger team, the  
17                  Chairman and her staff and last, but not least, my  
18                  staff for fulfilling their responsibilities in the  
19                  highest tradition of service. I thank them all for a  
20                  job well done.

21                         Thank you. I think I had my vote in there  
22                         some place.

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1 CHAIRMAN MORGAN: I think it's voting aye,  
2 yes.

3 I have a statement that goes into a couple  
4 of different areas and at the end of that I will also  
5 recognize a lot of people who have put a lot of effort  
6 into this project that we have before us.

7 Our job in assessing mergers is to balance  
8 a variety of factors and issue a decision that  
9 advances the public interest. The recommendation  
10 before us today will advance the public interest in  
11 many important ways. The application before us  
12 promotes competition and the recommendation before us  
13 applies the authority of the Board to enhance  
14 competition even further.

15 Let me talk about the strength of the  
16 merger application. The recommendation before us will  
17 preserve the strength and the integrity of the  
18 transaction that the parties brought to us. This  
19 carefully crafted, privately negotiated deal injects  
20 competition into the entire East like no merger before  
21 has ever done. It creates two strong competitors in  
22 the East that will provide improved rail service

1 opportunities throughout the Northeast and the South.

2 More specifically, through the development  
3 of shared assets and joint access areas, it will bring  
4 competition back to many areas that had lost options  
5 through the creation of Conrail.

6 Even for localities that are not shared  
7 asset areas, it enhances competition. In Buffalo, for  
8 example, although not every shipper will have direct  
9 access by two carriers under the proposal, the  
10 transaction itself provides a two carrier presence and  
11 the availability of a shared assets area in  
12 neighboring New Jersey will discipline CSX's  
13 activities in the New York City area.

14 In short, shippers throughout the East  
15 will have more options than they have had in decades  
16 and more competitive service at reasonable rates than  
17 they have ever had before.

18 Additionally, the deal will produce over  
19 time an impressive \$1 billion in quantifiable public  
20 benefits and numerous other benefits.

21 The capital that will be invested in rail  
22 infrastructure will benefit all shippers, not just



1 those that are served by CSX or NS or both. It will  
2 create new jobs both on and off of the rail system.  
3 The support of more than 2200 shippers from a broad  
4 spectrum of comity groups, 350 public officials, 80  
5 railroads, many state and local government interests  
6 throughout the East and various rail labor employees  
7 attest to the overall strength of the proposal. This  
8 merger will promote competitive balance throughout an  
9 entire region of the country and will create a strong  
10 rail network in the East that can handle the  
11 transportation needs of an expanding economy and  
12 advance important economic growth and development in  
13 the region. These benefits are clearly in the public  
14 interest.

15 Now turning to the preservation of the  
16 fundamental integrity of the transaction, the  
17 recommendation that the staff has presented to us  
18 while imposing important additional co-competitive  
19 conditions, recognizes the operational and competitive  
20 integrity of the proposal and the importance of  
21 preserving and promoting privately negotiated  
22 agreements. Government should not be in the business

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1 of fundamentally restructuring private sector  
2 initiatives that are inherently sound and the  
3 conditions that we would impose add value, but not in  
4 a way that undermines the value of the transaction  
5 itself. They reflect a respect for the numerous  
6 settlement agreements that we encouraged and that the  
7 applicants and the other parties have worked hard to  
8 reach, agreements like the National Industrial  
9 Transportation League settlement, the United  
10 Transportation Union settlement, the Cleveland  
11 Environmental settlement and so many more.

12 These private sector agreements have  
13 clearly added value to the proposed transaction from  
14 a competitive perspective and in other ways and the  
15 parties are to be commended for furthering the public  
16 interest in this way.

17 There is a strong public interest in  
18 encouraging private parties to negotiate  
19 pro-competitive transactions such as this one and  
20 government action that discourages such private sector  
21 initiative is not in the public interest.

22 Now the proposal before us promotes a

1 pro-competitive use of the Board's authority, while  
2 the recommendation preserves the strength and  
3 integrity of the proposal brought to us, it also  
4 applies the Board's authority fully and responsibly  
5 and reasonably to further promote competition to the  
6 benefit of many geographic regions. It's recommended  
7 additional conditions which go beyond the already  
8 regionally pro-competitive effect of the original  
9 transaction and the further pro-competitive effect of  
10 many settlements enhance the competitive service for  
11 areas in New York State and New England that had lost  
12 carrier options through the creation of Conrail.

13 The recommendation also applies the  
14 Board's authority to further enhance the positions of  
15 many users. The recommendation would impose the NIT  
16 League settlement and expand in a logical way the  
17 pro-competitive aspects of that settlement and by  
18 giving shippers the opportunity to be released from  
19 their contracts after six months, the recommendation  
20 would preserve the operational integrity of the deal,  
21 but will still give many shippers such as chemical  
22 shippers a chance to take advantage of their new

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1 competitive options sooner rather than later.

