Interstate Commerce Commission

Chicago, Milwaukee and North Western Transportation Company – CONSOLIDATION – Chicago and North Western Railway Co. and Chicago, Milwaukee, St. Paul and Pacific Company

Finance Docket No. 24182 et. al.

Final Report of Hearing Examiner

By Henry C. Darmstadter

December 4, 1968

FINANCE DOCKET NO. 24182 ET AL.

CHICAGO, MILWAUKEE AND NORTH WESTERN TRANSPORTATION COMPANY--
CONSOLIDATION--CHICAGO AND NORTH WESTERN RAILWAY COMPANY
AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC COMPANY

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INTERSTATE COMMERCE COMMISSION

Served *December 18, 1968*

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and serviced on all parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the recommended order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice or order to that effect, has been served.

Finance Docket No. 24182[1]

CHICAGO, MILWAUKEE AND NORTH WESTERN TRANSPORTATION COMPANY--CONSOLIDATION--CHICAGO AND NORTH WESTERN RAILWAY COMPANY AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY[2]

Decided ____________________

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[1]This report also embraces Finance Docket No. 24183, *Chicago, Milwaukee and North Western Transportation Company--Securities*, and Finance Docket No. 24184, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company--Amendment of Mortgages*.

[2]As initially filed, applicants sought to consolidate their properties into a new company. The terms of the agreement between applicants and the application were amended substantially to reflect a proposal to merge the Chicago, North Western Railway Company into the present Chicago, Milwaukee, St. Paul and Pacific Railway Company, whose name would be changed to Chicago, Milwaukee and North Western Transportation Company. In light of numerous orders that are outstanding and despite the change in basic terms, the initial title of this proceeding will be retained.

1. In Finance Docket No. 24182, merger of the properties and franchises of the Chicago and North Western Railway Company into the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for ownership, management and operation, and for authorization of Northwest Industries, Inc., to control the surviving corporation through stock ownership and of both directly and indirectly to acquire sole or joint control (1) of carriers subsidiary to or affiliated with the surviving corporation, and (2) of leases of and contracts to operate properties of other carriers and trackage rights now held jointly or otherwise by the applicant railroads over the lines of other carriers and terminals incidental thereto; approved and authorized, subject to conditions.

2. In Finance Docket No. 24183, authority granted to the Chicago, Milwaukee and North Western Transportation Company (the surviving corporation) (1) to issue not exceeding (a) 6 million shares of common stock, and (b) 2,000,000 shares of its preferred stock, and (2) to assume all obligations and liabilities of the Chicago, North Western Railway Company in respect of securities issued, assumed or guaranteed solely by that carrier or jointly with other guarantors.

3. In Finance Docket No. 24184, authority granted to the present Chicago, Milwaukee, St. Paul and Pacific Railroad Company to modify certain mortgage indentures, all for the purposes set forth herein in connection with the merger, acquisition of control and leases referred to above, subject to conditions.

APPEARANCES

Roger S. Bessey, Richard M. Freeman, Phillip M. Hackbarth, Jordan J. Hillman, Raymond K. Merrill, Robert F. Munsell, Eldon S. Olson, Warren H. Ploeger, Thomas H. Ploss, Edwin O. Schiewe, Robert G. Seaks, Chandler L. van Orman, and *Edward K. Wheeler* for applicants.

Reginald Ames, Gary S. Anderson, Harry N. Babcock, Stuart S. Ball, Frank E. Barnett, Haldor T. Benson, James S. Bowie, Phillip B. Bowman, Charles W. Burkett, Gordon G. Busdicker, Charles H. Clay, F. W. Crouch, Richard T. Cubbage, G. Clark Cummings, Theodore E. Desch, Kemper A. Dobbins, Frank S. Farrell, Samuel R. Freeman, Tully Friedman, Alan C. Furth, Robert G. Gehrz, John E. Haley, Bryce L. Hamilton, W. Covington Hardee, E. Houston Harsha, Reuben Hedlund, A. Leslie Hodson, Anthony Kane, Edmund J. Kenny, Tomothy C. Klen, Robert L. Liversay, Harry Lustgarten, Thomas F. McFarland, Francis J. Melia, Marvin Metge, Robert Mitten, Frederick C. Nash, Howard Neitzert, Milton E. Nelson, Jr., Karl F. Nygren, William O'Brien, Jr., C. Harold Peterson, George A. Platz, *Ernest Porter, Karl Ranous, Richard B. Rodgers, William C. Shannon, John McDonald Smith, Jay W. Sorge, R. W. Spachman, David S. Tatel, L. E. Torinus, Walter G. Treanor, F. Trowbridge, E. L. Van Dellan, James R. Walker, Jeremiah C. Waterman, Timothy Wittlinger,* and *Julius J. Zschau* for rail carrier interveners.

Jacob P. Billig, Albert J. Carr, Jack Chestnut, John M. Cleary, John F. Donelan, John I. Finsness, Norbert B. Flick, Patrick J. Foster, Harold Gawlik, E. J. Hanson, J. E. Hart, John W. Kachel, William J. Kazmer, Donald G. Kettner, Paul J. Maguire, Philip H. Porter, Robert B. Russell, Paul J. Schierl, Robert T. Semrad, Jerry R. Sheahan, Harry G. Slater, Gene A. Summerfield, and *Robert W. Taber* for shippers and receivers, civic organizations and communities.

Richard H. Kraushaar, William G. Mahoney and *Harold L. Ross* for railway labor organizations.

John M. Agrey, Herman L. Bode, James R. Cunningham, Norton Hatlie, Richard Maves, Richard Musenbrock, John J. O'Connell, Jerome E. Pederson, P. Kenneth Peterson, Leo J. Steffen, Jr., and *Lloyd Wandtke* for States and regulatory agencies.

Steven M. Charno, William J. Holloran, Jack Pierce, Joseph J. Saunders, and *Donald F. Turner* for the United States of America, Department of Justice.

Bruce L. Birchman, Bernard A. Gould, Ellis Gregory, and *Alan L. Siff* for the Interstate Commerce Commission, Bureau of Enforcement.

Anthony Haswell as a passenger pro se.

REPORT AND ORDER

RECOMMENDED BY HENRY C. DARMSTADTER, HEARING EXAMINER

PRELIMINARY STATEMENT OF THE CASE

APPLICATIONS

In the title proceeding, by joint application filed June 6, 1966, as amended July 22, 1968, the Chicago and North Western Railway Company (C&NW)[3] and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road), common carriers by railroad subject to the provisions of part I of the Interstate Commerce Act, applied for authority under section 5(2) of the Act:

[3] The names of applicants, interveners and other parties, corporations or organizations, will be referred to by the distinguishing portion of their corporate names or, by abbreviations shown in parentheses following the complete names.

(a) for merger of the properties and franchises of C&NW into Milwaukee Road, which will change its name to Chicago, Milwaukee and North Western Transportation Company, (the surviving company); (b) for the Milwaukee Road to acquire through stock ownership sole or joint control of the carriers subsidiary to or affiliated with the C&NW; and (c) for the Milwaukee Road to acquire leases of and contracts to operate properties of other carriers and trackage rights now held jointly or otherwise by C&NW over lines of other carriers and terminals incidental thereto. As part of said application, pursuant to section 5(2) of the Act, Northwest Industries, Inc., (Industries) applied for authority to acquire control of the Milwaukee Road through acquisition of its capital stock, and to acquire, through such ownership of stock, such control of other carriers subsidiary to or affiliated with Milwaukee Road as it may possess, and as a party applicant also requests authorization of the transaction proposed by applicants specified above. Applicants additionally request approval of a formula for apportionment of certain revenues and expenses as a basis for the determination of available net income under various mortgages and indentures of the respective applicants in lieu of maintaining separate income accounts and for the finding and determination that the aforesaid formula effects no material alteration in the rights of the bondholders and debenture holders on said mortgages and indentures.

In Finance Docket No. 24183, by joint application, as amended, filed on the dates specified above, the Milwaukee Road applied for authority, under section 20(a) of the Act, for the surviving corporation to issue not exceeding 7,000,000 shares of common stock without par value and 2,500,000 shares of preferred stock with $100 par value; to assume all contract debts, liabilities, duties, mortgages and deeds of trust and, indentures, amendments and supplements thereto, and all bonds and other obligations served thereby, of C&NW, and to acquire all the rights and powers which the C&NW may have to issue, sell, pledge, or otherwise deal with its aforesaid bonds and other obligations.

In Finance Docket No. 24184, by joint application, as amended, filed on the same dates, the surviving company ? requests approval of certain amendments of applicant Milwaukee Road's First Mortgage and its General Mortgage, both dated January 1, 1944.

DATA RELATIVE TO HEARINGS

The applications were assigned to this examiner for hearing and the recommendation of an appropriate order accompanied by reasons therefor. A pretrial conference was held before this examiner at Washington, D. C., on October 31, 1966. A report and recommended pretrail order were issued by the examiner on November 28, 1966, to which exceptions were filed. The Commission considered the exceptions as petitions for reconsideration which were denied, and the examiner's report became effective by operation of law.

Public hearings opened on February 6, 1967, and were initially concluded on January 12, 1968. Sessions were conducted at Chicago, Ill., Minneapolis, Minn., Milwaukee, Wis., and Washington, D. C., running intermittently for 119 days. In response to petitions filed by Industries and the Bureau of Enforcement, this Commission reopened these proceedings for a limited hearing which was held in Chicago, Ill., on June 17 and 18 and July 22 through the 24th, 1968.

Approximately 177 witnesses testified including 124 shipper witnesses, 10 public officials, and 3 local union officials. These witnesses were presented by approximately 30 parties who either intervened at the hearing in support of the applications, opposed thereto or as interests may appear.

Briefs, due on April 26, 1968, were filed jointly by applicants; the State of Minnesota Public Service Commission (Minnesota Commission); the State of North Dakota Public Service Commission (North Dakota Commission); the State of South Dakota Public Utilities Commission (South Dakota Commission); the State of Wisconsin Public Service Commission (Wisconsin Commission); Washington Utilities and Transportation Commission (Washington Commission); Metropolitan Milwaukee Association of Commerce (Milwaukee Association); Bureau of Enforcement, Interstate Commerce Commission (Bureau of Enforcement); the United States Department of Justice (Department of Justice); Chicago, Great Western Railway Company (CGW); Chicago, Rock Island and Pacific Railroad Company (Rock Island); the Denver and Rio Grande Western Railroad Company (D&RGW); Great Northern Railway Company (Great Northern); Illinois Central Railroad Company (Illinois Central); Lake Superior and Ishpeming Railroad Company (LS&I); Minneapolis, Northfield and Southern Railway (MN&S); Northern Pacific Railway Company (Northern Pacific); Soo Line Railroad Company (Soo); Union Pacific Railroad Company (Union Pacific); Southern Pacific Company (Southern Pacific); Western Pacific Railroad Company (Western Pacific); Railway Labor Executive's

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Association(RLEA); Brotherhood of Locomotive Engineers (BLE); Cleveland Cliffs Iron Company (Cleveland Cliffs); Consolidated Papers Inc., (Consolidated Papers); Krause Milling Company (Krause); Nekoosa-Edwards Paper Company (Nekoosa-Edwards); and its subsidiary, Butler Paper Company, (Butler); Wisconsin Rapids Chamber of Commerce (Wisconsin Rapids Chamber); Oscar Mayer and Company (Oscar Mayer); and the Upper Lakes Coal Docks Bureau, Inc., (Upper Lakes Bureau). Supplemental briefs covering issues raised at the reopened hearings of June and July, due September 9, 1968, were filed by applicants, D&RGW, Rock Island, Soo Line, Union Pacific and Bureau of Enforcement. A supplemental brief filed by applicants covering issues raised at the reopened hearings was filed in the form of a letter dated September 27, 1968 and accepted by Commission order dated October 4, 1968, to which the Bureau of Enforcement and the Upper Lakes Bureau replied.

GENERAL POSITION OF THE PARTIES

APPLICANTS

It is applicants' position that the proposed merger be approved with a minimum of conditions. The applicants, however, expressed a willingness to accept: (1) standard routing conditions for the benefit of all railroads[4]; (2) specific conditions for the benefit of particular railroads, as hereinafter set forth in detail; (3) inclusion, on a reasonable basis, of any railroads which wish to be included or whose inclusion is necessary to its future ability to render an adequate transportation service; and (4) conditions for the benefit of labor as prescribed in *Chesapeake & O. Ry. Co. - Control - Baltimore & O. R. Co.*, 317 I.C.C. 261. The extent to which applicants oppose conditions sought by various railroads, shippers and the Bureau of Enforcement will be set forth subsequently.

FEDERAL AGENCIES

On brief, the Department of Justice takes the position that in the event the merger is approved that conditions be imposed preserving competition at and in the City of Milwaukee.

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[4]As provided for in *Detroit, T. & I. R. Co.,-Control* 275 I.C.C. 455 (1950), as modified in *Chicago & North Western Railway - Merger - Chicago & Great Western Railway Company* 330 I.C.C. 13, as modified by Commission order of September 27, 1967 and report and order, dated May 23, 1968, 333 I.C.C. 13, hereinafter referred to as the *C&NW-CGW* case or decision.

Tab Reads: Positions of Parties

The Bureau of Enforcement, pursuant to the directions of the Commission's order, participated in the development of the record. It takes no position with regard to the basic merger proposal, but if Industries is authorized to control the surviving company, it requests that certain conditions be imposed.

STATE AGENCIES

The Public Service or Utility Commissions of North Dakota, South Dakota, Washington and Wisconsin support the merger proposal. The North Dakota Commission, however, urges that favorable consideration be given any reasonable request by other railroads, particularly Soo; and the Wisconsin Commission, with certain exceptions, supports the imposition of conditions sought by the Soo. The Minnesota Commission did not take a position on the proposed merger but does support the imposition of conditions sought by Soo and certain conditions sought by the Illinois Central if the basic transaction is approved.

STATE SUBDIVISIONS

Numerous counties, municipalities, towns or agencies thereof, including port authorities, entered appearances at the hearings and presented testimony or statements of position. Many indicated unqualified support for the proposed merger, several took positions either in support of or in opposition to conditions proposed by the various rail carriers; and one, the City of Milwaukee opposed the proposed merger.

RAIL CARRIERS

There were 20[5] rail carrier interveners of whom 5 presented no evidence and took no position[6]. Applicants entered into stipulations with three intervening railroads

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[5]The CGW was not counted as an intervener because it was merged into the C&NW on July 1, 1968.

[6]The Atchison Topeka & Santa Fe Railway Company (Santa Fe); the Chicago, Burlington & Quincy Railroad Company (Burlington); the Kansas City Southern (KCS); Missouri Pacific Railroad Company (Missouri Pacific); and Norfolk and Western Railway Company (N&W).

which withdrew any opposition upon the basis thereof.[7] Additionally, applicants entered into a stipulation with the La Salle and Bureau County Railroad Company (La Salle) which had not intervened in these proceedings. The Rock Island, Southern Pacific and Union Pacific oppose the merger unless prior thereto or concurrently therewith, the relief which they individually or collectively seek in Finance Docket No. 23286 *et. al.*, the so-called *Rock Island* case, is also granted. Soo, on brief, positions itself as opposed to the approval of the transaction unless certain conditions which it requests are granted. Northern Pacific; Great Northern; Illinois Central as supported by the MN&S; D&RGW; LS&I; and Western Pacific, while not specifically opposing the proposed transaction, seek the imposition of certain conditions to the benefit of their interests. In addition, several of the above, D&RGW, Rock Island, Southern Pacific and Union Pacific, seek reopened or further hearings on various issues; and Southern Pacific, in the event the relief it seeks is not afforded, would interpose a motion to dismiss the application on jurisdictional grounds.

LABOR INTERESTS

RLEA and BLE oppose the proposed merger. If the merger is approved, however, BLE proposes imposition of conditions alternative to the conditions offered by applicants. RLEA requests that if the merger is approved, it should be subject to the *New Orleans* conditions[8] with certain modifications to protect applicants' employees, employees of other railroads who would be injured and the LS&I employees if the conditions requested by the latter are imposed. Several local unions, including Longshoremen and Pilots Associations appeared in opposition to conditions sought by particular rail carriers.

SHIPPERS AND TRAFFIC ASSOCIATIONS

Numerous shippers and associations or organizations composed of business, shipper or trade interests appeared and presented testimony, either as interveners or as witnesses for

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[7]The Ann Arbor Railroad Company (Ann Arbor); the Green Bay & Western Railroad Company, and its subsidiary, Kewaunee Green Bay & Western Railroad Company (both collectively referred to as GB&W); and the St. Louis-San Francisco Railway Company (Frisco).

[8]Imposed in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271.

trade associations. Oscar Mayer supports the merger if conditioned upon approval of certain requests made by Illinois Central. On the other hand, Nekoosa-Edwards, Butler, Wisconsin Rapids Chamber, Consolidated Papers, and the Upper Lakes Bureau oppose the proposed merger but if approved, urge the imposition of conditions to protect the Soo and/or GB&W. The Milwaukee Association as supported by the separate brief of Krause would support the merger if certain conditions for the protection of the Soo were imposed in addition to the reservation of jurisdiction by the Commission to impose further protection at Milwaukee. In addition, Krause and Upper Lakes Bureau request special conditions to protect their respective interests. Cleveland Cliffs adopts the brief and position of the LS&I.

MERGER PROPOSAL

BACKGROUND OF THE PROPOSAL

For some years prior to its entry into a contract with C&NW, Milwaukee Road believed it essential that it seek unification with another rail carrier. During the decade commencing in 1950, unification with the C&NW was seriously considered but the project abandoned because of the inability of the railroads to agree on essential terms. In 1960, a study was made by Milwaukee Road of a possible merger with the Rock Island but final terms could not be agreed upon and discussions were discontinued. In 1961, C&NW and Milwaukee Road again entered into discussions concerning consolidation but the discussions again were suspended without agreement. During this period an investigation was made by the Milwaukee Road of possible merger with the Grand Trunk Western Railroad (GTW) and the GB&W but these preliminary studies never matured into realistic discussions.

During the past decade C&NW has been very active in its efforts to obtain merger partners and in this respect, has been successful on several occasions. In 1957 it consummated a lease agreement with its subsidiary, the Chicago, St. Paul, Minneapolis and Omaha Railway Co., (Omaha Railway); on January 2, 1958, C&NW merged with the Litchfield & Madison Railway Company (L&M); on November 1, 1960 it merged with the Minneapolis & St. Louis Railway Company (M&St.L) and on July 1, 1968, it merged with CGW.

Discussions between C&NW and the Milwaukee Road were revived in 1963 and continued until an agreement of consolidation was entered into on March 18, 1965, which agreement was approved by the stockholders and Board of Directors of both corporations.

The agreement of March 18, 1965, provided for the creation of a Delaware Corporation, Chicago, Milwaukee and North Western Transportation Company (the New Company) into which applicants would be consolidated. The New Company would have issued common and preferred stock and assumed obligations and liabilities in respect of securities issued, assumed, or guaranteed by the C&NW and Milwaukee Road. The preferred shareholders of the Milwaukee Road and C&NW would have received shares in the New Company on share-for-share basis. Holders of C&NW common would have received shares of New Company common on a share-for-share basis while Milwaukee common shareholders would have received 0.7 shares of New Company common for each share of Milwaukee Road common stock.

PRESENT PROPOSAL

On July 16, 1968, applicants modified the March 18, 1965, agreement changing the form of the transaction from a consolidation to a merger, with the Milwaukee Road as the surviving carrier. The same document also contained an application of Northwest Industries (Industries), a holding company, for leave to be joined as a party applicant to acquire control of the Milwaukee Road.

The merger agreement also provides for a stock-exchange ratio that is the same as under the original unification proposal. The preferred stockholders of both the C&NW and Milwaukee Road will receive, on a share-for-share basis, preferred stock in the unified company. The common shareholders of C&NW will receive common stock of the unified company on a share-for-share basis while Milwaukee shareholders will receive 0.7 shares of common stock of the unified company for each share of Milwaukee Road common. In addition, Milwaukee Road shareholders will be given an opportunity to become stockholders in Industries.

Industries' offer to Milwaukee Road preferred shareholders is to exchange one share of Industries 6 percent, non-convertible preferred stock for each share of Milwaukee Road 5 percent, non-convertible preferred stock. The offer to Milwaukee Road common shareholders amounts to an exchange of 0.4 shares of Industries common for each share of Milwaukee Road common subject to the

Tab Reads:
Issues

qualification that each share of Industries common tendered will have a market value of not less than $80 or more than $120 at the time of merger. Industries' exchange offer is contingent upon control by the latter of at least 80 percent of the outstanding stock or the Milwaukee Road. If the offer is accepted by Milwaukee Road shareholders, the exchange between Milwaukee Road shareholders and Industries would first be consummated and immediately thereafter the two roads would merge. No!

The proposal also contemplates the amendment of Milwaukee mortgages as a necessary incident of merger. Additionally, the Milwaukee's general mortgage requires amendment of its indentures. No! The July 16, 1968, agreement was approved by the Boards of Directors of C&NW, Milwaukee Road and Industries but not as yet by their stockholders.

STATEMENT OF BASIC ISSUES

PRELIMINARY STATEMENT

The railroad complex west of the Mississippi River is in the process of fundamental change and restructuring. Caught in this transition and to a large extent because of it, the ramifications of the proposed merger presents many basic problems in the analysis. Also, in light of the quickening momentum of change in the western rail complex, a definitive prospective must be provided for subsequent reviewing tribunals in order for them to gauge the reasons for, as well as the wisdom and necessity of, action taken by the Commission in this transitional posture. In this connection and at the outset, the examiner considers it essential to describe and define the rail structure as it existed at the outset of this proceeding, its evolution to its present status, and the changes which are proposed in pending proceedings.

RAIL STRUCTURE IN THE WEST

GENERAL

The rail structure in the West generally encompasses three basic route structures. The transcontinental route structure, embraces routes between points west of the continental divide, on the one hand, and, on the other, points east thereof extending from gateways as far east as Chicago, Kansas City and St. Louis to points on the west coast. The western regional structure encompasses routes constructed between or through gateways west of the continental divide from areas as far north as the Dominion of Canada and as far south as the Republic of Mexico. The regional midwestern structure which, for our purposes here, may be limited to routes operated in an area bounded on the north by the United States-Canadian boundary line; on the south by Kansas City and St. Louis; on the east by the Illinois-Indiana and Illinois-Kentucky boundary lines; and on the west by Denver, Colo. Because of the overlap in the lines of carriers operating in the West, the western railroad structure cannot be pigeon-holed into neat self-contained categories. Despite this intermesh, however, the examiner believes that the above description will serve a useful and realistic objective in defining the issues related to this proceeding.

TRANSCONTINENTAL RAIL STRUCTURE

The transcontinental route structure encompasses those carrier-route operations conducted through the northern corridor traversing the States of Oregon, Washington, Idaho, Montana, South Dakota, North Dakota, Minnesota and/or Wisconsin; the central corridor which extends across Nevada, Utah, southern Idaho, Wyoming, Colorado, Nebraska, Kansas and/or Iowa; and the southern corridor which cuts across southern California, Arizona, New Mexico, Texas, Oklahoma, Kansas and/or Missouri.

Heretofore, the northern corridor routes have been dominated by two railroads, the Great Northern and the Northern Pacific. The Milwaukee Railroad which also has a northern corridor route, plays a minor, if not insignificant, role in the movement of transcontinental freight. The Great Northern and Northern Pacific with their jointly-owned subsidiary, the Spokane, Portland and Seattle Railway System (SP&S) extend from Minneapolis and St. Paul, Minn., (the Twin Cities) and Duluth, Minn., and Superior, Wis., (Twin Ports) on the east through North Dakota, Montana and Idaho, to Spokane and Seattle, Wash., and Portland and Eugene, Oreg. There is a significant interchange of traffic with Southern Pacific at these western points. The SP&S in turn owns the Oregon Electric Railway Company (Oregon Electric) and the Oregon Trunk Railway (Oregon Trunk). Great Northern's route extends to ~~[illegible]~~ BIEBER, Calif., where it interchanges traffic with Western Pacific. Northern Pacific's lines extend northward from Seattle to Sumas, Wash., where it interchanges with Canadian Pacific. Great Northern extends to Vancouver, B. C. Both Northern Pacific and Great Northern maintain their principal eastern interchange at the Twin Cities where in each case their most important connection is the CB&Q. The latter is jointly controlled by the Northern Pacific and Great Northern through stock ownership. Their second largest connection is

C&NW, including CGW, with other roads such as the Milwaukee Road, Soo, Rock Island, and MN&S providing alternative connections at Twin Cities. Both Great Northern and Northern Pacific operate at least four trains in each direction transcontinentally on a daily basis.

As mentioned above, the third carrier operating in the northern corridor is the Milwaukee Road whose transcontinental route extends from Chicago through Milwaukee, Wis., and the Twin Cities to Seattle and Tacoma, Wash. Although in a physical sense, the Milwaukee Road might today be considered a transcontinental railroad solely by reason of its ability to originate and terminate traffic at such west coast points as Seattle and Tacoma, for all practical purposes, its Puget Sound Extension[9] has not provided it with access to the important traffic centers on the west coast in Oregon and northern California. Marengo Junction in Washington, where the Milwaukee Road has limited joint routes and rates on file with the Union Pacific on traffic moving to, from and through Portland,[10] is its only access to the important traffic centers in the West, which it does not reach directly. Although it interchanges traffic with the Great Northern and Northern Pacific at Chehalis, Wash., such traffic is limited to movements originating or terminating in Washington, North Dakota and Montana. Hence, its only interchange with the two Northern Lines on transcontinental traffic must be accomplished at the Twin Cities. As subsequently discussed, the lack of traffic density of Milwaukee Road's lines west of Twin Cities clearly reflects the scarcity of

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[9] Until 1905 the predecessor of the Milwaukee Road had operated essentially in the Midwest but in that year it began construction on a line to the Pacific Coast called the Puget Sound Extension, which was completed in 1909. As concluded by the Commission, however, the Puget Sound Extension resulted in substantial financial difficulties for the Milwaukee Road, and in 1925, the latter went into receivership. (For a complete history of the Milwaukee Road, see *Chicago, Milwaukee and St. Paul Reorganization,* 131 I.C.C. 673).

[10] Such joint rates are restricted on eastbound traffic to lumber moving to Chicago and general commodities moving to points north of a line extending from Omaha to Chicago and to points east of Chicago only on traffic moving via the cross-lake route. Such joint rates are restricted on westbound traffic to such movements through Chicago as originate on the Milwaukee Road. Territorial Directory TCFB 5(b), I.C.C. 1674 published by W. J. Prooter.

industries on its lines and its inability to compete for transcontinental traffic. Time after time Milwaukee Road has endeavored to break out of the confining restrictions imposed upon its Puget Sound Extension by the refusal of other transcontinental carriers such as the Northern Lines and the Union Pacific to establish through routes and joint rates, only succeeding at the Marengo gateway to the limited extent heretofore indicated.

A discussion of the northern corridor carriers would not be complete without at least mention of the two Canadian Transcontinental Railroads. The Canadian Pacific Railway (Canadian Pacific) which controls the Soo, operates throughout Canada. Through its connections with Soo at Portal, N. Dak., and Noyes, Minn., it moves a large volume of freight in competition with northern corridor carriers between the general midwest region and the Pacific Northwest and Western Canada. Likewise, the Canadian National Railways (Canadian National), which also operates throughout Canada in competition with the Canadian Pacific, competes with northern corridor carriers for traffic moving between the general midwestern region through the Duluth-Superior gateway and the Pacific Northwest and Western Canada.

The dominant carrier operating through the central corridor is the Union Pacific. Its lines extend west from Omaha, Nebr., and Council Bluffs, Iowa, through Cheyenne and Granger, Wyo., and from Kansas City through Denver, Provo and Salt Lake City, Utah, to Ogden, Utah. From Granger it conducts a main-line operation through major points in Idaho including Pocatello and Boise, through Pendleton, Oreg., to Portland and Seattle. From Pendleton and Hinkle, Oreg., it has a complex of lines extending northeast through eastern Washington to Spokane and to Eastport, Idaho, via its subsidiary, Spokane International. In addition, it conducts main-line operations from Salt Lake City through Las Vegas, Nev., to Los Angeles, Calif. Besides offering a through transcontinental service between points on its own line, Union Pacific in conjunction with other carriers performs a significant through service through the entire central corridor, interchanging substantial traffic at Ogden with the Southern Pacific and the Western Pacific; at Council Bluffs-Omaha to a major extent with C&NW (including Fremont, Nebr.) and to a lesser extent and in order of importance with Milwaukee Road, Illinois Central, CB&Q and Rock Island. At Kansas City, its other eastern gateway, it interchanges substantial traffic with eastern and southern carriers.

Vigorous competition through the central corridor is provided by a combination of carriers, of which D&RGW provides an indispensable link. The latter's essential lines run from Ogden and Salt Lake

City, on the west, to Denver, Pueblo, and Colorado Springs, Colo., on the east. At Salt Lake City, D&RGW connects with the Western Pacific and Union Pacific; at Ogden with the Southern Pacific; at Denver with the Rock Island, CB&Q and Union Pacific; at Colorado Springs with the Rock Island; and at Pueblo with the Santa Fe and Missouri Pacific.

Insofar as the central routes are concerned both the Western Pacific with routes between San Francisco and northern California points, including its connection with the Great Northern at Beiber, on the one hand, and, on the other, Salt Lake City; or Southern Pacific with operations from San Francisco, other northern California points and Oregon points, including Portland, where it connects with the Northern Lines, form the only access for the central route carriers to and from points on the west coast, except for the heretofore indicated line of road maintained by the Union Pacific to Los Angeles.

The eastern link of the central corridor on transcontinental traffic is in essence the same structure as is maintained to handle midwestern regional traffic and will be considered hereinafter.

Two carriers dominate the southern corridor, the Santa Fe and the Southern Pacific. The former's operations extend from San Francisco southeast and from Los Angeles northeast to Barstow, Calif., and then east through Kansas City to Chicago. Although Santa Fe did not participate in these proceedings, it is apparent from the large volume of revenue traffic handled, as indicated in its Form A report to this Commission, the nature and points of its service along its route, and the fact that it is the only transcontinental carrier to provide single-line service between major California points and Chicago, that it is a major carrier and competitor for transcontinental freight. The second dominant carrier in the southern corridor is the Southern Pacific. In addition to its significant importance and interest in the central corridor, Southern Pacific's long haul for transcontinental traffic is via the Santa Rosa-Tucumcari, N. Mex., interchange with Rock Island.[11] In addition to its Tucumcari route, Southern Pacific operates via Corsicana, Tex., in conjunction with its subsidiary, St. Louis-Southwestern Railway Company (The Cotton Belt) on traffic moving to the Southeast, and particularly to or through New Orleans

[11]The actual interchange between Southern Pacific and Rock Island occurs at Tucumcari although the actual junction point at which the two lines meet is Santa Rosa.

and the St. Louis gateway. Although it is evident that it is to Southern Pacific's economic advantage to prefer its subsidiary over Rock Island on transcontinental traffic, its ability to do so is restricted because of the circuity in routing traffic via the Cotton Belt, especially on perishable traffic, which generally moves eastbound, time is of the essence and for which Southern Pacific's Corsicana route is unfeasible. Possibly of more importance, however, the Southern Pacific and Rock Island are partners in a preferential solicitation agreement dating from 1924 under which both are obliged to preferentially solicit traffic between points in southern California, Arizona and New Mexico, on the one hand, and, on the other, points in Minnesota, Wisconsin, South Dakota, Nebraska, Kansas, Colorado, and certain areas in Illinois, Missouri, Oklahoma, and Texas for movement over a Southern Pacific-Tucumcari-Rock Island route.

REGIONAL MIDWEST STRUCTURE

Numerous carriers form the regional midwestern rail structure. Of those carriers actively participating in these proceedings, collectively, C&NW, Milwaukee Road, CGW, Rock Island, Soo, MN&S, Illinois Central, GB&W, and CB&Q form the primary service routes in this area. Major traffic routes are also operated by Missouri Pacific and its subsidiary Chicago & Eastern Illinois Railroad Company (C&EI), Gulf Mobile and Ohio Railroad (GM&O) and N&W. Inasmuch as the major gateways in the midwest region are generally open to routing and reciprocal switching, it is sufficient to list the carriers operating a single-line service between major gateways to obtain a basic picture of the general rail structure throughout this region. This listing is set forth in Appendix A-1.

Of the 17 carriers mentioned in Appendix A-1, C&NW, Milwaukee Road, Rock Island and CB&Q maintain the most extensive route structure in this region. Collectively, the aforementioned roads maintain extensive main lines and branch or feeder line operations along the routes and tributary territories. Soo and CGW are totally committed to the midwest region. Although Illinois Central, GM&O and N&W maintain important routes in the region, the former two also maintain extensive operations in the south central portion of the United States extending to New Orleans and the latter is primarily concerned with its extensive operations east of the Mississippi River. The midwest regional operations of Santa Fe, Union Pacific, Northern Pacific and Great Northern are essentially secondary to their more important transcontinental traffic. The operations of MKT, C&EI, Frisco and Missouri Pacific may be considered as extending on the eastern and southern fringes of the area under consideration.

As heretofore indicated, each of the routes listed in Appendix A-1 plays a role in linking either the northern, central or southern corridor transcontinental routes between the midwest and western gateways and, hence, shold also be considered as part of the transcontinental rail structure.

WESTERN REGIONAL STRUCTURE

The western regional railroad structure embraces operations conducted exclusively in the far west States of Idaho, Washington, Oregon, California, Nevada, Utah, Arizona, New Mexico and Montana. Northern Pacific, Great Northern and Milwaukee dominate operations in the State of Washington although the Union Pacific plays an important role in transportation to and from that State. In Oregon, Northern Pacific, Great Northern and Southern Pacific are the dominant carriers but again Union Pacific plays an important role. In California, the two major carriers are Southern Pacific and the Santa Fe with Western Pacific and Union Pacfic also performing vital services. In northern Nevada, Southern Pacific and Western Pacific are the dominant carriers although Union Pacific maintains some miles of road whereas in southern Nevada, Union Pacific is the sole carrier operating through the important point of Las Vegas. In Utah, the lines of Southern Pacific, Union Pacific and Western Pacific converge from the North, South and West in the general area of the Ogden-Salt Lake City gateways. Southern Idaho is served by Union Pacific only which provides the only rail service to the important points of Pocatello and Boise. In Montana, Great Northern blankets the northern and central portions of the State and the Northern Pacific the southern portion. Milwaukee Road's operations through Montana move generally through the central portion. In conjunction with Great Northern and/or Northern Pacific, Milwaukee Road serves Butte, Mile City, and Missoula. Great Northern also operates extensive mileage radiating from Great Falls and connecting its main transcontinental line with both the Northern Pacific and Milwaukee. The single-line route structure between major points in the far west is set forth in Appendix A-2.

As distinguished from restrictions on interchanges of transcontinental traffic at many western junctions, traffic appears to move relatively freely through the various gateways from one railroad to another where the origin and destination are both in the western region. This includes Milwaukee Railroad whose principal interchange, on western regional traffic is at Chehalis with the Northern Pacific and Great Northern. There would also appear to be a free flow of traffic between local points and routes of the Southern Pacific and the Santa Fe and their respective connections.

As pertinent to these proceedings, the railroad systems west of the Mississippi as described above were in existence as of the date on which the hearing was closed in this case.

EMINENT OR ACCOMPLISHED CHANGES IN THE RAILROAD STRUCTURE IN THE WEST AND HISTORY OF THIS PROCEEDING IN LIGHT THEREOF

From the date of the initial order (September 26, 1966) assigning this case for pretrial conference, the parties involved herein were put on notice that there were other proceedings before this Commission which could alter the basic structure of the rail industry in the West. This examiner in his statement attached to the order setting this matter for pretrial conference and at the pretrial conference requested applicants to "indicate how they will present their case in light of the other proceedings pending before the Commission." At pretrial conference, questions were specifically raised how applicants would present their direct case in light of the pendency of: (1) F. D. 23388 and related proceedings, *C&NW-CGW* case; (2) F. D. 21478, *Great Northern Pacific & Burlington Lines, Inc.-Merger, Etc. - Great Northern Railway Co. Et Al.*, hereinafter referred to as the *Northern Lines* case; and (3) F. D. 22688 and related proceedings, *Chicago & North Western Railway Company - Control - Chicago, Rock Island and Pacific Railroad Company*, hereinafter called the *Rock Island* case,

In the *C&NW-CGW* case C&NW and CGW jointly sought authority under section 5 for merger of the latter into the former. Applicants agreed to proceed on the alternate assumptions that the proposed transaction here involved a consolidation of the C&NW and Milwaukee Road with and without CGW as part of C&NW. Subsequently and after the hearing commenced, the Commission approved the *C&NW-CGW* transaction which was consummated on July 1, 1968. Inasmuch as this record was tried on the alternate assumptions indicated above, applicants' proposal assuming inclusion of CGW was tested by all parties. The examiner concludes and finds that the record is complete for all practical purposes and a decision may be rendered despite the intervening event of a merger of the C&NW and CGW.

In the *Northern Lines* case, Great Northern, Northern Pacific and CB&Q sought authority from this Commission under section 5 to merge into the Great Northern, Pacific & Burlington Lines, Inc. (hereinafter called the Burlington Northern).[12] Initially, by its decision

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[12] The Burlington Northern would lease the properties of the SP&S.

of March 31, 1966, the Commission had denied the *Northern Lines* transaction[13] at least partially because of the injury such merger would inflict upon Milwaukee Road and C&NW. After Northern Lines entered an agreement not to oppose the imposition of the conditions which the C&NW and the Milwaukee Road requested, they sought reconsideration of the Commission's earlier refusal to approve their proposed unification. By decision served December 15, 1967,[14] the Commission approved the proposed *Northern Lines* consolidation, imposing those conditions which C&NW and the Milwaukee Road severally sought. These conditions are set forth in Appendix A-3. Thereafter, on May 15, 1968, a three-judge District Court in the District of Columbia stayed the effective date of the Commission order which was affirmed by said Court on November 20, 1968.

Hence, the railroad structure through the northern corridor and in the midwest where the Burlington had heretofore performed an independent service may well be in the process of change as the operations of three major carriers may be performed by a single entity, the Burlington Northern. Of possibly greater significance, however, the conditions imposed by the Commission for the protection of applicants here and particularly the Milwaukee Road will have significant impact upon the nature and character of their operations. The record was developed upon the alternate assumptions that Milwaukee Road and C&NW would or would not carry the beneficial conditions afforded them by consummation of the *Northern Lines* case into their proposed merger. The fact that the latter transaction was approved and may be consummated prior to approval herein does not require a reopening of this record inasmuch as the consequences flowing therefrom have been considered on this record.

In an operational sense, the *Northern Lines* conditions which were extended to C&NW and Milwaukee Road will have significant impact upon the rail structure in the West. Although opening of junctions to the C&NW via Oakes, N. Dak., and Crawford, Nebr., will provide the latter with an opportunity to solicit and obtain a longer haul, especially on transcontinental traffic, which it has heretofore had to surrender at Twin Cities, the

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[13] *Great Northern Pac. & B. L. - Merger - Great Northern R. Co.*, 328 I.C.C. 460.

[14] *Great Northern Pac. & B. Lines - Merger - Great Northern*, 331 I.C.C. 228 as modified in 331 I.C.C. 869 and 333 I.C.C. 391.

significant feature of the conditions will be to put the Milwaukee Road's Puget Sound Extension in a position to compete for transcontinental traffic. Two of the *Northern Lines* conditions produce this result.

The first will open 11 junctions and gateways, particularly at Spokane, Seattle, and Tacoma for joint handling of traffic moving to, from, and beyond Milwaukee Road's service points in the West at the lowest available rates via Twin Cities and Sioux City, Iowa gateways. Once consummated, therefore, Milwaukee Road may solicit traffic moving beyond its line for long haul to western junctions instead of surrendering such traffic to the Great Northern and Northern Pacific at the Twin Cities.

Secondly and possibly of more significance, through trackage rights which the Northern Lines will be required to extend to Milwaukee Road into Portland, not only will the industries in Portland be open to the latter for its solicitation for single-line service, but under section 3(4) of the Act as construed by the Commission,[15] Southern Pacific will be required to extend and open the Portland gateway to the Milwaukee Road in the same manner and to the same extent as such gateway is open to other carriers serving Portland. Consequently, for the first time, Milwaukee Road will have access for its long haul to large volumes of traffic flowing to and from the important traffic-generating communities located in southern Oregon and northern California.

