SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

—CONTROL AND OPERATING LEASES/AGREEMENTS—

CONRAIL, INC., AND CONSOLIDATED RAIL CORPORATION

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1333 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433 www.nealgross.com
PRESENT:

VERNON WILLIAMS
DAVID KONSCNIK
JULIA FARR
LOUIS MACKALL
MELVIN CLEMENS
MICHAEL DALTON
EVELYN KITAY
PAUL MARKOFF
MICHAEL REDISCH
HENRI RUSH

ALSO PRESENT:

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

<table>
<thead>
<tr>
<th>Opening Remarks</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Linda Morgan</td>
<td>4</td>
</tr>
<tr>
<td>Gus Owen</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Introduction</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Konschnik</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation of Opening Statement</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julia Farr</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presentation of Team’s Final Recommendations</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Application/Broad Conditions</td>
<td></td>
</tr>
<tr>
<td>Specific Conditions</td>
<td></td>
</tr>
<tr>
<td>Louis Mackall</td>
<td>37</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operational Monitoring</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melvin Clemens</td>
<td>88</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment Review</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Dalton</td>
<td>105</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Closing Remarks</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>135</td>
</tr>
</tbody>
</table>
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
recommendations.

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

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

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

But most importantly, what is most
unprecedented about this proceeding is that the proposal before us, if approved, would inject competition throughout the East like no other merger before it has ever done.

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

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

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

In terms of staff presentation I propose that we adopt the following procedure. Staff will present an opening statement addressing the applicable
statutory standards and giving an overview of the issues central to this case.

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

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

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

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

VICE-CHAIRMAN OWEN: Just a short comment here. I'd like to welcome you back again and I'm sure that we won't be here that long, but this is the day
we've all been waiting for, and I for one, have been looking forward to this day of interaction with our merger team and its experts.

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

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

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

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

CHAIRMAN MORGAN: Okay. Mr. Konschnik, do
you want to begin?

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

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

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

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

By application filed June 23, 1997, applicants seek approval for CSX and Norfolk Southern to acquire control of Conrail and approval of the division of Conrail’s assets by and between CSX and Norfolk Southern. In addition, applicants have filed 38 related proceedings.
These include ten notices of exemption and 12 petitions for exemption relating to construction projects, a notice of exemption for a joint relocation projects, a petition for exemption for the transfer of a line, an application and a petition for exemption for control of terminal railroads, eight notices of exemption for overhead trackage rights, and authorization to abandon, or to discontinue, operations over four line segments.

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

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

The terms of the NIT League settlement agreement extend beyond traditional conditions that
have been imposed by the Board or the ICC in previous consolidation proceedings.

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

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

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

The application has been endorsed by more
than 2,700 parties, including more than 2,200 shippers, more than 350 public officials, more than 80 railroads, and many states and local governments.

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

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

Pursuant to their application, Norfolk Southern would control about 58 percent of Conrail's assets while CSX would control about 42 percent. After the transaction, CSX and Norfolk Southern each would have over 20,000 miles of rail line, and the
planned division of Conrail's assets would create new competition between these two Class I railroads in many parts of the Eastern United States where only Conrail served today.

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

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

After analyzing the record and hearing the parties' oral arguments presented on June 3rd and 4th, the team believes that the proposed control transaction, subject to certain mitigating conditions that we are recommending, will clearly be in the public interest, and that any remaining competitive concerns will be heavily outweighed by the positive
effects and benefits of the merger.

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

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

Several protestants have argued that the transaction is contrary to the public interest because CSX and Norfolk Southern have paid a large "acquisition premium" for the Conrail properties. They have argued that both of these
carriers will be forced to raise their rates to captive shippers in order to make up their revenue shortfall and finance this investment.

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

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

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

In sum, we believe that the purchase price agreed to by these commercially sophisticated railroads represents the best evidence of the current
market value of these properties.

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

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

Applicants have demonstrated that they should be able to achieve quantifiable public benefits, including operating cost savings, logistics savings, avoided highway maintenance costs, and other public benefits, of approximately one billion dollars.
annually after the third year following completion of
the acquisition.

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

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

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

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

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

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

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

In fact, several line construction projects that the Board previously authorized are
already well underway. These important public
interest benefits of increased competition, new
single-line routes, reduced highway traffic, and
increased capital investment in needed facilities, are
largely uncontested.

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

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

As for shortline interests, we are
recommending that the Board give shortline interests
 protections similar to those afforded shippers,
including: preservation of a second Class I rail
carrier connection, preservation of build-out options,
prevention of expansion of contractual blocking provisions, extending to shortline railroads the same relief afforded shippers by the single-line to joint-line section of the NIT League agreement, and the reciprocal switching section of the NIT League agreement where shortline railroads paid that charge to Conrail.

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

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

In light of the NIT League settlement agreement and other relief being recommended, we do not recommend granting additional requests for broad conditions. We do recommend however, an expanded 5-year oversight which addresses the request of several organizations, such as the Chemical Manufacturers’
Association, the Society of Plastics Industry, the American Short-Line Railroad Association, and Regional Railroads of America, as well as many individual parties for post-implementation oversight conditions to monitor the effect of the transaction on their industries or interests.

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

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

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

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

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

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

Of the 1,022 rail line segments that the
SEA staff evaluated, they found that 201 would experience reduced train traffic, 532 rail line segments would experience no change in train traffic, and the remaining 289 rail line segments would face increased train traffic.

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

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

Attorney Louis Mackall will be presenting the team’s recommendations as to the primary application, broad conditions, and specific conditions. Director Mel Clemens of the Office of Compliance and Enforcement will be presenting the
team's recommendation regarding Operational Monitoring. And project manager Michael Dalton of the Section of Environmental Analysis will be presenting the team's recommendations as to environmental mitigating conditions proposed in the Final EIS.