2 By preserving the settlements of many  
3 railroads and shippers such as coal and utility  
4 shippers, while imposing conditions to assist others  
5 such as aggregate shippers and the Port of Wilmington  
6 and smaller railroads that provide important service,  
7 the recommendation insures that overall shippers will  
8 be better off after the merger than they were before  
9 and that none will have less service than they had  
10 before.

11 In this regard, the recommendation  
12 recognizes the important role of smaller railroads in  
13 providing essential and competitive services in  
14 various regions affected by this transaction. By  
15 assuring that smaller railroads that provide essential  
16 services in such areas as the Ohio region will be  
17 viable and will continue to be able to compete. The  
18 recommended conditions promote important competitive  
19 options and further regional economic development.

20 With respect to operational and  
21 implementation success, the recommendation with its  
22 operational reporting and monitoring recognizes the

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1 operational challenge that the proposal represents.  
2 Its monitoring elements will provide the Board with  
3 the tools to further a smooth implementation of the  
4 merger in a way that utilizes the Conrail Transaction  
5 Council and the labor councils and does not unduly  
6 burden the parties. And it appropriately focuses on  
7 specific areas of concern such as the shared assets  
8 areas and the Chicago gateway.

9 Having been given the personal commitment  
10 of both Mr. Snow and Mr. Goode to make the merger  
11 work, I am confident that this merger will be  
12 implemented smoothly and will result in overall  
13 service improvements.

14 The recommendation conditions, however,  
15 will make sure that we are on top of the situation in  
16 case it does not.

17 With regard to protecting the environment,  
18 the recommendation appropriately protects the  
19 environment. The deal has many environmental  
20 benefits, including the significant truck diversion  
21 that is anticipated. At the same time the proposal  
22 raises environmental concerns. For the first time



1 ever in a merger the Board issued a full environmental  
2 impact statement.

3 We also encourage the railroads and local  
4 communications to meet and resolve environmental issue  
5 privately and several did. In Cleveland, for example,  
6 a key traffic center for this merger, Mayor White and  
7 both applicant railroads after months of discussion  
8 were able to reach mutually acceptable agreements that  
9 preserve the operational integrity of the transaction  
10 while addressing important community life concerns.  
11 I am happy we were able to give effect to win-win  
12 settlements such as this one and others in the  
13 Cleveland area and in so many other places.

14 At the same time for the communities that  
15 could not reach agreement with the carriers, the  
16 recommendation provides necessary and appropriate  
17 conditions pertaining to grade crossing safety,  
18 hazardous materials, traffic delay and noise among  
19 others.

20 The recommendation also promotes safety.  
21 More than half of the environmental conditions involve  
22 safety. For the first time ever in a merger the

1 applicants were required to submit safety  
2 implementation plans which under the recommendation  
3 will be monitored through a memorandum of  
4 understanding between the Board and the Department of  
5 Transportation.

6 The recommendation also recognizes  
7 employee interest. As previously discussed, the  
8 proposal before us will mean more jobs. And by  
9 mandating the creating of labor councils to focus on  
10 issues such as safety and operations, this  
11 recommendation will help promote the safety of the  
12 rail employees involved.

13 Finally, the recommendation provides the  
14 protection of New York Dock and it reaffirms the  
15 negotiation and arbitration process as the appropriate  
16 way to resolve important issues relating to employee  
17 rights.

18 This package before us clearly has overall  
19 benefits. It will clearly promote the public interest  
20 and its extensive oversight is intended to insure that  
21 it does. The original transaction proposed to us with  
22 its subsequent negotiated agreements and with the

1 conditions recommended by staff will provide many  
2 benefits to many people. The recommended oversight  
3 will help us to insure that these benefits will  
4 materialize and the private mechanisms in place for  
5 oversight will provide a vehicle by which private  
6 sector dialogue can condition.

7 The recommendation represents good  
8 government and promotes private sector initiatives  
9 that are in the public interest. It promotes a  
10 resolution that is best for the national interest as  
11 a whole and for the East, in particular. For all of  
12 those reasons in case you didn't guess, I  
13 wholeheartedly support the staff recommendation and I  
14 enthusiastically vote to adopt it.

15 With that, I believe that the proposal, as  
16 modified, is adopted and now I would like to thank a  
17 lot of people. I see people leaving the room, but this  
18 is important.