Consummation of the *Northern Lines* merger, therefore, will significantly alter the structure in the northern corridor by combining the two dominant carriers in that corridor but at the same time creating a new effective transcontinental carrier to fill the vacuum. It also alters the competitive structure of the regional midwest for it provides the Northern Lines with single-line access to all of the major traffic-generating points, routes, and gateways in the Midwest which had heretofore been served by the CB&Q independently. In light of the pendency of the *Northern Lines* case in court, this proposal will be considered under the alternatives as presented.

[15] *Liquified Petroleum Gas To And In The South,* 309 I.C.C. 389, at 404. See also *Central Railway Co., of New Jersey* v. *New York N. H. & H. Co.,* 122 I.C.C. 661, at 673-674. *Cotton From The Southwest To Southern Territory,* 302 I.C.C. 63, affirmed 166 F. Supp., 78. *Peoria & Pekin Union Ry.,* 93 I.C.C. 3, at 23.

The third case pending before this Commission at the outset of hearings in this proceeding was the so-called *Rock Island* case which involves four applications filed under section 5 of the Act in which merger, control or consolidation is sought. The first basic application, in time, at least, was filed by the C&NW to control Rock Island through stock ownership; the second, a joint application of the Union Pacific and Rock Island to merge the latter into the former; the third, the application of Southern Pacific to purchase Rock Island lines south of Kansas City; and the fourth, the application of Santa Fe to purchase the lines of Rock Island south of Kansas City. Both the Union Pacific and C&NW have agreed that if found consistent with the public interest by the Commission, they would sell the southern portion of the Rock Island's lines sought by Southern Pacific and Santa Fe, respectively, although C&NW would do so only if the Commission determined that its control of the entire Rock Island was inconsistent with the public interest.

Hearings in the *Rock Island* case closed on August 22, 1968, after 275 days of hearing. The record in that proceeding contains approximately 48,000 pages of transcript and over 1,500 exhibits and verified statements. At least 18 carriers have heretofore either opposed one or more of the applications and many have filed broad requests for conditions including requests to be included in the transaction and/or requests seeking trackage rights, which in some instances run or may well run over 300 miles of main line.[16]

Despite their agreement to proceed on the assumptions that the *C&NW-CGW* and/or the *Northern Lines* transactions had been consummated, applicants at pretrial conference refused to proceed on the further assumption that C&NW's application to control Rock Island had also been approved. In this respect, it was their view that because of the complexities involved in the *Rock Island* case, there was little, if any, probability that the Commission would be able to render a decision in the *Rock Island* case before the *C&NW-Milwaukee Road* proceeding was ripe for a decision; and that in any event, it was their intention to present the total picture of C&NW's merger plans, namely, the consolidation or affiliation of the C&NW, CGW, Milwaukee Road and Rock Island into one system in the *Rock Island* case. At the pretrial conference, no one specifically contested applicants' method of procedure and the examiner in his pretrial Report and Recommended Order concluded ...

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[16] Data indicated not contained in this record is officially noted.

> Since the burden rests upon applicants and there was no specific objections raised to applicants' basic plan of presenting evidence, the examiner must consider the issues framed in the context of the relief which applicants seek. The facts and allegations as they now stand do not evidence the present control of Rock Island by any carrier and at least, at this juncture, applicants, in this proceeding, have the right to formulate their case on the predicate of existing facts. This is a risk which they meet by their choice of forums and any delay in this proceeding resulting from such choice is also theirs to bear.

Despite its failure to indicate any opposition to such plan at the pretrial conference, Union Pacific took an interlocutory appeal to the above-quoted ruling requesting the Commission to order applicants to present evidence in support of their overall merger plans in this proceeding and by order issued on January 20, 1967, the Commission denied its petition, without prejudice, however, to a renewal of such request at a later stage of the hearing.

RELEVANCE OF THE ROCK ISLAND PROCEEDING

Prior to and during the course of the hearings, various parties to this proceeding have, from time to time, urged that the present proceedings be consolidated with other proceedings. Soo Line and RLEA supported by others, have on several occasions urged the consolidation of the instant proceedings with the *Rock Island* proceeding and the *C&NW-CGW* case. Union Pacific and others have several times urged a consolidation of this proceeding with the *Rock Island* proceeding; and Rio Grande has urged the consolidation of the *Rock Island* proceeding with the *Northern Lines* case and the instant proceeding. The issue of relationship of the instant proceeding to the other pending proceedings has been raised, directly or obliquely, through the various actions of the parties almost daily throughout the course of this case.

On December 15, 1967, the Commission issued an order in the *Rock Island* case requiring applicant, C&NW, therein to:

> Prepare and circulate ...studies, operational and otherwise, of its merger plan in the event control of the Rock Island is authorized upon the collective and alternative hypotheses as are appropriate:
>
> (1) that its application to merge with the Chicago Great Western Railway Company shall have been consummated;

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(2) that its request for consolidation with the Chicago, Milwaukee and North Western Transportation Company shall have been approved and consummated; and

(3) that the transactions approved by the Commission in F. D. No. 21478, *Great Northern Pacific & Burlington Lines, Inc. - Merger, Etc., - Great Northern Railway Company Et Al.*, shall have been consummated subject to those conditions stated in the decision of the Commission, dated November 30, 1967.

Hence, as the administrative handling of these proceedings now stands, the Commission in the instant proceeding has a record wherein the proposed consolidation of the C&NW including CGW and the Milwaukee Road, with access to Portland, has been tested and may be considered but it does not have a record where such a transaction can be tested or considered assuming C&NW also has control of the Rock Island. In the *Rock Island* proceeding, however, the Commission's examiners and the parties are in the process of developing a record in which the issues being tested and considered are: (1) whether approval of the C&NW's control of Rock Island is in the public interest; and (2) whether approval of C&NW's control of Rock Island is in the public interest, assuming the former has already merged with the CGW and the Milwaukee Road, which has gained access to Portland.

Addressing itself to the alleged "gap" in the instant record, D&RGW on brief, argues that the record in this proceeding is incomplete in that it does not permit consideration of "the merits of putting the Milwaukee into a regional *North Western-Great Western-Rock Island system.*" Although accepting the fact that in the *Rock Island* case, the Commission through its order of December 15, 1967, can determine proper disposition of the Rock Island assuming a *C&NW-Milwaukee Road* merger, it has no forum in which D&RGW can establish the adverse impact which would flow from a consolidation of a regional railroad composed of C&NW, CGW, and Rock Island into a transcontinental railroad (the surviving corporation, including Milwaukee Road). Upon this basis, it requests this examiner to withhold his decision in this proceeding until the so-called "four-party study"[17] has

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[17] Studies dealing with the proposed consolidation and/or affiliation of the C&NW, CGW, Milwaukee Road and Rock Island have been commonly referred to as the "four-party plan" and as such will be used by the examiner to describe this plan of combination.

been introduced in the *Rock Island* case, at which time the present record should be reopened for further hearings and the parties permitted an opportunity to introduce portions of the *Rock Island* record into evidence which are relevant to this proceeding and also, opportunity afforded for additional cross-examination.

Union Pacific[18] also alleges that the *C&NW-Milwaukee Road* proceeding is the only forum in which it can test consolidation of C&NW and Milwaukee Road assuming C&NW should gain control of Rock Island. In this respect, it argues that whether C&NW and Milwaukee Road are permitted to consolidate may well depend on whether C&NW gains control over Rock Island; that this examiner in this proceeding should require the record to be developed subject to the additional alternative assumptions (1) that a *Union Pacific-Rock Island* merger is approved and (2) that C&NW gains control of Rock Island. It is argued that only in such a manner can the full scope of public interest be considered and protected and the Commission meet its obligations as set forth by Justice Brennen in his concurring opinion in *B&O R. Co.* v. *United States*, 386 U.S. 372 at 412 and 421 (1967).

The examiner disagrees with the premises of both arguments. He believes the procedures used in this proceeding are a proper exercise of the Commission's discretion and have afforded D&RGW and Union Pacific a full and adequate opportunity to present their cases.

The court decisions are abundantly clear that the Commission, as a matter of law, is not obligated to consolidate so-called merger applications on a common record even though they involve carriers operating in the same territory[19] or for that matter even where one of the applicants is involved in more than one of the applicants is involved in more than one of the pending merger proceedings.[20] The only basic predicate for requiring

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[18] Reverence to Union Pacific's arguments also embodies those raised by Southern Pacific which encompass the former's by reference.

[19] Compare *Chesapeake & O. Ry. Co. - Control - Baltimore & O. R. Co.*, 317 I.C.C. 261 (1962) 221 F. Supp., 19 (1963) affirmed 375 U.S. 216, and *Penn-Central - Merger - and N&W Inclusion* cases, 389 U.S. 486 (1968).

[20] *Soo Line R. Co.*, v. *United States* (No. 4-67 Civil 318, D. Minn., January 25, 1968.)

the Commission to consolidate application proceedings is that they are "mutually exclusive" in that the grant of one of the applications without concurrent consideration of the other, deprives the latter applicant of an opportunity to obtain the same authority.[21] Obviously this is not the situation here.

The question realistically posed by the D&RGW and Union Pacific is whether the Commission was wise in exercising its discretion in favor of testing the "four-way plan" in the *Rock Island* case but not in this proceeding; and has either D&RGW or Union Pacific been materially prejudiced by the exercise of such discretion.

In order to properly deal with these arguments a brief discussion of the basis and development of the Commission's authority and Congressional objectives under section 5 is necessary. The genesis of the Commission's jurisdiction and authority over rail consolidations begins with the passage of the Transportation Act of 1920.[22] Under that Act, the Commission was authorized to approve applications for unification of rail carriers consistent with a Commission-prepared plan for consolidations of rail properties for the continental United States into a limited number of systems.[23]

The Transportation Act of 1920 was intended to encourage consolidation of the nation's railroads into a limited number of systems.[24] Opposition from the carriers completely frustrated the attempts by this Commission to bring about a workable master plan and the Commission's role as the master planner was abandoned and replaced by the Transportation Act of 1940.[25]

> Under the 1940 Act, the initiation of merger and consolidation proceedings is left to the carriers themselves and the Commission possesses no power to compel carriers to merge. However, the Congressional directive for a limited number of railroad systems has not been changed. The only change has been in the means of achieving that goal.[26]

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[21] *Ashbacher Radio Co.* v. *F.C.C.*, 326 U.S. 327 (1945). Compare also *Alterman, Extension - Hastings, Nebr.*, 94 M.C.C. 421.

[22] 41 stat. 481 (1920).

[23] 41 stat. 482.

[24] *Penn-Central and N&W Inclusion* cases, *supra*, page 492.

[25] 54 stat. 906 (1940).

[26] *Penn-Central and N&W Inclusion* cases, *supra*, pages 492-493.

It has repeatedly been held that the Commission may conduct its proceedings in such a manner as will be most conducive to the proper dispatch of business and ends of justice.[27]

The responsibility of the Interstate Commerce Commission is no longer that of the master planner of rail consolidations but rather its obligation is to test each merger proposal on the basis of the effect it produces on the public interest and to insure that it is not a negative step to the promotion of a more rational and efficient rail system. In light of the frustration which the Commission experienced in the past in attempting to determine what is the best rationalization of the rail system in the nation, it certainly cannot be argued that it would be wise for this Commission to launch out into an excursion in national planning. As construed by this examiner, it is the Commission's function to determine whether the proposal here is or is not consistent with the public interest, and not whether other possible consolidations could or would be in the public interest. D&RGW's position that it has been prejudiced by the failure of the examiner to consider evidence of the overall impact of C&NW's merger with Milwaukee Road, assuming C&NW already controls Rock Island, is without merit. The Commission under law is required to provide all parties an appropriate and fair forum in which they can test the impact of a particular merger proposed under section 5. In this sense, D&RGW and Union Pacific have been provided a full and adequate hearing to position themselves and present their evidence in this proceeding as to the issues involved; and in the *Rock Island* proceeding they have the opportunity to present evidence of adverse impact upon it which would flow from a combined *C&NW-Rock Island* system. In each case, they have or will have the opportunity to address themselves in favor or against the end product that can be produced as a result of the relief sought in that case and the incremental effect of each addition to the system, as it may develop. Nothing in the procedural handling of this proceeding has destroyed or can destroy their fundamental rights in this respect.

If, as suggested by these parties, approval of *C&NW-Rock Island-Milwaukee Road* combination is inconsistent with the public interest, it is no less inconsistent with the public interest were the Commission considering the application of a *C&NW-Milwaukee Road* combination to control Rock Island or whether it was considering a *C&NW-Rock Island* combination seeking to control Milwaukee Road.

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[27] *L&N R.R.* v. *Sloss-Sheffield Steel & Iron Co.*, 295 F. Supp., 53 affirmed 269 U.S. 217.

This issue was presented to the hearing examiner at pretrial conference and in his Report and Recommended Order on pretrial conference, he concluded:

> ...Conceptually, and within the framework of the issues posed, the instant application could be denied on the basis of injury to Union Pacific or Rock Island unless the latter two are merged and it is the examiner's conclusion that to the extent not otherwise inconsistent with his findings herein Union Pacific's amended petition should be accepted and petitioners permitted to adduce evidence on the basis thereof.
>
> Acceptance of the Union Pacific's petition, however, does not carry with it the right to introduce testimony used by it to support its application in the *Rock Island* proceeding. In that proceeding, the basic issue was and is whether its merger with the Rock Island is consistent with the public interest. Here, however, the frame of reference in which the potential of a Union Pacific-Rock Island merger has relevance encompasses a much narrower issue.[30]

Although not taking an appeal to the examiner's recommendations, applicants during the course of the hearing and now on brief, specifically attacked the examiner's ruling on this issue. In this respect, they argue on brief that section 5(2)(b) of the Act directs the Commission to approve those unification proposals which it finds consistent with the public interest "subject to such terms and conditions and such modifications as it shall find to be just and reasonable." From the inherent logic of the situation, as well as the phrasing, applicants argue it is plain that the conditions which may be imposed are only those which applicants have the power to meet. They are conditions which burden or limit the freedom of applicants and which they can submit to as the price of approval of their proposal or reject at the cost of their proposal. Just as the "modifications" which the Commission may require can certainly be only modifications of the applicants' proposal, so applicants contend the "terms and conditions" to be imposed must be those whose impact falls upon the applicants.

U. P. "cond" proper tho applics can't grant it

The examiner disagrees. The statutory power of the Commission to impose conditions to any transaction approved under section 5 of the Act is extremely broad. Other than a specific requirement

[30] Report and Recommended Order of Examiner Henry C. Darmstadter, Jr., on pretrial conference in the above-entitled proceeding, served November 28, 1966, pp. 9-10.

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U. P. "COND." OK

that such conditions be "just and reasonable," nothing in the Act restricts the type of condition which the Commission may or can impose.

In this respect, some discussion and examination of the Commission's conditioning power is essential to an explanation of the examiner's ruling. Up until the Commission's decision in *Seaboard Airline R. Co., - Merger - Atlantic Coast Line*, 320 I.C.C. 122 (1963), conditions imposed to section 5 rail transactions were generally confined to so-called standard *DT&I* conditions or modifications thereof to preserve and maintain existing interchanges, schedules, routes, and gateways; and labor conditions imposed under the provisions of section 5(2)(f). In that proceeding, however, the Commission recognized the need for stronger conditions than had been prescribed up to that time and required the merging carriers therein prior to consummation of their transaction to agree to open new routes, and gateways;[31] to transfer by sale, long-term lease, or otherwise, trackage rights to competing carriers;[32] and to agree to include other railroads upon fair and equitable terms where any of the latter subsequently filed a petition seeking inclusion and the Commission determined that such inclusion was in the public interest.[33]

all cond. applics could grant,

The broadest condition to a section 5 transaction heretofore imposed was contained in the Commission's approval of the *Northern Lines* case. There the Commission reserved full and complete jurisdiction to impose conditions which may subsequently be shown to be necessary, just, reasonable and consistent with the public interest to protect the various railroads and other segments of the public from the cross-over and cumulative effects stemming from approval of the *Northern Lines* merger and other mergers in the involved territory then pending, after it determined whether the basic merger proposals before it were consistent with the public interest. The conditions listed above put in applicant's hands the right to accept or reject such conditions and hence, determine whether consummation of their proposed transaction would occur or not.

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[31] Compare *Pennsylvania R. Co., - Merger - New York Central R. Co.*, 327 I.C.C. 475 (1966), 328 I.C.C. 304 (1966), 330 I.C.C. 328 (1967), 331 I.C.C. 643 (1967) and 331 I.C.C. 754 (1968) and *Northern Lines* decisions, *supra*.

[32] Ibid.

[33] Compare *Penn-Central* merger case, *supra* and *Norfolk & W. Ry. Co.*, and *New York C. & St. L. R. Co.*, 324 I.C.C. 1 (1964) and 330 I.C.C. 780 (1967).

The examiner's review of the Commission's treatment of conditions indicates that it has never considered specifically a request for conditions that were dependent upon an extraneous or independent event over which applicants had no control. In the *N&W Ry. Co., & N.Y. Chicago & St. Louis R. Co., Merger*, 330 I.C.C. 1 as modified 331 I.C.C. 22, the Commission did, however, impose conditions that would be modified in the event Congress enacted certain legislation providing for tax relief to railroads. And the Supreme Court in *Baltimore & Ohio R. Co.* v. *United States*, 386 U.S. 372 (1967) in reversing and remanding the so-called *Penn-Central* merger concluded that where the Commission finds that the survival of particular railroads was essential to the public interest and that these roads would be so seriously affected by the competition of the merged company that they may not be able to survive, the means to preserve the "protected roads" on a permanent basis should have been determined before permitting consummation of the transaction.

In dealing with this issue, the Supreme Court clearly indicated that this Commission not only had the power but the duty to frame approval of any transaction under section 5 in terms, whether through its conditioning power or otherwise, which would meet the acid test of "consistency with the public interest." If the proposed transaction would irreparably injure essential services to the public, that merger could not proceed to consummation until "the future of the protected railroads and their inclusion in a major system be decided...prior to the consummation of the...merger." Inasmuch as Union Pacific in support of its amended petition to intervene has stated that it and its connections, being essential to the transportation system of the United States, would be irreparably damaged as would other unspecified members of the public by approval here, the condition which it seeks to impose, even though dependent on an extraneous event, must be considered and the questions related thereto become a matter of substance and proof which will be further examined below. The examiner, therefore, reaffirms his ruling in permitting Union Pacific to present evidence in support of its position as indicated in its amended petition for intervention.

Non seq.

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During the early stages of hearing, it became apparent that what the examiner considered relevant to the issues posed by Union Pacific's request for a condition and what Union Pacific considered relevant in this respect were not compatible. The examiner, as early as in his report on pretrial conference, put Union Pacific on notice that although accepting the latter's right to seek its condition, such acceptance was not to be construed as authorizing the retrial of the *Rock Island* case and what the issue presented by its proposed condition was not "whether the

Union Pacific-Rock Island was in the public interest" but rather whether injury stemming from a *C&NW-Milwaukee Road* transaction would warrant a denial unless the *Union Pacific-Rock Island* merger was approved prior to or concurrently therewith. Although, as in all cases under the Administrative Procedure Act, the applicants have the ultimate burden of proof, it was incumbent upon Union Pacific and those supporting its position to go forward with evidence to establish (1) that the proposed transaction would result in such damage, injury or disability to the public interest or to a private interest, essential to the transportation system, which would warrant a denial of the proposed transaction; and (2) that a *Union Pacific-Rock Island* merger would be the only way to avoid, avert, or prevent injury which would otherwise result from approval of the transaction.

Despite what the examiner considered the clear delineation of issues set forth in his report and his almost daily rulings on the issue, Union Pacific and to some extent Rock Island and Southern Pacific circulated and offered into evidence numerous exhibits which had been accepted as evidence in the *Rock Island* case. Many of these exhibits had the admitted objective to establish either that the proposed *Union Pacific-Rock Island* or *Southern Pacific-Rock Island* transactions were in the public interest and/or that control of the Rock Island by the C&NW would not be in the public interest. Although certain exhibits were presented tending to establish that the *C&NW-Milwaukee* consolidation would injure Rock Island, Union Pacific and Southern Pacific and would reduce competition at various points, very little by way of direct evidence was presented to indicate specifically how a *Union Pacific-Rock Island* merger would cure the injury alleged. In many instances the material presented was incompetent and a direct import from the *Rock Island* case without any sponsoring witness.

After extensive argument and an attempt to consider the exhibits one-by-one to determine what, if any, evidence presented was relevant to the issues involved:

> ...it became quite apparent to this examiner that an exploration of Union Pacific's proposed cure for the injury which it alleges will result from approval of the proposed consolidation on this record would be tantamount to a retrial of many, if not all, the issues being raised in the so-called *Rock Island* case.
>
> The question raised by the proposed condition in this proceeding is one of interrelationship, founded upon a basis of purported injury which must be

established before the predicate for the relationship is manifested.

Dealing with the immediate problems facing us ...it is the examiner's intention to proceed with the hearing on the following basis:

One; I will permit Union Pacific to show whatever competent, relevant and material evidence that it has in support of the injury which it alleges in its petition of intervention which would result from the proposal, and two; I will permit an exploration of alternative conditions which may meet the burden of such injury, but, at this stage, I will not permit the receipt of any evidence presented in the *Rock Island* case in support of this condition.[34]

In light of the complex issues involved and the almost daily objections and arguments raised on the record concerning the issue, the examiner amplified this ruling on July 10, 1967.[35]

A careful study of Union Pacific's evidence clearly indicates that Union Pacific has made no special study to show how its merger with the Rock Island would cure any injury which it argues would occur here; rather, it depends exclusively on the evidence...or primarily on the evidence presented in the *Rock Island* case to show the general benefits which the public, including Union Pacific and Rock Island, would derive were the merger approved. I see no purpose, at this stage at least, to retry the very issues on trial in the *Rock Island* case here, and will not permit it to be done.

...On the question of fairness, I see nothing unfair to Union Pacific in this approach. For if it establishes the predicate of injury or harm which would warrant

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[34] Examiner's ruling on June 12, 1967, pp. 7788-7791, of the transcript.

[35] Transcript pp. 8698-8703.

consideration of its condition, then evidence to support this condition will have to be considered whether such evidence is taken into by stipulation between the parties as was requested by the Examiner, or by a reopened hearing here. ...Realistically, what the Examiner seeks to obtain is not substantially different from actions taken by numerous courts in court proceedings in separating the question of negligence from that of the nature of the judgements.

Subsequently, after extensive questioning by the examiner, Union Pacific counsel agreed that "it is the injury to Union Pacific and Rock Island" that makes this transaction "contrary to the public interest;" and that "if the damage to Union Pacific and Rock Island is so small that it is not reflected in any damage to the public" the issue whether a *C&NW-CGW-Milwaukee Road* combination without merger of the Union Pacific and Rock Island is in the public interest "wouldn't be involved."[36]

Subsequently, Union Pacific based on the injury it claimed to have established and toward the end of the proceeding, requested that this examiner permit it to proceed with the so-called "second step" of its proof. The examiner ruled:

> At stake in this proceeding is the central question, whether the consolidation of the Chicago & North Western Railway Company and the Milwaukee Railroad is in the public interest. And the basic inquiry here which we are to explore and have explored are the benefits and the injuries to the public which will flow from this transaction.
>
> Other issues must, of necessity, be tied by some relationship to this central proposition.
>
> ...My examination of the record up to date and of arguments by counsel for Union Pacific indicate that the fundamental relationship insofar as it is defined between this proceeding and the condition proposed by Union Pacific and Rock Island is purported injury to both of these roads, and derived therefrom the potential injury to the public. No one has alleged in a specific or positive sense that were it not for this injury that there would be any relationship between the central issue in this case and those embraced in consideration of the proposed condition.

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[36]Transcript pp. 12706-12711.

For purposes of this ruling and on the basis of his limited study of the record, the Examiner, therefore, must concentrate on the question whether the injury to the Union Pacific and Rock Island is of such nature, character and substance to warrant consideration of the evidence and the myriad of issues which would be raised by the proposed condition.

In this respect, evidence presented by the Rock Island indicates a potential diversion of less than $3 million. Because of the admitted precarious financial condition of the Rock Island, such diversion, it is argued, cannot be withstood without a substantial reduction in the vital service Rock Island performs for the public, and hence, a reduction of effective intramodal competition.

Applicants, on the other hand, have evidenced some indication that if the Rock Island's estimate is correct, they would be willing to consider conditions which would insulate Rock Island from such losses through indemnification. So-called indemnifications have heretofore been imposed by the Interstate Commerce Commission and have been accepted by the courts under somewhat similar circumstances. Hence, accepting Rock Island's injury at face, when the cost of complete indemnification protection is compared and weighed against the alleged substantial savings and public benefits which may result from approval of this transaction, the record simply does not warrant or justify exploration of the proposed condition and its ramifications at this time. To deny the public the alleged benefits of this transaction, if, upon subsequent analysis they are found to have been established, to protect an injury that can be completely eliminated through the imposition of reasonable conditions until or unless the *Union Pacific and Rock Island* merger is consummated, is clearly not in the public interest.

Turning now to Union Pacific's purported injury, here again, even assuming the Examiner was to accept Union Pacific's diversion estimates at face value, no specific fact has been presented to support the conclusion that such diversion would result in an injury to the latter's ability to provide service to the public or compete in the transportation arena. At least, on the tentative basis upon which this ruling is made, the Examiner sees no issue presented by such evidence that would warrant an exploration of the proposed condition on this predicate. The Commission's approval of a transaction under section 5 of the Interstate Commerce Act is not a guarantee of the *status quo* in either the traffic volume, revenue or level of earnings to competing carriers. Rather, our inquiry is designed to protect the public and insure that an adequate transportation system remains as a result and after such approval is forthcoming."[37]

On brief, and pursuant to the examiner's expressed permission, Union Pacific, as supported by Rock Island and Southern Pacific, contend that the examiner's rulings, heretofore described, were erroneous. In support of this basic contention, Union Pacific argues (1) that while considering alternate conditions which would meet the burden of the injury alleged and established by it, the examiner would not and did not consider the conditions suggested by the Union Pacific; (2) that the examiner confused the question whether a *Union Pacific-Rock Island* merger would be in the public interest which is involved in the *Rock Island* case with the issue whether a *C&NW-CGW-Milwaukee Road* merger would be in the public interest without a *Union Pacific-Rock Island* merger; (3) that while exploration of Union Pacific's proposed cure for the injury alleged would enlarge the scope of the inquiry, it could hardly justify a refusal by the examiner to explore the proposed cure if material to the issues involved; (4) that the examiner erroneously construed Union Pacific's alleged injury as one being limited to that to be experienced by "private interests" whereas the injury alleged by Union Pacific ran to the injury which would be experienced by the public and contrary to the public interests; (5) that the examiner refused Union Pacific an opportunity to show how the public would be benefited by better service from a *Union Pacific-Rock Island* merger; (6) that the right to present evidence of both injury and cure is not dependent upon a showing of Union Pacific of private disabling injury; (7) that no condition would insulate Rock Island, and especially indemnification, from injury without being included in a *Union Pacific-Rock Island* combination; (8) that applicant's present financial condition is such that the benefits of the proposed merger will not substantially benefit the public interest nor will applicants face any difficulty in awaiting consummation of their transaction until final disposition

[37] The examiner's ruling, transcript pp. 14855-14861.

of the *Rock Island* case; (9) that inasmuch as the examiner indicated that his rulings were tentative only and could be argued on brief, the examiner should recommend the reopening of these proceedings for further hearings or in the alternative withhold his recommended report until the *Rock Island* case has been ultimately determined; and (10) finally, that even under the examiner's ground rules he excluded significant evidence which was presented to establish the injury alleged by Union Pacific. In the latter respect, Union Pacific assigned 41 specific errors to the examiner's rulings which excluded offers of evidence whose admitted purpose was to establish that Union Pacific's condition could cure the injury caused by the combine and improve the rail transportation system.

The examiner disagrees with the Union Pacific premises and affirms his rulings stated above. As distinguished from other conditions proposed to this transaction, the conditions proposed by Union Pacific would, if imposed, make consummation of the proposed transaction contingent upon the occurrence of an extraneous event which may never occur. Union Pacific has consistently argued that if the merger of Union Pacific and Rock Island should occur, the proposed transaction then would be in the public interest and were this event not to occur, it would not. Although having the power to consider and impose such a condition despite applicants' inability to do anything to meet it, under the circumstances presented here, the extrinsic character of the proposed condition warrants consideration first of any solution which would cure the disabilities caused by this transaction which can be met by applicant before consideration be afforded to a proposed condition contingent upon the occurrence of an event which of itself must rest upon a showing that it is in the public interest. To do otherwise, could conceivably prohibit the consummation of a transaction which may be in the public interest, because it is ultimately determined that a second transaction may not meet this statutory test.

At the outset of these proceedings, the examiner fashioned what he felt was an appropriate vehicle through which Union Pacific could present its case. He was under the misapprehension that Union Pacific intended to and would establish whatever injury it estimated would be caused by the consummation of the proposed transaction and as part of its proof, design studies to show specifically how the proposed transaction of Union Pacific and Rock Island would be the only cure for this injury. Instead, Union Pacific in its presentation relied primarily on evidence presented in the *Rock Island* case by it and Rock Island to establish the general public benefits of their proposed transaction. Such

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proposed evidence included the entire merger studies presented by applicants in support of a *Union Pacific-Rock Island* merger and of Southern Pacific's request to purchase Rock Island lines south of Kansas City; select statements in support of their transaction by shippers presented in the *Rock Island* case; statements of officials of Union Pacific, Rock Island, and Southern Pacific, which were presented in support of their position in the *Rock Island* case; statements of officials of other railroads including applicants herein which Union Pacific believed would support the general benefits attending a merger of Union Pacific and Rock Island or would support their opposition to a C&NW's control of Rock Island; and a variety of other excerpts from the testimony of applicants' witnesses, other rail officials and other public witnesses which were received in evidence in the *Rock Island* case. In other words, the evidence circulated and offered into evidence by Union Pacific was not designed to show specifically how a merger of the Union Pacific and Rock Island would meet the burdens or injuries created by a *C&NW-Milwaukee Road* merger.

Had the issues posed by Union Pacific's showing been aired on this record, it was and is the examiner's conclusion that at issue in the *C&NW-Milwaukee Road* case would be the entire gamut of problems now posed in the *Rock Island* case. For to assess such general benefits, the examiner and this Commission would be required in the instant case to receive evidence of not only the benefits but also the disabilities and injuries which may be caused by the *Union Pacific-Rock Island* proposal and assess the question whether control of Rock Island by C&NW would be in the public interest.

Given this tactical design by Union Pacific, it was and is quite evident to this examiner that to permit Union Pacific to pursue in this proceeding the public benefits which would be derived from a *Union Pacific-Rock Island* merger would be a *de facto* consolidation into this proceeding the very issues at trial in the *Rock Island* case.

In this light, the conclusion was and is inescapable that the examiner had two choices; (1) to recommend to the Commission that the proceedings be consolidated on a common record to avoid the duplication of hearing and the extraordinary and burdensome costs in terms of time and dollars to the government and the parties; or (2) to devise and develop a procedure under which Union Pacific would have a fair and complete opportunity to develop the basis and a need for consideration (emphasis supplied) for its proposed condition on this record.

The examiner chose the latter approach and upon consideration of all the arguments raised on brief, concludes that such approach was not only proper but the only meaningful course available. At issue here is not, as Union Pacific contends, the proposition that if the proposed transaction is approved it would be more in the public interest if a *Union Pacific-Rock Island* merger were also approved for that, especially in light of the Commission's order of December 15, 1967, incorporating the four-party study into the *Rock Island* case, is the very issue presented in the latter proceeding. Rather, at issue here, is the question whether under the present circumstances, the proposed transaction is or is not in the public interest. If not, it may well be that the Commission should consider what change or changes in circumstances are necessary for such a transaction to become consistent with the public interest and this is the very issue to which the examiner will address himself.

Turning to Union Pacific's specific assignments of error in the examiner's rulings and in light of the difference in the nature of the conditions sought by Union Pacific and those sought by other parties, the examiner sees no error or prejudice to Union Pacific in his rulings or in the treatment afforded the latter in pursuing its condition. Furthermore, the examiner specifically rules (1) that to the extent any confusion exists in this record between the proof necessary to warrant consideration and imposition of the Union Pacific condition and the latter's burden in establishing its case in the *Rock Island* proceeding, sole responsibility for confusion therefore rests with Union Pacific;[38] (2) that the consideration of Union Pacific's proposed condition on this record need only be made upon a finding that the proposed transaction would not be consistent with the public interest without exploration of such a condition; (3) that the examiner was correct at this juncture of the proceeding in refusing to permit Union Pacific to show how the public would be benefited by a *Union Pacific-Rock Island* merger and would be injured by the control of Rock Island by C&NW; and (4) that under the circumstances presented, the examiner was correct in refusing to consider Union Pacific's so-called cure until and unless it established such injury to "the public" and/or "private" interests as would warrant a denial of the proposed transaction without consideration of Union Pacific's proposed cure.

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[38] See, for example, the request of counsel for Union Pacific at hearing that the *C&NW-Milwaukee Road* proceeding and this examiner are the only appropriate vehicles to determine whether the *Union Pacific-Rock Island* merger is consistent with the public interest.

One related contention raised by Union Pacific on the procedure used warrants special consideration. In its brief, Union Pacific raises the argument that the examiner in some fashion has required Union Pacific to show "a private disabling injury" prior to an exploration of its proposed condition and that he limited Union Pacific's right to establish "injury to the public" and limited such right to only establish "injury to private interests." This allegation is simply not correct. In his rulings the examiner consistently has referred to Union Pacific's allegation of disability, injury and damage which would be inflicted by consummation of the proposed transaction. As definitively described by Union Pacific and particularly its counsel in response to questions by this examiner, such allegation was primarily and essentially predicated upon injury to Union Pacific and Rock Island which inherently encompassed an injury to the public in the sense that it was and is Union Pacific's contention that such injury would affect the ability of such carriers to provide service to the public. Although during the course of the hearing, Union Pacific's counsel made certain allusions to the loss of intramodal competition and asked questions related to this subject, it is only on brief that Union Pacific raises this ground as a specific definitive and primary predicate for the consideration of its condition. As such, its requests will be considered.

PROCEDURAL AND EVIDENTIARY ISSUES

STIPULATIONS AND DEFINITIONS

In order to expedite these proceedings and eliminate unnecessary hearing time, the examiner at pretrial conference appointed a Stipulations Committee composed of major parties to this proceeding which was chaired by the representative of the Bureau of Enforcement. This committee not only functioned prior to the initial hearing, but also during the course of the hearings, developing and submitting proposed stipulations to all parties for their comment and approval.

The committee submitted numerous stipulations on non-controversial factural matters which were received into evidence without objection. Among others, these included stipulations describing the operations of freight trains; the nature and extent of reciprocal switching in the area served by applicants and intervening railroads; and the points, nature and method of interchange as between applicants and other carriers. Also in certain areas, where no agreement was feasible between the parties, stipulations were entered showing areas of disagreement. In the latter respect, stipulations covering points of disagreement included such matters as the general principles governing rail competition and principles governing the routing of freight by shippers.

The examiner believes that the committee served a very useful purpose and its chairman and members are to be commended for the diligence, fairness, and skill with which they approached their task.

A description of several of these stipulations would, in the examiner's opinion, be helpful for a complete understanding of the issues involved. Appendix B-1 hereto contains the essence of stipulations covering (1) a description of the types of freight trains operated in the areas embraced in this proceeding; (2) a definition and description of reciprocal switching arrangements; and (3) a description of various reciprocal switching arrangements at important gateways.

CONTESTED PROCEDURAL AND EVIDENTIARY ISSUES

In addition to those procedural matters covered in the preceding section defining some of the basic issues in this proceeding, applicants, Union Pacific, Soo, MN&S and Upper Lakes Bureau, on brief, specifically or obliquely, assign error to certain of the examiner's rulings. Issues raised thereby are specifically considered and ruled on in Appendix B-2 to this report. Furthermore, on brief, certain of the parties have assigned procedural or evidentiary error to the rulings of the examiner or this Commission which are treated in the context of the examiner's consideration of their substantive claims hereafter. To the extent issues have been raised by various parties and are not specifically discussed in this report, they have been considered and found to be without merit. Also, at hearing the examiner made certain rulings on evidence but specifically afforded any party aggrieved thereby the opportunity to reargue any issue posed by such rulings on brief. To the extent the parties did not take advantage of the opportunity so afforded, the examiner affirms his prior rulings.

APPLICANTS

PRELIMINARY STATEMENT

The pretrial order in this proceeding required applicants to submit extensive statistical data for the period 1955 to date and unless some special reason exists, there is no purpose in utilizing statistical data prior to that year to estimate applicants' present condition and future outlook. The 13-year span encompassed by this time period provides a sufficient basis upon which reasonable long-term trends or conditions can be estimated.

In addition, as the period between 1960 and 1967 provides results, both in the national economy and in the rail industry, which are somewhat different than had been experienced theretofor and is the most recent statistical indication of applicants' condition and operations, this period will be examined, as appropriate, to determine whether any marked variation exists between such data and the longer span (1955-1967) which would offset applicants' condition.

In summary, therefore, it is the intention of this examiner to evaluate the data filed for the period between 1955 and 1967 to determine applicants' present condition and future outlook but where it appears that the statistics filed for the more recent period (1960-1967) show inconsistencies with the long-term trend, the results for the later period will be taken into account as a separate factor when conclusions are drawn.[39]

Statistical comparisons of C&NW as it exists today with the results of operations conducted prior to 1958 fails to take into account the latter's acquisitions of L&M in 1958 and of M&St.L in 1960. Where comparisons are made using a base year prior to the date of such acquisitions, data filed separately by L&M prior to January 2, 1958 and by M&St.L prior to November 1, 1960 will be incorporated and considered as part of C&NW's operations unless otherwise indicated.

Appendix C-1 through 25 and D-1 through 15 describe in detail the history of applicants since 1955 in terms of operations, corporate structure, service, traffic and financial condition. Such data as will be supplemented in the body of this report provide a sound basis upon which conclusions can be drawn concerning applicants' existing condition and future outlook.

APPLICANTS AS PRESENTLY CONSTITUTED

Essentially, both of the applicants are midwestern railroads operating in a territory literally blanketed by other rail lines[40]

[39] The Form A reports filed by applicants and other carriers involved in this proceeding with the Interstate Commerce Commission have by agreement been stipulated by reference into this record. Since the record was closed prior to the filing of the Form A covering 1967, all data indicating rail activities for 1967 has been taken from the Form A reports of the respective carriers.

[40] See Appendix A-1.

and their history over the past 13 years depicts generally comparable results. In terms of their respective plants, both have, to a limited extent, modernized their yard and terminal facilities; improved power supply and employ larger freight-train cars than in the past; have improved communications and computerized their operations extensively. In terms of service, both have withdrawn from the handling of less-than-carload traffic but have developed, expanded and aggressively pursued traffic moving via piggyback service. In terms of passenger service, both have, through the discontinuance of operations, reduced intercity passenger service significantly to curtail losses but have maintained or improved their commuter operations. In the latter respect, C&NW has made significant purchases of modern equipment for use in the commuter phase of its operations.

Both of the applicants have experienced a decline in the number of carloads handled which may be attributed to the development of larger freight cars. This latter conclusion is supported by the fact that both applicants are slightly better off today in terms of freight output (revenue ton miles) than they were in 1955 and substantially better off than in 1961 which marked the low point of a steady decline in output starting in the latter part of the preceding decade. Although both of the applicants maintain moderately high traffic density lines radiating from Chicago to Milwaukee, Twin Cities and Council Bluffs, their system density charts reflect an extremely low density of traffic flowing over their other lines and significantly less density than some of their major competitors in the West. It is clear, that both applicants could handle substantially greater volumes of freight over their lines were such traffic to become available.

Local carload traffic approximates 30 percent of the traffic moving over both lines, as does interline-forwarded and interline-received traffic. Overhead traffic moving over C&NW, however, constitutes approximately 15 percent of its total carload volume whereas Milwaukee Road's dependency upon bridge traffic ranges between 8 and 10 percent. In terms of traffic consist, both of the applicants derive approximately 50 percent of their gross revenues from the Manufacturers and Miscellaneous and 20 percent from the movement of Products of Agriculture. C&NW, however, is more dependent upon Products of Mines than Milwaukee Road which has a greater dependency upon the movement of Products of Forest.

Although over the past 13 years Milwaukee Road exhibited a more stable financial condition in terms of earnings insofar as rail operations are concerned, neither of the applicants has earned anything resembling an adequate return on investment in any year.