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

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

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

CHAIRMAN MORGAN: Thank you very much, Ms. Farr. Let me just ask a couple of general questions if I might. First of all with respect to benefits, is there any dispute on the record as it relates to the benefits that you have cited in your document?
MS. FARR: No, and I’ll let Michael Redisch elaborate more on that.

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

CHAIRMAN MORGAN: If you wish.

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

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

The savings that they project for their own systems because of expanded service and reduced interchanges because of creation of new competition and new opportunities for shippers that will have rail/truck options that were not available prior to this merger; the savings to those of us who drive on
the highway and won't have to fight those trucks on
the Beltway anymore, the million truck trips a year
that are projected to move from the highways to rail
-- all those have not been contested by any party and
the staff has accepted it.

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

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

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

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

As far as reciprocal switching, the NIT
League Agreement does protect Conrail switches that
were available to CSX and NS but not the other way around. That’s one of the fairly major expansions that we made.

Michael, do you want to add?

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

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

CHAIRMAN MORGAN: Thank you. With respect to the acquisition premium -- and I think Mr. Redisch would be the one to answer this -- the claim is that because of the price of this merger proposal, the carriers involved will necessarily need to raise their rates on captive shippers and that the premium being...
paid for this transaction will increase the asset base
and have the net effect of ultimately raising rates.

Would you walk through that with us?

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

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

But other parties are concerned, not over
whether they will feel pressure to do so, but whether
they will have the opportunity to raise rates because
of the impact that this acquisition and the accounting 
rules adopted by the ICC and endorsed by this Board, 
would affect protections that are offered captive 
shippers.

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

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

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

We continue to believe that the ICC got it 
right and has been consistent throughout this process,
even as railroads and shippers had switched sides on this issue now that the acquisition values are higher than book values.

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

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

And the net effect on revenue adequacy calculations for both CSX and Norfolk Southern will
essentially be zero; that is, their return on
investment will be the same in a normal year as it is
today.

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

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

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20005-3701
www.nealgross.com
equipment, which appears 100 percent in our -- you
can't convince Price Waterhouse that a 5-year-old
locomotive is worth twice as much as it is because
it's not.

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

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

So if you looked at -- and we did -- hauls
of varying length and by all commodity types since
1985, and you ask what the URCS' variable cost per carload was, you will see in every instance, the same movement.

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

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

It's a long answer to a complex question.

I'm sorry --

CHAIRMAN MORGAN: Well, let me summarize -- tell me if I've got it. First of all, with respect to the asset base and how that's calculated, your conclusion is that that's the right way to go; we've
been doing it the right way, we’ll continue to do it the right way.

MR. REDISCH: Correct.

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

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

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

MR. REDISCH: Correct.

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701
www.nealgross.com
MR. REDISCH: Yes, again.

CHAIRMAN MORGAN: Thank you.

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

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

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

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

MR. MACKALL: If there are no further questions.

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

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

MR. REDISCH: Well, the very issues that I've discussed -- how this merger will affect calculation of revenue adequacy and of the jurisdictional threshold -- we will recommend be
incorporated in the Board's oversight in this proceeding.

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

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

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

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

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

The first item of business is the embraced proceedings in this case. We're recommending that the
Board approve the 38 embraced proceedings which include: authorizations relating to 22 construction projects to carry out applicants' operating plans; various trackage rights to preserve two railroad competition in certain areas; and certain limited abandonment requests covering about 60 miles of track.

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

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

The NIT League agreement calls for carrier reporting and Board oversight, and creates certain safeguards for shippers who have contracts with Conrail, who use facilities that will become
incorporated within Shared Asset Areas, who use reciprocal switching provided by Conrail, or will have Conrail single-line service replaced by CSX/NS joint-line service.

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

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

We’re recommending expansion of the reciprocal switching provisions to require preservation of switching agreements in both directions -- NS and CSX over Conrail and Conrail over NS and CSX. Similarly, we’re recommending expansion of the reciprocal switching provisions to Class III railroads that pay switching charges to Conrail.
One of the items that was very important in the two days of hearings we've had was the request by the applicants to override certain anti-assignment clauses in shipper contracts. We're recommending that the Board restrict its approval of applicants' override proposal so that anti-assignment clauses in shipper contracts would only be overridden as follows.

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

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

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

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

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

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

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

With regard to service East of the Hudson, we recommend that the Board impose a condition
requiring CSX to cooperate with the New York interests in studying the feasibility of upgrading cross harbor float and tunnel operations to facilitate cross harbor movements and alleviate motor vehicle traffic congestion and air pollution in New York City.

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

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

If the parties have not reached agreement within 60 days, the Board should initiate a proceeding to resolve this issue.
We recommend also that the Board require CSX to offer to the City of New York to establish a committee of the development of rail traffic to and from the City, with particular emphasis on the Hudson Line, as set forth in applicants' list of proffered conditions.

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

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

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

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

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

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

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

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

Finally, with regard to Buffalo, we
recommend that the Board hold CSX to its representations regarding investment in new connections and upgraded facilities in the Buffalo area.

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

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

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

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

Turning now to individual railroad, port,
and shipper issues. With regard to Amtrak and passenger railroads, as requested by Amtrak and applicants in their joint settlement agreement, we recommend that the Board monitor transaction-related impacts on Amtrak’s passenger operations as part of the general 5-year oversight.

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

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

We recommend preventing those provisions from having greater force as a result of this
transaction. We have already recommended that the Board extend to shortline carriers the single-line to joint-line and reciprocal switching relief of the NIT League agreement.

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

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

We further recommend that the parties submit their agreement to the Board within 30 days for the Board’s approval.