19 First of all, let me thank my Vice  
20 Chairman for all of his cooperation and commitment.  
21 There are two of us here. We do a lot of work. We  
22 continue to do a lot of work and we continue to



1 resolve a lot of difficult issues and we could not do  
2 it without his cooperation and commitment. Let me  
3 also thank his staff, Dennis Starks, who consistently  
4 assists and contributes. We could not do without you,  
5 Dennis.

6 Let me now turn to the merger team. We  
7 have a row in front, we have a row in back. Ms. Farr  
8 is the leader of this team and has been the leader of  
9 many teams before. This whole team has done an  
10 outstanding job as it always has done in the past, as  
11 I think the world has seen today: professional,  
12 competent, on top of it all. Thank you very much for  
13 all of your work and for bringing this to fruition  
14 today.

15 Let me turn to my secretary, Vernon  
16 Williams, who has kept his eyes opened now the third  
17 day in a row in this room and his staff over here and  
18 his staff who is downstairs and other places. We  
19 cannot do without the Secretary's Office. They handle  
20 of the paper that come sin here and keeps the records  
21 straight for everybody and we could not do it without  
22 you, Mr. Williams and your staff.

1           Let me next thank Dan King who is my one  
2 congressional liaison. That is a tough job. He has  
3 managed to work through about 20 congressional people  
4 that we've had over the last couple of days. I want to  
5 thank him for all of his professionalism in carrying  
6 out those responsibilities.

7           Dennis Watson is our one press liaison.  
8 He has also managed to coordinate all of the press for  
9 this event and has done a magnificent job and I want  
10 to thank him for that.

11           Don Hurst, who is the one that makes sure  
12 the building works and the air conditioning is one and  
13 so forth which is quite important. I want to thank  
14 him. I don't see him around, but he's around  
15 somewhere.

16           Lee Gardner, who is the overall  
17 administrator of everything around here, makes sure  
18 everything works and he has made sure we have had  
19 volunteers and made sure that all the details of the  
20 last couple of days have been taken care of.

21           Let me also then thank all of the  
22 volunteers. I cannot name you each individually, but

1 those of you who have taken elevators, have tried to  
2 get a phone, have tried to get a meeting room, you  
3 will see them. They have tried to help you and I can  
4 assure you that they have helped you because they are  
5 a professional group and I think this is the time to  
6 say thank you to the entire Board staff, because we  
7 have staff working on this, but we have staff working  
8 on everything else that is going on here and all of  
9 these people are committed to the public interest and  
10 the public is without question very lucky to have this  
11 group of individuals working on these issues.

12 Now let me turn to a couple of other  
13 special people. First of all, my staff. Now working  
14 with me is not a light and airy activity so you can  
15 imagine that they have put in a lot of hours. Let me  
16 start with Mary Touric who is not here. She's  
17 upstairs getting work done because I'm down here and  
18 she's upstairs. She runs the place, make no mistake  
19 about that. Craig Keats who is my, what I call  
20 ombudsman and he -- that's a heavy job with me because  
21 there's always seeming to be the need for an  
22 ombudsman. And then Richard Armstrong, who has been



1 my right arm and my left arm and my head on the merger  
2 and I want to thank him. I could not do it without  
3 those three people.

4 Now I'm also going to do something unusual  
5 which is that I'm going to thank somebody who is in  
6 the room who is -- I'm not going to point out and that  
7 is my husband, Michael, who has sat through three days  
8 of this proceeding. I think he's here to make sure I  
9 still exist.

10 Yes, I do exist, if even at a distance,  
11 but I will keep him anonymous so that he doesn't  
12 acquire any of the controversies that surround me, but  
13 clearly without him I would not be here and I could  
14 not do what I have done on this case or on any case.  
15 So I am to him eternally grateful.

16 And I think in closing I would say that  
17 this effort, along with every other effort in here  
18 requires everybody, at the Board, and everybody has  
19 been part of this and I feel like the staff here is  
20 the wind beneath my wings. I couldn't get off the  
21 ground without all of you and for those of you who  
22 have been in the room for three days, before you leave

1 if you could just thank a staff person from the Board  
2 because they really deserve it.

3 With that, I think our business is done,  
4 unless anybody has anything else, I think we will  
5 adjourn and then there will be 15 minutes of clearing  
6 the room out or 20 minutes and then the Vice Chairman  
7 and I will be back for our press conference and then  
8 we will be off to write the written decision.

9 Thank you all very much.

10 (Whereupon, at 3:54 p.m., the proceedings  
11 were concluded.)

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**CERTIFICATE**

This is to certify that the foregoing transcript in the  
matter of: Finance Docket No. 33388

Before: Surface Transportation Board

Date: June 8, 1998

Place: Washington, DC

represents the full and complete proceedings of the  
aforementioned matter, as reported and reduced to  
typewriting.

Kevin M. Murphy