Milwaukee Road's rate of return on net investment fluctuated between a low of 1.59 percent to a high of 2.85 percent whereas C&NW's return ranged between a negative figure in 3 years to a high of 2.6 percent. As judged by a comparison with the returns experienced by non-rail industries, applicants' rates of return have been pitiful and do not even approximate the return achieved during the same period on non-risk investment. C&NW has not paid Federal income taxes since 1960 and Milwaukee Road since 1958. Small wonder, therefore, that applicants view their rail operations as "anemic" or "marginal at best" which characterizations are fully supported by the record and the examiner so finds.

These results have taken their toll on applicant's basic condition and outlook. On the Milwaukee Road, working capital has been reduced by over 40 percent; non-rail property has been sold; dividends on common stock have been cut and in some years eliminated, and its equipment debt increased from $65.4 million to $115.7 million.

The impact of its poor earning picture upon C&NW has been equally significant. Of particular concern to this examiner is C&NW's diversification into other business endeavors. While the latter issue will be dealt with subsequently in detail, it should be pointed out at this juncture that whereas in 1955, C&NW's resources were devoted exclusively to the development of its rail plant and operations, today C&NW's management, which has an obligation not only to the public but its stockholders, may well face a difficult choice in the future between utilizing its limited resources in the furtherance of rail activities which have produced marginal returns or in its non-transportation endeavors where adequate returns can be anticipated. In the latter respect, it is significant to note that an important element in this choice, especially in the rail industry with it high fixed investment is the rate of return which the railroad will receive on its marginal investment.

Neither applicants nor any interveners studied this crucial investment ratio although cross-examination of C&NW's chief operating witness indicated that a return on new money invested in railroad was expected to amount to at least 20 percent on discretionary investment. Such a return, while high in relation to return on total plant, seems somewhat marginal. This is especially true in light of the realized return upon such investments as Velsicol of approximately 50 percent.[41]

[41] Without giving any weight to public interest factors which may go into C&NW's decision on where to invest, no prudent management could be expected to opt for a 20-percent return where a 50-percent return was available.

Applicants' basic problems would be of less concern to this examiner were the results of the past 13 years explainable by a poor or inactive management. Insofar as this record discloses, this was not the case. Despite the slowness of rail management generally to recognize and meet intermodal competition until the 1955-1958 period, since then, railroads and particularly applicants have moved rapidly to modernize plant; to innovate; to reduce price levels; and to reduce costs.

Both applicants have invested heavily in their plant and equipment with C&NW alone between December 31, 1961 and December 31, 1967, expending $203 million for additions and betterments in plant. Also piggyback service, autorack cars, damage-free cars, faster tracing procedures, faster schedules, more efficient handling in yards and terminals have been developed during this period.

In addition, both of the applicants receive less revenues per ton mile today than they did in 1955 and while a portion of this may be attributable to larger cars or increased length of haul, the conclusion is warranted as will subsequently be discussed, that in terms of constant dollars, the cost of applicants' services to shippers is cheaper today than it was in the earlier period. In large measure, applicants have been able to hold the line in their pricing policy on the basis of significant cost cutting which occurred during this period. This is especially true in terms of the contraction of labor force. From December 31, 1955 to December 31, 1967, C&NW reduced its labor force from 29,920 to 13,763 or by 54 percent. In the same period, Milwaukee Road's labor force declined from 27,936 to 15,665 or by 44 percent. Despite this significant reduction in employment on both roads, the actual employment bill of C&NW was decreased by less than 15 percent and Milwaukee Road's labor costs decreased at a lesser rate. Without such significant reductions in applicants' labor forces through increased productivity, the results would have been disastrous during this period of recognized high inflation. Another factor making applicants' cost cutting efforts even more significant is the fact that using average 1947-1949 costs as a base index of 100, the costs of materials and supplies (other than fuel) increased to 137 in 1955 and to 164.4 in 1965. Also, the cost of freight-train cars, passenger train cars, shop machinery, diesel-electric motors, and new rail have also increased sharply. Based on the above analysis, the examiner must conclude that both have done remarkably well in the management of their respective plants and their many problems stem from the external forces of the economy which, as hereinafter discussed, are of particular significance to their future.

In summary here, the examiner finds that neither of the applicants in any year covered by this analysis achieved what may be classified as adequate results as measured by any recognizable standards and that such poor showings may not be attributed to the inactivity of their respective managements.

APPLICANTS' FUTURE OUTLOOK

RESULTS OF RECENT ACTIONS BY THIS COMMISSION

Applicants' future as independent carriers was the subject of extensive testimony, of record, and argument on brief. Certain carriers and particularly Soo and Union Pacific argue that applicants' present condition is such as would permit them to maximize the benefits and advantages which they will experience as a result of the recent decisions by this Commission. These include the 3 - percent general freight increase as approved by this Commission;[42] increased divisions resulting from the decision in the so-called *Transcontinental Rate Cases*;[43] the increased traffic at least to the Milwaukee Road from the beneficial conditions which were imposed in the *Northern Lines* case if the latter merger is consummated; and the savings which C&NW will realize through its merger with CGW. Furthermore, they point to the fact that the nation's railroads, including applicants, seek further increases on rates on certain commodities.

Were applicants able to apply the 3 percent rate increase generally to traffic which they presently handle, their gross revenues in 196 would have increased by $7 million on the Milwaukee Road and $6.4 million on the C&NW. These figures, Union Pacific maintains, should be utilized to determine an improvement in terms of net income to each of the applicants. Applicants on the other hand, maintain that the 3 percent increase will not provide a significant contribution to their financial health. In this respect, they point to the fact that wage and fringe benefits increases amounting to 11 percent to some employees, became effective in 1967 and 1968 and that it is doubtful whether either applicant could retain much, if any, of this increase. In 1967 alone, wage increases and fringe benefits applicable to C&NW added $5.8 million to the latter's cost. Furthermore, increased prices, other things equal lead to reduced demand.

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[42] *Ex Parte 256 Increased Freight Rates, 1967*, 329 I.C.C. 854, 332 I.C.C. 280.

[43] *Chicago and N.W. Ry. Co.*, v. *Atchison T. & S.F. Ry. Co.*, 387 U.S. 326 (1967).

Tab Reads:
Nor. Lines Effects

In the examiner's opinion, given increased costs in labor, etc., the 3 percent rate increase recently afforded by the Commission to the nation's railroads will not significantly add to either applicants' financial condition even assuming that the increases were applied to all revenues presently received by applicants.

Applicants concede that the decision in the *Transcontinental Divisions Case* will result in increased divisions to the Milwaukee Road of $3.5 million and to the C&NW, including CGW, of $3.8 million. While these new divisions will obviously improve the earnings picture for both, they are not of such magnitude, standing alone, as to enhance either applicant's financial strength significantly.

The effects of the conditions in the *Northern Lines* case on C&NW and Milwaukee Road, if consummated, were urged as the reason for a finding that applicants no longer are marginal nor have a pressing financial need for merger. As indicated, the examiner refused to permit a retrial of the benefits and losses to be gained by either applicant were the *Northern Lines* merger consummated for it would necessitate a retrial of many of the issues presented in the *Northern Lines* case despite the fact that the Commission in its initial report[44] as supplemented in its later report served December 15, 1967,[45] had before it the basic record upon which these issues were directly tried and made definitive findings on the gains and losses which will be experienced by applicants here. Those findings will be accepted by this examiner as the best evidence available.

In its initial report in the *Northern Lines* case, the Commission concluded that consummation of that merger would result in a loss of gross revenues by C&NW of $4,375,600[46] and by the Milwaukee Road of approximately $5,147,000.[47] The Commission further found that imposition of the conditions (1) favoring C&NW would produce a traffic gain to the latter of $1,256,559[48] and (2) favoring Milwaukee Road would produce gains to the latter of gross revenues of somewhat less than $19,964,596.[49] In addition, in the *Northern Lines* case, Union Pacific attributed a loss of $1.1 million to the Milwaukee Road

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[44] 328 I.C.C. 460

[45] 330 I.C.C. 228

[46] 328 I.C.C. at p. 483

[47] 328 I.C.C. at p. 497

[48] 328 I.C.C. at p. 486

[49] 328 I.C.C. 497 In accepting the figure of $19,964,596, the Commission conceded that such estimate was "somewhat inflated." Furthermore, conditions imposed for the benefit of the Western Pacific in the Commission report in 331 I.C.C. at p. 869 would probably reduce the gross dollar value of this figure somewhat but no effect for this loss will be given here.

were the latter to gain access to Portland which figure the Commission refused to accept in the evaluation of the *Northern Lines* decision[50] but which will be accepted here for the purposes of the examiner's assessment of the Milwaukee Road's condition. Hence, upon consummation of the *Northern Lines* decision, it may be concluded for decisional purposes here (1) C&NW will experience a traffic loss in gross revenues of $3.1 million and (2) Milwaukee Road will experience a gain in gross revenues of somewhat less than $15.9 million and the consummation of the merger will have a combined effect upon both applicants by increasing their revenues by over $12.7 million.[51]

Given a general incremental cost of handling traffic of 33 1/3 -percent[52] the net loss to C&NW from the *Northern Lines* merger will approximate $2 million and the gain to the Milwaukee Road, $10.6 million. Add to this, the increased divisions which will be received by both roads, the anticipated $6 million in savings which C&NW projects for the C&NW-CGW, and the $2 million in savings projected as a result of C&NW's acquisition of DM&CI and subsidiaries in Finance Docket No. 24471 at best, the net effect of these proceedings would be to increase the net railway operating revenue of Milwaukee Road by $14.1 million and of C&NW by $9.8 million.[53]

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[50] 331 I.C.C. at p. 282.

[51] In the Commission's report served December 15, 1967, without inclusion of the traffic which would be diverted from Union Pacific, it concluded that the combined effect would be to increase the revenues of C&NW and Milwaukee Road by over $11.6 million which corresponds to the above analysis completely. 331 I.C.C. 228 at p. 279.

[52] This figure is subsequently arrived at by this examiner in this report as the incremental cost or saving to carriers in the handling of additional freight or of freight diverted from their lines without significantly modifying their plant or changing their freight schedules. In this respect, it is noted that the cost to the Milwaukee Road should be significantly higher inasmuch as it will have to absorb costs for the use of trackage rights into Portland and add freight schedules between Portland and Seattle, to attain the benefits of the *Northern Lines* conditions. (Compare the cost of Soo's entrance into Milwaukee as will be dealt with subsequently). For purposes of analysis here, however, the examiner will accept the 33 1/3 percent cost factor in dealing with the improvements in Milwaukee Road's financial condition as a result of the consummation of the *Northern Lines* merger.

[53] The above conclusions are arrived at for the purposes of this decision and are not necessarily the examiner's ultimate findings that either C&NW or Milwaukee Road will achieve such results. It should be noted that the estimates for *Northern Lines* conditions, the *Transcontinental Divisions Case* and the 3 percent rate increase are based on traffic and revenues for a particular year. It is impossible to adjust for differences in other years and it is probable that all rates of return figures are overstated.

Were such additions applied to the results of the past 13 years, rates of return on net investment for both C&NW and the Milwaukee Road would be increased as follows:

YEAR	C&NW[54]	Milwaukee Road
1955	3.07	3.93
1956	2.10	3.98
1957	2.49	3.95
1958	2.88	3.96
1959	2.08	3.52
1960	1.26	3.03
1961	2.64	3.60
1962	1.84	4.25
1963	3.79	4.71
1964	3.72	4.48
1965	4.03	4.82
1966	3.91	4.87
1967	-0-	3.95

It may be noted that even had the results depicted above been actually realized by C&NW that, except for 1955, in no year would its rate of return have exceeded the return on non-risk investment. And while the picture for the Milwaukee Road would be somewhat brighter, its rate of return would not have exceeded that realized by non-risk investment in 4 of the 13 years and only fractionally exceed this bench mark in the remaining 9. While obviously a significant improvement over actual results, such built-up return, in the examiner's opinion, still would not be adequate to lift either road from their marginal condition and both roads must look elsewhere if they are to reach a sound economic condition as called for in the National Transportation Policy. Nor would the benefits of the above increases in revenues and those otherwise ascribed by Soo and Union Pacific alter the examiner's conclusions that applicants are not and will not earn a reasonable return on investment in the near future without some fundamental and significant change in either the economy or their operations. The examiner so finds.

FURTHER ECONOMIES OF OPERATION

One of the major reasons advanced by applicants as to the need for merger of their properties is that dramatic reductions in labor force effectuated in 1955-1965 period are no longer possible.

[54] This computation includes figures for CGW which must be included if effect is given to $6 million savings attributable to the *C&NW-CGW* merger but does not include figures for DM&CI which slightly reduce the return indicated above.

The reasons for the position is that technological improvements made in the period have just about exhausted the ability to reduce forces further. The argument has some appeal and is superficially supported by statistical evidence. For example, from 1955 to 1961, the average number of employees of C&NW decreased 44.8 percent or about 7.5 percent annually. From 1961 to 1965, the annual average decline was approximately 3.1 percent. Milwaukee Road's experience was similar at slightly lower rates, 5.7 percent and 2.5 percent annually, respectively.

However, the first period was characterized by falling traffic while the second was one of increasing traffic. Traffic, in fact, increased through 1966 and employment again decreased slightly while in 1967, when traffic fell, the average number of employees declined by 4.0 percent for C&NW and 4.9 percent for Milwaukee Road. The latter figures would indicate that given the moderate increases traffic projected in another section, total employment will continue to decrease but probably at somewhat lower rates than the 1955-1961 period.

The number of employees is not the criteria of labor costs. The critical factor in this respect is total compensation including fringe benefits. While the number of employees of C&NW declined continuously from 1955, the decline in compensation stopped in 1961 at $123.6 million and then increased to $131.6 million in 1966. For the whole period, C&NW's total compensation expense decreased by approximately 16 percent. Milwaukee Road's experience was similar in trend to C&NW but the decline over the period 1955-1966 was only 2.7 percent.

A substantial part of C&NW's decrease in employment costs must be attributed to improved efficiency of operations because of the series of mergers undertaken by C&NW between 1955 and 1960. Given stable traffic, it is unlikely that total compensation would show much, if any, decrease in the future.

Here, as elsewhere, intervener Soo Line portrayed the optimistic side contrasted to applicants rather pessimistic views. Soo showed that technological advance in the past has greatly increased productivity and holds that the future will provide equal if not greater increases in productivity. It attributes this total increase to labor although it is obvious that the railroad industry and applicants have become increasingly capital intensive. Soo further suggests that continued increases in labor productivity will result in lower costs. The conclusion is not necessarily warranted even if the premise is true. Productivity cannot be measured in terms of labor alone. While there are improvements in the skills and output of employees

Tab Reads: Future Trend

over time, the major improvements must come from improvements in equipment and methods of operation. Technological improvements require capital expenditures which turn into expenses in the long run. As indicated, it is true that capital improvements have led to lower costs of doing business for the railroads. Without intermodal competition, these cost reductions would have been converted, at least in part, to more reasonable profit levels. Profit improvements that have occurred, however, appear to be due almost entirely to cyclically induced increased demand for transportation.

The sum of the effects of increased productivity and increased wages is that applicants must, as did Alice in Wonderland, run very fast to stay in the same place. Thus, it would appear that applicants are correct when they argue that merger is the only way to substantially reduce labor costs in the future if labor is interpreted to mean the total employment costs. Even so, reductions in labor force through merger is a single application procedure despite the time it takes to effectuate the savings.

EXTERNAL ECONOMIES AS AFFECTING APPLICANTS

Applicants present substantial data on the past performance of the national, district and regional economies and of their own performance in relation to these general economic indicators. The purpose of the showing was to demonstrate that applicants have not participated in the general growth of the economy, to bolster their contention that other modes have so participated and to show that the past is prelude to the future without the merger they here seek. These data, along with data showing the marginal character of the results of their operations, are designed to show the necessity for merger and that approval of the substantial conditions sought by interveners, if imposed, would seriously impinge on its value to applicants, the shippers they serve and the public interest generally. Certain interveners, and Soo Line particularly, take vigorous exception to this position and Soo presented its own expert economic witness to show that the claims are grossly overdrawn.

Applicants' estimate of their future is based on two primary concepts (1) the adversity of historical trends on their revenues, output and net income and, (2) the relatively slow growth rate of the region they serve. As to the first point, the examiner believes applicants' basic time period (1947-1965) results in too pessimistic a view of the future and that the used and implied straight line projection of trends developed from this data is not warranted, at least as to probable growth in rail output.

As to the region's growth rate, of the economic indicators used to support applicants' contention, only one "value added by manufacture" increased more than the U. S. as a whole, and that very slightly more. Their expert witness compared the "North Central" Region to the Western States of which North Central is a part and to the United States. A comparison may also be made with the Eastern Region:

		Percentage Increases (1955-1965)		
	U.S.	Western	Eastern	North Central
Personal Income	71.7%	76.9%	68.1%	67.1%
Population	17.4%	20.2%	15.4%	10.2%
Mfg. Employment	6.4%	13.8%	3.2%	6.0%
Value of Manufacture	56.1%	68.9%	38.5%	56.8%

The above table shows that the North Central States have fared rather well vis-a-vis the eastern half and not as well as all Western States. They have, however, shown considerable growth. There is no reason to believe that the region's growth in the future will be substantially different than the past.

There are, however, two additional factors present that require analysis. One is that railroads generally and applicants particularly have not participated in this growth in terms of output measured in ton-miles. Second, to the extent rail output has grown it has done so at constantly decreasing prices as measured in average revenue per ton-mile. Revenue ton-miles for C&NW and Milwaukee Road in 1967 were 10.6 percent and 7.6 percent, respectively, higher than 1955. Total freight revenues on the other hand, were up only 1.8 percent for C&NW and 7.1 percent for Milwaukee Road over the same period. Net Railway Operating Income-Freight in 1955 was $31.8 million and $37.1 million for C&NW and Milwaukee Road, respectively. The 1967 figures indicate a deficit of $8.3 million for C&NW and a plus figure of $23.1 million for Milwaukee Road. Total Net Railway Operating Income in 1967 was minus $9.8 million for C&NW and a plus figure of $11.5 million for Milwaukee versus 1955 earnings of $9.4 - million and $15.8 million respectively.

These declines in income from freight operation illustrate the problems faced by applicants in the past. Primarily, they have not been able to increase rates to offset rising costs. Soo's expert witness believes, however, that this is a past phenomenon and is in no way demonstrative of what can be expected in the future. He further holds that the railroad industry broke a long-term downtrend in 1961 and that since that date applicants have fully participated in the new trend. In this respect, he views the coinciding date of the rebirth of railroading and the last trough of the business cycle as merely coincidental.

While it is true that there has been secular (long-term) growth since 1960 and 1961, it is also true as designated by the National Bureau of Economic Research that February of 1961 represented the trough of the business cycle. Analysis indicates, contrary to the belief of Soo's witness, that the strong cyclical growth of the economy must receive substantial credit for the improved fortunes of applicants and railroads generally. The table below shows the Federal Reserve Board's Index of Industrial Production[55] for the years 1955, 1961, and 1967 and two components of that index which more particularly affect railroads (1957 - 1959 equals 100):

	Total Industrial Production	Durable Manufacturer	Mining
1955	96.6	101.9	99.2
1961	109.7	107.0	102.6
1967	157.8	163.8	123.4

The table shows that the annual average percentage point increases in the index and its components in the first 6-year period to have been 2.15, 0.85 and 0.57 respectively. The average annual increases in the second 6-year period from 1961 to 1967 were dramatically higher being 8.02, 9.47 and 3.47 percentage points respectively.

The following table shows applicants' output in ton-miles for the same years indexed at 1957-1959 equals 100:

	Index of Ton-Miles	
	C&NW	Milwaukee
1955	111.2	109.5
1961	101.0	94.3
1967	123.0	117.8
	Annual Average Percentage Point Change	
1955-61	-1.70	-2.53
1961-67	3.67	3.92

The relative fortunes of the economy and applicants cannot be viewed as mere coincidence. It would appear from applicants' growth rates, both positive and negative, in relation to the general economy that industrial production must experience sustained annual growth rates of 4 to 5 percent for the railroads and applicants to maintain any given level of ton-mile output.

[55] Economic Report of the President, February 1968, officially noted.

In developing projections of applicants' and Soo Lines' potential future traffic, Soo's expert witness calculated indices of production of various commodities and tonnage carried by those roads. From those indices he computed a "rail penetration ratio" reflecting the percentage of the traffic carried in any one year relative to the base year. For example, in 1960, a certain amount of a product was produced or consumed in the relevant territory in which Soo and applicants operate and the railroads carried a certain tonnage. Each of these figures was used on an index base of 100. Dividing the tons carried index by the production index yielded the penetration ratio which for the base year equals one, in any other year if production is 10 percent higher, i.e., the index is 110, and the number of tons carried is the same, the penetration ratio falls to .91 (100 ÷ 110). Such ratios have been used by many business analysts and they are a valid tool. There are, however, many problems in the application of the ratios. A ratio may be high because production in a particular year is low; or it may trend upward if production is declining only slightly and tons carried are stable over the period. Of greater importance is that the ratios may not reflect the true relationship between production and tons carried.

Soo, on brief, in effect, showed the doubtful validity of these ratios when it pointed out that goods produced in one year may be carried in another year. This factor may at least partially account for highly erratic behavior exhibited by some of the ratios. Such ratios then become unreliable predictive tools which was recognized by Soo's witness when he frequently had to resort to average penetration ratios as the forecast base.

The final goal of Soo's witness was to project applicants' and Soo Line's total tons carried to 1970 and 1980. These final projections of tons carried as opposed to indices of tonnage introduced a new element never discussed. This element is a Miscellaneous Tonnage category that was used to expand the 27 commodities studies to the total tonnage carried by the three roads in 1960 and 1965. It is a disturbing element because of its projected increase:

	Miscellaneous Commodities Percent Increase Projected	
	1960-1980	1965-1980
Soo	115.5	114.4
CNW	113.8	194.0
CMP	116.6	113.2

In contrast to these projected percentage increases on non-studied commodities are the following projected increases on commodities that were studied:

	Studied Commodities Projected Percent Increase	
	1960-1980	1965-1980
Soo	41.4	12.0
CNW	46.3	27.6
CMP	30.6	12.1

The effect of the projections on non-studied traffic is to increase projected total traffic from 37 percent to 237 percent above projections for studied traffic. Put in less dramatic terms, had non-studied traffic been projected at the same rates as studied traffic, the projections would be 10 percent to 23 percent lower. Since there was no reason advanced for not projecting total traffic on the study base, the results are not acceptable.

Turning to some of the major individual commodities of the study group, additional problems are encountered. Using the 1960 base, Soo's witness projects an increase of 18.7million tons for the 27 commodities in the study group. Of this amount, six commodities accounted for 15.5 million tons with coal alone contributing 5 - million tons to the increase in the 1980 projected traffic. The other major commodities are: Corn, 3.7 million; lumber,, 2.0 million; agricultural chemicals, 2.4 million; cement, 1.3 million; and motor vehicles, 1.3 million. The percentage increase projected on these commodities is compared to production indices (a percentage since 1960 = 100):

	Percent Increase 1960-1980	
	Tons Carried	Production
Coal	80.7	77.6
Corn	133.8	96.9
Lumber	58.1	32.9
Agr. Chemicals	342.9	259.4
Cement	73.1	104.9
Motor Vehicles	269.1	81.3

The tonnage figures related to production indicate the optimistic basis of the projections.

Analysis of these commodities on the basis of data presented by Soo's witness, however, shows that C&NW's coal tonnage has been fairly constant and that the penetration ratio depicts a constant downward trend. From this, it is difficult to see how tonnage projections can exceed consumption projection. Furthermore, since it is a consumption projection and highly dependent on electric utility use, it is necessary to take some account of changing methods of electricity generation such as atomic power and mine mouth generation. This was not done. The tonnage increases that have occurred are at least in part the result of unit-train rates the profitability of which has yet to be tested.

For corn, tonnage has been up but the penetration ratio erratic. Here rates are so low that corn is almost prohibited from moving in joint-line service. Here again, there is no apparent reason to project corn tonnage above production projections in the long run particularly since the penetration ratio is so erratic.

The penetration ratio trend for lumber appears to be more downward than constant as use of the average ratio would imply and the projection of greater tonnage than production figures is excessively optimistic.

The projections on agricultural chemicals appear to be overstated by 600,000 tons or nearly 20 percent if the 1980 projection tonnage index is applied to the 1960 tons carried. A major problem with this commodity is that the basic index, the Federal Reserve Board Index of Fertilizers is confined to superphosphates. This necessarily ignores use of other fertilizers which may be substituted therefor, such as anhydrous ammonia. If the growth in consumption of fertilizers is as great as projected by Soo's witness it would appear that liquid fertilizers could well move by pipeline. This factor was not considered in Soo's projection.

Cement is the only commodity of the six listed above in which tonnage percentage projections are below production projections. However, given the fact that the penetration ratio shows such a pronounced downtrend, it would appear more reasonable to assume a continued decline rather than the 1959-1965 average as was done.

The projections of motor vehicle production and tonnage carried illustrates some of the problems and the need for careful use of penetration ratios or of trends in different statistical series. Soo's evidence reflects purchases of new cars in 1960 in C&NW service area as 927,300 and a 1980 projection of 1,681,000. Converting these numbers to tons at 1.5 tons per car gives 1960 tons of 1,391,000 and 1980 tons of 2,522,000. North Western motor vehicle tonnage in 1960 was 479,000 and was projected in 1980 to 1,768,000. On this basis, C&NW accounted for 34.4 percent of the tonnage purchased in its area but would in 1980 account for 70.1 percent. Very slight differences in the rates of change in either series could result in C&NW capturing 100 percent of the market. This may be the fault of the market index since C&NW may transport substantial volumes of motor vehicles as overhead traffic. If so, this factor should have been elucidated. As it is, the projections are not reasonably explained.

The basic assumption upon which Soo's projections are based is that in 1960 or 1961 the railroads engineered a fundamental change in their fortunes by finally learning how to use their inherent advantages to compete for traffic. Consequently, their share of total intercity traffic has stopped declining and they will now participate fully in national economic growth. Output and income will rise accordingly. Information to the extent available would indicate otherwise.

One of the characteristics of the statistical series "Percentage Share of Intercity Ton-Miles" is that between years in which there is a sharp increase in real output the railroad share of transportation output has always reduced its rate of decline. This can be seen between the years 1950-51, 1954-55, 1958-59 and 1961-62. In the last case there was even a slight increase in rail share. On the other hand, when the rate of growth in real output slows the rail share declines more rapidly. From 1961 to 1966 the average annual growth of real output was approximately 5.9 percent which contrasts sharply to the average rate of 1.4 percent from 1956 to 1961. Between 1966 and 1967 the rate of growth in real output increased only 1.5 percent and U. S. rail ton-miles fell 2.6 percent while their percentage share showed its greatest decline since 1960-61, down 1.34 points to 41.63 percent. Soo's expert's contention that there is no particular significance in the relationship of the business cycle to rail growth since 1961 cannot be accepted.

In essence, while the examiner is not quarreling with the methods and theories presented by Soo as noted heretofore, the examiner has some difficulty in Soo's application thereof. Rail traffic does respond to economic growth and a good deal of railroads relative and absolute decline in fortunes is due to the extraordinary development of other modes including pipelining of fuels competitive with coal. Its contention that technological opportunities in railroads are great is correct. It is not reasonable, however, to suppose that technology of other modes will not advance and rails will be the only mode making innovations or that product competition will not continue or increase. Furthermore, a key difference between Soo and the examiner resides in the former's reliance upon the 1961-66 period as a base for estimating the growth of the economy, the rail industry and applicants.

An example of the complexities of forecasting and the role of substitute modes and products is coal. Many steam-power plants employ burners that are readily convertible from coal to gas or oil.

Slight changes in BTU cost of these fuels can result in substantial changes in coal consumption. Another factor in the coal market is the substitution of atomic power plants. These facilities have and will make inroads on conventional power plants. However, there is a growing national concern with air pollution and many communities have already established standards for emission of certain pollutants such as sulphur raising coal costs and encouraging substitutions of gas. As a percent of the total energy fuels market, coal has increased over recent years. This appears to be due to the downward trend of coal prices, (including transportation) and the rising trend in gas prices. In the last two or three years, however, coal prices remained relatively stable.[56] The narrowing of price differences if continued could result in substitution of gas for coal.

At least one more factor enters the coal picture. That is the development of extra-high voltage transmission of power so that generating plants may be located at the mine sites. Any projections, of coal consumption and transportation must therefore take these factors as well as increased power generation into account. Since transportation accounts for a high percentage of the delivered cost of coal, it is obvious that transport prices have a major impact on coal consumption. At this point, it appears that innovation of rail technology has gone as far as it can to meet price requirements of the power industry. Fully automated unit trains would of course reduce costs further but this seems somewhere in the more remote future. Despite these uncertainties and the fact that coal consumption now is about what it was in the pre-1940 years there is a reason to believe that consumption will increase in the future based on the sheer pressure of increasing numbers of population and industry.

Moving to the estimates themselves, the primary source used was Resources in America's Future. Among items forecast was a breakdown of transportation requirements by mode. Total demand for rail transportation was predicated at 157.5 percent of the 1960 level. With the exception of C&NW the estimates of Soo for tons carried in 1980 by Milwaukee Road and itself are close to this percentage figure. The estimates for C&NW's are, however, 10 percent higher than projected by Resources for all roads. Given the growth of applicant's output relative to all other railroads and the expected future growth of the area served, these rates must be modified. The historical relationship of applicants to total rail growth has been on the order of 20 percent to 60 percent.

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[56] Bureau of Labor Statistics, Wholesale Prices and Price Indexes, officially noted.

Accepting a 50 percent factor would indicate a potential growth of 28 percent. As heretofore shown this depends on an average annual increase in real output of 4 to 5 percent over the 1960 base. This would mean an increase in ton-miles to approximately 17.0 billion each for North Western and Milwaukee. This area was nearly reached in 1966 on the basis as heretofore noted of annual average increase in real output of 5.9 percent, a rate doubtfully sustainable in the long run. Thus, while potential tonnage, i.e., real output, will increase, the rates of growth will be lower over the cycle than they are in its upward phase.

With lower economic growth rates declines in rail output must be anticipated. Because of the continued rise expected in total commodity output it is somewhat unlikely that applicants' output would fall below the 1960-1961 level without a substantially deeper business recession than has been experienced in the post-1946 period. It appears likely also, again based on a continuing increase in the size of the total market, that applicants' output will continue to increase but at a substantially more modest rate than the approximately 5 percent per year realized in the 1961-1967 period. Comparing 1967 to 1955, the average annual increases in North Western and Milwaukee ton-miles were approximately 0.85 percent and 0.83 percent respectively. These appear **much more likely long-term trends.** C&NW's rate, using 1967 ton-miles as a base, produce an average increase of 144 million ton-miles per year. This would place the combined ton-mile at approximately 37.2 billion in 1980 against 33.5 billion in 1967. The 1980 figure, of course, assumes that that year would be a high point in the business cycle. The increase to 1980 represents an 11.0 percent rise contrasted to Soo Line's estimated increase of 54.8 percent in tons carried.

Both estimates may be far from the mark. Indeed, output could possibly rise 100 percent or fall 50 percent. The ton-mile gain specified above appears prudent for determining the possible future condition of applicants and will be used in this report as best predictive tool available.

CONCLUSIONS RE: APPLICANTS' PRESENT CONDITION AND FUTURE OUTLOOK

The foregoing analysis clearly evidences a situation in which there is simply too much railroad plant operated in the territory served by applicants to continue to support the individual efforts of all its components. As viewed in terms of operations, output, or income, the results for the past 13 years have shown neither a substantial improvement nor a significant deterioration in applicants' condition. Despite what this examiner considers to be a maximum effort by applicants to lift themselves from their anemic condition, they have barely succeeded in maintaining their 1955 position. Neither road has attained anything resembling the strength which, from the standpoint of the public interest, is desirable and must depend upon a sustained growth in the economy to maintain even the marginal status in which they exist.

Applicants future as independent railroads, although not without many bright spots, is not reasonably assured. The added strength to either or both which has been or will be achieved by increased divisions; the consummation of the *C&NW-CGW* merger and/or the consummation of the *Northern Lines* merger as presently proposed is not sufficient to enhance the position of these roads in the terms called for by the National Transportation Policy. Nor does it appear likely that increased rates, recently approved or prospective; further internal economies; or increased traffic will do much more than offset the increased costs if present trends continue. The continued downward trend in the railroads' participation in overall intercity traffic simply precludes any significant upward adjustment in price to meet such costs and it is the examiner's conclusion that applicants will have to continue at maximum effort to maintain or slightly improve their present position.

In short, applicants' present condition and future outlook as separate entities is not such, even under efficient and economic management, as to assure confidence in their respective financial condition and in their ability to raise the monies necessary to discharge their public duties nor does it appear likely to provide the incentive necessary to take the risks which are vital in achieving a sound condition. The examiner so finds.

EFFECT OF MERGER UPON THE ORGANIZATION AND OPERATIONS OF THE SURVIVING COMPANY AND SAVINGS TO BE REALIZED THEREFROM

The stated objectives of the proposed consolidation are: to eliminate duplicating facilities, such as classification yards, stations, and repair facilities and services particularly interchange and intermediate switching operations, maintained by both roads today which have resulted in added costs and inefficient railroad service; by so doing to generate savings of $29 million to $36 million which will provide financial stability to the present marginal operations of each road, permit the continued maintenance of existing rates and service levels despite spiraling costs, and generate sufficient funds for the maintenance and replacement of equipment and facilities; and to streamline operations to provide the public with a better service than either road can provide today and hence, improve the railroad's ability to meet intermodal competition.

Appendices E-1 through E-6 describe in detail the applicants' plan for the implementation of their merger proposal. On the basis of

Tab Reads: Savings

the analysis contained in those appendices, upon consummation of the proposed transaction, the examiner finds (1) that the surviving company will operate over approximately 22,102 miles of road in 15 States extending from the Midwest to the Pacific Coast State of Washington; (2) that in the event the *Northern Lines* merger is consummated, operations of the surviving company will extend to points in 16 States including Portland, Oreg.; (3) that the surviving company would be responsible for the issuance of 5,242,954 shares of its common stock and 1,534,719 shares of its preferred stock; (4) that the merged company would be controlled by Industries and the latter by a consensus of the majority of its stockholders; (5) that to the extent the basic merger is consistent with the public interest, the increased ownership by the surviving company in its transportation and non-transportation subsidiaries and affiliates is also consistent with the public interest and the National Transportation Policy; (6) that certain technical problems are indicated in the procedures and methods used in the preparation of the operational and overhead studies made by applicants but that such studies provide a reasonable vehicle to test the overall and incremental effects of the proposed transaction and include the necessary information to consider the issues presented in this proceeding; (7) that the surviving company would reroute traffic so that the most efficient or short-line route would be used in the transportation of its traffic, resulting in a net reduction in train miles and locomotive miles as now operated by applicants today; (8) that the proposals to consolidate terminal, yard and equipment repair facilities are designed to permit a more efficient and effective flow of traffic across the surviving company's system; (9) that the consolidation of applicants' overhead and general office functions will eliminate extensive duplication, provide efficiencies, permit the reduction of inventories, and provide for the better utilization of applicants' present system of communications; (10) that the surviving company will achieve a better and more efficient utilization of its equipment than can the individual components thereof achieve today; and (11) that the surviving company will seek to abandon some 24 segments of line and eliminate the second track over three other segments, which will result in the elimination of duplicating lines.

The savings estimates provided by applicants' studies are predicated on a foundation that railroads operate under increasing returns to scale, i.e., that any increase in volume is accompanied by reduced costs per unit. There is substantial evidence to support this premise although some economists[57] have cast doubts on this

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[57]Healy The Effects of Scale on The Railroad Industry, Committee on Transportation, Yale University, (1961); Borts "The Estimation of Rail Cost Functions" Econometrics Volume 28, number 1 (January 1960), pp. 108-131.

theory contending that railroads do not operate under increasing returns.

Whether rail costs are, indeed, structured to provide increasing returns to scale is of crucial importance to the value of merger, particularly here, where there will be substantial consolidations of parallel lines.

ECON OF SCALE

On the positive side of this issue, the examiner has before him the detailed studies provided by applicants which at least on the surface appear to understate the areas in which savings are available were this transaction approved. In addition, however, it must be recognized that the whole structure of rail rates is based on the premise that the greater utilization of rail plant made by a particular movement, the smaller the unit costs of that movement. In this respect it is reflected in the rate tapers that exist both on distance and tonnage as well as the increased use of unit-train rates and other guaranteed volume rates. Clearly, therefore, there is a direct application of the premise in the fact that reduced unit costs will be experienced over a relevant range of output increase.

Of equal importance, railroads possess most of the cost characteristics of public utilities which are frequently termed "natural monopolies" in that the minimum size of plant required to serve any given market may be large enough to provide the total supply and the smallest plant may be increased in size to serve the total market with but a small increase in investment. Accompanying such small investment is the accepted fact of continuously decreasing average variable cost per unit of output, i.e., all factor input costs decrease per unit of output as output increases.

The examiner has nothing which was presented by any of the parties either at hearing or on brief to dispute applicants' view on costs. Furthermore, the general studies of economists studied by this examiner on this subject which have taken the position that there is no return to scale, are not conclusive on the issue, especially if proper consideration is given to their inability to adjust available data statistically and the lack of certain relevant data.

Based on his assessment of the record, the examiner is convinced that at the minimum, applicants will achieve average annual savings as a result of consummation of this transaction of not less than $31,700,845. After merger, applicants will have the opportunity to economically concentrate traffic of two or more lines between two points on one line between those same points.

It is the examiner's view that the applicants' estimates are indeed conservative for they do not include savings possible through abandonments which future study may find warranted and justified as a direct result of consummation of this transaction and for which Commission approval is necessary.

In addition, as indicated in Appendix E-1, estimates for per diem savings and/or the net benefit from the availability of additional cars appeared to be areas from which additional savings may be extracted as a direct result of consummation here. Also, use of Car Fax over the entire operations of the merged company will provide savings which cannot be quantified into dollar figures.

Finally themost important area in which applicants failed to produce concrete studies and in which the examiner believes savings will materialize is in the reduction of track maintenance. As indicated, after merger, applicants will have the opportunity to concentrate traffic of two or more lines running between two points on one line between these same points. The graphic demonstration of this ability is presented in the density charts of applicants today as compared with the density charts as it would look were this transaction in effect. From information of record, it is not possible to analyze the effects of merger on all segments of major lines. It is, however, possible to analyze one of the major segments from Chicago to Tama, Iowa, and the examiner considers the results from such analysis to be typical of the additional savings which will be produced were this transaction consummated.

TRACK MAINT FAILURE

In this respect, both C&NW and Milwaukee Road operate parallel lines running between Chicago and Tama. After merger, the Milwaukee Road line to Tama, which is presently double tracked to Green Island, will be converted to a single track and density reduced from 9.66 million gross tons per mile of track to 2.08 million gross tons per mile of track. Density of C&NW's line will be increased from 13.24 to 19.05 million gross tons per mile of track. As calculated by the examiner, the result on this segment alone will be a reduction in normalized maintenance of some 14 percent or $400,000.

Similar savings should be available from reduced maintenance on parallel tracks maintained between Tama and Council Bluffs where, apparently, C&NW's double track line will be single track.

It will be noted from the above-stated density figures that the proposed operations between Chicago and Tama would result in a reduction in total gross tons from 22.89 million per mile of track to 21.13 or by 7.7 percent. This reduction is made possible by the ability to concentrate traffic making more efficient use of motive power and auxillary equipment relative to net payload. It should be realized that all of the reduction in gross tons would be made in motive power and in auxillary train equipment so that the amount of reduction in those items constitutes a far higher percentage.

As seen the concentration of traffic with its concomitant efficiencies, runs throughout the proposed operation and will tend not only to reduce maintenance on track but also maintenance on equipment, investment needs in equipment and repair facilities and the need for yard space, and personnel. In effect, such concentration will affect all other expenses associated with train operation.

Hence, at least to the extent this examiner can project, approval of this transaction will result in significant economies which could not be achieved were the applicants' separate plants maintained. In sum therefore, approval here will provide significant savings which will permit the new company a much stronger financial base upon which to operate. The fact that there may be other savings of a substantial character which cannot be determined does not in any way undermine such findings nor as will later be discussed, warrant any different conclusions with respect to any issue posed by interveners.