Wheeling and Lake Erie. We recommend that the applicants provide certain remedies to W&LE to
ensure W&LE's viability and its continued service to facilities such as the Neomodal Terminal, as follows.

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

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

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

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

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

As already mentioned, we are recommending
that applicants' settlement agreement with W&LE must include a new connection for Ann Arbor with W&LE at Toledo, which should help improve Ann Arbor's position as well.

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

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

Philadelphia Belt Line. We recommend simply that the Board grant this carrier's request for a declaration that the Philadelphia Belt Line principle -- whatever that is -- will not be preempted by Board approval of this transaction.

The Elk River Railroad. We recommend that the Board require NS to adhere to representations that it will work with Elk River to establish an appropriate interchange if Elk River completes its proposed build-out, and to discuss rehabilitating or
selling to that carrier the line between Falling rock and Charleston.

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

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

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

PSI Energy. We recommend that the Board follow Department of Justice’s recommendation and require that Conrail’s dormant trackage rights be
transferred to CSX rather than to NS.

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

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

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

Joseph Smith & Sons. We recommend that the Board preserve that shipper’s option to build-out
and receive service from NS, which will be operating over nearby lines.

Millennium Petrochemicals. We recommend that the Board require applicants to adhere to their representation to discuss alleged problems in serving the Findere, New Jersey facility.

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

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

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

We're also recommending something that's really new in this case and that we've never done before. And that is that the Board make a clear statement that approval of this transaction does not
indicate approval or disapproval of any of the
collective bargaining agreement overrides that
applicants have argued are necessary to carry out this
transaction.

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

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

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

Finally, we recommend that applicants be
directed, as suggested by UTU, to meet with labor
representatives and to form a council or councils for purpose of promoting management-labor dialogue concerning implementation and safety issues.

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

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

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

Finally, I'd like to turn just briefly, to
environmental conditions. We’re recommending that the Board impose the various mitigation measures recommended by the Section of Environmental Analysis in its Final Environmental Impact Statement, and this will be further addressed by the next panel.

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

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

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

MR. MACKALL: Well, one of the conditions we’ve imposed is to expand the NIT League agreement so that if a shortline connects now with Conrail, and after the transaction it’s connecting with -- in order to do this movement -- it’s connecting with CSX and NS or NS and CSX, it will be able to invoke the remedies
that were crafted by NIT League, and I think what is
a very creative solution that they’ve created for this
situation.

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

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

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

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

VICE-CHAIRMAN OWEN: Thank you.

CHAIRMAN MORGAN: Let me just run through
a couple of issues with you. Start out with the issue
of contracts. We heard during the oral arguments a concern about managing the contracts through the transition period operationally.

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

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

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

CHAIRMAN MORGAN: And I recall from the oral arguments that some of the shippers, I think Chemical shippers in particular, were seeking this
sort of option, at some point?

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

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

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

CHAIRMAN MORGAN: So that during the six
month period the contracts with non-assignability clauses would be handled in the same way that the other contracts would be handled?

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

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

MR. REDISCH: Yes.

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

MR. REDISCH: That is correct. The NIT League agreement provides additional safeguards for shippers who do not have non-assignability clauses. It permits CSX and Norfolk Southern to treat those contracts again, as assets of Conrail and to divide them in such a way as to provide efficient service.
after Day 1 -- after the day in which they begin to integrate their combined systems.

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

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

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

Now, you've run through the conditions that have been imposed in the New York City area. To
what extent do they address this concern about truck traffic?

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

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

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

CHAIRMAN MORGAN: And then as the staff see it, what else is your proposal doing relative to
encouraging increased rail traffic? In other words, taking trucks off the road, in the context of the conditions that you've recommended?

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

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

MR. MACKALL: That's correct.

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

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

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

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

MR. MACKALL: That's correct.

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

MR. MACKALL: That's correct.

CHAIRMAN MORGAN: Is that how I read that?

Moving on to Buffalo/Niagara. What is the, as it relates to -- prior to this application, what is the competitive situation in Buffalo today? Not with your added recommendations.

MR. MACKALL: This was mostly a very heavily Conrail market. There was some participation
by other carriers but Conrail was handling most of the traffic in Buffalo.

MR. REDISCH: Well over 50 percent.

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

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

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

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

MR. REDISCH: Yes. The two additions that we’re recommending were suggested by the Erie and the Aqua Chickagau Rail Steering Committee. And the
arguments they presented seemed convincing with respect to the Buffalo Creek line. It was an unusual set of circumstances.

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

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

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

So we believe that those trackage rights
had transferred to Norfolk Southern. Similarly with respect to the Niagara Falls area, what the Steering Committee told us on record was that there was a switching charge available from Conrail as recently as 1995 and '96 for rail movements that would come over from Canada by CSX over the suspension bridge and into Niagara Falls.

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

And they canceled their switches but even more recently, the applicant said on record that new arrangements were being made yet again and that these movements may go over suspension bridge directly into Niagara Falls; it may go over the international bridge and be switched at Frontier Yard. In either case they plan to continue collecting Conrail’s revenues as line
haul divisions rather than as switching charges.

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

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

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

CHAIRMAN MORGAN: So then the net effect of -- just to summarize where I think we are relative to Buffalo -- is that NS has a presence under the application?
MR. REDISCH: Oh, yes indeed, a strong presence. Not as strong as some parties would like, but a strong presence in terms of reaching a number of shippers, in terms of having the opportunity to locate new industries, honest lines, and have them served, in terms of a presence strong enough to do all the things that rail lines can do to constrain rates of other shippers that would remain exclusively served -- first by Conrail and then by CSX.

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

MR. REDISCH: That is correct.

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

MR. REDISCH: Yes.