The examiner further finds that applicants' estimates of planned capital expenditures of $33,127,411 and offset receipts of $24,242,915 from salvage and sale of excess land are reasonable.

Attached as Appendix E-6 is a pro forma balance sheet of the surviving company, as of December 31, 1967. Although the record contains individual balance sheets of the components of the proposed system later than December 31, 1967, no other uniform data is available for applicants including CGW. The adjustments in Appendix E-6 are not to be construed as approval of the proposed accounting and jurisdiction will be reserved for consideration of this issue, pending submission of statements showing all expenditures and the accounting entries proposed to record the transaction as required by the order herein. As indicated from Appendix E-6, were this transaction consummated as of December 31, 1967, the merged company would have had available working capital of approximately $11.4 million and a working capital ratio of 1.08 to 1. Although the merged company's working capital would not meet the generally accepted standard of 2 to 1, it should prove adequate.

WORK CAP RATIO

The long-term debt of the merged company would be $522.7 million or approximately 40 percent of the $1.3 billion net recorded book value of its total properties. Its ratio of total

Tab. Recds: Comp

debt to combined total debt and shareholders' equity would be a favorable 45.3 percent.

Insofar as the merged company's maturities are concerned, C&NW's and Milwaukee Road's respective debt structures appear well suited for merger. Although the debt structure is sizable in amount, the maturities appear well spaced.

As the C&NW, including the CGW, will be merged into the Milwaukee Road, the latter's fixed charges will be increased directly by the amount of the former's fixed charges. During 1967, the C&NW, including CGW, had fixed charges of $10.1 million and Milwaukee Road had fixed charges of approximately $8.8 million. However, in light of the savings and efficiencies in the operations of the merged company, such an increase in Milwaukee Road's fixed charges should not prove burdensome. In the aggregate there will be no increase in fixed charges and the transportation properties involved will carry the same burden of fixed charges after merger as before.

The affect upon applicants' projected income and cash flow making allowances for savings, increased revenues, etc., will be considered subsequently.

COMPETITION IN TRANSPORTATION

INTRODUCTION

An analysis of competition in transportation necessarily requires a description and analysis of six general categories of competition which each play a significant role in the overall context of the relationship between the various segments of the transportation industry and between such segments, on the one hand, and, on the other, the users of transportation. They are (1) intermodal competition; (2) structure of rail industry; (3) price competition; (4) service competition; (5) market and product competition; and (6) shippers' role in the competitive arena.

INTERMODAL COMPETITION

MOTOR CARRIER COMPETITION

Applicants presented an abundance of statistical and other evidence to indicate that at all major points served by them there were a large number of motor carriers available and urged that such availability precludes any necessity for maintaining rail competition. Whether motor carrier service is available in abundance or not at rail points is not significant for the limited capital commitment with which for-hire motor carriers can enter the market or shippers can secure motor vehicular equipment for private carriage warrants the conclusion that to the extent motor carrier service is or can be made effective to compete with rail service it has gained or can gain relatively easy access to any given market.

Rather the key issue with reference to the claims that motor carrier service is a substitute and an effective competitor for rail traffic is the degree to which motor carriers can provide the effective and economical service vis-a-vis rail carriers. Unquestionably the development of the highway system increases in capacity of motor equipment, increases in motor carrier speed and other innovations have permitted penetration by motor carriers into the movement of commodities which formerly could only be feasibly handled by railroads. In this respect, between 1956 and 1963, motor carriers increased their participation from 9.04 percent of the total tons carried by commodity groups to 13.15 percent. It is significant to note that in each commodity group the motor carriers have increased their share:

Commodity Group	Percentage of Total Tonnage in 1956	Percentage of Total Tonnage in 1963
Products of Agriculture	2.39%	3.16%
Animals & Products	24.25%	35.85%
Products of Mines	1.04%	1.92%
Products of Forests	0.93%	1.51%
Manufacturers & Miscellaneous	23.92%	31.39%
TOTAL	9.4 %	13.15%

Despite these results, there still appears significant areas where railroads presently provide the only effective service. In other words, although resort to statistics would indicate that motor carrier penetration has made a dent in every basic commodity grouping, the key factors of volume, distance, and nature of the commodity are still significant elements in minimizing or eliminating the effectiveness of the motor carrier as a competitive lever for shippers on the movement of certain traffic.

Although no precise delineation point where motor carriers cease to provide effective competition to rail service can be ascertained, general areas can be described with reasonable accuracy and to the extent necessary to arrive at a decision in this proceeding. In the latter respect, it may be generally concluded that as shippers' need for a carrier to handle volume shipments of low-rated and bulk commodities increases and as the distances of movement for such shipments become longer, the effectiveness of motor carrier competition diminishes and eventually reaches the point that without the availability of rail service, or some other mode of transportation, the commodities will not move.

This conclusion is supported by the result of the 1963 census of transportation as formulated and developed by the Department of Commerce. The census studied the origination tonnages of 24 commodity groups. The results of the survey show that for-hire motor carriers accounted for the origination of 25.1 percent of the total U.S. tonnage and private trucks 16.9 percent with railroads originating 32.6 percent. The census further shows that trucks participate in all weight brackets but less than 10 percent on shipments over 60,000 pounds for 7 of the 10 heavy-loading commodities. Trucks also participated for all distance blocks with the share of the market generally declining as the distances increase.

As disclosed on this record, fitting into this category in which the effectiveness of motor competition diminishes with increases in volume and distance are such commodities as grain; coal; logs and pulpwood; and various types of ore, particularly iron ore. Although motor carriers do, in fact, handle movements of these commodities in the territory served by applicants, on many movements were the services of railroads eliminated, the cost of utilization of motor carrier service would simply be too high, whether for-hire or private, to permit movement of these commodities to particular market areas.

Despite this conclusion, the transportation mix as between rail and motor carriers is not constant. Railroads presently face motor carrier competition at all levels of volume and distance as indicated from the census study. That such competition may be marginal or non-existent for particular types of movement as heretofore concluded does not preclude future inroads by motor carriers into areas presently held captive to rail service. The competitive effort of motor carriers is generally directed at marginal movements and, if successful, grows to encompass broader ranges.

It is apparent that trucks have been successful and that they are likely to continue to improve their competitive effectiveness over time. Despite any general allusions to developments in the future though, the examiner must, as a predicate for his conclusions here, stand on the present record and the finding that motor carrier competition although an adequate substitute for rail service on the vast majority of transportation movements, is still ineffective in fulfilling the role of a complete substitute for rail service on all movements and this predicate will serve as a basis for the examiner's ultimate findings here.

WATER CARRIER COMPETITION

Although water carriers in large measure are limited in a geographic sense in the territories served by applicants to points along the Mississippi and Missouri Rivers and their tributaries and to operations on the Great Lakes, they do provide an alternative service to railroads in those particular areas in which motor carrier competition is weak or ineffectual. The Mississippi River system alone has more than 12,000 miles of waterways presently navigable or authorized for improvement, a great deal of which is west of Chicago and north of St. Louis extending into the areas operated by applicants. As distinguished from overall water carrier share of intercity traffic which has remained relatively constant, movement on rivers and canals have increased from 8.7 billion to 149 billion ton-miles between 1929 and 1965. The increasing movement on inland waterways to a large extent is a reflection of the expenditures made by the United States Government for the improvement of waterways. Of particular significance, the movement along inland waterways is essentially exempt and not subject to government regulation. Of a total of 320 barge lines serving the territory in which C&NW and Milwaukee operate, 302 are exempt carriers and the greater percentage of their traffic is the bulk commodities in which railroads have heretofore exerted their dominance over motor carriers. Because of their low cost of operation, water carriers are particularly effective in competing with railroads on the movement of low-rated commodities and their inherent advantage in this respect is protected by Commission regulation.[58]

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[58] *American Lines* v. *L.&N. R. Co.*, U. S. Supreme Court (October Term, 1967, decided June 17, 1968) U.S.

OIL AND GAS PIPELINES

Probably more than any other mode of transportation, pipelines have made significant strides since 1929 in their limited sphere of market activities. So great has the role of pipelines played in the movement of petroleum products that in 1965, their ton-mile volume equaled 40 percent of that handled by railroads. Today, railroads transport only 2 percent of the movement of crude petroleum and petroleum products and only 3.35 percent of refined petroleum products. It appears evident that railroads at present do not provide an effective substitute for pipeline competition. In addition oil delivered by pipelines competes with coal in energy uses. Product competition also comes from gas delivered by gas pipelines.

No recapture of the movement of petroleum products appears on the horizon and it appears likely that gas will continue to make inroads into the fuel market displacing coal or preventing it from participating in the growth of the market.

CONCLUSIONS RE: INTERMODAL COMPETITION AND ITS FUTURE

Until the late 1920's competition to railroads from other modes was a secondary factor in the transportation scheme of the nation, with railroads enjoying approximately three-quarters of the volume of intercity movements. Since then, however, statistics demonstrate that railroads have experienced a severe decline in their proportion of intercity traffic; that motor carriers have shown a marked increase in their share of traffic, especially since World War II; that water carriers share has remained relatively constant; that all pipelines have shown a remarkable increase in their share of transportation; and that air freight lines, although still a very small factor in the transportation picture, are growing at a rapid rate.[59] All of these facts are conceded specifically or tacitly by the majority of the parties but several and particularly Soo contends that there has been a radical change in the general trends indicated above, at least since 1961 and that the railroads while not increasing their share of total transportation, evidenced a stability of their relative share with other modes and are, in fact, increasing their volume. For example, Soo points out that between 1961 and 1966, railroads, highway transportation, and inland waterways have increased ton-miles by 32.8 percent, 33.6 percent, and 30.2 percent, indicating a stability in relative share. Applicants,

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[59] The examiner does not consider competition of air freight to be of such significance as to warrant separate consideration at this time. Contra ISO

while recognizing that in the last 5 years the rate at which they have been losing their share of competitive freight to other modes has been slowed, assert that it is yet too early to conclude that such erosion has been abated.

Based on an analysis of historical trends and the more recent data for 1966 and 1967[60] the examiner concludes that applicants' fears may be well founded. As indicated, concrete analysis of rail output as compared to other modes in terms of relative shares of the transportation market bears almost direct correlation to the growth in real output of the general economy. In years in which real output rose substantially, railroads appear to hold their relative share of the transportation market. On the other hand, when growth is moderate or small, their share has a tendency to erode at a rapid rate. Even before 1961 this premise was supported by available data. Between 1954 and 1955 and between 1958 and 1959, the decline in rail percentage share of the transportation market was substantially less than 1 percentage point. The growth of real output between each of the two indicated above years was in excess of 7 percent, evidencing the fact that during the period preceding 1961, shares of rail output remained relatively constant each year in which real output experienced a significant growth but was effectively reduced during the years in which real output declined or showed a moderate or small increase. Since 1961, real output has grown at a phenomenal rate and rail share of the transportation market remained relatively constant with only fractional decreases or increases until 1967. Between 1965 and 1966 rail output as a relative share of the transportation market decreased from 43.25 percent to 42.97 percent.[61] In 1967, however, when the rate of growth of real output was only 1.5 percent, the rail share of the transportation market fell by 1.34 percentage points to 41.66 percent while motor carrier participation increased slightly from 21.80 percent to 22.10 percent. Clearly the picture for 1967 indicates that the historical trend of the 1950's at least to this point appear to be permanent and the implication of this statistical analysis cannot be rebutted by speculation.

Applicants urge that despite the fact that the railroads have fought back valiantly in their endeavor to retain freight from the incursion of intramodal competition by designing and purchasing new

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[60] Transport statistics as published in the Transport Economics Monthly Comments, July, 1968 as published by the Interstate Commerce Commission, Bureau of Economics.

[61] Soo, based on preliminary data for 1966, showed the rail percentage at 43 percent but later figures evidenced that the decline was to 42.97 percent.

equipment; by developint special contract and multiple car rates and by instituting piggyback service, they have still been losing ground. All of these features, however, are late innovations having been developed since the late 1950's and realistically have not reached their peak of effectiveness. Piggyback service appears to be destined for continued growth; rate innovations continue to be made and areas for the development of new equipment do not appear to be exhausted.

Despite the late awakening of rail management to the competitive realities of intermodal competition, such competition in the examiner's opinion is and will be a serious, if not the most serious, threat to the viable existence of railroads for some time to come. It does no good to assert as is urged by the Soo that since motor carriers receive an average revenue of 7.1¢ per ton-mile, water carriers .2¢ per ton-mile and railroads approximately 1.4¢ per ton-mile that they are handling different types of traffic and do not compete. A comparison of the average revenues per ton-mile for motor carriers which essentially concentrate on high-rate traffic; water carriers which center their activities on low-rated traffic; and railroads which transport both types of traffic have very little correlation. The more meaningful data in terms of how intermodal competition has affected the railroads is indicated by the almost continuous decline in revenue per ton-mile figures experienced by the railroads generally and particularly applicants which would certainly have not occurred in an inflationary economy and during a period when rail rate of return was relatively low but for the massive impact of intermodal competition. Although Soo attributes the decline in revenue per ton-mile to increased productivity of rail labor which jumped 61 percent per worker since 1958 and to the application of modern technology, which the examiner concedes made such reductions possible, certainly without intermodal competition, it is inconceivable that rail management of its own volition would seek to reduce rates and not pass at least some of these benefits of increased productivity along to its stockholders.

IMPORTANCE of INTERMOD COMP

Soo predicts a glowing future for railroads, not only because it views inroads of intermodal competition as having abated but because the application of technology and the relative increase of rail productivity will provide the railroads with such a significant advantage over other forms of transportation that can only justify the conclusion that the threat of intermodal competition will decrease. In the past, it argues, more efficient locomotives have permitted the reduction of train crews; the introduction of mechanical maintenance equipment has reduced the need for maintenance employees in large numbers; increased capacity of of freight cars has permitted railroads to reduce their car fleet;

sutomatic train yards have permitted faster schedules; and modern communication systems have increased the traffic capacity of track. In the future, Soo asserts that computer and other technology will permit a greater utilization of car supply; that diesels are being improved to an extent which will permit a significant contraction in locomotive fleet; that fully automated trains and automated switch yards are technically feasible and on the horizon, holding open an avenue for further reductions in labor and cost; and that the use of containers is still in its infancy.

It argues that motor carriers still suffer and will continue to suffer from the cost disability that a driver and motive power are necessary to handle each truck load or a maximum of 50 tons whereas train crews of four or five and one diesel unit can handle trains carrying as much as 1,700 tons. Furthermore, although it admits that technologically water carriers can handle a much larger volume of traffic on barges than is presently feasible and will undoubtedly seek to do so, such service is still restricted in the winter when the waterways are frozen and larger loads are inhibited by low channel depth and lock limitations on the various waterway systems. As to pipeline, Soo recognizes that railroads already have lost most of the competitive traffic handled by pipeline and the use of the latter for handling solid commodities is still so impractical as to justify discounting this competitive mode, at least at this juncture.

Despite Soo's justifiable enthusiasm for the future of the railroad industry in terms of a more efficient operation and reduction of costs through modern technology, the fact remains that despite introduction of many technological innovations during the past 10 years and the fact that today the rail industry can claim significant economic and cost advantages over other modes, the rail industry has not been able to maintain its relative share of the transportation markets during the past years during periods of significant economic growth. If the past is any criterion of the future, the rail industry will still be required to turn Soo's prediction into reality to make substantial technological advance in order to maintain or reduce the slippage in its share of the transportation market. The examiner disagrees with applicants' claim that all major technological improvements and labor-saving innovations have been utilized and that the rail industry is at the end of its rope in developing major efficiencies. It is evident that there are many areas in which major action to be taken by the railroad still remain but at the same time, the examiner cannot ignore the historical lesson that the rail industry must continue to run hard in terms of technological improvement if it is to remain competitive with other modes.

STRUCTURE OF RAIL INDUSTRY

In order to cope with the competitive realities of the rail industry, it is necessary initially to recognize its boundaries in terms of geographic location and structure. Railroads as contrasted with manufacturers are severely handicapped in extending their activities to new markets, barring merger or other forms of consolidation, for to do so would require a significant capital input to extend their plant, which under basic economic dictates would, with few exceptions, be totally impractical. Although the development of piggyback service has, to an extent, permitted limited expansion and the broadening of markets, this vehicle is more in the form of an adjunct service to existing plant operations rather than a true expansion of rail plant.

PB "adjunct"

For all practical purposes, a railroad without cooperation of other rail carriers can only provide service to points which it serves directly on line (including switching and terminal carriers) or in the limited off-line territory which it can serve through its adjunct piggyback service or via its team tracks. To gain access to points beyond its lines it must cooperate with other railroads through the development of through routes with recognized interchange points and agree on divisions of rates (or combination of rates) for these routes; agree to interchange cars and return interchanged cars to the owning line; and agree to switch cars through reciprocal switching agreements or otherwise at common points.

The failure to form joint routes and agree to interchange traffic or switch cars with other railroads restricts a railroad to that traffic on which it can provide a complete service. This record is replete with instances where one carrier has refused to establish joint routes with another, i.e., refuses to yield its monopoly position. For example, until the *Northern Lines* merger is consummated and because of the refusal of connecting carriers to enter into through route arrangements, Milwaukee Road is barred, with certain minor exceptions, from transporting California traffic to and from points on its lines west of Minneapolis and the latter lines are confined to handle transcontinental traffic from and to points which it serves on line. Since, as indicated, the economic realities of modern railroading prevents Milwaukee Road from extending its own line to California points, even assuming Commission approval for such an endeavor, it cannot compete in the California market for transcontinental traffic.

The refusal to enter into a reciprocal switching arrangement or the refusal to interchange traffic may well make the competitive services of one carrier unavailable to a shipper, even though the latter's plant may be located in the city served by such carrier. In this respect, although reciprocal switching generally appears prevelant throughout the area served by applicants, numerous railroads, normally at no small risk to themselves, have developed industrial parks served by their lines which they have refused to include in reciprocal switching tariffs. Consequently, unless a shipper located in such an industrial park can afford the usually more expensive piggyback service or truck his shipment to a team track, he is economically barred from utilizing a carrier even though the latter's lines may run only a short distance from its plant.

Competition in the railroad industry is confined for physical and other reasons and cannot be compared in any sense to the concepts of competition in which all suppliers have equal access to common markets. Given further the large investment in plant and the limited number of suppliers in existence today, the market for the production of rail transportation is, at best, an oligopoly and, in many instances, as will be seen, a monopoly.

PRICE COMPETITION

In theory and in fact price competition predicated on a rational economic basis is not effective in that segment of the rail industry upon which this record is focused. The structure of the industry, the regulation of rates and the fact that most rate actions are taken through rate bureaus of the industry sanctioned under section 5(a) of the Act, tend to inhibit a rail carrier from seeking to improve its traffic by initiating competitive price action vis-a-vis another rail carrier.

CAUSED BY INTERMODE

Although numerous instances were cited throughout this record indicating that one railroad reduced rates on a given movement independently, in all instances, where the decision appeared rational, the stimulus therefor, was invariably a response to action by another mode of transportation (including prospective entry of another mode), market competition or product competition. For example, the motive behind a recent reduction of rail lumber rates from the Pacific Northwest to the Midwest was to meet low motor carrier rates from Colorado and Wyoming and at the same time meet the competition of southern pine in the Midwest. The objective of such rate action was not one railroad seeking to capture traffic handled by another; for, unless such rate action was taken, the railroad would lose existing or potential traffic intermodally, its customers would be forced out of the market or another product would be substituted for that produced by its shippers.

For all practical purposes, the premise that competition between railroads as they exist today is of little value in the determination of rate levels is not only fully supported, of record, but is well in accord with economic theory. Even without regulation, in an oligopolistic market where only a few firms offer service, each company acts in the knowledge that its competitors will and must respond in kind. Regulation adds the important factor that each company knows of proposed rate actions in advance. Given advance and certain knowledge of competitive action, the rail industry takes on the cloak of a cartel structure in which price actions, in effect, are coordinated. This tendency in the rail industry is reinforced by the fact that there is almost perfect price collusion (government sanctioned) among firms.

Despite the structure of the industry, results produced do not accord with the predictions of the theory of oligopoly. First, high profits would be expected but the fact is that rail profits are low. Second, under oligopoly, there should be a stability of shares of traffic between two points but the fact is that market shares are at least occasionally unstable. Therefore, if construction of the industry as an oligopoly is to have any significance or meaning, analysis of the reasons for the deviation from the results predicted by theory must be explained.

It is apparent that market competition could not result in the nearly-complete deviation from expectations since sanctioned price collusion, while generally regional, is broad enough to keep rates "in balance" as between regions. Product competition could account for some depressed rates, e.g., where fuel oil not carried by rails can displace coal. It would seem, however, that this factor is not strong enough to lead to industry-wide more or less depressed profit levels.

If, however, transportation is viewed as a single industry and not as several separate industries such as the rail industry, the motor carrier industry, or the pipeline industry, the scope of price competition becomes clear and the results explicable by theory. When so viewed the dichotomy of inter- and intra- modal competition must be discarded so that analysis of relevant factors is possible.

Of first importance, when viewed as a single entity, is the nearly-total dissolution of blocks to entry. While common and contract motor carriers require authority to enter any interstate market and some intrastate markets, any non-transportation firm may own and operate proprietary truck equipment. Further, agricultural commodities are exempt from regulations for both motor and bulk water carriers which have no restriction on entry. The existence of an unregulated segment of the industry has implications broader than the scope of the exemptions themselves. The immediate effect of such exemptions is to take rate regulation out of the hands of the government or the rate bureaus and make pricing the result of economic factors. That railroads may all then set the same rate is not of interest for rates are simply responsive to market forces. Thus, competition between railroads is irrelevant in the determination of price or output where there are exemptions from regulation.

Rate reactions are not necessarily immediate. They depend largely on the railroad's estimate of demand elasticity for the movement in question. An example of this was adduced by the traffic official of Soo who is a strong exponent of intramodal competition. Between 1965 and 1966, truck unloadings of barley in the Twin Cities-Twin Ports areas increased by 44 percent to account for 20 percent of total rail and truck unloadings. The witness testified that rail rates have not been reduced because to do so and in order to gain part of the 20 percent of traffic haul by truck would result in a reduction of total revenues to the railroads. Here motor competition was insufficient to force a rate reduction but were it sufficient to justify action, the existence of more than one railroad would have no effect in the application of the motor carrier induced reduction to all shippers. In that instance, at least, the rails involved would not engage in mutually destructive price competition. Such pricing action demonstrates the absence of competition in the rail industry in the sense that railroads could successfully avoid profit-reducing price action were it not for the impact of actions taken by other modes.

However, recognition must be given to facts adduced in the record showing that the existence of alternate roads and thus the possibilities of different rate-making methodology affect the prices offered to shippers. These occurrences arise on the separate estimations of the separate roads of the profitability of the rates in question. It was frequently noted that of two railroads serving a plant, one would occasionally not meet a rate set by the other road. One witness testified to three specific instances which he deemed demonstrative of the value of rate competition.

Krause
Carr

In the first instance C&NW established a low basis of rates on originated whole corn for export moving to Chicago and Milwaukee and other lake ports but refused similar rates on corn to be processed in Milwaukee and exported as corn meal. Milwaukee Road, however, agreed to the low basis on corn for processing for export. There is nothing of record to indicate that C&NW faces any cost disadvantages to prevent it from offering the export rates on corn for milling and it has extended the rate. The fact of an alternative source of supply was obviously important to this shipper although it was not competition between the roads that resulted in Milwaukee Road's action and C&NW's prolonged denial of the rate is puzzling only if the fiction of competition between the roads is maintained. C&NW eventually gave the same rates to the milling company for both export and domestic corn. The witness testified that it took 4 years for this to occur. This does not seem particularly responsive if the roads were truly competitive.

The second instance cited was C&NW's establishment of a low rate from Milwaukee to St. Louis to enable the shipper to remain competitive with corn producers in Illinois while the Milwaukee Road refused to participate. In this case, C&NW has a single-line haul and Milwaukee Road does not. Given that rates on corn and corn products are depressed to a level at which joint-line hauls appear to be economically unfeasible, rail monopoly would have provided the same result since it was the single-line service that was necessary.

The third example cited by the witness referred to different corn rates from Iowa to two separate points, each of the points being on both North Western and Milwaukee. Here the rates the witness wanted would clearly not be the result of railroad competition.

Thus, on three examples designed to show the benefits to the shipper of rail price competition it is clear that whatever the source of rate reductions it was not competition between C&NW and Milwaukee Road. In the first instance, both the moving force and the delaying force appear to have been market competition and rate adjustments between markets. The second case is clearly either truck or barge competition since the same witness testified that corn rates were severely depressed and as noted before, rails cannot rationally institute such low rates. The last case would again appear to involve market competition faced by producers at a particular point and the witness does not now have the benefit of price competition between two railroads although both serve him and the point having the rates to which he objects. The objection is clearly from his position in the market.

No CNW-Milw Comp

MARKET AND PRODUCT COMPETITION

Underlying much of the confusion, of record, relating to the need, presence, and objective of rail competition lies in the confusing of this subject with market and product competition. The latter arises under several situations. Basically, the three broad classifications dealing with market and product competition are: (1) where two or more producers of substitutable products compete for sales in the same market; and (2) where products may be disposed of through two or more markets, e.g., export of grain via Atlantic ports or Gulf ports; and (3) where products not carried by rail are substitutable for those which are, e.g., natural gas for coal. In each case, the transportation element of delivered cost becomes an intrinsic and important part of the products market competitiveness. But, in each case the sellers of the products are competitive and the rails are serving competitive markets. This means that they must offer competitive prices and services in order that they have the opportunity to carry the goods produced by their shippers.

The complexities of competitive interrelationships were indicated above in the example of northwest coast and southeast lumber as reacting on each other in the midwest market and in turn reacting to the Colorado-Wyoming products moved under motor carrier rates to the same market.

One of the more clearly depicted examples of both product and market competition at work in the intramodal scheme was presented by the Upper Lakes Coal Bureau. The Bureau complained that neither C&NW nor Milwaukee Road offered a comparable level of rates to those afforded by Soo Line and that the former two concentrated their rate efforts on interior origins which evidently provided them with a greater return. On the other hand, Soo's lines, which did not extend to any interior source of coal, sought to keep its only customers, the Bureau members, competitive with interior-produced coal. Consequently in this instance, the availability of Soo permitted the Bureau to compete with interior-produced coal. Such competition, on its face, is beneficial to a particular shipper but the benefit to the shipper results from Soo's locational disadvantage or rather C&NW's monopoly on single-line coal movements. C&NW and Milwaukee Road have, in effect, granted Soo a monopoly of these shippers. Below the face of the argument is the fact that the rates charged for interior coal may not be designed to hurt a particular shipper. They may rather be designed to prevent the product competition of natural gas, oil or nuclear energy from displacing coal entirely.

The fact that C&NW and Milwaukee Road both serve various points at which Bureau members had docks in competition with Soo did not realistically make any difference in the equation, for the maintenance by Soo of the lower rates was predicated solely on Soo's competitive response to the rate action of C&NW and Milwaukee Road from interior coal origins and the latter's level of rates from the interior were quite probably dependent upon the product competition which coal consummers in the Midwest faced from other forms of fuel.

Market and product competition not only play important roles in rail-rate relationships but also in intermodal-rate relationships. Historically, motor carriers have had a general advantage on short-haul movements. If two producers of a product are located at different distances from the market and one within the economic range of motor carrier transportation, whether the producer at the greater distance is served by one road (faces a monopoly) or two roads is immaterial since, if the product is to move, it must be delivered at a competitive price. This does not necessarily mean that transportation rates will be equal since the remote producer may well have to absorb some of the difference in the product price at the plant. All things being equal, however, the railroad cannot charge a monopoly price for transportation if it follows an economically rational policy, nor can shipper be denied adequate or equivalent service if it is to prosper and the railroad to retain the business.

While coal and lumber have provided the best examples, of record, on the effects of market and product competition on railroad price and service actions, there are many others. Much of the testimony of grain shippers that advocate competition appear to do so primarily on the implied reason that having the service of two or more railroads substantially broadens the territory from which grain processing and exporting industries can buy. It is, therefore, the desire to have the broadest possible sources of supply rather than competition that appears to be the primary inducement to locate on more than one railroad. The breadth of sources of supply would not be altered by merger. Then too, for the rail roads and shippers in this case, all areas, with some minor exceptions, will still be subject to such rail competition as exists from the hauling of grain by truck from the farm to the best country market, in part determined by rail rates. To the extent that rails do compete, this factor would tend to keep prices at competitive levels.

Other areas are obvious, though not explicit of record. Automobile, television and steel producers compete in nearly all markets outside of their own producing areas and they require competitive transportation rates to be able to reach those markets. Zenith Radio Corp., for example, produces television sets and other home entertainment equipment at 10 Chicago plants which it ships to all parts of the country. The rates and services it receives from the railroads serving it must permit it to compete with other producers served by other railroads as well as by motor carriers. Thus, competition between any particular roads is not of particular importance and that company so stated. The same is true for other manufacturers.

?? militates

Market and product competition, therefore mitigates strongly against any conclusion that reasonable rates or improved service as provided by any railroad is materially affected by rail competition.

In the vast majority of instances, whether a shipper has one or more railroads available is immaterial for it will not gain access to a particular market unless it is able to meet the competition of its market competitor and in this respect, it behooves the railroad or railroads serving its plant to provide it with maximum opportunity to attain such goals and its ability to enter the market place is dictated by the economics of the situation rather than by intramodal competition.

SERVICE COMPETITION

Encouragement of competition among suppliers is predicated not only on the premise that suppliers will seek to increase their volume by reduction in cost or price to their customers but also that they will improve their product or service and thereby capture a greater percentage of the market. Most of the arguments favoring two or more railroads serving one plant or one station center on or are couched in terms of service rather than price benefits. The theory of oligopoly embraces the concept that service or product competition may well exist in oligopoly even where price collusion is perfect (which is not so among railroads). Whether non-price competition is effective, or the extent to which it is effective is difficult to test in any objective manner. Here, as in the analysis of price competition, dependence must be placed on specific examples wherein the source of service or product improvements may be identified.

The first and most basic form of service competition deals with the efforts of one supplier to improve his product or service to capture a greater percentage of the market, normally at the expense of another. It is this form of service competition that in the long run supplies the greatest justification for its existence. It is here also that much of the underlying rationale for anti-trust legislation exists.

In terms of rail product improvements to the extent observable, rail competition has, at most, played only a minor role. Generally, rail product improvements have been accompanied by price reductions. That condition is contrary to action that would be predicated by theory and further reinforces the position taken above that the transportation industry must be considered as one market structure in analyzing price and service conduct of each segment of the industry. Indeed, transportation price and product must be viewed in the broadest sense of the total distribution service needed and cost of that service from loading at shipper's plant to unloading at consignee's plant.

Elements of service improvements in the rail industry which generally are of recent vintage include (1) the development of specialized cars; (2) the dieselization of locomotives; (3) the improvement in communication system, and the development of automated yards; (4) the improvement of car tracing through faster and more reliable car identification procedures, and (5) the development of TOFC and containerized services.

The recent development of specialized equipment including damage-free (DF) cars, jumbo hoppers, tri- and bi- level autorack cars, wide-door and all-door boxcars, and unit trains clearly reflect such action. Until the quite recent past, the railroad industry has not been particularly imaginative in this area. Complacency in innovation also accords with oligopoly theory wherein individual firms view their best interests as not rocking the boat.

Given these conditions, what change occurred which stimulated the railroads into action? Railroads have always had substantial lading damage problems and cost to shippers of packing and dunnage were large. The motor carrier can and does offer relatively damage-free movement with far less packing costs. Therefore, DF cars became a necessity if railroads were to compete effectively with motor carrier for damage-susceptible lading both in terms of damage to lading and cost of packing to shipper. Thus, the introduction of DF cars was a response to motor carrier competition.

The development of jumbo hoppers and unit trains, on the other hand, were improvements in railroad's bulk transportation advantages. In the case of jumbo cars the effort was directed to both motor and water carrier competition for grain, initially from the Midwest to the Southeast. The unit train was initially utilized in coal movements in the eastern districts so that the delivered price of coal could be competitive with fuel oils and natural gas (product competition). After this initial application, unit train use spread to grain transportation to compete with water carriers on the Great Lakes-St. Lawrence Seaway system and has lately been extended to compete with barge carriers on the Mississippi River through Illinois Central's Rent-A-Train.

The autorack car was obviously developed to compete with motor carrier service by providing lower costs to the shipper and better service. There have additionally been interesting side effects in the concentration of assembly plants because of the rack car, thus providing mass movements from fewer points, relatively, while the total number of distribution points was not reduced because of the increased size of the automobile market.

The impetus for the development of wide- and all- door boxcars is more difficult to pinpoint. Motor carrier and water carrier competition apparently had some influence but it seems that the primary cause was a need created by the development of industrial handling equipment, particularly in the lumber industry.

The primary aim of innovations made in signaling, car identification and location, and yarding procedures, and the installation of the diesel among others has improved equipment utilization and reliability of service. These goals, in the context of oligopoly, can only be rationalized by the existence of competition from outside the presumed protected area.

Outside of rail product improvements, there is a broad area of service in which applicants concede that at least some remnants of competition exists. These areas are circumscribed by limitations and rules governed by either physical factors or the dictates of economic motivation. It was in this area particularly that the Stipulations Committee provided a basis from which this examiner could formulate a framework of rules governing such activity. Subject to the restrictions heretofore indicated, these rules are as follows:

> (1) *To the extent railroads compete for traffic from the standpoint of service, they do so where two or more maintain reasonable direct lines, publish comparable rates, and maintain routes between common points or have formed reasonable direct joint routes with other carriers between common points.*
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> (2) *Railroads compete to influence traffic originating and/or terminating beyond their lines where they can acquire a portion of the haul through joint routes and will unless market or product competition dictate otherwise generally solicit traffic over the route which will maximize their net return.*[62]

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[62]As originally submitted to the committee, the above principal was founded on the theory that the carriers sought to maximize their return. Some dispute was raised between the carriers that utilization of "maximum return" as the criterion for a carrier's routing policies is inappropriate inasmuch as realistically a carrier seeks to maximize its "net return" or "net revenues" or on the other hand, that a carrier's Traffic Department not being versed in cost theory, will seek to maximize its "gross revenue" After reviewing the various arguments of the parties and the record, the examiner believes that a carrier will, over the long run, seek to maximize its net return. The tendency of the Traffic Department to attempt to obtain the longest haul on all traffic it can, whether profitable or not, will be balanced in the long run by the operating and financial departments' estimates of costs and returns.

(a) *Except where unduly circuitous, the single-line route between two points is generally that providing the maximum economic return.*

(b) *Normally a controlled carrier even though not wholly owned is generally regarded for solicitation purposes as if a part of the parent company.*[63]

(c) *In the absence of a single-line route and to the extent compatible with shipper's basic needs, a carrier will solicit for that joint-line route which gives it the longest haul.*

(3) *Rather than not participate in a traffic movement, a carrier will seek any participation in the movement which will yield more than out-of-pocket expenses.*

(4) *Single-line routes, where not unduly circuitous, are normally in a position to set the competitive standard which alternate routes of competing carriers seek to meet.*

(5) *Where alternate rail routes or modes of transportation exist between two points or market competition involving railroads or other modes is a factor, service decisions may be affected by intermodal or intramodal competitive factors.*

(6) *Rail competition to the extent it exists may be more significant to those shippers who rely largely on rail transportation or have substantial transportation needs which railroads are uniquely suited to supply than it is to shippers who have few transportation needs which other modes are not as well or better suited to supply.*

(7) *Rail rivalry may have an effect on a number of aspects of rail operations, including but not limited to:*

(a) *provision of equipment, especially special equipment.*

(b) *speed, frequency and reliability of schedules.*

(c) *transit, reconsigning privileges, etc.*

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[63] Although Union Pacific disputes this general observation, the economic facts of life dictate otherwise.

(d) *improvement of incidental services such as information, rate quotations, tracing, claim handling, etc.*[64]

Although the above rules as developed with the assistance of the Stipulations Committee tells us much about the mechanism of rail competition, there is much to be said about how the mechanism works and the degree to which any of the above-described elements meaningfully fit into the system of interreaction between rail carriers in a competitive frame. In the latter respect, in this examiner's opinion, the degree of effectiveness of each factor of rail competition can better be described in terms of how shippers react to these various competitive influences.

FACTORS GOVERNING THE ROUTING OF TRAFFIC BY SHIPPERS

The attitudes, views and needs of the user of transportation service in large measure dictate the value which may be given to the role of competition in the transportation scheme. As distinguished from analysis of the transportation industry, consummers of manufactured products normally have a single or reasonably identifiable objective in their purchase which can be assessed in terms of seeking the best quality for the lowest price. On the other hand, users of transportation essentially have a variety of different objectives and needs in their use of transportation service and pose a somewhat different problem. The problem is further compounded by the fact that the same shipper may have different objectives and different needs with each shipment made and hence, predictions as to how he will route his traffic vary, and vary significantly with the commodity to be shipped and the nature (distance, time available for delivery, and volume) of the shipment. Despite the lack of homogeneity as between users of transportation services, there were certain practices, among shippers, which appeared and reappeared on this record so frequently that they may be used in terms of providing a foundational approach for the assessment of the subject matter under consideration.

(1) *Cost of distribution* - Underlying the routing practices of all but a few shippers appearing in support of or in opposition to the application or tangentially in support of intervening railroads seeking conditions was their need and desire for the cheapest form of transportation available. Strangely, this element was

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[64] As initially proposed the above-listed subsections included "rates". Inasmuch as the examiner has heretofore considered this question and found very little so-called "rate competition" this element has been eliminated as urged by the C&NW.

more implicit than explicit in the evidence when discussing intra-modal competition and may realistically be explained away by the fact, as heretofore indicated, that there is little, if any, direct price competition between railroads that exists even in the short run but for the corollary presence of market competition between producers.

Of the approximately 120 shippers or shipper associations[65] who testified in this proceeding over 90 have shipped or have members who ship raw materials or commodities whose transportation costs make up a significant portion of the product price. These commodities include agricultural commodities such as grain, corn, barley, malt, soybeans, and cocoa beans; wood and wood products such as lumber, pulp, pulpwood, millwork, building materials, paper, paper products and pulpboard; canned goods; grocery products; glass; hides; coal, scrap iron; roofing granuels; carbon black; sand and gravel, iron and copper ore; fertilizers; vegetable oils; chemicals; seeds; and cement. In some instances, cost of transportation exceeds the origin cost of the product.

The initial consideration of the shipper of these products is obviously governed by rates and hence, in its selection of mode, a shipper is motivated initially and primarily by cost considerations.

The remaining shippers including many fabricators of steel products, several large machinery manufacturers, a department store, several manufacturers of motor vehicles and numerous freight consolidators are generally representative of the type of demand for rail service required by the so-called high-rated commodities. In the main, cost considerations directly or indirectly still play an important, if not vital, role in their routing via rail versus other modes. To a large extent, the very existence of a freight consolidator or warehouse operator is predicated on his ability to consolidate shipments in such a manner as to achieve lower costs of distribution. To a major extent the ability of railroads to provide lower rates than motor carriers on volume shipments or on commodities with heavy loading characteristics such as fabricated steel and steel products is the prime factor to rail success in this area and it would appear that the use of rail to handle products such as television sets and goods sold in department stores is keyed to the fact that shippers in these categories maintain large distribution warehouses that were established to cut costs of distribution afforded by rail carriers offering the railroad the advantage in providing delivery of a large volume of traffic at low cost.

[65] This does not include those verified statements which were accepted by the examiner as statements of position.

So also in the automobile industry, the development of the auto-rack car has provided the latter industry with cheaper costs of distribution and resulted in a shift back to the railroad traffic that had been lost to the motor carrier industry.

In one special category where cost of distribution is vital, the mode used must supply a prompt, dependable service or it will be discarded. In this respect, it is evident that the numerous shippers of perishable agricultural commodities such as oranges, bananas, and frozen meat, of necessity, must predicate their routing practices upon cheaper distribution costs which make up a significant portion of the ultimate purchase price of their products. In many instances their choice of mode is governed by market competition, yet to preserve their products or to meet exacting time demands of the market, a vital corollary consideration in their choice of mode and even carrier is service.

Based upon the above, the choice of mode and particularly the selection of a rail carrier over a motor carrier is founded on the premise that the former can provide a service which meets shippers' basic needs at a cheaper cost of distribution. It would appear, however, that as the value of shippers' products increases and/or the need for volume or distance transportation decreases, rail participation decreases and motor carrier routing increases inasmuch as the cost of distribution becomes a secondary factor to shippers' desire for service. Where, however, a high-rated commodity moves in volume and as shippers become larger and their distribution patterns become more centralized, they tend to route more traffic via rail service in preference to motor carrier service.