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

MR. REDISCH: Yes.
CHAIRMAN MORGAN: Is that a good summary of where we are in the Buffalo area?

MR. REDISCH: Yes, it is. Yes.

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

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

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

And so we have crafted a remedy that we hope will ensure that continued and uninterrupted service for freight and passengers on that line.
CHAIRMAN MORGAN: And that was requested by the New England Central?

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

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

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

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

And those three offices, all Ohio public
offices, explained that the advent of the W&LE bankruptcy would be particularly disruptive for major Ohio rail users, including steel, stone, plastic, and coal producers.

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

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

The Ann Arbor as well had the strong support in Ohio. We've given it -- if you accept our recommendation -- a new connection with Wheeling and
Lake Erie. Its other concern was a new Chrysler
contract in which it performs switching services for
Chrysler -- I've crossed into Ann Arbor.

MR. MACKALL: I'm sorry.

CHAIRMAN MORGAN: We all get along here.

MR. MACKALL: Sorry, Michael.

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

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

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

MR. REDISCH: Correct.

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

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

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

CHAIRMAN MORGAN: And then with respect to Ann Arbor and the Chrysler contract, we will be monitoring that performance, is that your suggestion?
MR. REDISCH: Yes.

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

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

CHAIRMAN MORGAN: So we are addressing the concerns --

MR. MACKALL: Yes, we will.

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

MR. MACKALL: Yes, we will.

CHAIRMAN MORGAN: With respect to the aggregate shippers, you’ve mentioned those already as
it relates to Wheeling and Lake Erie, but the specific
suggestion that you are making as far as in general
addressing those shippers, you are from what I gather,
taking an agreement that has already been reached with
one of those shippers and applying it to the others,
is that accurate?

    MR. REDISCH: Yes.

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

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

    MR. RUSH: That's correct.

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

    MR. RUSH: That's exactly right.

    CHAIRMAN MORGAN: Through the process. Is
this the way that the Board has always intended that
this issue be addressed?

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

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

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

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

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

The problem is if you dismiss an employee in Philadelphia or Pittsburgh and we ask him to report to Jacksonville against the threat of losing his
benefits if he refuses to do so. That I view as a bottom line, New York Dock protection that cannot be accomplished by whatever the mechanism is by which it's tried.

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

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

MR. RUSH: No. You can't transfer the seniority and require the employee, once dismissed, to report to that location, under the threat of losing his protective payments. The transfer of seniority in itself would appear to be unobjectionable so long as it's not used to require an employee to move or lose his benefits -- a dismissed employee.
CHAIRMAN MORGAN: So it relates to what they would get under New York Dock in the normal course --

MR. RUSH: That's correct.

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

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

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

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

MR. MACKALL: Well --

CHAIRMAN MORGAN: It's a good thing?
MR. MACKALL: We think it's a really creative and very valuable agreement that really does some things that we might not have thought of. But we thought there were some areas where we could improve it slightly without undoing that deal -- one of which was increasing the amount of oversight.

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

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

One is, Amtrak, another is -- after I'm finished you can tell me if I've missed anything -- passenger rates in Buffalo for a 3-year period, the jurisdictional threshold and revenue adequacy determinations, New York City truck traffic, Chicago
Switching District, and impact on smaller railroads in general.

Is that -- have I covered the --

MR. MACKALL: I think that's amazing.

You've covered every single one of them.

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

VICE-CHAIRMAN OWEN: Yes. Thank you. Mr. Rush, back to the labor agreement there if you could.

You're saying then basically, that either New York Dock is the floor --

MR. RUSH: That's correct.

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

MR. RUSH: Yes, indeed.

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

MR. RUSH: As I said, I believe the transfer of seniority is unobjectionable as a part of the implementing process. I do not believe they can negotiate the issue of requiring separated employees,
dismissed employees, to report to a different location.

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

CHAIRMAN MORGAN: I’m sure --

VICE-CHAIRMAN OWEN: Can anyone answer that?

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

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

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

MR. RUSH: That’s correct.

VICE-CHAIRMAN OWEN: Thank you. Back to
the economics of some of the situations here. Maybe
you could walk me through the fees to the Hudson/New
England area, Buffalo area here. We have proposed --
or you have proposed -- trackage rights for multiple,
shortline railroads as set to make it more
competitive.

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

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

The second question was whether there was
enough traffic. We’ve addressed that issue by
suggesting that CP be given the option -- either to
have haulage rights or trackage rights. And if the CP
were to believe that it would be in its interest to
use haulage rights rather than trackage rights, then
CSX would be actually performing the service.

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

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

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

In deposition, the New York parties who
were very much interested in new trackage rights tenet
had identified really only 50 carloads of freight
coming into the city that might be attracted to that
tenet and none going out. So we were concerned about
the imbalanced loads there. We thought that haulage might be the way to go, but we wanted the carriage to have that opportunity to use either haulage or trackage rights if the track does develop and the traffic builds as the New York parties hope. Then they would have the opportunity to have two strong carriers, not a Class 3 carrier, but actually CP or CSX operating over that line and could end up being a win-win-win for the carriers, for the area and for the shippers and for those people who would be pleased to get some of that truck traffic off the road as well.

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

VICE CHAIRMAN OWEN: I hope that's the
case. The other question is with the short lines coming in and picking up some trackage rights and going for other customers in there and competing, head on with CSX. Is there enough financial motivation there for CSX to go ahead and invest in the infrastructure.

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

VICE CHAIRMAN OWEN: I agree. I would like to refer back to one of your statements a little
bit earlier though where maybe I misheard you or you
misspoke, where you were going to take all of the
trucks off the freeway? I thought that was pretty
good. I would like to see that. Thank you. I have
no other questions.