On the opposite end of the commodity spectrum, however, shippers' routing of traffic via water carriers increases to the extent it is available as the value of the commodity decreases and the distance and/or volume needs for transportation increase.

Consequently, as supported by this record and by general motor, rail and water carriers' statistics, this record clearly warrants the conclusion and lends indisputable support for the premise that insofar as shippers route traffic intermodally, the cost of distribution plays an essential if not the key role.

Very little routing is done by shippers intramodally on the basis that one railroad offers it cheaper distribution costs than another. This is true not because such preference would not be exercised were it available but simply on the grounds, as heretofore indicated, that the structure of the rail industry does not economically permit price competition, in the sense that it exists

Tab Reads: Switch RR wins

intermodally. To the extent rate differentiation exists, it is founded primarily upon external factors outside of the intra-modal pricing scheme such as the existence of market competition or physical advantage. To the extent it exists otherwise, it may be deemed an aberation. Consequently, the examiner believes that he must look elsewhere for an understanding of why shippers route traffic via one railroad versus another.

(2) *Plant location* - The record discloses that the most important factor in the routing of traffic by shippers over one railroad versus the other is plant location. The carrier physically serving a shipper's plant is by far the most frequently used carrier by such shipper and is in a dominant position in competing with other carriers which can gain access to the plant by reciprocal switching or otherwise. Where the carrier serving the origin plant does not serve the destination plant, the carrier serving the consignee's plant is in an advantageous position.

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A shipper is dependent for switching on the carrier serving its plant and that fact strongly ties the shipper to that carrier and may even overcome an inadequate car supply or a defect in service. Although in a situation where a shipper may use an alternative route through reciprocal switching, shipper has a competitive lever to keep the carrier serving its plant on its toes, the record discloses that such competitive lever is very rarely used and it is apparent that shipper is too dependent upon the essential switching service provided by the serving carrier to exercise this advantage.

The vast majority of shippers whether advocating the benefits of rail competition or not, indicated a deliberate policy of preferring the rail carriers switching their plant for the latter's longest haul.

Of all the rules governing the routing of rail traffic, the principle that a shipper will maximize the use of the carrier serving its plant appears to be the most strongly embedded and the one with the fewest exceptions. For example, several of the larger shippers indicated that despite requiring a second carrier to provide cars to a particular plant served by only one switching carrier, such shippers would use the latter to handle the shipments for its longer haul and make up the traffic lost thereby to the carriers supplying it equipment from another plant.

The strength of plant location as a motivating factor for shippers in their routing policies was clearly set forth in the testimony of a shipper of highly perishable products who inidcated that despite its need for speed and dependability, the railroad that switched its plant was the one who received the traffic. In fact, this witness indicated that if the switching road did not provide it with an adequate service, shippers' traffic would move via motor carrier.

Many shippers testified that in the location of a plant one of the foremost considerations was the service of "at least two railroads." No shipper indicated that his concern was for two roads serving the same destination and it is apparent from the record that the greatest benefit of such location is the improved availability of single-line service to a greater number of destinations. It is not competition that is important but the existence of locational monopoly.

Despite its application to the industry generally, the record does, however, disclose that such factors as inadequate car supply, poor service, or shipper's use of a competitive carrier to insure the availability of a competitive service inhibits a universal application of the rule. It is doubtful, however, that the exceptions are of sufficient significance to warrant a failure to apply the general rule for less than a majority of a shipper's routings where a choice is available.

(3) *Allocation* - Possibly the most elusive but still a strong motivating factor in the routing of traffic, allocation of traffic, is founded on a shipper's inherent desire to keep as many alternatives open to it as possible. Particularly prevelant among the larger shippers, the allocation of rail traffic is the policy of dividing traffic between competing railroads on a pre-determined formula to insure the availability of equipment, support for rate proposals in traffic bureaus, and the general undefined desire of shippers to maintain open gateways and junctions in their traffic routing.

Where applicable, allocation normally occured in two given situations: (1) where shipper is served directly by more than one carrier; and (2) on overhead traffic or on traffic handled beyond the maximum haul that can be obtained by the switching carrier at shipper's plant.

Of record, there is no predominant formula used by shippers in determining the share or relative share each carrier will receive. The largest allocator of traffic, the Department of Defense, bases its allocation policies for use of rail service upon the relative road mileage that each railroad bears to the total mileage in the nation. Hence, to the extent feasible, each railroad in the nation should receive a portion of total Defense rail traffic equal to the ratio which its rail mileage bears to the total mileage in the nation.

Evidently, however, because of the lack of Defense production facilities and movement in the Midwest, rail carriers serving the latter region complain that it is impossible for the Defense Department's Traffic Managers to meet this standard.

A second method of allocation is simply to divide the traffic evenly between the carriers serving shipper's plant. Prior to the filing of this application, Nekoosa-Edwards attempted to divide its traffic in relatively equal shares between the three roads serving its plant. In so doing, C&NW derived $1.6 million for this traffic, Milwaukee Road, $1.3 million and Soo Line $1.9 million. If this merger is approved, Nekoosa-Edwards indicated that its basic policy of dividing traffic between the railroads serving its plants would continue but that the traffic would be divided between only two carriers, the consolidated company and Soo Line, which would, if followed by other shippers allocating on this basis, increase Soo's relative proportion at the expense of the merging carriers.[66] Whether all of the companies which allocate traffic on the same basis as Nekoosa-Edwards would follow the latter's approach were this consolidation approved, is debatable but undoubtedly, many would.

A third form of allocation appearing, of record, was determined on the basis of car supply. Major shippers such as the Ford Motor Company have requested carriers including those not serving its plant to supply it with certain specified number of special cars on a permanent basis. Under Ford's allocation policy, it divides the traffic relative to the number of cars supplied by each carrier and no regard is given to the particular car moving from Ford's plant.

Where allocation exists, numerous shippers indicated that it was founded on a basis of equality of rates and service and many indicated that they reviewed their allocation policies from time-to-time. Despite these assertions, the record indicates that shippers are reluctant to change their allocation proportions and approach and since rate levels between rail carriers are generally equal, shippers use a rather broad brush in determining whether alternate rail service is equal or not and are reluctant to discard use of a carrier that is providing a slightly inferior service than its competitor. One shipper, Minnesota Mining and Manufacturing Company, does predicate its allocation policy exclusively on the basis of service and it considers that C&NW has always been able to provide more service than Milwaukee Road. Consequently, it

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[66]At least three other shippers either indicated that they would divide their traffic along the same lines or had already increased their proportion of traffic moving over Soo based on the pendency of this application.

allocates its traffic on a 60-40 percent basis in favor of C&NW. It is significant to note, however, even in this instance, and despite its service impediment, Milwaukee Road is still able to retain 40 percent of the traffic.

It further appears that even where a plant is served directly by two or more railroads, the share of traffic of each is not determined by the competitive factors of price and service (quality of product) but rather by the shippers' sense of what is fair to the railroads involved. Eight shipper witnesses testified that allocation was the primary factor governing the routing of their traffic. Many others, however, testified that allocation was very prominent in routing policy although not the primary factor. Where allocation exists, competition normally is an ineffective factor. The participating roads share in but do not compete for the shippers' traffic. Indeed, in many instances the shipper seemed to view his routing policies as resulting from an obligation to support all of the railroads serving its plants, the plants of its customers and any necessary or useful overhead roads.

The degree to which shippers practice allocation cannot be determined with precision for the concept of "allocation" lends itself to a variety of definitions. For example, a traffic official for the Great Northern views all shippers as being allocators of traffic since, of necessity, their day-to-day action has the cumulative effect of dividing traffic between carriers over the long run. The examiner believes that this traffic official's definition is much too broad since there is a significant policy distinction between a shipper which routes its traffic based on its day-to-day requirements and the shipper which has a deliberate policy of dividing its traffic within given perimeters. Despite this, the dividing line between an allocator of traffic and a non-allocator of traffic is so vague as to preclude precise calculations. For purposes of decision here it is sufficient that the examiner recognize that allocation exists and under what circumstances it exists and consider it as a factor in the ultimate evaluation of the issues in this proceeding. To do more would overstate the precision by which it can be measured and to do less would be unrealistic.

(4) *Car supply* - Inasmuch as the movement of traffic depends initially on the availability of a car in which it can move, quite obviously car supply commands an important role in the routing of traffic. Ordinarily, it is the duty of the switching carrier to meet the shipper's requirements for empty cars. On traffic where the switching carrier is unable to receive a line haul because of the geographic location of the destination, the shipper or carrier which serves him must seek help on empties from those carriers

which can participate in the business. The availability of a car in a particular area does not necessarily depend upon the ownership thereof by the supplying road but may simply depend on the fact that the latter delivered an off-line car in the immediate area which is destined in the direction of shipper's movement.

During periods of car shortage, which at certain times and places becomes very acute, a switching carrier may be incapable of meeting the equipment requirements of its own shipper. Such shortages appear to occur for all roads at one time or another as no railroad maintains its equipment fleet to meet sporadically high or peak demands. During such periods the shipper must appeal to other carriers for equipment and arrange for its acceptance and placement by the switching carrier. It is in such situations that a shipper favoring one carrier can draw upon his past and future routing to that carrier to secure a car. It is also in such instances that the shipper allocating traffic may turn to a secondary source on the basis of past or current promises of allocations of traffic. It is also in these critical periods where the ability of one carrier to supply equipment may well influence a shipper to alter or modify his existing routing policies on the basis of car supply.

The greatest complaint voiced by shippers concerning rail service dealt with such shortages. This was particularly true of beer manufacturers, cement producers, producers of chemical and mining products, grain producers, foodstuffs and meat and packinghouse producers. It appears that when car shortages occur that they are more prevalent among users of special equipment such as DF cars whereas shortages of ordinary cars occur normally in peak seasons only.

With specialized equipment involved, the American Association of Railroads car service rule requires that certain types of rolling stock do not become part of the nation's car fleet but remain instead under the control of the owning railroad for services assigned exclusively by those carriers and must be returned to the owning line at the completion of every trip. Equipment falling within this category includes covered hoppers, covored gondolas, boxcars equipped with special interior lading protection devices, mechanical refrigerators, etc.

Shippers desiring to increase the availability of special equipment for their own use have departed, as indicated, from their traditional dependence on switching carriers for car supply and seek assignments from many lines. To the extent any assignment of specialized equipment is made, the shipper will commit one load for each car. In some instances, rather elaborate pools of equipment owned by several carriers are established, with each carrier rewarded according to its participation in the pool.

Except in the case of special equipment, where one carrier provides switching service to a particular plant, it does not appear that the failure of the latter to supply equipment will affect shippers' dependence upon that carrier to perform service for the significance of the switching carrier to shipper normally transcends the former's inability to supply a car on occasions but the impact of car supply is readily ascertainable on shipper's secondary source for shipper can more readily eliminate a secondary carrier from its routing pattern without fear of reciprocity than it can eliminate the carrier switching its plant. Consequently, whether it be general or special equipment, the ability of a carrier to provide cars may be an important element in determining the routing policy of a particular shipper. Subject to restrictions heretofore mentioned, particularly that regarding plant location, this is an area in which the role of intramodal competition is still somewhat effective in providing the shipper with a tool to secure a better service.

(5) *Transit privileges* - Despite being a factor in the cost of distribution which has heretofore been considered, the nature of traffic moving throughout the territory served by applicants warrants separate and special consideration being given to transit privileges as an independent factor in the routing of traffic. Transit involves the interruption of a movement at an intermediate point, sometimes for many months, for storage, processing, fabrication or related purposes, with the ultimate forwarding of tonnage to destinations beyond transit points.

Freight charges on the movement beyond intermediate transit points generally reflect a balance of a through rate which is significantly lower than were two independent movements considered and charges made. Under normal circumstances, transit is available where the carrier transporting the traffic to the intermediate point is the same carrier which hauls a comparable load outbound from such points. Although the identity of the goods transported to the intermediate points is lost, the requirements of transit billing are that the inbound carrier obtains a comparable load outbound. At certain points, however, an open transit exists in which transit values may be used by any carrier for outbound movements regardless of the identity of the inbound carrier. Although it cannot be assumed that transit operations of a particular shipper automatically restricts his routing to specific carriers for many shippers cancel such rail transit billings because their products are marketed locally or moved beyond the transit points by motor carrier, it may readily be accepted that where a shipper intends traffic to move under transit, the shipment is tied to a carrier or those carriers which can afford the transit privileges. Any other action on shipper's part would be irrational. The majority of shippers of grain and grain products stress the importance of transit rates in determining their routing and several other shippers (Sterling Pulp & Paper Co., Mosinee Paper Mills Company, Forest Products Industries, Potlach Forest Products, Pittsburgh-Des Moines Steel, National Tea Company, and Libby, McNeill & Libby) also indicated that transit plays a significant role in their routing of traffic.

(6) *Single-line service* - All other factors being equal, shippers prefer single-line service and will route their traffic accordingly. Where no single-line service is available and again all other factors being equal, a shipper will usually prefer and use the route which involves the fewest number of carriers. Usually single-line service is faster and more dependable and offers better car tracing facilities. Further, the elimination of interchanges between railroads and the reduction in number of switches, not only reduces transit time but also reduces freight damages and facilitates the handling of claims when lading is damaged in transit.

Where a carrier serves the origin and destination plant, it is almost axiomatic that the traffic will move via such single-line service. Whether a carrier who can only gain access to shipper's plant through reciprocal switching but provide direct delivery to consignee's plant can overcome the advantages of the road serving shipper's plant which can provide service to destination only through interline connections, is questionable. In such an instance, the use of the road providing single-line service through reciprocal switching may well depend upon the closeness of relationship of the switching road to shipper or whether the switching road's connection can serve the destination point directly.

In certain instances a good multi-line service route may be preferable to a single-line route which shipper has found to be too slow or unreliable. For example, on traffic moving north and west of the Twin Cities and south and east thereof, a route including MN&S may be preferred to one in which there is only one interchange at Twin Cities to avoid the congestion in that area. Although dependability of service was indicated as a paramount consideration for many shippers, except for the movement of perishable products, speed of service was rarely mentioned as a factor that governed the routing of traffic. Insofar as dependability of service was concerned, shippers which were vitally concerned with inventory planning and controls especially on the production line, were also vitally concerned with the reliability of transportation services. On the routing of perishables, speed and dependability are of obvious importance and there are recognized "perishable" routes in which carriers shorthaul themselves to make the service as attractive as possible to such shippers. Subject to rate restrictions, the fastest route normally governs the movement of perishable traffic and since the alternative to the expeditious movement of this traffic is motor truck, railroads work generally closely together to insure that this traffic moves according to schedule.

(7) *Solicitation* - Although an intangible factor, solicitation plays a significant role in the routing of freight, particularly on those shipments in which shippers have a realistic choice between rail routes. While the shipper may be economically tied to the switching carrier and in some instances, tied to the latter's connections because of route restrictions or simply because of the switching road's predominate influence upon shipper, where the switching road cannot perform a particular service or can only perform a portion of the service, the role of the rail traffic solicitor becomes particularly significant. This is not only true because shipper in such a situation is economically free to make a competitive choice but because, as indicated, rail pricing is essentially non-competitive and depending upon the type of traffic involved, service differentiation between railroads may not be particularly significant. It is at this point that some element must be introduced to influence shipper's choice and that role is fulfilled by a competent solicitation force. This premise is borne out by the placement by applicants of its solicitors who are either located at competitive rail points or in areas where major movements of rail-oriented traffic originates.

(8) *Industry location* - In locating plants shippers consider many factors in their determination including the availability of direct rail service. Competition is strongest between rail carriers when seeking industry locations on lines. Each railroad will compete directly with all other roads regardless of location to maximize the number of industries served directly by its line. Most roads today have industrial departments that devote their time to the acquisition, development and sale of plant sites for the location of new industry. Once located, however, the serving road has, as characterized by Soo, an almost proprietary right to traffic generated by that plant.

To the extent ascertainable, the majority of shippers which testified were served directly by only one railroad. While in many instances shippers testified that in choice of plant locations they attempt to locate their plants at points served directly by two or more roads, in most instances, the majority of plants operated by even these shippers were served by a single railroad. While this lack of correlation is undoubtedly explained by the fact that other factors such as cost and availability of labor, proximity to raw materials or market clearly can explain their choice of location despite their preference for two-line service, it indicates that the value of intramodal competition is a peripheral factor in the choice of site for new industry.

To the extent shippers have located plants at points served by two railroads, they have done so largely because of the added territory to which both roads can provide single-line service and/or their belief that competition will improve car supply and other intangible elements of service.

CONCLUSIONS RE: COMPETITION IN THE TRANSPORTATION INDUSTRY

Subject to the refinements and exceptions heretofore discussed in the above section, general conclusions are warranted. Initially, it may be concluded that although there are areas in which railroads still provide the only effective transportation service, the combined effect of intermodal competition as provided by motor, water and pipeline carriers poses a direct threat to the vast majority of rail traffic. The almost total rail monopoly that existed up until the early 1930's has evaporated and rail carriers, and particularly applicants, have been forced to reduce rates to maintain their traffic volume in face of competition from other modes. It appears that the technological advances of the past 10-15 years have enabled the rail industries to remain competitive but it is evident that the future must offer additional advances if the rail industry is to remain competitive with other modes.

The isolation of intra-rail competition as a separate factor indicates that the geographic limitations of roads and yard, with minor exceptions, inhibits service to industries located off line without the cooperation of other roads. In many respects, railroads possess the characteristics of a natural monopoly, and analysis of their market actions must be made on models of monopoly or oligopoly.

Price competition among railroads is of little, if any, value in the determination of rate levels. The structure of the industry and the cartel-like methods of rate making would, were it not for intermodal competition, dictate higher profits and a greater stability of market shares within the industry than is actually realized. Hence, in all instances where price competition was indicated and appeared rational, such action is motivated by market, product, or intermodal competition and would have undoubtedly occurred whether there were one or more railroads providing service.

To the extent intra-rail competition is significant it hinges primarily on the degree rail carriers provide differentiations in service. Although few, if any, innovations in the rail industry have had as their primary impetus intra-rail competition, there is a residue of service factors such as single-line service, provision of equipment, speed, frequency and reliability of schedules, transit and other privileges, which play a role in measuring the existence of competition between any two railroads.

Shippers will normally provide the carrier switching their plant its maximum haul but are governed to some extent by self-determined allocation policies. Insofar as shippers have a realistic choice between two or more rail routes, selection will be determined on the basis of car supply, transit privileges, the availability of single-line service, and solicitation. Shippers tend to locate their plants at points determined by factors other than the availability of competitive rail service although the existence thereof is a positive factor in the selection.

INTRA COMP: "RESIDUAL" BENEFITS

In short, it is inescapable that competition between railroads generally and applicants provides only residual benefits to the public. Although the maintenance of such competition must be afforded weight here, it is but one factor which must be balanced in the deliberation process.

EFFECT OF THE PROPOSED TRANSACTION UPON AN ADEQUATE TRANSPORTATION SERVICE TO THE PUBLIC

General

The Commission is required in passing upon any transaction submitted under section 5(2) to consider, among other things, the effect of the proposed transaction upon an adequate transportation service to the public. As construed by this examiner, the issue is all embracing and must be viewed from a variety of vantage points. An initial predicate for this evaluation, of necessity, must be the effect upon the services presently rendered by applicants. Of equal importance, however, an assessment must be made of the effects which this transaction will have upon the services rendered by other members of the transportation community and finally, the net effect which approval would have upon the system itself. Essentially keyed into and underlying this analysis is the vital issue of how approval of this transaction will effect the service provided to the transportation user for whose protection the Act provides this Commission with an irrevocable commitment.

SERVICE OF THE NEW COMPANY

The scope, size, nature and ability of the surviving company's plant and operations versus that presently in existence must be evaluated in terms of service provided to the general public and the ability of the surviving company to compete for existing traffic or to generate new traffic. No basic question is more keyed to the public interest than the determination of this issue. For purposes of this analysis, the term "service" encompasses the total relationship between applicants and the surviving company, on the one hand, and, on the other, users of its transportation product and the communities it will serve.

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PASSENGER SERVICE

As stated heretofore, applicants plan no change in their present passenger service as a result of the proposed merger. No member of the public, except Anthony Haswell, expressed any interest in any change or liklihood of change in passenger services following merger. Both applicants have persisted in their program of continuously re-examining the financial operating results of their respective passenger service and have pending before the Commission several section 13(a) proceedings to discontinue certain of their remaining intercity passenger trains. Other than the possibility of improving the resultant company's financial ability to maintain marginal passenger services, approval of this transaction will not in any way interfere with applicant's present ability to provide service and the actual service performed in connection with the movement of passengers either in an intercity or commuter service. Mr. Haswell, generally positioned himself in favor of the proposed transaction, if as a condition thereto, applicants are required to improve or maintain their intercity and suburban passenger service. No evidence was presented directly nor does the record otherwise provide a basis upon which consideration of this type of condition should be afforded. Approval of the proposed transaction will not affect passenger service and a general requirement that such service be maintained or improved as a condition herein is simply not warranted by the evidence. The examiner, therefore, declines to recommend the imposition of Mr. Haswell's requested condition.

FREIGHT SERVICE

Approximately 120 shippers and shipper associations appeared either for or against applicants' proposals or in favor or in opposition to the conditions proposed by Soo Line, Metropolitan Milwaukee Association, Illinois Central, and LS&I. Additionally, 48 statements of position favoring applicants' proposal were accepted as such on behalf of applicants, and, in addition, the examiner rejected as cumulative, the statements of 39 additional witnesses proffered by the Illinois Central. In addition to shipper witnesses, representatives of communities, States or other public bodies and of shipper associations appeared either in support of or opposition to applicants or in support of or opposition to the conditions proposed by the parties above. Of the 120 shippers appearing, 53 appeared for applicants, including 10 who appeared as rebuttal witnesses and 10 whose testimony was only accepted as a statement of position; 22 appeared for Illinois Central; 18 for Metropolitan Milwaukee Association; 3 for the LS&I; and 31 in support of the conditions sought by the Soo Line. Shippers appearing for interveners focused their attention upon conditions sought by such interveners and with certain exceptions hereinafter considered, were not particularly concerned with the impact of the transaction upon applicants' transportation services but rather with the impact upon the services provided by railroads serving them.

Individually, such shipper witnesses were qualified to speak of their own transportation needs and problems, their particular relationships with applicants, other railroads, and other modes of transportation and many expressed their hopes or fears relating to how this proposal and its ramifications would affect them. Shippers either indicated that the merger would fulfill their hopes for improved service or reduced rates, make applicants stronger, or that consolidation would adversely affect the present service provided them by applicants or other railroads. In this connection, very few of these witnesses made any definitive study of the applicants' or interveners' concrete plans and, in the majority of instances, their hopes or fears from approval of this transaction were founded on information supplied by the particular carrier in whose favor they testified. Such evidence, standing alone, would add very little to an assessment of the issues involved, and the parties to this proceeding through various stipulations recognized this fact. This evidence, however, when analyzed in conjunction with applicants' and interveners' concrete proposals does offer a basis for a determination of what problems these shippers have experienced and whether their hopes or fears will be met. In this light, their evidence will be considered.

In general, the shippers supporting the proposed transaction share the belief that a strong railroad is easier to work with than two marginal railroads. They feel it is more important in the marketing of their products to have an economically healthy railroad which can provide better service than to have the availability of two or more railroad services.

Many of the shippers recognize that railroads, as other businesses in today's economy, must meet rising operating costs and increased competition by strengthening themselves and they have been informed by applicants that approval of this proposed transaction is one method in reaching that goal. Although the majority of shipper witnesses do not anticipate that merger will permit the consolidated company to reduce rates, it would, they believe, assist the surviving company to maintain existing levels of rates. In this area particularly, shippers were dependent upon applicants' representations and not their independent analysis.

The shipper witnesses also anticipate service improvements to be derived from the merger. They would hope that the transaction will permit the development of new equipment, particularly special equipment, and make additional equipment available for general use. Merger will also, they believe, increase the destination points on applicants' combined lines via through-train service, eliminate interline switching which will shorten turn-around time and result in the more efficient use of equipment and improve car supply. It is contemplated that the additional single-line service of the surviving company will afford more opportunity to take advantage of TOFC plan rates.

Coal shippers are hopeful that the merged company would be better able to provide service in unit trains which make rail coal competitive with barge and nuclear fuels thereby improving coal's market position vis-a-vis other fuels. A limited number of shippers indicated a belief that an improvement of applicants' financial condition, if realized, through this transaction will insure continuation of existing marginal branch lines.

Two shippers, Consolidated Paper, Inc., and Nekoosa-Edwards, however, view approval of this transaction in a different light. Both shippers produce woodpulp, paper and paper products and have facilities located in Wisconsin Rapids, Wis., which is also the site of their main offices. They also have facilities located at Nekoosa, Port Edwards, Butler, Appleton and Byron, Wisc. These shippers rely heavily on the Soo Line for service. The nature of their products dictates that most of the inbound and outbound shipments be handled by rail and in this respect, the Soo Line moves much of their traffic. Use of trucks to handle their traffic is unfeasible for the long haul and hence, approximately 90 percent of their traffic moves via rail.

Their opposition is based on the view that the merger is a hazard to the continued financial viability of Soo Line and GB&W, placing in jeopardy these carriers' ability to continue to provide an adequate service and provide effective competition to the merged company. Of more importance insofar as this particular analysis is concerned, both shippers are of the opinion that the merger is unnecessary and will not result in a better service. Without having effective rail competition, these shippers view the improvement in single-line service created by the merger in and of itself a nullity and they do not expect that either transit time, or car supply will improve. Nekoosa-Edwards particularly believes that the savings which applicants estimate can be achieved through merger, could be accomplished without this consolidation and that both applicants are in a position to increase their car supply through the better utilization of equipment. The greatest fear indicated was that the merged company would dominate rail transportation in Wisconsin and the Midwest and that it will be indifferent to shippers at non-competitive points. It is significant to note, however, that Nekoosa-Edwards, at least, would be served by two railroads at each plant after the transaction is approved.

The Upper Lakes Bureau, a voluntary non-profit association of companies which operate commercial coal docks on the Great Lakes, urges that the application be denied or in lieu thereof that certain conditions be imposed. Issues raised by its evidence and pleading will be considered subsequently in the context of arguments raised by Soo, and the Milwaukee Association and those raised in connection with Industries control of the surviving company.

Although many of the shippers supporting the conditions requested by Soo Line, Illinois Central, LS&I, and the Metropolitan Milwaukee Association indicated some concern relative to the service which they anticipated would be available to them from the merged company, their testimony related primarily or exclusively to a particular condition or conditions which they supported and in that context, their evidence will be subsequently considered.

STATES, CITIES AND OTHER POLITICAL SUBDIVISIONS

Support for and/or opposition to the proposed merger or conditions sought by other carriers was presented by a number of State, county, and city officials and representatives of various chambers of commerce and associations. No public authority or shipper association from

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or in the States of Idaho, Illinois, Indiana, Kansas, Michigan, Missouri, Montana, Nebraska, or Wyoming, all States which applicants serve, presented evidence or filed briefs. Several of these States, however, either on the record or as a result of stipulations entered into between the parties took positions either in favor of the transaction or in favor of certain conditions.

STIPL re POL. SUBD.

From the State of Illinois, the Cities of Dixon, Devon and Elgin and the Chambers of Commerce of DeKalb and Elgin indicated that they favored approval of the proposed transaction. From Iowa, the Cities of Clinton and Sioux City; the Algona, Iowa Industrial Development Corporation; the Spencer, Iowa Industrial Foundation; and the Chambers of Commerce of Clinton and Des Moines took a similar position. The Public Utilities Commission of Michigan positioned itself as neither in favor nor as opposed to the proposed transaction but in the event it is approved, the Commission favored imposition of the conditions sought by LS&I. From the same State, the Communities of Iron Mountain and Escanaba favored approval of the proposed transaction.

The positions taken evidence presented, and/or arguments raised on brief by the remaining State and local agencies and traffic or shipper associations which either presented evidence at hearing or filed briefs, is as follows:

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Minnesota - Although not submitting any evidence in this proceeding, on brief, the Public Service Commission of Minnesota took no position on the merits of the proposed transaction. This Commission, however, supports in toto the conditions requested by the Soo Line and also supports all of the conditions sought by Illinois Central, except as affects Madison, Wisc., on which they took no position. The Minnesota Commission believes that the proposed merger coupled with those that have heretofore been approved and those pending would put the future of the Soo Line as a sound railroad in jeopardy without imposition of the conditions Soo has requested. The Commission also takes the position that the granting of trackage rights to Illinois Central between Lyle and Northfield, Minn., would benefit the State. In the latter respect, it argues that the granting of such trackage rights would permit the Illinois Central to connect with MN&S which will be able to provide traffic moving to, from, or through the Twin City gateway with an economical and efficient service and provide this area with necessary competition.

The Commissioner of Agriculture of Minnesota charged with the responsibility for the development of agriculture and agricultural industries in Minnesota, indicated unqualified support for the proposed transaction. The Commissioner considered that denial of the proposed transaction would result in the continuation of unnecessary and wasteful duplications of line in the State and that approval here would eliminate duplication, and allow the merged company to make better use of its funds to provide a superior service to the State's agricultural economy. The Commissioner was particularly concerned with the need for larger covered hopper cars in greater quantities than have heretofore been provided. He also indicated the importance of applicants' branch lines in Minnesota to the agricultural interests thereof.

The Minneapolis Traffic Association, a non-profit organization, formed to enlarge the importance and strengthen the transportation position of the City of Minneapolis supports the proposed transaction but desires that the Soo Line remain a strong effective carrier inasmuch as the Association believes that the Minneapolis market requires a high-level of railroad competition. It also evidenced support for Illinois Central's request for trackage rights to connect with the MN&S to provide an additional alternative for shippers located at Minneapolis. Although, to some extent, its support for Soo's conditions was predicated upon the latter being the only carrier in the Minneapolis area which provided less-than-carload service, which Soo subsequently announced that it would discontinue, the discontinuance of such service did not result in the reconsideration of the Association's stated position. It also considers Rock Island an important carrier in serving the Minneapolis complex. In support of Illinois Central's condition, the Association did not consider what effect such condition would have upon either the Soo Line or the Rock Island. Inasmuch as six out of the eight carriers presently serving the Minneapolis complex are engaged in merger proceedings, the Association would hope that the carriers serving Minneapolis will be able to construct a more efficient rail interchange and yard complex in the Minneapolis area than exists today.

The Cities of Winona and Duluth and the Chambers of Commerce of Duluth and Owatonna positioned themselves in support of the proposed transaction.

North Dakota - The Public Service Commission of the State of North Dakota although viewing the proposed transaction favorably, also requests that favorable consideration be given to any reasonable request of other railroads, particularly the Soo Line, for trackage rights, retention or opening of gateways and routes and terminal and switching arrangements, etc., that may be made in these proceedings, and also that no lessening of service to the people of the State of North Dakota result from such merger. Applicants operate only 381 miles of railroad or 7.23 percent of the total railroad miles in North Dakota whereas Soo Line operates 1,313 miles or 24.9 percent and the Great Northern and Northern Pacific 3,502 miles or 66.41 percent. Although applicants operate only a relatively minute percentage of the total rail mileage in North Dakota, the Commission considers that if the proposed merger were able to strengthen the Milwaukee Road, the latter would be in a favorable position to provide adequate competition to the so-called Northern Lines, especially if the latter's proposed merger is ultimately consummated. Additionally, it is hoped that the proposed merger would permit the resulting road to maintain the present branch lines in the State.

The Commission considers Soo Line, which handled over 2 million tons of freight into and out of the State annually, an important rail carrier. For this reason, it is interested in preserving the present status of Soo insofar as the latter's traffic and revenues are concerned. It therefore supports those reasonable and practical conditions to the merger proposed by Soo to the extent a denial thereof would impair Soo's ability to provide necessary service.

The Chamber of Commerce of Fargo, N. Dak., a community of 50,000 population, which is served by the Great Northern, Northern Pacific and the Milwaukee Road, supports the proposed merger in expectation that the resulting road would be financially stronger and would be able to provide a better service. Fargo is a gateway serving central Minnesota, North Dakota, eastern Montana and northern South Dakota. The Chamber views the Milwaukee Road as today operating under many competitive disadvantages to the Northern Lines at Fargo. The former's route to Twin Cities is slightly over 50 miles longer than that of the other serving railroad. Also, Fargo is at the terminus of the Milwaukee Road line and inasmuch as there are very few industries in Fargo, there is very little volume generated at that point by the Milwaukee Road. As distinguished from the Northern Lines which owns large parcels of land in and surrounding Fargo, the Milwaukee Road is without land for this purpose. Being without the tonnage and industries to allow it to provide daily line-haul and switching services, the latter labors under several handicaps. Industries cannot locate on the Milwaukee Road and ship out to non-competitive points in North Dakota and Montana without being subjected to switching charges which are not incurred if they locate on the other railroads serving Fargo. The effects of these restrictions has been to diminish the service and competitive effect of the Milwaukee Road at Fargo. Despite this, the Chamber believes the Milwaukee Road to be a valuable competitive force in the protection and maintenance of its rate relationships.

Were the proposed merger approved, the Chamber anticipates that a larger tonnage base, including shippers and industries on C&NW, will be available for direct movement on the merged system to Fargo with less susceptibility of diversion to the Great Northern and the Northern Pacific at Twin Cities which will strengthen the present Milwaukee Road's lines into Fargo. Furthermore, approval of the proposed transaction will provide Fargo with direct single-line service to and from St. Louis, Mo., an important rail gateway, as well as to and from all local stations now on the C&NW. Finally, it would expect that the proposed merger will provide Fargo with vastly greater areas from which rail service can be utilized. In the latter connection, it would anticipate that transit privileges now available on the C&NW but not available to the Milwaukee Road would be provided in the merged company's tariffs after merger and the Chamber envisions that it will be able to draw commodities such as millet seed, from what are now C&NW stations, which has been unfeasible, in the past.

The Greater North Dakota Association, a non-profit organization composed of 4,000 members representing all phases of the economy in North Dakota, supports conditions proposed by Soo which would offset anticipated diversion losses. Approximately 80 percent of the income of North Dakota is derived from the production of agricultural commodities. In view of the important service being presently provided by the Soo Line to the agricultural interests of the State, it is the Association's position that if this Commission finds that there may be an adverse effect upon the Soo that the latter be given some assurance that there will be protections preventing the weakening of the line without regard to any specific Soo condition requested.

South Dakota - The Public Utilities Commission of the State of South Dakota evidenced unqualified support for the proposed transaction. South Dakota, like its sister-State North Dakota, is heavily committed to the pursuit of farming and stock raising. In this respect, there are some 52,000 farms and ranches in South Dakota. An adequate freight transportation service by railroad is considered indispensable to deliver grain, livestock, and related commodities from South Dakota origins to large terminal markets such as Chicago, Twin Cities, and Omaha. In this respect, the South Dakota Commission considers that not only main-line railroad service but also extensive branch-line railroad service acting as gathering lines is necessary for the economy of the State.

Together applicants operate 3,181 miles of railroad in South Dakota of which 1,421 miles consist of branch-line operations. Many of these branch lines are recognized by the South Dakota Commission as marginal and hence, the Commission is most anxious to do all within its power to assist continued operation of such lines. In the latter respect, if as alleged by applicants, their proposed merger would result in savings of over $36 million annually the State believes that such savings would be of great assistance in maintaining these marginal branch lines. Consequently, despite the fact that competition would be eliminated in South Dakota at 15 rail stations served by C&NW and Milwaukee Road alone, the South Dakota Commission urges that the Commission approve the proposed application. In addition to the South Dakota Commission, the Cities of Belle Fourche, Aberdeen, Mitchell, Rapid City, Redfield, Huron, and Sioux Falls; and the Chambers of Commerce of Aberdeen, Huron, Rapid City and Sioux Falls support the proposed transaction.

Washington - Although not presenting any evidence at hearing, the Washington Utility and Transportation Commission, on brief, urges that the merger of the C&NW and Milwaukee Road be approved. The Commission considers the Milwaukee Road an important road providing transcontinental traffic with other rail carriers across the northern tier States. The State is not served by the C&NW. The Commission considers that shippers in the State of Washington are at a disadvantage in competing at the major markets in the Midwest. To overcome this disadvantage, the State of Washington considers that its shippers must rely heavily upon rail transportation. The Washington Commission sees no disadvantage from the proposed merger insofar as its area of interest is concerned, and the Commission views approval of this transaction as promoting the adequacy of transportation service from the Pacific Northwest to Midwest. The Commission would hope that in the event the proposed merger is approved it would permit the resultant company to provide a greater fleet of cars in the State and make possible a more expedited rail transportation service from and to shippers located in the State. It urges that the Commission approve this transaction without delay and without withholding a decision here until the so-called *Rock Island* case is ultimately decided. The Port of Longview, Wash., also indicated its support for the proposed transaction on the record.

Wisconsin - Intense interests in the proposed transaction was expressed on the record by State and local officials and associations from the State of Wisconsin. Although considering the merger of the C&NW and the Milwaukee Road as possessing many favorable attributes, the Public Service Commission of Wisconsin also believes that the merger will result in certain adverse consequences particularly the elimination of competition at many points within the State and as effecting the ability of other railroads serving the State to perform their common carrier obligations. On the latter basis, the Wisconsin Commission takes the position in the event the proposed transaction is approved that this Commission impose all the conditions sought by the Soo

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Line, except for condition 5 (entry of Soo into Green Bay). In the latter respect, it fears that unrestricted entry by Soo into Green Bay may adversely affect the service and operations of the GB&W and for that reason, the Wisconsin Commission would request this Commission to limit Soo's access to Green Bay in a manner hereinafter specifically considered. While not taking any position upon Illinois Central's requested conditions for trackage rights to connect with MN&S, it supports the former's request for direct entry to serve the Oscar Mayer plant at Madison, Wisc. It opposes the condition requested by the Milwaukee Association of Commerce "for entry of a third major western carrier to serve Milwaukee, Wisc."

As will later be analyzed, pivotal issues are raised with reference to service at various Wisconsin points and in this respect, the evidence presented by the representative of the Wisconsin Commission is particularly helpful in analyzing the need for transportation service to the State.

C&NW and Milwaukee Road are Wisconsin's two principal carriers, whether measured in terms of road mileage, points served or traffic handled. Combined, the two carriers operate in excess of 68 percent of the total State railroad mileage; serve 68 percent of the total railroad stations; and handle 75 percent of the rail freight originated and 73.5 percent of the rail freight terminated. The applicants serve 54 points in common within the State and virtually all of the State's most populated cities are served by both carriers including Milwaukee, Madison, Racine, Green Bay, Eau Claire, Superior, Wausau, Appleton, La Crosse, Oshkosh, Beloit and Janesville. Of the 16 cities in Wisconsin with populations over 30,000, only 3 (Sheboygan, Kenosha and Manitowoc) are not served by both of the applicants but only by one of them.

From Wisconsin points, the lines of the C&NW and Milwaukee Road are considered as intensely competitive for the two carriers not only operate over parallel lines within the State but their systems spread out to serve major gateways in common including Chicago, Twin Cities, and Omaha. In addition, applicants cooperate extensively on traffic in joint-line service as evidenced by the large interchange of traffic between them.

The third largest carrier in Wisconsin is the Soo Line which operates over 1,432 miles of rail line or 23.7 percent of the total State rail mileage. It is the only other railroad serving Wisconsin which has extensive route mileage spread over a large portion of the State. In the latter respect, Soo serves 259 freight stations in Wisconsin, of which 40 are common with C&NW, 31 common with Milwaukee Road, and 20 are common to all three roads. In addition, Soo serves 203 non-competitive rail stations in Wisconsin which are solely dependent upon it for adequate rail transportation. Realistically, Soo provides the only major competitive rail service to gateways such as Chicago and Twin Cities out of Milwaukee. Collectively all of the other road-haul carriers operating in Wisconsin have but 613 miles of road equivalent to about 10 percent of the total. In addition to the road-haul rail carriers within the State, cross-lake ferries serve the west bank of Lake Michigan at Milwaukee, Manitowoc, Kewaunee, and Marinette.

The Wisconsin Commission, consequently, considers the C&NW, Milwaukee Road and Soo Line as constituting the basic railroad service structure in Wisconsin but it recognizes that all three carriers have poor system traffic density, a long history of financial problems, poor earning power, and erratic income. Because of their similar characteristics, the Wisconsin Commission considers these three carriers as having competed on an equal basis heretofore, none having extensive resources or sufficient earnings to sustain a distinct competitive advantage over the others.