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

MR. REDISCH: Yes, it is. So we would
fully expect that CSX would be compensated for that.
We -- and the record, there were two parties, two New
York parties who were given an opportunity by Judge
Levanthal to take a look at an earlier version of a CP
agreement and there was the New York parties' feeling
that CP had settled for too high a rate, that they
were paying for these haulage conditions, but when we
look, we weren't making a real judgment here. All
we're saying is that it looked like a costing experts
that the New York parties had hired, failed to take
into account that it really is an imbalanced traffic
flow on that line with everything coming in and
nothing going out and the costing procedures that you
would apply to it, to determine what the needs are
even before you started talking about additional
investment, those costing procedures should take
account of the imbalance flow in the line.

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

MR. REDISCH: One investment which is not
quite done which has been subsidized by New York State
is a turn near New York where the lines from
Connecticut and the lines from Albany merge. There’s
some dispute in the record about whether it’s
completed, but when it will become operational, you
really wouldn’t want to have a lot of new traffic on
that line until that turn is complete. Because
while the line itself has a lot of capacity, a lot of
it is quadruple track. You don’t want to throw a lot
of new traffic down around that junction point, right
there just above the city. So, we would expect that
that investment as well would be taken into
consideration by the parties as they negotiate their
investment.

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

MR. REDISCH: Yes.

CHAIRMAN MORGAN: So we’re looking at the
entire infrastructure in the area.

MR. REDISCH: Yes.

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

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

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

MR. CLEMENS: Chairman Morgan, Vice
Chairman Owen, good afternoon. I’m pleased to present the staff recommendation for operational monitoring. As part of the staff recommendation that the Board approve this transaction, we believe that operational monitoring is essential and that it should be a condition of the Board’s approval.

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

The purpose of the operational monitoring is to provide the Board with information that would help us make a timely evaluation of and response to any operations-related issues that arise during the implementation of the transaction. The monitoring plan we’re recommending includes reviews of the implementation of various operational aspects of the transaction. While this monitoring will require periodic status reports and progress reports from CSX, Norfolk Southern and Conrail, we do not believe that it will unduly burden the applicants or the Board.
We propose that this monitoring include developmental areas, ongoing prior to day 1 for these areas which include labor implementing agreements, construction and capital projects, information technology and customer service monitoring will begin on the effective date of the decision.

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

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

We recognize that under applicants agreement with NIT League the transaction council will
Recommend to the Board measurable standards for quarterly reporting. While the details of that reporting have not yet been determined, we have determined what we believe the Board itself needs to monitor the operational issues.

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

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

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

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

Information technology. To insure timely
integration of the applicants’ information systems
with those of the former Conrail and the training of
all personnel who will use the new computer systems,
applicants should report monthly as to the progress of
system integration and personnel training. These
reports should identify the principal systems, affected operating area, implementation schedules and training schedules and completion and should note any delays either in planned implementation or in training.

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

Power and rolling stock. As soon as possible after the effective date of the decision, applicants should provide a report covering the apportionment of the Conrail locomotive and freight car fleets. This report should categorize the freight and locomotive equipment by type and should indicate the number of each type assumed by each applicant.
Car management, crew management and dispatching. Critical to an efficient and safety operational transition are the areas of car management, crew management and train dispatching. These areas of concern include information regarding the consolidation of car management functions into the respective operating systems, crew training to familiarize employees with new operating territories and with different locomotives and other equipment, and employee timekeeping. Also critical is complete familiarization with potentially new train and traffic control systems. We recommend that applicants be required to certify as of day 1 that all employees have been fully trained and qualified to operate over the Conrail territories they will be assigned, that employees are qualified to access and operate the information management systems related to crew management, time keeping and train dispatching and that train and traffic control and car management systems are in place, fully operational and fully staffed.

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

Each Monday for the previous seven days applicants should provide daily train arrival and departure information as measured against current published schedules for the respective shared assets.
area and yard and local crew assignment performance by location in comparison to the plan for that area.

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

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

Progress reports for these projects should be included in the monthly construction and capital project reporting. Operating activity at Cleveland’s rail facilities by CSX and Norfolk Southern should be subject to weekly monitoring reports beginning on day
1. Specifically, we recommend that Norfolk Southern be required to report on East 55th Street Yard and Rockport, Brookport and Motor Yards.

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

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

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

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

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

The Conrail Transaction Council. The
Transaction Council will be asked to report monthly on
its meetings and on specific elements of the
transaction that where the subject of discussion or
are of concern. This is particularly the case for the
areas of information technology, shared assets, and
customer service.

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

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

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

CHAIRMAN MORGAN: Thank you, Mr. Clemens.

Let me just run through a couple of issues with you.
First of all, as you see it, Mr. Clemens, what is the
overall objective of the set of recommendations that
you are putting before us?

MR. CLEMENS: Our objective would be,
Madam Chairman, to assure the Board that we have in place an early warning system for problems that may arise and that we have a system in place while not unnecessarily burdensome to either the Board or the applicants that would provide us with information that would indicate where certain types of problems may be beginning, in certain yard operations, in the shared assets territories or in other locations, thereby assuring the public that we can focus and ask the applicants to focus on any of these noted problems.

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

MR. CLEMENS: It is our expectation that this data is readily available to the applicants. The morning reports, for instance, that we noted, the daily status reports, this is a contemporary practice on the railroad to identify the condition of the railroad each morning for the benefit of management and so we think that kind of reporting is readily available, yes.
CHAIRMAN MORGAN: And the reporting that you're suggesting, how does that dovetail with the other monitoring implementation plans that are in the rest of this proposal before us?

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

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

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

MR. CLEMENS: That is correct. We would encourage the applicants to make as broad a use of the data that they would be providing us even though we
would use the data for our own review and monitoring purposes. We would encourage them to make use of that data as broadly as they find beneficial.