Based on its review of the record and particularly applicants and Soo Line's diversion studies, the Wisconsin Commission believes that Soo would lose significant traffic to the merged company due to the improvements in service and greater financial strength which the latter would obtain through this merger which would weaken Soo as the only major rail alternative in Wisconsin. In the latter sense, the Wisconsin Commission argues that applicants' evaluations of diversions are grossly understated whereas Soo's study is more realistic and should be adopted. Consequently, the Commission believes that Soo's requested conditions except to the extent it would modify condition 5, be imposed if for no other reason than to maintain Soo's financial strength. It does not agree with applicants that the granting of such conditions would mean a loss to the merged company of $15.8 million in revenues, for as argued by the Wisconsin Commission, applicants' study was based upon the vaguest type of analysis rather than a careful evaluation of the traffic HANDLED by Soo.

Of added significance, however, the Wisconsin Commission points to the testimony of shippers at Milwaukee as indicative of the fact that Soo's entry thereto is necessary to preserve the competition which would otherwise be lost through approval of this transaction. While not necessarily opposed to a different approach being used for Soo's access to Milwaukee than the terminal company suggested by Soo, in the event another approach is adopted by this examiner it is the Wisconsin Commission's view that consummation of this merger should be withheld pending final resolution of the methodology under which Soo would enter the City of Milwaukee. It does not believe that access of a third major rail carrier into Milwaukee is necessary as proposed by the Milwaukee Association for to permit such entry would result in a drain of rail revenues from both the merged company and the Soo Line which they both sorely need and that such losses would outweigh any benefits which would be gained by the entry of such road into Milwaukee.

In Wisconsin there are 14 communities with populations of over 3,000 which would be converted to cities served by one railroad on merger.[67] The Wisconsin Commission recognizes that loss of competition is inevitable when two competing carriers operating in the same geographical ~~spere~~ SPHERE merge their properties, but some loss of competition would be tolerable and offset by the various benefits of the merger provided rail competition at the larger industrial areas is preserved as all of the Soo and Illinois Central conditions would accomplish.

The merits of the Wisconsin Commission's contentions relative to the conditions proposed by Soo Line and Illinois Central will be discussed in the context of the analysis of the cases as presented by the latter two roads.

While the Milwaukee County Board submitted a resolution favoring applicants merger, the City of Milwaukee opposed the proposed transaction. The City opposes the merger on the grounds of loss of railroad competition in the City and a reduction of employment opportunities. It takes this position without regard to either the conditions requested by Soo Line or as subsequently seen, those requested by the Milwaukee Association. Another ground for its opposition was the possible elimination of passenger service which, as seen, is not a part of applicants' merger plan. With respect to the potential loss of employment engendered by this proposed transaction, it is noted that the City has the third best employment record among all major cities in the United States and that the city government itself has difficulty in obtaining an adequate number of qualified employees for the proper functioning of the city services. Hence, loss of employment opportunities in Milwaukee cannot be considered as a significant basis for denial of this proposed transaction. Furthermore, opposition to applicants' merger plans for the reason of loss of employment

from our brief

[67] Beloit (32,846); De Pere (10,045); Howard (3,485); Janesville (35,164); Menominee (8,624); Oconto (4,805); Platteville (6,957); Plymouth (5,128); Racine (89,144); Ripon (6,163); Schofield (3,038); Sparta (6,080); Watertown (18,943); and Wausau (31,943).

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opportunity does not take cognizance of the improved future stability of the surviving company's employment as compared to the instability in working for two marginal carriers.

Although not essentially in opposition to the proposed transaction, the Metropolitan Milwaukee Association of Commerce views the proposed merger with some apprehension. It is particularly concerned over the loss of the intramodal railroad competition which applicants presently provide at Milwaukee and would favor and support the proposed merger were conditions imposed to maintain competition at that point. The Association presented numerous shipper witnesses upon its behalf and such evidence and the Association's request for conditions will be explored subsequently in the context of the case presented by the Soo Line.

Although the City of Green Bay positioned itself in favor of the proposed transaction without the need for the imposition of any condition, the Green Bay Area Chamber of Commerce, although not opposing the proposed merger, requests this Commission impose appropriate conditions to assure effective competitive service by Soo Line and that the latter be granted authority to serve Green Bay directly. In this connection, the evidence presented by the Chamber will be considered in the context of Soo's requested conditions 5 and 6.

In addition to the above, the Cities of Racine, Marinette, and Wausau support the proposed transaction without reservation as do the Chambers of Commerce from Superior, Marinette, and Beloit, Wisc.

REALIZATION OF SERVICE EXPECTATIONS

As indicated, the hopes and fears of all shippers relative to the service which the merged company would afford after merger was founded upon either the assurances of applicants or generally an understanding derived from parties seeking conditions. These anticipated results as those anticipated by the various public witnesses must be screened in light of the entire record and the elements of service broken down in the context of what exists now and what will exist after consummation before arriving at any conclusion in this respect. The function of this analysis, therefore, is to view this transaction in terms of what effects changes in applicants' service will have on shippers and communities as a result of approval here.

As established on this record, the elements of service may be broken down into two general categories: (1) Those which are concrete and which may be evaluated in specific and positive terms;

and (2) Those which are intangible through nonetheless real in the sense that they may be valuable and influence shippers' routing but which, by their nature, are impossible to gauge or pinpoint precisely in either terms of value or influence.

Concrete elements of service include: (1) Frequency of train and switching service provided; (2) Speed and/or dependability of door-to-door transit time; (3) Car supply; (4) Rates or costs; (5) Transit, reconsignment and stop-off privileges; and (6) Car tracing.

Intangible elements of service include: (1) Solicitation; (2) Other services as provided by a carrier's Industrial Department; and (3) The availability of an alternate rail carrier.

FREQUENCY, DEPENDABILITY AND SPEED OF SERVICE

Applicants contend that the overall frequency, dependability and speed of their present service will either improve or remain the same as it presently exists. Soo asserts that the merged company will improve such service tremendously and become significantly more dependable and substantially reduce transit time between major terminals throughout its system. Union Pacific, on the other hand, contends that any improvement in transit time is illusory and that, in fact, the frequency of service to shippers will be reduced.

Inasmuch as one of the primary objectives to the proposed merger will be the elimination of duplicating facilities and services, it is readily apparent that approval of this transaction will bring a reduction in the frequency of train and switching services to some shippers and communities upon applicants' present lines. In this respect, the surviving company will serve approximately 2,362 rail stations in the general area[68] at which its present components, including CGW, perform freight-train service. Of these, 161[69] are served in common by C&NW, including CGW, and Milwaukee Road today; 1, 330 are served by C&NW alone; 741 by Milwaukee Road alone and 124 by the former CGW alone.[69A] Of the 161 served in common by more than one component

Exc. 1

[68] This includes points in Idaho, Indiana, Montana, North Dakota and Washington served by Milwaukee Road.

[69] An additional 25 common points were indicated of record, but they are either in the Chicago, Minneapolis-St. Paul or Milwaukee switching districts and are included in such districts for purposes of analysis here.

[69A] Although CGW has been included in C&NW for purposes of this analysis, its service at non-competitive stations as it existed at the time of hearing will be considered.

of the new system, 80 will receive the same service in terms of number of freight trains and frequency of service by each train; and 60 will receive a less frequent train service in terms of either the number of trains available or number of schedules provided by such trains.

Of these 60 communities which will receive less by way of frequency of train service, 24 will feel only minor changes, the other 36 which are identified in Appendix F-1 which compares present and proposed service, would lose at least one train and/or six schedules per week operating through or to the community identified.

Of the 1,330 stations served by C&NW but not by either CGW or Milwaukee Road, frequency in number of trains or number of schedules per week will be decreased at 38 communities, identified in Appendix F-2. Of the 741 stations presently served by Milwaukee Road but not by either C&NW or CGW, the number of trains and/or frequency of schedules per week will be reduced at 26 points identified in Appendix F-3. Of the 124 stations served by CGW but not by either C&NW or Milwaukee Road, the number of trains and/or frequency of service will be reduced at 39 points as identified in Appendix F-4.

Since this comparison between present service performed by CGW and service by the merged company is predicated upon the assumption that CGW is included concurrently with consummation of the proposed transaction, the degree of such service reduction is overstated. Applicants' exhibits do not reflect the changes which would be brought about by consummation of a *C&NW-CGW* merger and disapproval of **the** instant transaction.

Tab Reads: Train SVC

The record also reflects the fact that service will be increased, in the same terms indicated above at 96 points served by one or more of the three components of the merged company.[70]

[70] Including Belvidere, East St. Louis, Nelson, Peoria, Rochelle, Rockford, Waukegan and West Chicago, Ill.; Belle Plaine, Clinton, Des Moines, Dubuque, Highland, New Lebanon, Logan, Luzerne, Oelwein, Ottumwa, and Waterloo, Iowa; Mankato, Roseport, Winona, and Worthington, Minn.; St. Joseph and Fremont, Nebr.; Beloit, Cedar Grove, Clinton Jct., Fond du Lac, Hammond, Hersey, Hilton, La Crosse, Manitowoc, Menomonie, Port Washington, Sheboygan, and Watertown, Wisc.

In terms of switching services, the surviving company would be in a position through merger of its switching runs to reduce the number of switching services it provides at common points. Applicants' merger plans anticipate that it will be able to eliminate 582 switch-engine shifts at 26 points and will be required to increase switching shifts at two points. In this respect, at Chicago the merged company will eliminate 151 switch-engine shifts a week; Twin Cities, 120; Savanna, 45; Milwaukee, 45; Kansas, 33; Cedar Rapids-Marion, 21; Mason City,14; Sious City, 14; Green Bay, 12; Council Bluffs, 32; Janesville, 12; and Madison, 11. It would appear that the majority of the reductions may be attributed to the consolidation of yards and the elimination of interchange between applicants which necessitate use of switch-engine crews. On the other hand, although no specific breakdown was provided, it must be concluded that in certain instances an element of service, namely the number of switches received by a specific industry today, will be reduced. As has already been concluded the number of trains moving between certain points willbe reduced while the number of trains operating between other points will be increased. (See Appendix E-3).

As indicated, the vast majority of stations served by each of the components of the new system will be unaffected in terms of frequency of switch or train service. However, at major points it is reasonable to conclude that because of the elimination of duplicating switching and train service and the rerouting of traffic as indicated some shippers will experience slight delays or inconvenience in getting cars into and out of their respective plants via switch engine and subsequently onto through trains moving between various gateways. For example, in certain instances, a shipper presently afforded two switching services a day, one by Milwaukee Road and the other by C&NW, may be required to make minor readjustments in its operations to accommodate the receipt of but one switch service a day. Its car once switched into the classification yard may also wait a longer period of time before it it put on a through train for movement to destination. In most instances and particularly at major points, the inherent delay caused by the reduction of train schedules will be small and of no consequence. Smaller points, however, such as Grafton, Iowa, which formerly had the service of one train a day offering service six times a week, would receive a service by one train operating only three days a week. Hence, as compared to today, the movement of cars out of particular yards after delivery to the surviving company may be delayed for as much as one day or more.[71] Such reductions appear to be the exception and not the rule in applicants' proposed operations.

[71] In one instance at Plattsburg the reduction in train service from two trains a week collectively offering service five times a week is scheduled for reduction to a single train offering service only one time a week.

Time schedules between a limited number of specific points will undergo a significant change. Attached Appendix F-5 compares in terms of hours the seventy fastest schedules offered by applicants individually or collectively today with those to be offered by the surviving company between major points at which operational changes will occur. The comparison indicates that in only ten instances will the fastest transit time provided by applicants be increased as a result of consummation of the proposed transaction and in only three instances will such increase exceed 10 percent of the present scheduled time.[72] In all other instances, except one where the fastest scheduled time will remain the same; transit time will be reduced and in some instances by over 50 percent. In one instance (between Chicago and Tracy), the reduction will exceed 24 hours in scheduled transit time; in four instances the reduction will fall between 18 and 24 hours (from Chicago to Sioux City; from Duluth to Kansas City; from St. Louis to Green Bay; and from St. Louis to Twin Cities); and in seven instances the reduction will be between 12 and 18 hours (from Chicago to Austin; from Kansas City to Green Bay; from Green Bay to St. Louis; from Tracy to Chicago; from Council Bluffs-Fremont to Green Bay; and from St. Louis to Duluth.) Overall, the schedules depicted in Appendix F-5 indicate an average reduction of 27.2 percent in scheduled transit time between points which applicants propose to reroute traffic. This percentage reduction, of course, cannot be applied to the entire system operation of the surviving company inasmuch as many routes and particularly those west of Twin Cities will be unaffected in terms of transit time by the consolidation. This is not to say, however, that the surviving company will not be able to provide faster schedules between points outside of the area in which its transit time will be changed for those same schedules are used on through traffic moving beyond the points directly served. For example, a reduction in transit time in the schedules of the present Milwaukee Road by the surviving company between the Twin Cities and points east and south thereof will be carried over, at a lesser ratio of significance to the operations presently conducted by the Milwaukee Road to the Spokane-Seattle area.

27.2% overall reduction

In addition to changes in schedules, the elimination of interchange between applicants and the revamping and the more efficient utilization of existing yards and the construction of new yards

YARDS

[72] (1) From Mason City to Chicago (increase of 1'15"); (2) from Janesville to Chicago (increase of 55"); and (3) from Twin Cities to Duluth (increase of 1'40").

will be of some assistance to the surviving company in expediting traffic between major points on its system. The record discloses that in many instances more time is expended at terminal or intermediate yards conducting interchange and switching operations than in providing the line-haul service. No specific comparison was made to show the present and proposed average time which is or would be consummated at the various yards in effectuating pick-up, interchange, transfer or delivery, but from a minute review of applicants' present and proposed facilities and operations, it may be reasonably concluded that the surviving company will achieve at least marginal benefits in saving time in this respect.

From the above, it is clear and the examiner so finds that consummation of the proposed transaction will permit the surviving company to provide a somewhat faster and/or more dependable service between consignor's loading dock to the consignee; or from or to terminals at which it receives and/or delivers traffic; and that such will be an improvement in the service presently provided. To the extent service is improved, it will permit the surviving company to provide a more dependable service.

To the extent transit time of schedules will be increased, the examiner finds that in the majority of instances such increases will be of de minimous nature and hence, of no material detriment to service. Despite these findings, however, the examiner concludes that the merger plan will not, as urged by applicants, provide all shippers with a "comparable or better service" than they presently receive. In a limited number of instances the reduction in frequency of train scheduled service, and particularly at points where service will be reduced from once a day to less than three times a week, will not be overcome or compensated by the more efficient use of yards or a faster schedule service. The number of shippers and communities in the latter category appear to be small and in light of the size of the communities involved, it may well be that little if any traffic is moving to and from such points. Since no representatives from such communities or shippers were presented at the hearing, it may well be that they relied on applicants' statements assuring all shippers of a "comparable or better service". In light of this problem, the examiner will recommend that a condition be imposed permitting such communities or shippers after consummation of this transaction who as a result of approval here receive less than three pickup and/or delivery services a week to request this Commission to impose the requirement, where a need therefor is established, that the surviving company supply additional service. In the event the facts warrant the conclusion that the reduction of service was made as a direct result of consummation of the proposed transaction; that such reduction reduced a daily service to less than

COND.-? ?

three days a week; and that a need for additional service exists, the Commission may require the surviving company to increase its scheduled service to such communities. Consummation of this transaction will be irrevocable assent by the surviving company to the power of this Commission to impose such requirements.

CAR SUPPLY

Applicants contend that the car-time savings resulting from the consolidated operation would have the effect of increasing the availability of freight cars both for the surviving company and for the railroad industry generally whose cars are used on the surviving company's lines and which would be returned to the other owning lines at an earlier date. Soo asserts that car supply improvements will produce significant advantages for the surviving company in terms of providing service which is not available to its components today whereas Union Pacific urges that while car supply may be improved at competitive points, it is highly likely that car supply will remain inadequate or worsen at non-competitive points.

An important element in determining the quality of rail service is the ability of a rail carrier to supply special equipment and the length of time necessary for it to supply all types of equipment. As indicated, many shippers consider this an important element in their routing of freight. In this respect, as indicated, approval of the proposed merger will allow the surviving company a greater flexibility in the use of its combined fleet of specialized equipment and general improvement in the merged company's availability of equipment to meet shipper's overall requirements. For example, joint use of equipment would permit empty cars of C&NW to be used for outbound loadings by customers of the Milwaukee Road, thereby eliminating the need for the latter to move empty equipment for long distances. Car time would also be saved through the elimination of interchange delays, use of shorter, more advantageous routes, reduction of intermediate switching and use of direct connections.

As depicted in applicants' operational study insofar as can concretely be defined, the merged company, including CGW will be able to reduce the number of car days consummed in present operations by 671,068 car days. Such estimates, however, include only that time saved from the elimination of interchange delays, use of more direct routes, and the reduction of intermediate switching. While applicants, for purposes of their study, utilized such savings in car days to eliminate per diem charges, the more efficient use of cars on line will realistically provide the surviving company with some opportunities to use this saving to supply shippers with extra cars. If savings in car days were converted to annual car use, approval of this transaction would have the effect of putting 1,839 extra cars on applicants' lines.

Other factors would also have the net effect of increasing car supply further. As indicated by applicants' chief operating official, peak movements of agricultural commodities of C&NW and Milwaukee Road occur at different times and hence, the merger of these two roads, despite no actual increase in car supply, will provide shippers during the staggered peak seasons with a greater supply of cars with which to meet their needs. Another factor which may well have the net effect of improving the availability of cars on the surviving company's lines is the installation of "Car Fax" over the entire complex of the surviving company.

Contrary to Union Pacific's arguments, the examiner does not forsee any reduction of car supply at non-competitive points or points made non-competitive as a result of the consummation of this transaction. Although there is some indication of record that car supply for certain shippers with plants located at rail competitive points has been better than at non-competitive rail points, the evidence is not uniform in this respect. It is the examiner's conclusion that the availability of cars appears more dependent upon the number of cars which a particular carrier has available for loading at a given community than does rail competition. Hence, a shipper located at a community at which no rail competition is available but at which numerous inbound cars are unloaded is in a better position to secure a car than is a shipper located at a community at which rail competition is available but which does not have any volume freight moving inbound. The record simply does not justify the general premise that railroads supply cars to shippers at competitive points preferentially over those located at non-competitive points.

In summary, it is the examiner's conclusion that, although at least in the short run applicants' car supply will be improved, the extent of improvement will not substantially alter applicants' basic ability to supply cars, either general freight cars or special cars. Although in the long run, applicants' financial condition may permit it to be in a better position to meet shippers' exacting demands in terms of securing equipment, it appears remote, especially in light of applicants' present financial condition and historic returns to stockholders, that management would move to secure sufficient cars to meet peak demands in the future not now met.

COSTS OR RATES

Applicants contend that although the merger will not result in the reduction of existing rate levels, it would permit the merged company to be in a better position to hold the line in terms of future rate increases. Soo views the merger as offering applicants an opportunity to exert competitive rate pressures against competing railroads and particularly the Soo Line whereas Union Pacific views lower rates resulting from the proposed transaction as extremely unlikely.

After merger, the surviving company through its proposed operation plan will be able to provide service at lower costs than the individual components thereof are able to achieve today. Realistically, however, it is doubtful whether these lower costs will be passed along to transportation users. Applicants' history of marginal earnings makes it extremely doubtful that lower rates, at least on a general basis, will follow the implementation of applicants' merger program. Applicants' present rate policy is predicated on a foundation of meeting rate competition to a point where rates provide a return of out-of-pocket costs and this basic policy could and would not be changed upon consummation of this transaction. Despite this conclusion, however, it may reasonably be concluded and the examiner so finds that consummation of the proposed transaction will put the merged company in a better position, financially and otherwise, to entertain requests for lower rates and at least, to maintain existing rate levels against spiraling costs where intermodal competition warrants such action.

BUT!

OOP basis for rates

SINGLE-LINE SERVICE

Applicants view the fact that the creation of new single-line routes would benefit the shipping public significantly by approval of the proposed transaction for it would eliminate interchange delay between applicants, permit utilization of the less circuitous routes, permit more efficient car tracing and eliminate much damage due to the present necessity for interchange. Soo views the consummation of the proposed transaction as creating a new vast system of single-line routes which have heretofore not existed whereas Union Pacific views the opportunity for increased single-line service as being limited. The latter, while recognizing that the shippers on the C&NW would acquire direct single-line service to Milwaukee Road points west of Twin Cities, contends that the combination will tend to result in the abandonment or downgrading of single-line routes in States in which applicants presently conduct parallel operations rather than adding new ones.

END TO END

Despite this duplication of routes at points of service, approval of this transaction has significant so-called end-to-end features which will result in the creation of a larger number of new single-line routes. As indicated, C&NW, including CGW, serves 1,454 points not presently served by Milwaukee Road. Of these, at least 47 have populations over 10,000.[73] On the other hand, the latter serves approximately 941 stations[74] which C&NW can reach of which 32 have populations over 10,000.[75] Approval of the proposed transaction will permit the merged company to provide shippers and consignees with a single-line service as opposed to providing only a joint-line service today between those points served by C&NW indicated above, on the one hand, and, on the other, points served by the Milwaukee Road.

NEW S-LINE ROUTES

Of particular importance, consummation of the proposed transaction will provide shippers on the present Milwaukee Road direct single-line access to the important gateways of St. Louis, and Peoria; and those on the C&NW with direct single-line access to the Western gateways of Seattle, Spokane, Tacoma, and Marengo and the Eastern gateway of Terre Haute. If the *Northern Lines* merger is consummated, shippers on C&NW will be afforded direct single-line access to the Portland, Oreg., gateway.

Hence, approval of this transaction will provide extensive new single-line service for shippers which in and of itself will reduce time in transit through the elimination of interchange and facilitate car tracing and other accessorial advantages of rail service.

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[73]Bellwood, Carpentersville, Des Plaines, East St. Louis, Elmhurst, Glen Ellyn, Highland Park, Lombard, Maywood, Monmouth, Mt. Prospect, North Chicago, Palatine, Peoria, Sterling, Villa Park, Waukegan, Wilmette, Winnetka and Zion, Ill.; Ames, Boone, Cedar Falls, Ft. Dodge, Marshalltown, Oskaloosa and Waterloo, Iowa; Leavenworth, Kans.; Escanaba and Ironwood, Mich.; Rochester, St. Louis Park, and Winona, Minn.; St. Joseph, Mo.; Chippewa Falls, Cudaha, Kaukauna, Kenosha, Manitowoc, Marshfield, Sheboygan, South Milwaukee, Spooner, St. Francis, Two Rivers and West Bend, Wisc.; and Casper, Wyo.

[74]This includes approximately 200 stations in Idaho, Indiana, Montana, North Dakota and Washington which are not included in the area analysis of competitive areas.

[75]Deerfield, East Moline, and Northbrook Ill.; Muscatine and Ottumwa, Iowa; Coeur d'Arlene, Idaho; Terre Haute, Seymour and Bedford, Ind.; Albert Lea, Minn.; Bozeman, Butte, Great Falls and Missoula, Mont.; Aberdeen, Auburn, Bellingham, Everett, Hoquiam, Moses Lake, Opportunity, Port Angeles, Puyallup, Renton, Seattle, Spokane, and Tacoma, Wash.; and Beaver Dam, Brookfield, Brown Deer, Menomonee Falls, Wauwatosa, Wisc.

END TO END

TRANSIT, RECONSIGNMENT AND STOP-OFF PRIVILEGES

Although not without exception, as ~~has~~ heretofore discussed, the degree to which a carrier can publish rates providing for transit privileges depends upon the rail carriers' ability to serve the origin, the transit point and the destination of particular movements in a single-line service. Insofar as new single-line routes are created, the surviving company will be able to expand its line of transit rates. Also, by the same token, the increased points at which the surviving company will provide service will permit it to expand the available line of stop-off rates for partial unloading and provide for a greater variety in the application of reconsignment rates and rules.

Car tracing - Car tracing will be facilitated not only because of the broader areas in which single-line service will be provided but because the installation of C&NW's computer "Car Fax" system will cover the entire complex of the new system which will make information more readily available.

Solicitation - While applicants view the merger as providing the resultant company with a more efficient solicitation force, they do not visualize the solicitation forces of the merged company as being particularly an improvement over that presently rendered by the independent companies. On the other hand, Soo views the merger as providing a significant improvement in terms of solicitation over that presently performed by each applicant, for each solicitor will have more time to devote to the particular problems of his customers.

The function of a railroad solicitation force is not only the sale of rail service but, of equal significance, a competent and efficient force can supply persuasive information to routing, consider and propose rate reductions, recommend the procurement or devotion of equipment to meet shippers' needs and generally assist shippers in working out their transportation problems in which a mutual interest exists. In terms of numbers, the C&NW presently maintains 234 solicitors located in 85 communities and Milwaukee Road, 224 solicitors at 65 communities. After consummation these forces will be combined to provide a net solicitation staff of 312 solicitors located at 93 communities.

Appendix F-6 depicts the present and proposed number of solicitors at each location. As denoted therein, the solicitation offices maintained today will be continued at all points by the surviving company except at Idaho Falls, Idaho, Grand Rapids, Mich., Yakima, Wash., Louisville, Ky., Jackson, Miss., San Jose, Calif., and Toledo, Ohio and a new office will be open at Pacatello, Idaho. Therefore, in terms of statistical numbers, the merged company will maintain less solicitors at fewer points than both of the applicants do today.

Despite this reduction, in terms of realistic value to the shipping public, the solicitation force to be maintained and offered by the surviving company will, in the examiner's opinion, be more effective in providing information, and assisting shippers in meeting their specific needs. While applicants' solicitation force is to be reduced by 32 percent, the common areas of service and location of the solicitation forces indicate the obvious fact that applicants each maintained duplicate and redundant sales forces today which after consolidation may be confined in such a manner that each shipper located on the surviving company's lines should be in a position to receive a more personalized service than applicants individually can offer today.

No specific study was presented indicating whether the solicitation forces of applicants would be affected further after the *C&NW-CGW* merger was consummated. As indicated, it was applicants' view that no further reductions over that proposed in the *C&NW-CGW* proceeding could be achieved, especially inasmuch as of October, 1966, the CGW maintained 80 solicitors at 45 points.[76] The locations of the 45 points at which CGW maintains solicitation forces coincide with those presently maintained by one or both of the applicants except for agencies at Red Wing, Minn.; St. Joseph, Mo.; South Omaha, Nebr.; Sycamore, Ill.; and Waterloo, Iowa. Consistent with applicants' overall plant, it may reasonably be concluded that the forces formally maintained by CGW at points where one or both of the applicants presently have solicitors will be combined and the solicitation forces at points where neither of the applicants presently has solicitation forces will be continued as part of the surviving company's solicitation department.

Industrial Traffic Department - Each of the applicants today maintains a so-called Industrial Traffic Department whose primary purpose is to locate new plants or business on their respective lines. On the C&NW, offices of this department are located at Chicago, Des Moines, Milwaukee and Minneapolis and on the Milwaukee Road at Chicago and Seattle. The number of employees (23) engaged in such activities prior to merger will remain the same after merger and it would appear from applicants' general plan for merger that all offices presently maintained by each applicant independently

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[76] The parties stipulated that they and the examiner were free to use information contained in certain documents including the Official Guide of Railways and Steam Navigation Lines of the United States, etc., as published by Rand McNally & Co. Information as to the CGW was obtained from pages 639 and 642 of the October, 1966 issue of this document by the examiner.

would be continued except that the duplicating offices maintained by voth of them in Chicago would be consolidated.

Realistically, however, the major difference between the service offered by applicants' Industrial Department today and that to be offered by the surviving company is the availability and the variety of products which may be sold. Operating independently, the Industrial Department of each applicant is limited in geographic location and area sites which it has to offer to a prospective customer for the location of plant on its line. Obviously, consummation of the proposed transaction will provide the combined Industrial Department a larger number of plant sites. This is not only true by reason of the simple fact that the possible rail sites for industry located on each applicant's lines will be combined but also due to the release of land through the coordination and abandonment of duplicate facilities. Hence, applicants will achieve a greater flexibility in meeting the exact specifications of shippers seeking plant or industrial sites and the shipping public will benefit in terms of an increase in availability of prospective sites for the location of industry through this merger.

THE AVAILABILITY OF APPLICANTS IN PROVIDING COMPETING SERVICES

An intangible element of service but an element which has historically been considered of vital importance to the national economy and users of transportation services is the competitive service which one carrier will provide because another is available which it would not supply were the second carrier not available. Much of the remainder of this report will directly or indirectly deal with this issue. However, because of the seeming confusion that has historically surrounded this issue, the examiner deems it appropriate to highlight this matter in the context of the paramount area in which it has been and is significant.

This Commission has in the past considered the elimination or reduction of competition at points or over routes served in common by applicants to a rail merger proceeding as a vital factor in evaluating a merger proposal and this examiner believes it to be at least a threshold issue in the determination of how this merger will affect shippers' choice of alternatives for rail service and competition generally. At the outset, however, it should be understood that such analysis merely gauges the presence of alternate rail lines at or between particular locations and does not as heretofore has been discussed denote that competition exists between such carriers at or between those locations. Such analysis, however, does set the outer frame in terms of isolating the area in which competition may be reduced.

 REDUCED COMP

To the extent rail competition is meaningful, applicant railroads today compete for traffic moving throughout the territory in the Midwest and approval of this transaction will eliminate any competition which presently exists between them. Union Pacific views this elimination as a key argument and predicate to its basic position that the instant transaction should be denied unless a *Union Pacific-Rock Island* merger is approved. Underlying this premise, it argues that approval of this transaction would create a "monopoly or near monopoly of rail transportation in extensive areas in the Midwest and particularly in northern Illinois, Iowa, southern Minnesota and eastern South Dakota." It argues that competition would be eliminated at 125 stations of which 22 have populations of over 10,000 or more and generate large volumes of traffic. Union Pacific argues that such loss of competition contrasts sharply with the loss of competition at 32 points resulting from the *Penn-Central* merger and at 20 resulting from the so-called *Northern Lines* consolidation. Additionally, it argues that, excluding terminal short-line ferry services, 30 stations served by both applicants today are only served by the Rock Island, Soo or Illinois Central and that unless Rock Island is strengthened through its merger with the Union Pacific that this application should be denied. It points out that at 11 of Milwaukee Road's and C&NW's most important traffic-generating points, competition would be eliminated completely,[77] and at 8 points[78] served by the constituents of the proposed company, only the services of Rock Island, Soo or Illinois Central would remain and at 4 other points only one other carrier would be available.

Under its theory, Union Pacific contends that competition would be destroyed or significantly reduced over 3,875 routes and of paramount importance, the merged company would have three of the principal routes extending between Chicago and Omaha and between Chicago and St. Paul-Minneapolis, Minn.; two of the three single-line routes between Chicago and Milwaukee; three of the five single-line routes between the Twin Cities and Des Moines and Omaha; and two of the four routes between the Twin Cities and Kansas City.

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[77] Green Bay, Janesville, Red Wing, Marinette, Beloit, Chaska, Racine, Mankato, South Beloit, Rapid City and Wausau.

[78] Milwaukee, Cedar Rapids, Mason City, Madison, Neenah, Menasha, Appleton and Eau Claire.

Applicants, while recognizing that approval of the proposed merger would eliminate competition to the extent it presently exists between them, urge that to the extent such competition is eliminated it would be insignificant when balanced against the clearly defined advantages of approval of the proposal. In this respect, applicants recognize that the existence of competition at various populated points in Illinois, Iowa, Michigan, Minnesota, South Dakota and Wisconsin to the degree it exists would be eliminated and concede that at other points, the number of carriers serving thereat would be reduced. Despite this, they argue that the availability of motor carrier and/or water carrier service would provide sufficient competition to either applicants alone or remaining railroads to insure protection to shippers. In addition, they point to the fact that the majority of points which applicants serve in common are so lightly populated as to minimize the need for competitive rail service.

C&NW, including CGW, and Milwaukee Road serve 161 points in common,[79] of which 105 are served by applicants and no other railroads.[80] Of the 56 points served in common by applicants and other railroads, competition between applicants thereat will be eliminated.

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[79]Although an additional 20 points or stations were indicated at which applicants provide service, these were eliminated from consideration here on the grounds that they are clearly earmarked as being within the switching district of another point and hence, for purposes of this analysis, redundant for consideration.

[80]In its argument, Union Pacific alludes to the fact that applicants serve 125 points at which no other railroad provides service and at which competition would be eliminated completely. Analysis of Union Pacific's testimony in this respect indicates that it includes Holcomb and Nelson, Ill.; Lyons and Sheldon, Iowa; and Green Bay, Green Bay Junction and Kelly, Wisc., as only being served by applicants. These points are either served by another railroad in addition to applicants, served by only one of the applicants or are within the switching district of communities served by applicants and a third railroad. Union Pacific's evidence also does not include as points solely served by applicants, points considered herein, which offset those indicated above. More important, however, Union Pacific's brief and the determination that 125 points are served by both applicants only includes 20 points at which the services of the former CGW and C&NW were available as of the time of hearing. As this competition no longer exists, it cannot be destroyed by approval of this transaction. Consequently, it is the examiner's conclusion that the applicants' list of 105 points more clearly reflects the area in which competition would be completely eliminated.

Of the 56 points served in common by applicants and other railroads, 24 appeared on one or both of applicants' lists as a major origin and/or destination point of traffic. Despite the elimination of competition between applicants at such points, 45 of these communities will have available the competitive service of CB&Q, Illinois Central, Soo, Great Northern and/or Northern Pacific in the event this transaction is approved.[81] At major gateways, such as Chicago, Council Bluffs, Des Moines, Sioux City, Minneapolis, Sioux Falls, St. Paul, Kansas City, Duluth and Superior, competition of more than one other railroad will remain after merger. As indicated heretofore, carriers such as the CB&Q, Illinois Central, Soo, and the Northern Lines are competitors to applicants and by themselves or in conjunction with other carriers provide a single- or joint- line service which is reasonably direct to and from all major gateways. All of these carriers and particularly CB&Q, whose routes blanket the area, are strong, viable, railroads and will, as will be discussed later, remain viable and competitive after merger.

Despite the volume of traffic handled by applicants and giving consideration to the fact that only one alternative railroad may exist in certain instances after merger here, the examiner does not deem the loss of competition between applicants at such 45 points as a paramount obstacle to approval of this transaction. The number of railroads serving these points is obviously indicative of an over-capacity of rail plant in this area. This is especially true when the rail plant which exists in the Midwest is compared to the East where only three major railroad systems (Penn-Central, C&O-B&O, and N&W) provide the only available competitive service and in the South where only two provide major competition (Southern and ACL). Furthermore, as indicated by the Supreme Court's final decision in the *Penn-Central* case, *supra.*, the end product to be achieved by rail consolidations under section 5 of the Act is the structuring of the nation's rail plant into a "limited number of systems". The impact upon the 45 communities indicated above comports with this aim and the examiner so finds.

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As to the remaining 11 communities at which applicants provide service in conjunction with one or more other carriers, special consideration is necessary. Although the service of Ann Arbor is

[81] Chicago including Bryn Mawr, Freeport, Holcomb, Ladd, Rochelle and Rockford, Ill.; Arion, Council Bluffs, Cedar Rapids, Clinton-Lyons, Dubuque, Des Moines, Sheldon and Sioux City, Iowa; Albert Lea, Bayport, Duluth, Lyle, Minneapolis, including Minneapolis Transfer, New Brighton, St. Louis Park, St. Paul, including South St. Paul, Stillwater, and Winona, Minn.; Kansas City, Mo.; Omaha-South Omaha, Nebr.; Aberdeen and Sioux Falls, S. Dak.; Appleton, Chippewa Falls, Eau Claire, Fond du Lac, La Crosse, Madison, Menesha-Neenah, Nekoosa-Port Edwards, Onalaska, Oshkosh, Superior, Sussex, Waukesha, and Wisconsin Rapids, Wisc.

REDUCED COMP UNIMP.

Tab Reads: Loss of Comp

available at Menominee, Mich., (pop. 11,200) and Marinette, Wisc., (pop. 13,000), the existence of Ann Arbor at such points does not realistically provide shippers with a competitive service to that provided by applicants. Hence, rail competition to the extent it presently exists at these points, will be eliminated upon merger. Further, although Great Northern serves Hopkins, Minn., the latter does not provide effective competition with C&NW and the Milwaukee Road at that point since there is no track connection to either C&NW or Milwaukee Road and hence, to the extent rail competition exists thereat, it will also be a casualty to approval of this transaction. Furthermore, although C&NW, Milwaukee Road and Rock Island presently provide service at Dundas, there is no track connection between them nor have they entered into a reciprocal switching agreement. Therefore, any competition that exists between them must be conducted either through the vehicle of piggyback service or via team track. To the extent shippers use piggyback service or team track, the loss of competition between railroads is not particularly significant for normally such traffic is readily susceptible to motor carrier competition. No exception to the general rule was indicated of record. Finally, theloss of rail competition at the Milwaukee switching district, including its environ of Granville, at Waukesha, and at Green Bay, Wisc., was the subject of much argument and a specific request for conditions by Soo Line and by the Milwaukee Association and these issues will be considered subsequently in the context of the latter's case. Also, with regard to Mason City, Iowa, Faribault, Northfield, and Owatonna, Minn., the only points served by more than one component of the proposed company and Rock Island only,[82] the loss of competition thereat will be considered subsequently in the context of Rock Island's argument.

At 100 points,[83] which are served by applicants exclusively and at Menominee, Marinette, and Hopkins, where, in the examiner's opinion, rail competition will cease to exist upon approval of this transaction, a separate analysis is necessary. At 42 of these

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[82] Northfield is served by Rock Island and MN&S. The latter provides a significant degree of competition thereat.

[83] West Allis was in applicants' initial list of points served exclusively by applicants but is and will be considered as part of the Milwaukee switching district and arguments relating thereto, subsequently. Also, the need for competition at Schofield Rothschild and Wausau, Wisc., and Austin, Minn., will be considered separately.

points[84] there does not exist any track connections between applicants nor under these circumstances have applicants entered into a reciprocal switching agreement. Consequently, applicants' service at such points is not competitive except to the extent piggyback service or team-track service is available and to that extent, the examiner considers the elimination of competition as afforded by approval of this transaction as insignificant and of no consequential effect.

Of the remaining 60 points,[85] 6 (Elgin, Ill., Racine, Wisc., Mankato, Minn., Rapid City, S. Dak., Beloit, and Janesville, Wisc.), have populations in excess of 25,000; 8 have populations ranging between 10,000 and 25,000 (DeKalb, Ill., Menominee, Mich., Fairmont, Hopkins, and Red Wing, Minn., Mitchell, S. Dak., and Marinette and Watertown, Wisc.); 9 have populations ranging between 5,000 and 10,000 (Perry and Spencer, Iowa; Iron Mountain, Mich.; Shakopee, Minn.; Menominee, Platteville, Plymouth, Ripon and Sparta, Wisc.); 19 have populations ranging between 1,000 and 5,000;[86] and the remaining 17 have populations ranging from 0 to 1,000.[87]

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[84] Population indicated where it exceeds 500 -- Evanston, Ill., (81,000); Skokie, Ill., (67,500); Lake Forest, Ill., (12,000); De Pere, Wisc., (10,600); Algona, Iowa, (5,702); Sac City, Iowa, (3,354); DeWitt, Iowa, (3,224); Spring Valley, Minn., (2,628); Stambaugh, Mich., (1,876); Gurnee, Ill., (1,831); Mapleton, Iowa, (1,686); Manning, Iowa, (1,676); Kenyon, Minn., (1,676); Milton Junction, Wisc., (1,433); Sherburn, Minn., (1,277); Norwood, Minn., (945); Bangor, Wisc., (928); Welcome, Minn., (773); Necedah, Wisc., (691); Stillman Valley, Ill., (598); Fairfax, Iowa, (528); Marathon, Iowa, (516); Amasa, Mich., (500); Elberon, Iowa; Mendota, Minnesota City, and Welch, Minn.; Bradley and Parker, S. Dak.; Glenview Naval Air Station and Techny, Ill.; Balsom and Triangle Spur, Mich.; Varco, Minn.; Elrod, S. Dak.; and Burnett, Camp Douglas, Camp McCoy, Merrimac, North Lake, Rockland and Tunnel City, Wisc.