CHAIRMAN MORGAN: So you don’t perceive this data as unduly burdensome?

MR. CLEMENS: I do not.

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

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

CHAIRMAN MORGAN: So for example, a chemical shipper is very concerned about the shared assets areas. Do you feel that the recommendation
that's before us now adequately responds to that as far as operational integration is concerned?

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

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

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

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

CHAIRMAN MORGAN: Thank you.

MR. CLEMENS: Thank you.
CHAIRMAN MORGAN: Vice Chairman.

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

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

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

(Laughter.)

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

VICE CHAIRMAN OWEN: I think it’s an excellent program for early warning. I just hate to see more burdensome paperwork imposed upon the industry and the fact that you are sunsetting it as soon as it’s not needed is great now. Thank you.
MR. CLEMENS: Thank you, sir. I think that you and the Chairman have articulated numerous times what our role should be in these areas and certainly that would not be an imposition that we would plan beyond the earliest time that it could be eliminated.

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

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

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

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

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

In its environmental review process, SEA first issued a notice of intent to prepare an EIS. SEA proposed and sought comments on a draft scope for the EIS. SEA then published a final scope. A draft EIS was issued for public review and comment. More than 250 comments on the draft EIS were received, addressing over 1,000 issues. SEA received comments from a broad range of interests that include federal, state and local agencies, elected officials, communities, businesses and associations, commuter services and the general public.
In preparing the final EIS and making its recommendations on conditions to reduce or eliminate potential environmental impacts, SEA conducted an extensive independent environmental analysis, reviewed all the public comments and consulted with federal, state and local agencies.

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

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

In its analysis, SEA identified both beneficial and adverse environmental impacts that
could be result from the proposed Conrail acquisition. On a systemwide basis, SEA identified important environmental benefits that could result from overall improvements in rail operating efficiency. These benefits include reduced air pollution emissions and reduced energy consumption, reduced likelihood of rail accidents involving hazardous materials and decreases in highway accidents due to reduced truck traffic on interstate highways.

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

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

SEA also identified adverse environmental

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
(202) 234-4433 WASHINGTON, D.C. 20006-3701 www.nealgross.com
impacts that could be result from acquisition related changes in rail activity. These potential adverse impacts include safety impacts related to hazardous materials transport and freight and passenger rail operations along certain rail corridors.

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

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

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

SEA developed extensive environmental mitigation on a general or system-wide basis as well
as on a regional or local level. SEA also recommended mitigation measures to address specific impacts in numerous communities with unique circumstances and developed focus mitigation to address disproportionate impacts on minority and low income populations.

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

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

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

I'd like to briefly summarize the major environmental mitigation recommendations in the final EIS. As I mentioned earlier, most of SEA's mitigation recommendations address safety related impacts. To address the significant increase in the movement of
hazardous materials on 64 rail line segments, SEA recommends that the applicants implement various measures such as installing train defect detectors, developing and distributing local hazardous material emergency response plans, conducting track inspections and conducting simulation, emergency response drills with local emergency response organizations.

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

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

To provide for safer passenger rail
operations on five rail lines segments, SEA recommends that CSX consult with FRA and three passenger service agencies to develop operational strategies and apply technology improvements to insure the safety of passenger train operations as maintained.

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

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

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

SEA’s other local mitigation includes a
recommendation that the applicants mitigate train locomotive engine and wheel rail noise in certain communities. This mitigation would require the applicants to reduce noise levels by 10 decibels by using either noise barriers or building sound insulation treatments.

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

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

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

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

Third, both NS and CSX have entered into additional negotiated agreements with various communities since the final EIS was issued and may yet enter more agreements with other communities. This would be a good point for me to note that negotiated agreements may be substituted for any of SEA’s recommended environmental mitigation, provided that
the parties certified that the agreement satisfies their environmental concerns.

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

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

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

Thank you and I'm available for any questions.

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

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

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

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

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

CHAIRMAN MORGAN: Well, I think we're all
running on empty, so I sort of relate to that. No air pollution there at all.

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

MR. DALTON: Except for the Claggsville connection.

CHAIRMAN MORGAN: Right.

MR. DALTON: Which NS proposed.

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

MR. DALTON: We did take quite an extensive look at the Four Cities. It is crossed by a number of CSX and NS rail line segments, some of
which have large train increases, some have had
smaller train increases, some have decreases. In
looking at it, there were a couple of factors
involved. First of all, the Four Cities proposed two
alternative routes, both of which would involve some
operational difficulties. There were trackage rights
issues that they would have to run over. Basically,
it was the CSX rerouting that they were proposing.
They would have to reroute over trackage rights over
all the carriers. There would be other constructions
necessary. There were certain difficulties.

In addition, CSX is making substantial
modifications in the Four Cities area. Actually, in
the Chicago area, terminal area, to address a number
of their operating concerns which I believe they're
related to all last week. Those operational
improvements would flow into the Four Cities area and
also in response to the Four Cities concerns, CSX did
offer up certain voluntarily mitigation of proposals
including rerouting a few trains away from the key
line segment that was at issue between Pine Junction
and Barr Yard.
Given the -- in addition, the section of environmental analysis proposed additional mitigation measures on CSX in the Four Cities area. So given the operational improvements that the CSX will be making in the area, the mitigation measures they will be imposing of themselves or recommended themselves and the ones we are recommending, we did not see any environmental driving reason to search out an alternative or to adopt, certainly, an alternative. We felt that the solutions proposed by the carrier and by the section on environmental analysis would certainly address the issues that were raised.

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

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

MR. DALTON: Yes, it does.