[85] Racine Junction is included as part of Racine

[86] Bryon, Ill.; South Beloit, Britt, Hawarden, Jefferson, New Hampton, and Tama, Iowa; Crystal Falls and Iron River, Mich.; Cannon Falls, Chaska, Montgomery and Winnebago, Minn.; Faulkton, Groton and Redfield, S. Dak.; and Clinton Junction, Oconto and West Salem, Wisc.

[87] Hedrick, Melbourne, Pickering, Ruthven, Slater and Waukee, Iowa; Kasota, Leroy and Miloma, Minn.; Lake Preston, Vilas and Wolsey, S. Dak.; and Forest Junction, Minnesota Junction, Stiles Junction, Waxdale and Woodruff, Wisc.

Some of the points at which rail competition would be eliminated are included among the 30 stations at which Milwaukee Road or C&NW originated or terminated the greatest number of carload shipments. These points and the traffic handled thereat include Janesville which is the 6th ranking origin point in terms of carloads handled (10,803 cars) and 8th ranking destination point (14,283 cars) on the Milwaukee Road and 21st ranking origin point for interline-forwarded traffic (3,199 cars) and 22d ranking origin point for local traffic (2,283 cars) on the C&NW; Red Wing, which is the 17th ranking origin point (5,911 cars) on the Milwaukee Road; Marinette, which is the 27th ranking origin point (4,377 cars) on the Milwaukee Road; Beloit, which is the 14th ranking destination point (8,267 cars) on the Milwaukee Road; Chaska, which is the 23d ranking destination point, (5,081 cars) on the Milwaukee Road; Racine, which is the 29th ranking destination point (4,002 cars) on the Milwaukee Road; Hopkins, Minn., which is the 30st largest ranking destination point on the Milwaukee Road; Mankato which is the 13th ranking origin point for local traffic, (4,281 cars) on the C&NW and 10th ranking origin point for interline-forwarded traffic (4,975 cars) for the C&NW; and South Beloit which is the 19th ranking origin point for local traffic (3,100 cars) on the Milwaukee Road; Rapid City which is the 28th ranking point for local traffic (2,575 cars) on the C&NW.

Union Pacific alludes to the fact that these communities generate a great deal of traffic and hence, should, because of that fact standing alone, have the availability of more than one carrier. Volume of traffic while an element in evaluating the need for intramodal competition, such as it may be, standing alone is not conclusive of this need. For example, of the 30 most important points either in terms of originating traffic, destination of traffic, included therein are Algonquin, Middle Grove and Rapatee Mine, Ill.; Ladda and Fayette, Ind.; Clarkia, Idaho; Dakota City and Gilmore City, Iowa; New Ulm, Minn.; Bain, Jefferson Junction, Kaukauna, Kimberly, Manley, and Sheboygan, Wisc.; Bentonite Spur, Wyo.; Limestone Junction and Morton, Wash., at which today only one applicant is available and no other carrier.

As indicated, the role of competition between railroads is not the major spur in achieving lower rail rates or improved rail service and the fact that rail competition will be reduced or in fact eliminated at a particular point where volume traffic may exist does not of itself warrant the conclusion that the need therefore is so strong as to prohibit or prevent approval of this transaction. It is significant to note that not only was there no opposition engendered by any public official or shipper located at any point where competition would be eliminated or reduced, with the exception of those special situations which will be considered subsequently with particularity, but in many instances shippers, public officials and various Chambers of Commerce took positions in support of the proposed transaction.[88]

Given the facts: that only remnants of rail competition remains in the areas served by applicants; that at the majority of points at which rail competition will be totally eliminated, there is little concentration of population; that at the minority of points indicated above from which and to which applicants do handle a high volume of traffic and/or there is a larger concentration of population, there was no intimation by anyone other than Union Pacific that the elimination of rail competition thereat was material or significant but rather, and to the extent positions were taken, a clear indication of support for the proposed transaction and subject to certain exceptions hereinafter considered, the examiner believes that the conclusion is warranted that to the extent competition as indicated above provided by applicants between themselves is eliminated, the public and particularly shippers will not be materially affected. The examiner so finds.

SUMMARY REGARDING THE CHANGES IN SERVICES RESULTING FROM APPROVAL OF THE PROPOSED TRANSACTION

In most of the areas considered, approval of this transaction will result in a net improvement of services to shippers and communities. In some instances, however, certain shippers may experience less service than they are receiving today, particularly those who count frequency of switching and train service as the main factor in their transportation requirements. Overall, shippers may anticipate some degree of improvement. While the degree of improvement may very from shipper to shipper depending upon its location, its equipment needs, the transit time necessary to move its shipment, etc., the service to be provided by the merged company should be superior to the service provided by applicants individually. Despite such improvement, it is reasonably apparent that the merger here proposed will not be a panacea to shippers' present problems with the exception of a few situations where, for example, new transit points

SVC

[88] The DeKalb Chamber of Commerce of DeKalb; Elgin Association of Commerce of Elgin; The City Manager of Elgin; Spencer Industrial Foundation, Inc., of Spencer; Spencer Chamber of Commerce of Spencer; Mayor of Iron Mountain; Mayor of Winona; Mayor of Mitchell; Mayor of Redfield; the Mayor of Rapid City; The Chamber of Commerce of Rapid City; the Greater Beloit Association of Commerce; the Mayor of Marinette; the Chamber of Commerce of Marinette; the Mayor of Racine; and the Mayor of Wausau.

Tab Reads = Improved SVC

become available by the extension of single-line service, the merger will generally produce only marginal improvements over that being presently supplied by applicants individually today. The significance of such improvements, of necessity, depend on the individual situation, but in any event, approval of this transaction in terms of shippers served by applicants, is a step forward in the direction of a more efficient and economical transportation service.

In the examiner's opinion, Soo estimates of the improvements to be wrought by the consummation of this transaction are significantly overstated whereas Union Pacific's views appear to concentrate more on the negative aspects, which the examiner concedes are there, without giving sufficient weight to the more desirable aspects in terms of service which would be made available were this transaction approved. Applicants, while closer to estimating the service improvement that will result were this transaction consummated than either Soo or Union Pacific, on certain occasions appear to have overestimated and in other instances under-estimated the effect which such improvement would leave on service. Certainly, as heretofore indicated, not all shippers and communities will benefit by this transaction nor will their services remain the same. Certain of them will lose particular elements of service which they have heretofore had available. This is particularly true with regard to switching services, etc. Also, the penetration by both applicants to new markets through single-line routes is a significant feature of the improvement in service which this merger can provide and the examiner believes that the intangible efficiencies brought about by the consolidation of applicants' solicitation forces and industrial development forces coupled with the availability of plant sites for new constructions was understated in applicants' assessment of the merged company's improved situation.

In summary, therefore, it is concluded and the examiner so finds, that the merger will produce marginal improvements in the overall rail service which will benefit shippers and communities and some to a material extent.

EFFECT UPON SERVICES AS PROVIDED BY INTERMODAL COMPETITION

Other than applicants' general assertion that approval of this transaction would permit it to compete more vigorously with other modes of transportation, no direct evidence was presented by applicants' intermodal competitors. To a large extent, the need for this merger is predicated upon the growing ability of other modes to provide services competitive to those rendered by applicants which the latter, in a persistent marginal condition, have had extreme difficulty in meeting. While the examiner anticipates that the merger will strengthen applicants into a more formidable competitor to other modes, such strength should not, in any way, interfere with or hamper the provision of an adequate service by such modes. In the latter respect, the continuing improvements in efficiency by motor carriers and water carriers provide ample assurance that their services, to the extent economically feasible, will continue to be supplied, improved and grow despite approval of this transaction. Hence, this examiner, on the basis of this record, concludes that approval of the proposed transaction will have no material effect upon the transportation service rendered by other modes.

EFFECT UPON SERVICE BY RAIL CARRIERS WHICH DID NOT SUBMIT EVIDENCE OR WHICH SEEK CONDITIONS NOT OPPOSED BY APPLICANTS

CARRIERS NOT SUBMITTING EVIDENCE

As indicated, one of the main objectives of the Commission's assessment in determining the merits of an application filed under Section 5 is to gauge the effect which approval of the proposed transaction will have upon an adequate transportation service to the public. In view of the limited number of rail carriers supplying rail service to the public, it is important that the Commission gauge the impact of the transaction upon the services provided by other railroads, despite the fact they evidence no interest in the proceeding or have withdrawn their opposition to the proposed transaction on the basis of agreed-to conditions.

The examiner's prior discussion of the Western Railroad complex indicates that in addition to those carriers actively opposing this transaction or seeking conditions herein and those which have withdrawn their opposition, several other carriers provide service in the territory in which applicants, individually or jointly operate. These include the Missouri Pacific and its subsidiary, the C&EI, GM&O, N&W, and Santa Fe.[89]

As adjudged from their respective Form A reports, which are officially noted, the examiner must conclude that the financial strength of Santa Fe and N&W coupled with their respective route strength precludes any possibility of their services being materially effected by consummation of the proposed transaction. Nor does it appear that this transaction will have more than a peripheral affect upon the Missouri Pacific, its subsidiary the C&EI or the GM&O. Although these carriers provide limited service between gateways served by applicants today as depicted in Appendix A-1, one or both of the applicants can provide single-line service today between such gateways and the degree of service improvements possible as a result of consummation of this transaction over these routes does not

SF-N&W
MP
CEI
GMO:
NO
EFFECT

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[89] Although SP&S did not present any evidence directly of impact upon it, this impact was presented by the Northern Lines and will be considered in the context of the latters' arguments.

indicate any reasonable possibility that the present service of such carriers is in jeopardy either as a result of diversion stemming from this merger or otherwise. To the extent any material diversion would be possible, however, these carriers appear to be fully protected by the imposition of the so-called *DT&I* standard traffic conditions as amended in the *C&NW-CGW* case. These conditions, the necessity therefore, and other arguments related thereto are fully set forth in Appendices G-1 through G-2. Therefore, as buttressed by the failure of the above-carriers to present evidence in this proceeding, and for the above-stated reasons, the examiner finds that the service of rail carriers which did not submit evidence in this proceeding will not be effected by consummation of this transaction, subject to the imposition of the conditions set forth in Appendix G-2.

RRA NOT PARTIES

With respect to the four carriers which withdrew their opposition on the basis of stipulated agreements entered into with applicants, three, the Frisco, the La Salle, and Ann Arbor, operate on the periphery of applicant's eastern and southern route complex and appear to be amply protected by the stipulated conditions. These conditions and the basis for imposition thereof are contained in Appendix G-1, and G-3 through G-5.

With respect to GB&W, the latter's operations are, to some degree, competitive with those presently maintained by applicant.S Despite this, however, the conditions agreed to between applicants and GB&W open up new opportunities and gateways for the latter and appear to be designed to protect it fully from any material impact which would result from consummation here. In the latter respect, the Wisconsin Commission although evidencing real concern for the GB&W from the condition proposed by Soo Line to gain access into Green Bay, considered subsequently, failed to evidence any concern for GB&W service stemming directly from this transaction. The stipulated condition entered into between GB&W and applicants and the reasons warranting imposition thereof are set forth in Appendix G-6.

EFFECT ON RAIL INTERVENERS SEEKING CONDITIONS TO THE TRANSACTION WHICH ARE OPPOSED BY APPLICANTS

GENERAL

Introduction - Of the railroads intervening in this proceeding, 10 (Soo Line, Illinois Central as supported by MN&S, Union Pacific, Southern Pacific, Rock Island, LS&I, Western Pacific, D&RGW, Northern Pacific and Great Northern) seek an assortment of conditions which applicants generally oppose. Some of these railroads request conditions which are based on the belief that if this transaction is approved that they would lose traffic to the combined system. Such traffic, they believe, should be made up through the granting by this Commission of favorable traffic conditions that will permit interveners access over a line or to a point or to a shipper or in some other way recapture the traffic lost through diversion. Certain of these carriers, and particularly Soo and Rock Island urge that the traffic loss through diversion to the consolidated company would jeopardize their ability to perform a service to the public. Some urge, diversion or no, that their suggested conditions are necessary to insure competition or some necessary element of service that would be lost by the public generally if this transaction is approved. Before considering these arguments specifically, however, the examiner believes that it would be helpful to review the bases for the imposition of conditions in transactions formulated or proposed under section 5.

Conditions Sought Which are Based Solely on Diversion - No section of the Interstate Commerce Act provides that it is the function or obligation of this Commission in considering an application under section 5 to maintain the *status quo* in terms of shares of traffic between rail carriers. The fact that approval of this transaction or any transaction will result in the diversion of traffic from a particular rail carrier does not, standing alone, justify the imposition of any condition for there is no irrevocable right to traffic residing in any carrier.

Diversion only becomes an element in the weighing process in determining the relative merits of a particular application, where the diversion from a particular carrier will result in the destruction of the latter's ability to compete generally or to perform a specific form of service. Where a carrier is already in a weak condition, or hovering on the brink of bankruptcy, even a small loss or diversion of traffic may justify the imposition of conditions to offset such losses or for that matter to deny the application where the services of the carrier affected are vital or important to the public. On the other hand, it is not the Commission's obligation to impose conditions to keep competing and inefficient railroads in business but rather its objective through its conditioning power stems from its essential relationship to the public interest, namely, that the public shall receive an adequate, economical and efficient transportation service and to foster sound economic conditions in transportation.

Tab Reads RR's Not Parties

Conditions Predicated on Factors Other Than Diversion - Many carriers and implicitly applicants, view proof of a diversion as an essential element warranting the imposition of conditions to a proposed transaction. In the examiner's view, this position is totally erroneous. In order for any condition to be imposed to approval of a section 5 transaction, it must (1) have some relationship to or need therefor stemming from the proposed transaction; and (2) be in the public interest. The necessity for some diversion to occur as a predicate for the imposition of the condition seems to be based upon the fact that in most instances conditions are sought by the carriers themselves which seek to protect themselves primarily and not the general public. For example, in the *PENN-CENTRAL* case the requirement that the Penn-Central Railroad agree to reciprocal switching at Pittsburgh was not based upon any diversions from the B&O-C&O or the N&W systems but rather upon the Commission's conclusion that rail competition was a necessary and vital element in the Pittsburgh switching district. On the other hand, a condition which is designed to correct an existing inequity between carriers but having no relationship whatsoever to the impact of the transaction proposed under section 5 can not nor should not be imposed. It is only the relationship between the transaction and the injury that warrants consideration and imposition of conditions in the public interest.

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Diversion Studies Generally - Certain general characteristics of the diversion studies as presented by the various parties to this proceeding may be considered in their broad aspects. In preparing estimates of traffic diversions, five interveners used random sampling techniques to develop data on which to judge diversion estimates (Soo, GN, NP, UP, and D&RGW). Other parties, including applicants, who performed diversion studies use judgement sampling techniques. Insofar as sampling applies to diversion studies, one technique appears to be as effective in terms of the result as the other. Random sampling, however, provides certain economies in that only a limited number of cars must be considered when such techniques are used; but the random sampling approach runs into a serious problem in the non-homogeneity of the data. The mathematical tests of the results is affected by this problem also and, there seems to be some difficulties in communication between the designer or the statistical expert who prepares the random sample and the traffic expert who applies his judgement in determining the degree to which any and all given cars are divertable. Because of these factors, the standard errors and relative standard errors end up having little real value in judging the adequacy and validity of the diversion estimates. The variables attending each shipment and the lack of continuity as

Tab Reads Divert Studies

between shippers of comparable movements or even the same shipper with the same type of movement preclude the type of mathematical precision which one might hope for in different areas of analysis.

Despite these handicaps, however, the examiner sees no realistic alternative but to accept the random and judgement sampling techniques used on their face value. In all instances, such samples were designed by competent statisticians who followed acceptable standards. Though the examiner cannot, with confidence, conclude that the reliability tests are of great value, such lack of confidence is not necessarily the fault of the statistician but rather the complex nature of traffic flows and the variables attending the movements involved.

Precision is not a necessary element, except in extraordinary situations, for the function of this Commission is not to determine an exact dollar value in terms of diversion but rather to gauge an impact upon a particular carrier flowing from the transaction and then predicate a judgement thereon. The variability which one sampling technique or the other can bring to the situation is not such, as to alter the results materially.

The diversion studies, therefore, will be examined on the basis of the judgements of the traffic witnesses and the sampling techniques and mathematical extrapulations flowing therefrom will be accepted as basically sound in the evaluation. This does not, as will be seen, mean that judgements of the traffic witnesses that particular traffic or volume of traffic will or will not be diverted as a result of the proposed transaction are accepted.

Turning then to the primary element in the assessment of traffic diversion studies, the judgement of the traffic witnesses, a major problem of evaluation must be dealt with initially. In order for a diversion to occur as a result of the consummation of any proposed transaction under section 5, the latter must result in certain changes which will cause the shipper or consignee routing the traffic to change its routing practices. We have heretofore explored how railroads operate, how they compete, and what factors influence a shipper in the routing of its traffic. Additionally, the examiner has detailed the changes in the type, kind and nature of service, size, financial ability and other factors which play a role in the relationship of a carrier and a shipper insofar as they will exist were this transaction consummated. The thrust of all diversion studies presented, of record, is to evaluate the impact which such changes will have upon shippers' ultimate choice of carrier.

In presenting their respective diversion studies, applicants and other intervening railroads have each utilized a traffic witness who formulated judgements on the critical questions based upon his experience and evaluation of the numerous factors that are determinative of how shipper routes its traffic. Because of the numerous variables involved, it was a rare situation in which the judgements of the experts coincided. To a large extent, each judgement depends upon the peculiar knowledge by the traffic witness of the shipper's routing considerations and the order or premium which the latter puts upon each variable. Hence, at hearing, each traffic witness was put under the most arduous and tedious cross-examination, sometimes lasting for a week or more in which many of the individual judgements made by him were screened. Although conforming to the constitutional requirements of due process, the examiner considers the procedure as more closely resembling a trail by combat conducted in the Middle Ages than the orderly dispatch of an administrative hearing in the Twentieth Century. While recognizedly the administrative agency is to some extent subservient to judicial procedures and techniques, the functions and obligations of the administrative agency are totally different from those exercised and imposed upon the Courts. The complexity of the administrative hearing today makes it essential that both the agencies and the Courts recognize the divergence and that the former evolve rules and the latter sanctioned procedures which would permit a more orderly method by which the public interest may be tested and served. The examiner would hope and strongly recommends that consideration be given to modifying the rules of practice to eliminate the necessity of the ordeal for realistically, in the final analysis, it serves no useful purpose.

Were we able to evaluate all shipments individually which presently move over a particular route in terms of why they moved over that route, why they did not move over another available route, and what specific change would be necessary to shift the specific traffic from one route to another, the Commission might be able to gauge with precision the degree of diversion which will result from consummation of any transaction.

DIVERT STUDIES

This examiner has no illusion that based on the type of evidence presented in this proceeding that he could arrive at a precise diversion figure on any of the diversion estimates made. The best that can be achieved under these circumstances is an estimate of a maximum and/or minimum diversion figure. In the latter respect, the examiner believes that in most instances, the evidence is sufficiently clear and the basis for the judgements of the traffic witnesses sufficiently determinable so that a conclusion of impact, which, in the examiner's opinion, is more important can be made.

Despite the fact that only remnants of rail competition remain in any given area or between specific points, the force and meaning of such competition are totally dependent upon the structure of the industry in that area or between those points at a given point of time. For example, barring the use of some other mode in combination with rail service, traffic moving via a railroad between two points which it serves exclusively cannot be diverted to another carrier. By the same token, however, traffic moving between two points presently served by at least one of the applicants and an intervening railroad may be subject to diversion from one railroad to the other, whether an intervening transaction under section 5 occurred or not. Hence, normally the initial step in a study of diversion possibilities, no matter whether predicated on a sample or a complete study of traffic is to separate the traffic on which there is a possible diversion from that traffic on which no such possibility exists. This is normally determined solely by the physical characteristics of the shipments but in some instances, such factors as the necessary use of transit by shipper at a point not served by a competing railroad also precludes any possibility of diversion. In essence, the initial step in a diversion study is to isolate that traffic which is "potentially divertable". In the latter sense, the degree which traffic is "potentially divertable" depends upon physical facts, namely, whether the resulting railroad can in combination with another carrier or singly transport traffic which the carrier alleging diversion presently handles.

Having once gauged the extent to which diversion is possible or potential, the final step is to measure the extent to which such diversion is probable or likely. In the latter respect, the key to any reasonable estimate is determined by a judgement assessing the impact which the change in applicants' operations and services brought by the transaction will have upon shipper's selection of routes. While each traffic study presented in this proceeding poses somewhat different problems, certain general observations may be made.

For reasons heretofore discussed, the examiner cannot accept the fact that this transaction will result in any change in the price charged by applicants for services which they presently perform on an individual basis. Rail price competition, as heretofore observed, is negligible at best and no foreseeable economic objective would be achieved by the merged company were it to deviate from the normal standards of pricing in the rail industry today. Nor were there any peculiar set of circumstances as those presented in the *C&NW-CGW* case, at Roseport, which would indicate that the merged company would have any special benefits at any given point or any given area by launching a rate-reduction program that was not concurred in by competing railroads. Hence, a prime motive for routing of freight, i.e., price, may be excluded initially as a measure of diversion in this proceeding.

NO RATE EFFECTS

but

EXTEN OF HAUL

The strongest possibility under which another railroad can adversely be affected by this transaction is through the entry of the components of the new company into new markets through the extension of their haul. This is especially true where the extension coincides with the placement of the merged company in a position to serve the consignor and consignee directly. For example, traffic which today originates at a Milwaukee closed point and which is delivered indiscriminately to either Soo or C&NW at Twin Cities for delivery at an industry served by both C&NW and Soo would after consummation of this transaction, probably move in a single-line service via the merged company in preference to the joint-line service of the merged company and Soo. In such an instance, the merger has, in essence, expanded the merged company's market and provided the latter with a strong relationship--direct track location--at both consignor's and consignee's plants which offers the merged company a significant advantage under normal conditions to the capture of a larger percentage of this traffic.

While the extension of the merged company's market, where it exists, through approval of this transaction, always adds a factor in the competitive relationship between carriers serving the same market, it will not always, by any measure, provide the resultant company with more than peripheral benefits. For example, where a shipment originates at a plant located on the Soo but is open to C&NW for a reciprocal switching service, and is destined to a plant served by the Milwaukee Road, the opportunities for the merged company to divert substantial traffic away from the Soo are extremely remote. Despite the availability of a new single-line service as a result of this transaction, the origin shipper will under ordinary circumstances continue to ship via the joint-line service of Soo-merged company for its basic dependence upon Soo for switching service will not have been changed or reduced by the merged company. To the extent not dictated by other economic pressure, such shipper will still seek to maximize Soo's long haul despite the availability of a single-line service.

Obviously a variety of other combinations are available under which the merged company will be able to extend its haul, not only converting multiple-line service into single-line service,but in terms of its ability to provide a more extended interline-forwarded or interline-received service. The degree of diversion, if any, which will follow such extensions of line will depend, to a large extent, not upon the extensions themselves but upon the corollary fact that one of the components of the merged company already serves the origin and/or the destination point directly and will be able to extend its haul through access to such origin or destination point through the other component. The main point to be provided by this basic analysis is that while the extension of haul is the strongest factor which would put the merged company in a position to divert traffic from another carrier, its significance may be blunted and even obliterated by shippers' dependency on the carrier switching its plant and the fact that shippers normally provide such carrier its longest haul despite the availability of a single-line service obtainable through reciprocal switching.

"MAIN PT" EXT. OF HAUL SOMETIMES EPHEMERAL

Insofar as ascertainable, shippers which have a definitive policy of allocation will to some extent divert traffic away from applicants in favor of available competing railroads. The principal basis of allocation springs from a shipper's desire to keep its service options open. Merger here eliminates one of those options by converting two railroads into one. Hence, shippers which predicate their policy of allocation upon maintaining alternative sources of supply will, at the minimum, maintain their present quotas for competing railroads and since the latter in many instances may be the only alternative rail service available, there will unquestionably be a tendency to provide such carriers with a greater share than they have heretofore received at the expense of applicants. As in the case of diversions created by extension of lines, the general observation may be blunted or obliterated by such features as track location, transit and other paramount factors. It is significant to note, however, that some shippers engaged in allocation practices today testified

ALLOCA. EFFECT

that they have already increased Soo's share of traffic in anticipation of approval of this transaction. Reallocation, therefore, after merger will be a negative factor with which applicants will have to contend.

Much has been said about the fact that the merged company would be in a better position from the standpoint of financial strength and improved service through the creation of faster and more dependable schedules, greater car supply, better tracing facilities, and use of a more efficient solicitation staff to achieve significant diversions away from intervening railroads. Under this theory, many if not all of the intervening railroads which presented diversion studies, contend that the merged company will be able to divert traffic moving between points which one applicant can already handle today in a single-line service but which is being handled by such intervening carrier for one reason or another. Essentially this proposition is predicated on intervening railroads' beliefs that applicants will through this merger be able to improve their transit time to such a significant degree and will have so many more cars available plus provide the wherewithal to purchase additional cars that intervening railroads will lose traffic in wholesale amounts. Applicants, on the other hand, disclaim any diversion from this type of change through merger.

As usual, on traffic matters, the opposing parties have gravitated to opposite poles, and the examiner must look for some reasonable ground upon which to found his judgement.

Unquestionably, in certain instances, where applicants' scheduled times will be reduced significantly so that it can provide a door-to-door service in a materially shorter time than it or its competitors can provide service, a shift of traffic will inure to merged company's benefit on cars in which time is important. There is a liklihood that some perishable traffic will be diverted from opposing carriers on the basis of such improved scheduling. Generally, however, the improved scheduling will mean very little in ultimate door-to-door deliveries but the examiner cannot discount this margin of improvement completely as have applicants as a means by which the merged company will divert traffic.

PERISH TFC DIVERS

Many carriers stress improvement of car supply as a key factor in the diversion of their respective traffic. As indicated by applicants, however, should this transaction be approved

Tab Reads: Gen. TFC Effect

they will improve car utilization to increase the number of cars which they can use on line by roughly 2,000 or less than four percent of their total car fleet. Although as indicated, intangible factors such as the installation of Car Fax on the Milwaukee Road should improve car utilization on a system-wide basis, by the same token to the extent the merged company will improve its car utilization, such improvement will also apply to foreign cars on line which, if they are special cars, must be returned to the owning road directly with or without an outbound load. Therefore, in many instances, the net effect of an improved car utilization, as indicated of record, will not be to improve the merged company's car supply but rather, as indicated by applicants, who overstated this factor in their studies, to reduce per diem expenses. Hence, a massive injection of new equipment anticipated by several opposing rail carriers which would result in the extensive diversion directly simply will not occur.

CAR SUPP WON'T DIVERT

In sum, therefore, the examiner concludes: (1) that despite the fact that only remnants of rail intramodal competition remains approval of the proposed transaction would, in fact, alter the existing rail structure and thereby cause the shift of some traffic to the merged company from intervening railroads; (2) that the strongest inducement for traffic to move to the merged company from other railroads will be the opening of new markets to the present components of the merged system especially where the latter gains physical access to an origin or destination plant as a result of the transaction; (3) that insofar as shipper allocates traffic, applicants will suffer some losses in traffic to other carriers; and (4) that the improved service including faster and more dependable schedules, greater car supply, more efficient transportation, etc., and increased financial strength anticipated by the examiner's findings herein will permit marginal improvements in service which will result in equally marginal gains in traffic at the expense of other railroads.

Applicants' Traffic Study - To cope with the issues raised by each of the individual railroads, with regard to the adverse effect of the proposed consolidation, a preliminary discussion of applicants' general traffic study is necessary. Initially, and as part of their direct presentation, applicants submitted a study based on their records which reflected their estimate of additional revenue which the surviving company would receive by reason of retaining their present traffic for a longer haul and what losses this would cause to other railroads. The study also reflects what gains would be made by other railroads on traffic which would be diverted to C&NW and Milwaukee Road for only a part of the movement.

The study was in two parts. The first was predicated upon the assumption that only a C&NW-Milwaukee Road consolidation was in the offing and the second, assumed a merger of the Milwaukee Road into a merged C&NW-CGW. Inasmuch as CGW is now included as part of the C&NW, the initial study need not be considered except that it is significant to note that it is applicants' view that the effect of a C&NW-Milwaukee Railroad merger will cause less diversion to competing carriers ($4.1 million) as a result of CGW's prior inclusion in C&NW than if it were not so included ($4.7 million). The key to this assessment is the fact that a consolidation of C&NW and Milwaukee without inclusion of CGW would permit shippers located on C&NW's lines to gain access to Kansas City via a single line service for the first time whereas merger with a C&NW including CGW would already have access to Kansas City.

Since applicants considered a study of each car moving over their lines for a full year as impractical and as requiring considerable time and expenditures, applicants selected the traffic moving via the C&NW, Milwaukee, and CGW which moved during a four-month period (January, April, July and October, 1964) and then multiplied the results by three to get an annual projection of both losses and gains. Review of the record and of applicants' total traffic for the year 1964 indicate that the period considered was reasonably representative of the entire year. Although the examiner recognizes that traffic flows vary from month-to-month and even from day-to-day, there is no reason to raise any significant question on the assumption that the four-month period used by applicants was any less representative of their traffic than would a full study of one year. In other words, the four-month period used reflects sufficient information from which reasonable conclusions can be drawn.

The study initially encompassed a total of 887,512 cars of which 454,542 moved over C&NW, 367,312 over the Milwaukee Railroad and 65,738 cars over the CGW.

With reference to C&NW traffic, computer printouts were made indicating whether the traffic was local, interline forwarded, interline received, overhead eastbound or overhead westbound.

The printouts also provided the origin city and State, shipper, destination city and State, with certain exceptions, consignee, commodity, origin and destination road and up to four intermediary roads, kind of car, weight, and percentage of C&NW's gross revenues, and junctions at which C&NW received and/or delivered shipments plus additional information. All identical shipments were combined in the printout. Additionally, the origin and destination agencies furnished the name of the carrier serving the consignor and consignee; whether either leased property from a railroad; whether the industry is open to reciprocal switching; and whether a shipment moved under transit; and the name of the railroad to whom shipper looked for its car supply.

As to the Milwaukee Railroad shipments, the latter's Accounting Department prepared information comparable to that provided by C&NW printouts. Milwaukee's study was also implemented by information furnished by its regional traffic offices of special conditions relating to shippers or receivers which might possibly effect the routing of traffic similar to that provided by C&NW's origin and destination agencies.

Traffic officials for both C&NW and the Milwaukee Road went over each printout determining first whether the car could be diverted and the probable route over which it moved. Employees in the Accounting Department determined the revenues that would be diverted. Certain cars and particularly cars that would have to move on circuitous routes and cars where C&NW or Milwaukee Road were short-hauled were excluded. For example, traffic moving from Los Angeles to Chicago routed via Council Bluffs over C&NW was excluded as not subject to potential diversion as were shipments routed Seattle-Milwaukee-Twin Cities-C&NW-Albert Lea-IC-Chicago. In the former instance it is applicants' view that a C&NW-Milwaukee consolidation would add nothing which would cause a shipper to route traffic any differently and in the latter situation, the traffic was excluded because Milwaukee could already provide single-line service from origin to destination and C&NW could already provide single-line service from Twin Cities to Chicago and hence, shipper must have had a reason to short-haul C&NW at Albert Lea and Milwaukee at Twin Cities. All local traffic was also excluded from the study. (257,033 cars).

Although CGW's traffic was sampled and analyzed on the same basis as applicants' traffic initially, it was determined that the inability of CGW personnel to prepare a four-month study providing similar information as that provided by applicants' personnel, would require an alternative approach. Instead, an IBM printout of CGW's traffic was prepared covering a four-month period. The printout amounted to a total number of 65,758 cars and excluded local traffic. Because there were significant gaps in the information contained on the print-outs, especially on overhead traffic, each category (interline forwarded, interline received and overhead traffic) was examined separately. In ten-percent of the instances no information on consignor or consignee was indicated for interline forwarded or received traffic and on overhead traffic no information for consignee or consignor was indicated at all. The information available, however, was studied and on the basis thereof, applicants weeded out those shipments which because of their physical characteristics could not be diverted. For example, a shipment originating on CGW at Minneapolis and moving to a connection at Kansas City for a destination in Texas was considered as non-divertable since there could not be any extended haul caused by the merger of the C&NW and Milwaukee. On this basis CGW's interline forwarded and received traffic was reduced from 34,822 cars to 6,622 cars to be considered as possibly divertible. As to the latter group in approximately 90 percent of the instances CGW personnel were able to supply all the information needed and from this information an estimate of actual diversion was determined. With reference to overhead traffic, however, an estimate of possible diversion was not made. Of a total of 30,936 cars moving over CGW in an overhead service, only 2,361 moved to either an origin or destination which was served by Milwaukee Railroad. Since it is applicants' view that an overhead carrier has very little influence on the routing of traffic, it was felt that the degree of a diversion which connecting carriers could experience on such traffic would be insignificant and as a result applicants did not provide any estimate at all on CGW's overhead traffic. With reference to CGW traffic that was considered divertable, information concerning the revenues which other carriers received was not available from CGW's records and applicants were required to utilize the average revenues to be lost as part of C&NW's studies in estimating the actual dollar loss.

Thereafter, except on local traffic (257,033 cars), that traffic which applicants determined would not be affected by consolidation, and that traffic upon which C&NW and/or Milwaukee Road was short-hauled, a traffic official reviewed each of applicants' cars remaining to determine actual extent that traffic would be diverted from other carriers.

As pertinent here the results were as follows:

	Traffic Interchanged With C&NW Including CGW	Traffic Interchanged With Milwaukee	Total
CB&Q	$ 46,182	$ 129,246	$ 175,428
Rock Island	54,789	38,001	92,790
Great Northern	868,194	6,495	874,689
GB&W	-	37,920	37,920
I. C.	7,050	277,299	284,349
LS&I	42	-	42
MN&S	3,501	-	3,501
Northern Pacific	894,549	480	895,029
Soo Line	29,463	91,566	121,029
SP&S	112,248	-	112,248
SP	26,592	-	26,592
Union Pacific	243,528	8,982	252,510
DRGW	2,196	-	2,196
Western Pacific	1,017	-	1,017
Other	$ 289,122	$ 924,696	$1,213,818
Total	$2,578,473	$1,514,685	$4,093,158

From the above total of $4,093,158 the surviving company would gain $3,894,189 and other carriers which would benefit by applicants longer haul, the balance.

No cars were diverted from other carriers on the basis that the C&NW-Milwaukee Railroad consolidation would result in a general service improvement such as an added car supply, or a more dependable service between points presently served by one or more of the components; nor were any cars which neither applicants or CGW presently handled considered as possible candidates for diversion from the other carrier by reason of the creation of a new single-line service. Finally, no consideration was given to the possibility that shippers which allocate traffic on the basis of the number of carriers serving their plant might divide traffic in favor of other carriers. An analysis of the relative value of applicants' study as to each of the involved railroads, where the issue is raised, will be considered in the context of the particular carrier being considered.

THE COST OF HANDLING DIVERTED RAIL TRAFFIC -

Where diversion occurs, the gross revenues received or lost by carrier gaining or losing traffic cannot be used as the sole measure of the impact upon such road. In each instance, the cost of handling such traffic must be measured to determine that impact.

Soo urges that except where services are expanded, the cost of handling any incremental traffic gained or lost by it would range between 25 and 30 percent of gross revenue whereas the other parties appear to be in general agreement that on this type of traffic, the affect of diversion would be to increase or decrease costs by 33 1/3 percent of the gross revenue change. Although several witnesses indicated that the cost saving on divertible traffic might run as high as 50 percent, such witnesses did not make any special study of this subject and their qualifications to testify on the issue of cost is subject to some question.

Unless a loss of any car or a group of cars would permit a carrier to contract its service or operations, it is apparent that the costs attending the performance of such service and operations would be continued despite the loss of such traffic. Although Soo alleges significant diversion from itself, its expert indicated that Soo would not be able to reduce its train schedules or other operations. Soo indicated, however, that it would be able to eliminate certain per diem charges, fuel costs, trackage charges, and terminal switch charges. Although recognizing the possibility that a small portion of its overtime payments in labor could be eliminated, Soo considered such cost eliminations as remote at best.

30%
vs.
33 1/3%
SAVED
OK

The examiner considers Soo's estimate of cost appropriate although he believes that a 30 percent cost factor as more likely than the 25 percent factor. Although the 33 1/3 percent figure submitted by applicants and accepted by other carriers is slightly higher than Soo's cost factor which is predicated on a sound study, the difference is so small that it also may be accepted readily without material problem.

Generally, diversions of traffic as will result from the consummation of a transaction such as proposed herein do not occur in sufficient numbers of cars between any two given points to permit any reduction in the number of trains, terminal

Tab Reads: SOO

switching operations, maintenance or general administrative operations. In other words, where a car is diverted by the merged company from another carrier, the latter would be able to eliminate only the direct out-of-pocket costs attending the movement of that car. On this basis, unless the diversion hereinafter indicated would result in an opportunity to reduce the service or operations of the carrier which will experience such diversion, and except for Soo where a 30 percent factor will be used, a cost factor of 33 1/3 percent will be used for diverted traffic.

30% used.

EFFECT ON SOO LINE

NATURE AND SCOPE OF PRESENT OPERATIONS -

Soo, a Minnesota corporation, is the survivor of the reorganization and merger,[90] effective December 31, 1960, between Duluth, South Shore & Atlantic Railroad Company; Wisconsin Central Railroad Company and Minneapolis, St. Paul & Sault Ste. Marie Railroad Company. Some of its predecessors had been in existence since 1853.

As of December 31, 1967, Soo operated 4,692 miles of road of which 656 were located in Michigan; 1,432 in Wisconsin; 1,036 in Minnesota; 1,313 in North Dakota; 108 in South Dakota; 57 in Montana; and 91 in Illinois. Its lines extend north from Chicago through Fond du Lac, Rugby Junction and Neenah to Menasha, Wis., serving the city of Milwaukee through an agency relationship with the Milwaukee Road, on a branch line from Rugby Junction. From Menasha, Soo's lines radiate (1) northwest through Marshfield and Chippewa Falls, Wis., Twin Cities and Glenwood, Minn., and thence to (a) Portal, N. Dak., and (b) Noyes, Minn., at which points Soo connects with the Canadian Pacific; and (2) north to Wisconsin Junction where it connects with its main line running southwest from Sault Ste. Marie through upper Michigan and northern Wisconsin to the Twin Cities and the Twin Ports. Additionally, Soo maintains a route running north from the Twin Cities to the Twin Ports and a route west from the Twin Ports which connects with the heretofore described routes to Portal and Noyes. Its principal points of service are those indicated in the route descriptions above plus Bismarck, N. Dak.; Riverton and McGregor, Minn.; Eau Claire, Ashland and New Richmond, Wis.; and Trout Lake, St. Ignace, Marquette and Escanaba, Mich.

[90] Approved by this Commission in *Duluth S.S. & A. R. - Merger*, 312 I.C.C. 341.

As of December 31, 1967, Canadian Pacific held 56.37 percent of the capital stock in the Soo Line and as of December 31, 1966, held mortgage bonds having an aggregate par value of $19,456,500 out of an outstanding mortgage bond indebtedness of $34,468,000. The 19 members on the Soo Line's board of directors include 4 who are officers of the Canadian Pacific. Additionally, with Commission approval,[91] Canadian Pacific and Soo formalized a prior long-standing mutually beneficial traffic relationship. The traffic agreement basically provides that each party, subject to termination rights, will continue to maintain routes via which joint through rates are in effect on November 1, 1950, and each party will deliver to the other its traffic destined to or via the territory of the receiving party.

Under the terms of this agreement, in 1966, Soo and Canadian Pacific interchanges totaled approximately 103,000 carloads of freight, or 20 percent of all Soo Line's carload traffic. Of the total referred to above, 86,483 cars were delivered to Soo Line and 16,813 cars were delivered to Canadian Pacific. Inbound traffic included large quantities of lumber, potash and sulphur, pulpwood, woodpulp and newsprint. Outbound traffic represented manufacturers and miscellaneous destined for points in Canada. There is some evidence that during car shortage periods in several recent years, Canadian Pacific made some grain boxcars available for the use of Soo. It is apparent that the Canadian Pacific and Soo have a close working arrangement and preferentially solicit traffic for movement over their joint routes. Were Canadian Pacific and Soo Lines considered as a single entity, their freight revenues would exceed those of the proposed company by 20 percent; their income available for fixed charges by 54.5 percent; their net income by 11.83 percent; and their revenue ton miles by 22.3 percent.