MR. RUSH: I think it would be fair to say that the changes that have been made are suggested largely voluntarily will more than offset the
incremental increase in traffic that will be going over the line. So that it’s a net plus environmentally.

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

MR. DALTON: Yes, the major lines was through East Chicago was one of the largest ones that was contentious was initially almost a six train increase. In its efforts to mitigate CSX did propose to reroute several of the trains on a couple different line segments and brought that down to two trains a day increase which would be a small increase based on the 30 trains a day that currently go through that area. Plus, as I said, they’re going to be putting in significant capital improvements in the Chicago terminal area and along that line segment, including increasing the speeds to a certain extent, plus putting in, as we’re recommending, warning time devices and other improvements that should decrease the delays that were incurred in that Four Cities area and raise the safety elevation.
CHAIRMAN MORGAN: Thank you. In terms of safety, you mentioned safety integration plans. How many of the 65 environmental conditions that EIS recommends be imposed are safety related?

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

CHAIRMAN MORGAN: With respect to grade crossing warning signs which is something that you mentioned in your document and there’s been some discussion of possibly delaying the implementation date by which those warning signs are to go up,
related to increased traffic through the grade
crossing area. Do you have any comment on the
suggestion of moving that date?

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

CHAIRMAN MORGAN: And then the last area
I just wanted to review with you is noise. Could you
go over in a little bit more detail what the EIS includes as it relates to noise mitigation.

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

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

VICE CHAIRMAN OWEN: I really don't have an awful lot left on the table after that. But what I would like to do is commend your section on environmental assessment because you have done an
excellent job working on an EIS and bringing in the safety factor, the SIP at a later date and coordinating that throughout the States. And so do you think that that was the thing that brought people to the table to a greater degree, the EIS and the SIP so that they were happy to sit down and negotiate and try to come to some compromise?

MR. DALTON: You’re talking about the various communities and the applicants?

VICE CHAIRMAN OWEN: Right.

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

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

MR. DALTON: I think it’s entirely possible other communities would be talking to the railroads.

MR. RUSH: To address your concern, Mr.
Vice Chairman, I think there's a misapprehension that there's a preference for noise barriers. There is not. It's just that where there is substantial increase in noise, a significant mitigation must be provided, but no particular mode is preferred over the other.

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

MR. DALTON: We did mention in the final EIS, there are other mitigation strategies and I think the applicants raise that also in some of their concerns that things like putting in continuous welded rail can reduce the noise of the wheels. Because what we're talking basically here is wheel rail noise. So
by putting in -- you lose the old clickety-clack that
a lot of people used to like to hear. I guess they
don't like to hear it as much any more, but that would
reduce the noise by having continuous welded rail.

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

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

CHAIRMAN MORGAN: Well, let me then, I
think this would be an appropriate time before we move
to final vote on the merger application then before us
with all of the staff recommendations for me to
specifically offer a recommendation as it relates to
the final EIS which, of course, we must do because EIS
was a staff document and not a Board issued document.
So let me just lay out the recommendation which then
will be part of the final package if we approve the
rest of the recommendations before us today.
First of all, I recommend that we adopt the mitigation proposed by the section of environmental analysis in the EIS as modified by negotiated agreements arrived at later, as necessary by comments that you referenced on the Claggsville connection in the Cleveland area, and as necessary, by request for clarification.

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

With respect to negotiated agreements and their imposition, those entered into to date will be imposed as a condition unless both parties to an agreement within two weeks advise us that they do not want that settlement agreement imposed. For those imposed, clearly the Board does not intend to, nor
will it, go beyond its jurisdiction in enforcing those agreements and with respect to the terms of the negotiated agreements imposed, there is no precedential effect associated with those terms in the context of appropriate mitigation for future cases.

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

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

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

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

I further recommend that the Board direct conversations between the applicants and Wellington and North Ridgeville, Ohio, about their environmental concerns.
One hundred twenty day period has been requested by the State of Ohio for negotiation with the applicants on 29 grade crossing upgrades based on a corridor approach. This recommendation is not inconsistent with the SEA's recommendations in the EIS and I recommend that we adopt that approach. We encourage other States to continue to negotiate with applicants on grade crossing protection within the two year period provided in the environmental impact statement.

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

In connection with any changes that we make in accordance with this motion that I am offering.
today, if adopted, there will be an opportunity to
comment by way of administrative appeal.

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

VICE CHAIRMAN OWEN: I'll second it.

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

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

VICE CHAIRMAN OWEN: Thank you very much,

Madam Chairman. It's with great pleasure that I'm
here today to participate in this proceeding. Since
1920 it has been the public policy of this nation to encourage railroad mergers that are in the public interest. The public interest, just what does that expression mean? We are instructed via the statute, Agency precedent and the courts that in the context of a proposed merger that expression should mean increased competitive options and reasonable rail service for shippers. For railroads, it should mean growth, better returns on investments, greater and efficiency use of assets and infrastructure improvements. For labor, it should mean fair working conditions, wages, enhanced job security. And last, but not least, for impacted communities it should mean fair and equitable arrangements and enhancement of the environment and the quality of life.

I find that in the context of this proposed merger that in view of the quality of the arguments and evidence that this is indeed a proposed merger in the public interest. I vote to approve it. With everything being said and done, I cannot help but conclude that the public benefits are compelling. Chiefly among which is that, in my opinion, this
merger as approved and conditioned approximates as closely as possible what was envisioned as far back as the final system plan for viable, two carrier competition in the East.

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

The debate consisted of many diverse views, but I truly believe that what we do here today, will in the long run achieve the greatest good with a minimum amount of harm. In this regard, I would
commend the applicants and the National Transportation
League for sitting down at the table in advance of
these proceedings, for seeing meaningful dialogue and
reaching exceptional and novel resolutions. That was
truly an example of the private marketplace regulating
itself better than any governmental body could do. I
would also commend the role of other federal agencies
such as the FRA in matters of safety and the DOT and
DOJ for their valuable input regarding some of the
competitive and operational issues in and advancement
of the process.

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

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701 www.nealgross.com
(202) 234-4433
Lastly, I would be remiss if I did not take a moment here and thank the Board's staff. I must admit I came here from the private sector and looked at Civil Service bureaucracy as maybe marginal, some competency there. But let me tell you, that these civil servants that have worked on this project here and the previous mergers that we have been involved in are outstanding, each and every one of them, dedicated, knowledgeable, some of the most knowledgeable transportation people in the nation. They take their work home with them in the evening, work here on Saturdays and Sundays many hours. And it could be due to the fact that the Chairman has a bullwhip out, but the Agency possesses some of the finest and competent transportation specialists in the world. I thank them all, the merger team, the Chairman and her staff and last, but not least, my staff for fulfilling their responsibilities in the highest tradition of service. I thank them all for a job well done.

Thank you. I think I had my vote in there some place.
CHAIRMAN MORGAN: I think it's voting aye, yes.

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

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

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

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

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

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

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

The capital that will be invested in rail infrastructure will benefit all shippers, not just
those that are served by CSX or NS or both. It will create new jobs both on and off of the rail system. The support of more than 2200 shippers from a broad spectrum of comity groups, 350 public officials, 80 railroads, many state and local government interests throughout the East and various rail labor employees attest to the overall strength of the proposal. This merger will promote competitive balance throughout an entire region of the country and will create a strong rail network in the East that can handle the transportation needs of an expanding economy and advance important economic growth and development in the region. These benefits are clearly in the public interest.

Now turning to the preservation of the fundamental integrity of the transaction, the recommendation that the staff has presented to us while imposing important additional co-competitive conditions, recognizes the operational and competitive integrity of the proposal and the importance of preserving and promoting privately negotiated agreements. Government should not be in the business
of fundamentally restructuring private sector
initiatives that are inherently sound and the
conditions that we would impose add value, but not in
a way that undermines the value of the transaction
itself. They reflect a respect for the numerous
settlement agreements that we encouraged and that the
applicants and the other parties have worked hard to
reach, agreements like the National Industrial
Transportation League settlement, the United
Transportation Union settlement, the Cleveland
Environmental settlement and so many more.

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

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

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

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

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

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

With respect to operational and implementation success, the recommendation with its operational reporting and monitoring recognizes the
operational challenge that the proposal represents. Its monitoring elements will provide the Board with the tools to further a smooth implementation of the merger in a way that utilizes the Conrail Transaction Council and the labor councils and does not unduly burden the parties. And it appropriately focuses on specific areas of concern such as the shared assets areas and the Chicago gateway.

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

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

With regard to protecting the environment, the recommendation appropriately protects the environment. The deal has many environmental benefits, including the significant truck diversion that is anticipated. At the same time the proposal raises environmental concerns. For the first time
ever in a merger the Board issued a full environmental impact statement.

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

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

The recommendation also promotes safety. More than half of the environmental conditions involve safety. For the first time ever in a merger the
applicants were required to submit safety implementation plans which under the recommendation will be monitored through a memorandum of understanding between the Board and the Department of Transportation.

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

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

This package before us clearly has overall benefits. It will clearly promote the public interest and its extensive oversight is intended to insure that it does. The original transaction proposed to us with its subsequent negotiated agreements and with the
conditions recommended by staff will provide many benefits to many people. The recommended oversight will help us to insure that these benefits will materialize and the private mechanisms in place for oversight will provide a vehicle by which private sector dialogue can condition.

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

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

First of all, let me thank my Vice Chairman for all of his cooperation and commitment. There are two of us here. We do a lot of work. We continue to do a lot of work and we continue to
resolve a lot of difficult issues and we could not do it without his cooperation and commitment. Let me also thank his staff, Dennis Starks, who consistently assists and contributes. We could not do without you, Dennis.

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

Let me turn to my secretary, Vernon Williams, who has kept his eyes opened now the third day in a row in this room and his staff over here and his staff who is downstairs and other places. We cannot do without the Secretary's Office. They handle of the paper that come sin here and keeps the records straight for everybody and we could not do it without you, Mr. Williams and your staff.
Let me next thank Dan King who is my one congressional liaison. That is a tough job. He has managed to work through about 20 congressional people that we’ve had over the last couple of days. I want to thank him for all of his professionalism in carrying out those responsibilities.

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

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

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

Let me also then thank all of the volunteers. I cannot name you each individually, but
those of you who have taken elevators, have tried to
get a phone, have tried to get a meeting room, you
will see them. They have tried to help you and I can
assure you that they have helped you because they are
a professional group and I think this is the time to
say thank you to the entire Board staff, because we
have staff working on this, but we have staff working
on everything else that is going on here and all of
these people are committed to the public interest and
the public is without question very lucky to have this
group of individuals working on these issues.

Now let me turn to a couple of other
special people. First of all, my staff. Now working
with me is not a light and airy activity so you can
imagine that they have put in a lot of hours. Let me
start with Mary Touric who is not here. She’s
upstairs getting work done because I’m down here and
she’s upstairs. She runs the place, make no mistake
about that. Craig Keats who is my, what I call
ombudsman and he -- that’s a heavy job with me because
there’s always seeming to be the need for an
ombudsman. And then Richard Armstrong, who has been
my right arm and my left arm and my head on the merger and I want to thank him. I could not do it without those three people.

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

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

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIPTIONS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701
(202) 234-4433 www.nealgross.com
if you could just thank a staff person from the Board
because they really deserve it.

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

Thank you all very much.

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

[Signature]