Applicants believe that the Soo Line should be considered as part and parcel of the Canadian Pacific system and as such the traffic and other relationships of Soo vis-a-vis applicants should be considered on the basis of comparisons between the

[91] See, *Minneapolis, St. Paul & Sault Ste. Marie Railway Company - Reorganization*, 252 I.C.C. 525 at pp. 529 (1942).

Canadian Pacific system and applicants. In this respect, applicants point to the stock ownership, the close working arrangement, Soo's utilization of Canadian Pacific cars, and other factors as being indicative of the Canadian Pacific's commitment to assist the Soo in meeting the competition of all railroads and all modes of transportation and urge this examiner and this Commission to view the impact upon Soo in terms of what impact the proposed transaction will have upon the Canadian Pacific system. Contrary thereto, Soo Line asserts that its management is completely separate from that of the Canadian Pacific; that Canadian Pacific has, at best, only sporadically come to Soo's assistance; and as indicated by the District Court in *Soo Line Railroad Company, et. al.* v. *United States of America, et. al., supra,* the possibility that the Canadian Pacific would be required or would in fact subsidize unprofitable operations of Soo over an extensive period of time must be viewed with skepticism. Soo urges that there is no evidence that Canadian Pacific will continue to maintain its financial investment in Soo indefinitely nor that it would subsidize Soo's operations or provide it with funds to pay its equipment obligations or an interest on bonds.

On these issues, as all issues in this proceeding, Soo Line and applicants have polarized themselves in extreme positions. On the one hand, applicants urge complete fealty on the part of Canadian Pacific towards its subsidiary the Soo Line, while Soo refuses to recognize even the slightest economic advantage to it from its relationship to Canadian Pacific. The simple answer to this contest of rhetoric is that if it were to Canadian Pacific's economic benefit to assist the Soo Line by the way of providing cars or otherwise, it certainly has the wherewithal and incentive to accomplish this end, but if Canadian Pacific views further investment in the Soo Line as a losing proposition in the long run, obviously the international umbilical cord would and could be severed. Clearly, as long as there is significant hope for the future of the Soo Line, Canadian Pacific will seek to protect its significant investment in that carrier but if the future for Soo Line does not hold any hope because of diversions flowing out of this merger or otherwise, sound business judgement would prohibit Canadian Pacific economically from adding to its losses already destined to occur. Clearly, as long as there is the faintest glimmer of hope for Soo's existence, Canadian Pacific will seek to solicit and move as much freight via Soo as possible but more than a glimmer would be necessary for Canadian Pacific to add to its already heavy investment in Soo's plant. For all practical purposes, such conclusions

Soo-CP

are academic for it is doubtful that barring an out-and-out competitive struggle between Soo and the merged company which, given the present structure of the industry, the examiner does not conceive, would the Canadian Pacific find it necessary to provide the Soo with cars or the financial aid envisioned by applicants.

As of December 31, 1967, Soo Line owned and operated 199 diesel locomotives; and 14,179 freight cars. Among its freight-train cars are included, 6,607 general-service boxcars; 1,185 special-service boxcars; 614 flatcars; 1,562 gondola cars; 3,584 hopper cars; 193 refrigerator cars; 84 rack cars; 151 stock cars; and 12 tank cars.

In 1967, Soo Line received gross freight revenues (Account 101) of $83,648,570 which was down from its 1966 peak year in which it derived gross freight revenues of $90,205,268. In 1966, its ten largest revenue producing commodities, in order of revenue contribution, were wheat, lumber, sodium-potassium chemicals, primary forest products, barley and rye, pulp, refined petroleum products, primary iron and steel products, newsprint, and miscellaneous non-metallic commodities. In 1966, these commodities produced over 50 percent of Soo Line's gross revenues. Between 1961 and 1966 its gross revenues increased from $74,992,000 to $92,849,445 but decreased in 1967 to $85,776,771. For the years 1961, 1966 and 1967 its net railway operating income amounted to $3,722,000, $9,101,646 and $4,616,207 respectively. Its net income amounted to $664,000 in 1961; $6,532,485 in 1966; and $2,696,444 in 1967. As of December 31, 1967, Soo Line had total assets of $238,503,620, including $32,244,209 in current assets; and $18,632,863 in current liabilities.

COMPETITIVE RELATIONSHIP BETWEEN APPLICANTS AND SOO LINE -

Applicants and Soo Line compete for midwestern grains moving from points in North Dakota and Minnesota to terminal elevators in markets at Duluth-Superior and at the Twin Cities. In the movement of international traffic, Soo and the Canadian Pacific jointly compete, to the extent rail competition exists, with Great Northern, Northern Pacific, C&NW, Milwaukee Road, and the Canadian National. Milwaukee also solicits western international traffic via Sumas and Seattle, Wash., in conjunction with the British Columbia Electric and Pacific Great Eastern. Soo's lines between the Twin Cities and the

Twin Ports and between the Twin Cities and Chicago are also competitive to those maintained by both applicants. At the present time, applicants and the Soo Line compete for traffic moving into and out of the Upper Peninsula of Michigan.

The most intensely competitive area for applicants and the Soo Line is within Wisconsin. In this State, Soo operates 1,432 miles of road; C&NW, including CGW, 2,739 miles and Milwaukee 1,592 miles. In 1965, C&NW originated 39.5 percent of the traffic originating in Wisconsin; Milwaukee, 35.66 percent; and Soo Line, 17.1 percent. In the same year, C&NW terminated 42.5 percent of the total traffic terminated in Wisconsin; Milwaukee Road, 31.1 percent and Soo Line, 16.3 percent. Today, Milwaukee Road serves 34 of the 43 communities with populations over 3,000; C&NW, 38 communities in the same category; and Soo Line, at least 24 such communities. Every major point in Wisconsin, except Ladysmith, served by the Soo Line is also served by one or both applicants. These points include Ashland, Appleton, Burlington, Chippewa Falls, Eau Claire, Fond du Lac, Manitowoc, Marshfield, Menasha, Neenah, New Richmond, Oshkosh, Rhinelander, Rice Lake, Shawano, Superior, Waukesha, Wisconsin Rapids, and points within the Milwaukee switching district (Milwaukee, Western Milwaukee, Wauwatosa, Glendale and West Allis). Service at points within the Milwaukee switching district is presently provided by C&NW and Milwaukee Road. The latter not only provides service for itself but acts as agent for the Soo Line.

POSITION OF SOO LINE -

Soo opposes the proposed unification of the C&NW and Milwaukee on the belief that it would be unable to compete with a combined C&NW-Milwaukee Road. In the event the proposed transaction is found to be consistent with the public interest, however, Soo requests that this Commission impose nine conditions which would preserve its competitive strength; compensate or repay it for the damage caused by diversion resulting from the transaction; and finally, insure shippers of an adequate competitive service.

F. D. No. 24182

SOO'S DIVERSION STUDY -

In preparation of its traffic diversion study, Soo retained two statistical experts from the University of Minnesota to develop a random traffic sample for the year commencing December 1, 1964. During this period the Soo participated as a line-haul carrier in the movement of 486,906 cars and about 43 percent of this total was eliminated from consideration as not being susceptible to diversion for a variety of reasons. The remaining "frame" of 279,222 cars was classified as local, interline forwarded, interline received, and overhead and stratified by routes, junctions, origins and destinations. From this frame of traffic, a sample of 7,202 cars was drawn on a random sample basis.

The car sample provided information relative to the type, origin, destination, complete routing, identity of consignor and consignee, commodity, weight, freight charges, etc. On the basis of such information and also knowledge by the Soo's traffic witness of the identity of the carriers physically switching both shipper and receiver, a judgement was made as to the degree of diversion which each car would experience. In so doing, Soo's traffic expert used certain guidelines which involved the utilization of five plateaus or gradations of divertability ranging from a highly-susceptible plateau (coded "A") to a moderately-susceptible plateau (coded "E"). In addition, Soo's traffic expert concluded that a number of sample cars (approximately 35 percent out of the 7,202 cars) would not be affected at all by the proposed transaction and this traffic was provided with the code "O". Under the guidelines, the five diversion levels were established as follows:

CODE	PERCENTAGE OF DIVERSION
A	90%
B	70%
C	50%
D	20%
E	5%

Using these guidelines, of the 1,520 local cars handled by the Soo in the sample, the latter's traffic expert concluded that all but 349 would experience some degree of diversion; of the 828 interline forwarded cars, Soo's traffic expert anticipated that all but 205 would experience some degree of diversion; of the 1,709 interline received cars, all but 249 would experience some percentage of diversion; and of the 3,145 overhead cars, it was concluded that 1,668 would not be diverted by the proposed transaction.

Of the 4,731 cars which Soo's expert assigned percentages of divertability, 116 fell into Class A (90 percent divertable); 113 fell into Class B (70 percent divertable); 1,030 in Class C (50 percent divertable); 1,950 (20 percent divertable) in Class D; and 1,522 in Class E; with the remaining 2,471 cars being deemed not divertable and this figure was expanded to total claimed diversion by multiplying the revenue by the number of cars in the frame divided by the number in the sample or what might be called a car-expansion formula. Although the process was somewhat more complicated than stated by the examiner since the Soo study was initially based upon the adverse impact of a C&NW-Milwaukee consolidation, the examiner sees no reason to analyze the arguments created by this issue inasmuch as any differing result would not warrant a different conclusion.

On this basis, it was the opinion of the Soo's traffic expert that upon approval of this transaction without protection of any conditions, Soo would experience a gross loss of $4,986,660 and giving effect to a reduction of costs between 25 and 30 percent, a net loss between approximately $3,490,000 and $3,740,000.

As Soo's traffic witness justifies this estimate of diversion it is his opinion that the unified company would have enormous new strength and vitality, he believes that the Soo Line's ability to compete successfully with the unified company for traffic would be in serious jeopardy as a result of the specific advantages derived directly from consummation of the proposed transaction. Such advantages in the opinion of Soo's traffic witness, would include (a) the single-line service which the unified company would be able to provide between many more points and perhaps of more importance, between many more industries; (b) the pooling of traffic now handled by the three then components of the resulting company would result in a faster, more flexible and more dependable freight schedule for shippers en masse; (c) the pooling of car supply of the three companies would improve the utility of the unified company's fleet of freight cars; (d) the unified company will be able to concentrate its car supply at points competitive with the Soo Line, thus diverting business from the latter at these points while retaining business at its non-competitive points; (e) that the unified company will offer a greater variety of routes for stop-off and transit privileges; (f) that the unified company will have the competitive advantage of locating industries; and (g) that the increased financial strength of the unified company will enable it to increase its car supply, make capital expenditures for various types of improvements, and make competitive rate reductions directed at traffic of other railroads, particularly the Soo Line.

Viewing the same sample as used by Soo in a different light, applicants' traffic witnesses[92] only found 32 of the 7,202 cars in Soo's sample as being subject to any degree of diversion ranging from 20 to 100 percent. The differences between the estimates of Soo's traffic witness and those testifying on behalf of applicants stems from the judgements made as to how great an impact the proposed transaction, when consummated, would have upon the shippers' routing policies.

Soo on the one hand envisions such impact as enormous whereas applicants view the impact as de minimous. Applicants argue that the new company will not be so big as to out-muscle the Soo Line especially in light of the latter's affiliation with the Canadian Pacific. They point out that Soo Line had been able to build its net income from $664,000 in 1961 to $6.5 million in 1965 despite the fact that they have had to compete with such giants as the Great Northern, Northern Pacific, CB&Q, and the Canadian National, all of whom have had the advantages of significantly larger car supply than Soo Line. Applicants urge, Soo's arguments derived from size comparisons carry no weight whatsoever.

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[92]As indicated, applicants also, as part of their direct case, produced a traffic study of cars which they estimated would be diverted from the Soo in the event this transaction is approved. This study was limited solely to traffic which was interchanged between one of the proposed resulting company's components and the Soo Line and did not, in any way, account for traffic presently being handled by the Soo Line exclusively or by the Soo Line in conjunction with a carrier other than one of the merged company's components. An analysis of this exhibit would serve no useful purpose in light of the fact that Soo has introduced a study embracing a sample of its complete traffic to which applicants have directly responded.

As contrasted from Soo's study of diversion, applicants concluded that the merger could divert traffic from Soo only if some "tangible new factor" was introduced by consummation of the proposed transaction and that insofar as this examiner can determine, applicants concluded that no diversion would result to Soo or to any other carrier for that matter, unless the merger changed the resulting railroad so as to (1) extend its length of haul on any particular traffic; (2) provided it with direct access to a particular origin plant and/or destination plant thereby eliminating reciprocal switching on the line haul; or (3) permitted the shipper routing the traffic to take advantage of a new service which is not in existence today and would be created as a result of the transaction. In this respect, applicants' analysis indicates that Soo estimated that of the 7,202 cars from the random sample, 90 percent of 116 cars would be totally diverted; 70 percent of 113 cars would be diverted; 50 percent of 1,030 cars would be diverted; 20 percent of 1,950 cars would be diverted; 5 percent of 1,522 cars would be diverted; and none of the remaining 2,471 cars would be diverted. This conclusion, applicants argue, was based on not only the so-called "tangible new factors" considered by them, but upon such factors as "greater strength, potential service improvement and the like" which are intangible factors. Applicants concluded, on the basis of their analysis, that to the extent that Soo took diversion on the vast bulk of movements on which 90 and 70 percent diversion was taken and on virtually all shipments on which 50, 20, and 5 percent diversion was taken that such "intangible" factors played the dominant role.

In other words, applicants contend that the only major area in which the diversion fears of Soo may have any basis at all is in that area in which today service can only be provided by a combination of two or more components of applicants or one or more components of applicants and Soo which, after merger, could be performed by the merged company in a single-line industry-to-industry or point-to-point service. Of the 1,171 cars of Soo local traffic claimed divertable, applicants were able to find only 15 cars which could be diverted; of the 623 Soo interline forwarded cars, it found no more than 5; of the 1,460 interline received and the 1,479 overhead cars, applicants found only 66 and 77 cars respectively. As to the 66 cars in interline received, 51 involved multiple movement of cement from Dixon, Ill., to Milwaukee which because of particular circumstances, could not be diverted from the Soo Line. In the final analysis, using Soo's sample as a basis and accepting the latter's methodology, applicants estimated that the revenue loss projected for the Soo Line as a result of the consummation of the proposed transaction would not exceed $140,000.

BOTH DIVERT STUDIES BAD!

The examiner's review of the data, in his opinion, justifies the conclusion that neither Soo nor applicants has approximated the mark with any degree of precision. Applicants' initial diversion study, heretofore described, was too limited and dealt solely with cars which one or more of the components of the proposed company interchanged with Soo and its rebuttal study gave no credence whatsoever to the merged company's increased strength nor the improved service factors heretofore considered. Soo's study on the other hand, anticipated much greater strength in the new company than feasible as a result of this transaction and its high estimates of diversion percentages were based on minor, if not de minimous, changes in operations which at most would influence shippers to modify existing routing policies on only occasional shipments but certainly would not provide the merged company with the traffic benefits envisioned by Soo.

In computing its estimate of actual diversion, Soo gave itself no credit whatsoever for its ability to increase traffic volume due to a change in the allocation of shippers whose allocation policies were based upon the number of carriers serving their plant or on maintaining alternate services. For example, Nekoosa-Edwards presently receives service by C&NW, Milwaukee Road and Soo Line and its policy is to allocate traffic evenly between those carriers. After merger, however, it would maintain a policy of dividing its traffic between the remaining two carriers, namely, the merged company and the Soo Line thereby increasing Soo's volume of traffic substantially. Other shippers, heretofore specifically indicated, likewise have increased or intend to increase their use of Soo's service in the event this transaction is approved to insure themselves of retaining a strong, viable competitor to the merged company. Admittedly, however, Soo's traffic expert, while taking into account all losses it anticipates would result from the transaction refused to concede the possibility of any gains in such traffic. Here, therefore, is an element that should tend to reduce the net impact upon the Soo Line resulting from the consummation of the proposed transaction.

The examiner also has extreme difficulty in accepting the degree of diversion as set forth in Soo's guidelines. In this respect, throughout this proceeding, Soo Line has urged consistently and vehemently that the carrier which actually serves the shipper and/or consignee has the most forminable (approaching monopoly strength) opportunity to retain all of the traffic which it can handle despite the availability of an alternative road or route which can provide a comparable service through reciprocal switching. As has been heretofore indicated, the examiner essentially agrees with this premise. 3d time

Soo estimated a loss of 5 to 20 percent on all traffic which today originates on an industry served directly and exclusively by Soo which moves to a consignee served by Soo in conjunction with one of the components of the resultant company, or a foreign line. In these instances, Soo discounts its dominance at the origin whereas the examiner views the latter's access to the origin industry as precluding this type of diversion unless there is a total breakdown in Soo's service or some new factor not otherwise indicated, of record, is made apparent. Consequently, the examiner in accepting the premise of the dominance of the originating carrier cannot accept its estimate of the degree of diversion on traffic at which Soo serves the shipper exclusively.

Also, today, where Soo has a local movement which moves from an industry served by C&NW to an industry served by C&NW or an industry served by Milwaukee Road to an industry served by the latter, and in which Soo provides service only through reciprocal switching at both origin and destination, Soo projects a loss of 90 percent of its present traffic. Under Soo's theory, which as indicated, has been accepted by the examiner, Soo has obtained this traffic on the grounds that shipper allocates traffic or that the services of either C&NW or the Milwaukee Road were non-responsive to shippers' demand. By projecting a 90 percent loss in such instances, it is evident that Soo either estimates that shipper will for all practical purposes, eliminate Soo in its allocation policy, or where no allocation is prevelant, that in 9 out of 10 instances the merged company will be able to meet the demands which neither C&NW nor Milwaukee Road individually were able to meet. Predicated on the prior analysis of shipper routing policy, the examiner cannot accept the en masse diversion estimates projected by Soo for the benefits of the proposed transaction are not of such radical character as to warrant the wholesale abandonment of Soo as an alternate source in such instances.

Turning to non-local traffic on which Soo estimates substantial diversion, the differences between this examiner and Soo Line stems essentially in terms of degree. The large bulk of this traffic is deemed divertable by Soo because of the improved service which the merged company could provide which would cause shippers to reroute traffic. Although the examiner cannot accept applicants' basic premise that such improved service resulting from merger would not divert any traffic from other carriers, he cannot accept Soo's predicate that improvements in schedules, car supply, etc., would result in the significant change of service necessary to shift the traffic volume estimated by Soo from it to the merged company. Furthermore, applicants' rebuttal study of the random sample of Soo's shipments, if nothing else, illustrates the many factors that would tend to tie this traffic to Soo despite merger.

$3 mil loss

Upon examination of the record and more particularly each study to the extent made available of record, the examiner concludes that consummation of the proposed transaction will not cost Soo Line traffic revenues in excess of $3,000,000. In so concluding, the examiner recognizes that this figure in all liklihood will be higher than will be actually realized but giving effect to the fact that applicants maintain the overall burden of proof and that the examiner must make his findings on the basis of the record as is, such conclusion is fully warranted. Furthermore, in light of the conditions which will be hereinafter imposed for the protection of the public which incidentally will inure to Soo's benefit from the traffic standpoint, the examiner does not, as in the case of the Rock Island, deem it necessary to be more definitive on the question of diversion in this instance.

BUT How MUCH?

SOO'S CONDITIONS 1, 2, 8 and 9 -

Soo's proposed conditions 1 and 2 were admittedly satisfied in the *C&NW-CGW* case and need not be considered further. Condition 8 has been met by imposition of the standard conditions as modified in the *C&NW-CGW* case in Appendix G-4 and condition 9, to the extent necessary, will be met by reservation by the Commission of jurisdiction to consider the cumulative and cross-over effects of the various merger proceedings in the West after the basic structure has been determined.

CONDITIONS SOUGHT BY SOO, METROPOLITAN MILWAUKEE ASSOCIATION, UPPER LAKES BUREAU AND KRAUSE MILLING AT MILWAUKEE -

The Milwaukee switching district or terminal is presently served by five railroads: Milwaukee Railroad, C&NW, Soo Line, C&O and GTW. The latter two provide service by car ferry across Lake Michigan from and to points in the East.

Tab Reads: Soo $3 Million

Soo presently serves the City of Milwaukee through the agency of the applicant, Milwaukee Railroad. In effect, all terminal activities of Soo Line are performed by Milwaukee Road engines and crews as agents or by C&NW engines and crews on a reciprocal switch basis after interchange with the Milwaukee. As of this date, no industries in Milwaukee can be switched directly by the Soo Line. On the other hand, the Milwaukee Railroad and the C&NW serve the switching district of Milwaukee directly and have entered into a reciprocal switching agreement which Soo, through its agency arrangement with the Milwaukee, is an indirect party.

Under present competitive conditions, the existing railroads handled 294,600 carloads in 1965 in the following basic proportions:

1965 RAIL TRAFFIC AT MILWAUKEE, WISC.

Railroad	Percent Of Carloads Originating	Percent Of Carloads Terminating	Percent Of Total
Milwaukee Road:	50.8%	50.6%	50.7%
C&NW:	27.6%	37.4%	33.0%
Soo:	4.2%	6.4%	5.4%
C&O:	11.9%	4.8%	8.0%
GTW:	5.6%	0.8%	3.0%

After merger, assuming all things stay equal, the unified company will originate 78.4 percent of all carload traffic and terminate 88 percent of all carload traffic in the Milwaukee switching district. All switching and terminal handling for Soo Line traffic will be in the hands of the unified company and terminal handling of cars to and from the C&O and GTW car ferrys will also be exclusively handled by the resultant company.

Under these circumstances, Soo Line considers its position at Milwaukee as becoming untenable if this merger is approved. Presently it suffers from the fact that its only access to Milwaukee is via its agency relationship with Milwaukee and that it can only handle such traffic via Rugby Junction which is 29 miles northwest of downtown Milwaukee. The distance between Milwaukee to Soo's Schiller Park yard in Chicago via Soo tracks is 129 miles compared to 85 miles via the Milwaukee Road to the latter's Bensenville yard and to C&NW's Proviso yard. This disadvantage compounded with the necessity of reliance upon Milwaukee Road for switching service under the agency relationship,

Wrong

causes a delay of at least one day or more in Soo's service in moving freight into and out of Milwaukee through the Chicago gateway.

Soo-Milw K

Of even more significance, however, Soo presently labors under severe traffic restrictions under its contract with Milwaukee Road in that it may not take any traffic, with certain exceptions, at the cities of Milwaukee or Chicago destined locally to the other of said cities; from or to the City of Milwaukee to or from points east of the Missouri River reached by the lines of the Milwaukee Railroad and not reached by the Soo Line or to or from points west of the Missouri River in Kansas, Colorado, New Mexico, Arizona, Nevada, Utah or in Wyoming south of the main line of the C&NW. Such restrictions severely limit the Soo's opportunity to provide effective competition at Milwaukee even if it were to serve shippers directly or on a more direct route between Chicago and Milwaukee.

In light of these problems, and on the grounds that they are necessary to offset Soo's losses and are in the public interest, Soo requests as conditions to the proposed transaction (1) the cancellation of its present contract between the Milwaukee Road and Soo and the elimination of all traffic restrictions; (2) the granting by the consolidated company of joint-trackage rights from Soo Line's main line at Waukesha into Muskego yard in Menomonee Valley in the City of Milwaukee and reasonable joint use of said yard for road train arrivals and departures; and (3) the creation of a neutral terminal service company to be owned by the merged company, Soo Line and any other railroads serving Milwaukee and desiring to participate.

The cancellation of the contract presently existing between Soo Line and the merged company and the elimination of the aforementioned restrictions would open to Soo the right to solicit all traffic moving into and out of Milwaukee. The granting of the trackage rights indicated above would reduce Soo's present routes by 20 percent and would permit Soo to operate two trains a day in each direction between its Schiller yard near Chicago and Muskego yard enabling Soo Line to make morning and late afternoon connections with road trains of Chicago railroads. Additionally, Soo would utilize the trackage rights to provide additional service to Superior, Ashland and the Upper Peninsula of Michigan. With respect to this trackage, Soo agrees that it would pay the consolidated company a user proportion of rental based on original cost less retirements

Longer rte from trk rts!

doesn't give it! isn't required of Soo.

NO FOLLOWING!

plus additions and betterments on a user proportion of maintenance and operating expenses measure by counting cars, cabooses and locomotive units or other comparable, equitable methods of measuring use.

TSC

The most important feature in Soo's proposed condition with reference to the City of Milwaukee would be the creation of the neutral terminal company. Under the proposal, the terminal company would be set up as a separate corporation which would have its own permanent operating management and its own locomotives acquired by lease from the unified company or otherwise. The Board of Directors would represent the respective interests of the participating roads, including the car ferry carriers if they so desire. The terminal company would obtain trackage rights in the Milwaukee switching district to perform switching services for all carriers serving the Milwaukee switching district. The proposal would provide that leases and trackage arrangements be entered into between the merged company and the proposed terminal company under which the merged company would receive rentals, reimbursements for expenses of maintenance and operations upon an equitable user basis. All other expenses would also be divided on an equitable user basis. Soo contends that the operations of the terminal company would be essentially the same as those conducted by the unified company but the principal difference would be that all Milwaukee rail carriers would have control over the terminal service.

Such service, Soo maintains, would not materially alter service that could be provided by the unified company directly and a terminal company such as that proposed herein is similar to terminal companies operated in major rail centers such as Chicago where the Belt Railway of Chicago operates and in Minneapolis where the Minnesota Transfer Railway operates. Soo's proposal also encompasses proposals for the interchange of traffic between the Soo Line, the unified company and the car ferries. It does not believe that it is superimposing another level of service over and above that which already exists and that cars could be distributed more readily by the line-haul carriers with the assistance of the terminal switching company.

It is felt by Soo that in this manner it would gain access to all shippers in the Milwaukee switching district equally, permitting it to compete for traffic moving to and from this area on a reasonable basis. Any alternative, it is felt by Soo, would leave the latter at the mercy of the unified company for the performance of a switching service and would not afford shippers in the Milwaukee area with a substitute for the competitive service they would lose in the event the C&NW-Milwaukee merger were consummated.

In support of their basic position for an independent and neutral terminal service company, Soo Line cites many cases in which the Commission generally has found that such independence and neutrality is essential to an adequate transportation system and to protect the public interest.[93]

In essence, the Metropolitan Milwaukee Association views approval of this transaction as eliminating rail competition for all practical purposes at Milwaukee and it seeks conditions requiring the merged company to grant access to Soo Line and possibly a third major midwestern carrier such as CB&Q as a substitute. The terms of its requested conditions as is Soo's condition 3 are set forth in Appendix H-1.

Milwaukee County and the City of Milwaukee are among the most important industrial centers in the United States. In 1964 the City of Milwaukee had a population of 741,324 ranking eleventh among the cities of the United States. It leads the nation in the production of heavy, durable and capital goods, outboard motors, motor cycles, tractors, padlocks, wheelbarrows, leather gloves and mittens, work shoes and other items, such as in the brewing of beer. In 1960, Milwaukee turned out about $3.5 billion worth of products and generated over 10 million tons of freight for railroads.

Milwaukee County, with an area of 239 square miles, has a population of 1,061,950 and employs 177,212 industrial workers or 37 percent of the total for the State. Of these, some 116,337 or 65 percent of the total were employed in metal-consumming industries, i.e., primary metals, fabricated metal products, machinery, electrical machinery and equipment, and transportation equipment. The brewers and maltsters employed 8,189 or 5 percent of the total and other food and kindred products 8,707, together almost 10 per-

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[93] *Chicago & Eastern Illinois R. Co.-Merger-Etc., Chicago Heights Terminal Transfer R. R. Co.*, 312 I.C.C. 564 (1961); *City of Milwaukee* v. *Chicago and North Western Ry. Co., et. al.*, 279 I.C.C. 521 (1950); and *Consolidation of Railroads*, 159 I.C.C. 522 (1929).

cent of the total. The remaining 25 percent were employed mostly in the production of paper products, leather, scientific instruments, chemicals, textiles and wearing apparel.

The Milwaukee terminal ranks number one in the generation of freight traffic for the Milwaukee Road (67,717 cars originated and 81,574 cars terminated in 1965) and number two for the North Western for cars originated (38,652 cars in 1965).

Seventy common and contract motor carriers provide the city with services. Two pipelines, one gas and one petroleum, lake vessels, barge lines and 54 steamship lines offer the city transportation service, some of which is in direct competition with applicants.

Extensive evidence was presented by the Metropolitan Milwaukee Association in support of its position that additional rail competition is necessary to meet the needs of its members in the event this application is approved. The Association is an organization interested in the promotion of the economic welfare of the City of Milwaukee with a membership of approximately 2,900 including all types of commercial enterprises, retail stores, wholesalers, manufacturers and professional people. It maintains a full-time manager of its transportation division who testified on its behalf as did some 21 shipper witnesses.

It is the position of the Association that although the C&O and GTW maintain a service at Milwaukee via car ferry across Lake Michigan, their routes are essentially limited to movements to or from the East and Southeast and to or from the Ports of Ludington and Muskegon, Mich., and the record supports this contention. The Association considers it essential that it have a competitive rail service to the West, the Southwest and Northwest which it does not believe would be available in the event this merger were approved without any conditions. In this respect, the Association does not consider the Soo Line as providing Milwaukee with an effective competitive service. In the latter respect, the Association does not believe that the Soo Line laboring under the restrictions in its present contract with Milwaukee Road, can provide the single-line outlets to the West beyond Minneapolis and Chicago gateways that both C&NW and Milwaukee Road can provide today.

C&O - GT carferry

The Association feels it is extremely important to maintain intramodal competition and fears the effect of the proposed consolidation which would, in the Association's opinion, except to the East and Southeast, make Milwaukee a one railroad city.

MILW ASSN

Although admittedly other modes of transportation will be available to shippers they are not sufficient in the Association's opinion for the many types of important traffic moving to and from Milwaukee such as iron, auto frames, barley, ore, etc., which is tied to the railroads. The Association is convinced that for Milwaukee to grow, it will need the benefit of rail competition including obtaining suitable equipment, better service and rate adjustments.

Twenty-one shippers support the conditions sought by the Metropolitan Milwaukee Association, including those conditions which would establish a terminal company at Milwaukee as advocated by Soo Line. Of these, nine are engaged in the manufacture of or ship iron and steel articles, such as steel and aluminum structures, scrap metal, iron and iron ore, bentonite, gas cylinders, automobile and truck chassis frames, pipe, automotive and construction equipment parts, drop and upset forgings, diesel engines, diesel generator sets, etc. At least seven of these shippers rely on rail service for the majority of their inbound traffic and four for the majority of their outbound volume. Some of them have extremely large annual volume and one, A. O. Smith, has an annual volume of 40,000 cars moving in a rail service. It does not appear that shippers in this general category have a reasonable alternative to rail service in handling many of their movements. In addition, six shippers of agricultural commodities including corn, malt, cocoa, and meal testified. Most of these shippers also are heavily dependent upon rail service and one, Krause Milling Company, has an annual volume of 20,000 cars. The remaining six shippers consist of a receiver of pool-car shipments, a paper company, a receiver of coal, two cement companies, and a producer of glass and chemicals. These shippers also make extensive use of rail service.

All of the above-specified shippers with one exception which receives rail service by team track, are served directly by Milwaukee Railroad and/or C&NW. Where only one of the latter roads serve a particular plant in the Milwaukee switching district, such shippers presently have the availability of the other road through reciprocal switching. Generally, shippers utilize the Soo Line on only rare occasions and as was found generally for shippers throughout the territory involved, these shippers generally provide the carrier serving their plant with its maximum haul although several of the shippers indicated a general policy of allocation.

In all instances, support for the conditions sought by the Metropolitan Milwaukee Association and the Soo Line are founded on the general assertion by the above-specified shippers of their need for competitive rail service. The majority are fearful that a dependency upon only one carrier, particularly for switching service, will result in their receiving a poorer service. They consider the formation of an independent terminal company jointly owned by all railroads serving Milwaukee as advocated by Soo Line as providing them better access to Soo and the other lines serving the Milwaukee Terminal and would make them less dependent upon the merged company. The several shippers served directly by both C&NW and Milwaukee Railroad cite instances where one or the other railroad has not performed a satisfactory switching service and resort to the other has improved such service. Although a pattern was not established, several of the supporting shippers have noted that on several occasions the Milwaukee Road has delayed switching cars destined for line-haul handling by Soo for as much as four days. Some are interested in gaining access to all carriers serving Milwaukee through a terminal road on the belief that they would be in a better position to secure cars when shortages occur and several indicated that their threat to use another rail service under present conditions has been helpful in securing cars from either the Milwaukee Railroad or C&NW. Availability of alternate service would also be helpful to shippers in time of strike. In essence, these supporting shippers believe competition between railroads is helpful in obtaining a good rail service.

gen. comp. is support

COMP DISCIPLINE

NB "no pattern"

?

?

Krause Milling and the Upper Lakes Bureau, present special problems which in light of their relationship to the request of Metropolitan Milwaukee Association and the Soo Line will be considered here.

Krause Milling which is engaged in the processing of corn domestically is particularly concerned over the loss of rail competition between the Milwaukee Road and the C&NW at Milwaukee. Both roads are used by this shipper as corn-gathering roads from points in northern Illinois and Iowa and shipper's ability to compete with other corn-processing companies and exporters in the purchase of corn at such northern Illinois and Iowa origins is influenced to a great extent by the level

KRAUSE

KRAUSE

of freightrates determined by market competition. Heretofore on various occasions,[94] one or the other road has maintained lower rates on export corn moving through Milwaukee for direct export shipment than on domestically-processed corn and this has led shipper to seek relief from the other road which was received. Admittedly, "the cited instances do not involve rate-cutting nor the playing of one carrier against the other, but on the contrary involve the application of existing bases of rates and their availability to one group of corn users as well as to others".

Additionally, Krause is in competition with domestic processors and/or exporters located at Chicago for the purchase of corn at northern Illinois and Iowa points. In the latter respect, C&NW and Milwaukee Railroad have heretofore maintained a relative parity with Chicago on their rates for Milwaukee processors. In this respect, Krause urges that if competition between the Milwaukee Railroad and C&NW is eliminated and if another railroad serving Chicago reduces its rates to the latter point that such reductions would not be extended to Milwaukee, thereby leaving Krause and other Milwaukee processors at a significant competitive disadvantage with their Chicago competitors.

At hearing, the examiner suggested the possibility that if this transaction were approved, that a condition might be imposed requiring the merged company to maintain corn rates inbound to Milwaukee at parity with Chicago which would meet the above-stated problem. At hearing, however, the shipper's supporting witness did not feel that such a condition would protect it. On brief, however, Krause conceded that such a condition would "have realistic value and should be seriously considered by the Commission" in the event the transaction is approved. In addition, Krause strongly urges the imposition of condition 5 as sought by the Metropolitan Milwaukee Association which would insure it of an alternative service other than Soo Line which it does not consider a significant competitor on the traffic moving from Iowa and northern Illinois points. In the latter respect, it is submitted by Krause that any service performed by Soo would have to be in conjunction with another railroad serving the origin points and that it was doubtful that the joint-line service could be provided which would meet the rates of the merged company in a single-line service.

In addition to Krause Milling, Upper Lakes Bureau submitted evidence in opposition to the proposed transaction. It is the position of this Bureau that the proposed transaction is not

[94]See prior discussion of *Competition in Transportation* for a more detailed analysis of Krause's evidence in this respect.

consistent with the public interest but that in the event the Commission determines that the merger should be approved that conditions be imposed as sought by the Metropolitan Milwaukee Association and the Soo Line.

The Bureau is composed of 12 member companies which maintain commercial coal docks at various points on the west bank of Lake Michigan and the south bank of Lake Superior at which they receive coal shipped by boats from Appalachian mines for trans-shipment by rail to points in the States of Michigan and Minnesota and to points in the Upper Peninsula of Michigan. The investment of coal operators in their docks amounts to approximately $75 million. Recently, competition from natural gas has increased substantially due primarily to the importation of natural gas from Canada and aggressive marketing thereof in the Bureau's marketing area. Coal moving across the Bureau members' docks has been reduced from approximately 11 million tons of coal handled some 20 years ago to 6 million tons of coal handled annually today. The Bureau complains that both C&NW and the Milwaukee Railroad have been promoting long-haul coal business at the expense of the relatively shorter haul ex-dock coal traffic originating at points served by them directly in the Midwest. The Bureau complains that both of the applicants have maintained discriminatory and inequitable rates on ex-dock coal in comparison to coal originating at mines served directly by them. It has been made abundantly clear to the Bureau members that neither C&NW nor Milwaukee Railroad is interested in handling any coal, either eastern or midwestern, moving across the commercial coal docks on the west bank of Lake Michigan and the south shore of Lake Superior. Bureau members, however, have been able to maintain their present volume on the basis of cooperation from the Soo Line which does not originate any midwestern coal and has established rail-lake-rail routes to move coal over the commercial dock to destinations in the Bureau members' market territory. This cooperation by Soo Line has enabled the dock industry to market lake-cargo coal in competition with midwestern all-rail and barge-delivered coal and with natural gas.

The Bureau contends that if a virtual rail monopoly is created by the proposed merger, the policy of the resulting company will be in promoting its long-haul coal business from the Midwest at the expense of the ex-lake traffic. Consequently, strengthening the Soo Line at Milwaukee would be of substantial benefit since cars are often in short supply and switching and line-haul service is erratic. The Bureau also seeks, as a condition to this proposed merger, the requirement that the merged

COAL BUREAU

company enter into joint-lake switch and rail-lake-rail routes and rates equalizing the rates to the extent lawful, on traffic handled by the merged company between its inland sources via an all-rail movement with traffic moving ex-lake over its members' docks.

MERGER NOT CAUSE!

The Bureau's present difficulties do not stem from this transaction and barring a deterioration of Soo's ability to provide service, the Bureau's members would face no different problem after merger than they do today. In the latter respect, neither of the applicants provide competitive rates on ex-lake coal today. Hence, the Bureau's members would not lose anything if this transaction were approved and Soo remained able to provide its present service. Of further concern, the requirement requested by the Bureau, if imposed, could well divert traffic from the Soo Line. In any event, the examiner finds no basis for special conditions sought by the Bureau and it will not be imposed and the issues raised thereby will not be considered further.

∴ NO COND.

C&O supports Soo's proposed condition 3 generally and on brief, the Department of Justice, although not taking a position on the basic merger, urges that the Commission impose the conditions specifically requested by the Metropolitan Milwaukee Association, including Soo's proposed condition 3. In support thereof, it argues that merger here would eliminate substantial and necessary competition at Milwaukee which is vital to shippers in this area which are largely dependent upon the railroads for transportation.

The Department does not consider the strengthening of Soo to be sufficient to meet the burden of competition at Milwaukee and strongly urges that the Commission reserve jurisdiction to permit another carrier access to this important manufacturing center.

The Wisconsin Commission, although supporting Soo's requested condition 3, for the reasons heretofore indicated, opposes granting access to Milwaukee to a third major carrier.

Applicants view the proposed conditions of the Metropolitan Milwaukee Association and the Soo Line with reference to Milwaukee as being unnecessary and as opposed to the public interest. Applicants point to the fact that the majority of the shippers appearing either for the Metropolitan Milwaukee Association or on behalf of the Soo admitted that the Milwaukee Railroad did

Tab Reads: No Cond. Upper Lakes DOX

not discriminate in performing the switching service for Soo under its agency contract. They urge that removal of restrictions in Soo's contract with Milwaukee Road are unnecessary inasmuch as Soo can presently handle traffic to and from its local points, except between the corporate limits of Chicago and Milwaukee, and that it cannot directly serve any area to and from which such restrictions are applicable in western States. Furthermore, they argue that insofar as such restrictions are applicable, they do not pertain to the movement of iron and steel articles which make up the predominant movement from and to the Milwaukee area. Given the removal of restrictions, at best, Soo would only gain a shorthaul movement to Chicago and that premise alone should not, in applicant's opinion, justify the removal of such restrictions. Finally, Soo itself admits that the removal of such restrictions would not be meaningful without the creation of the terminal company.

In the latter respect, applicants adamantly insist that the creation of a terminal company would not only be extremely costly to the merged company but would create a bottleneck in the Milwaukee switching district which would result in a much poorer service for the shippers in this area. This, applicants point out, is not the case of a need being presented for the opening of a closed terminal which the Commission has sought to achieve in the past.[95] Furthermore, the situation is complicated by the negative attitude of GTW which provides competitive rail service in the Milwaukee switching district.

TSC EVALUATION

Applicants view the creation of a new terminal company at Milwaukee as a step backwards and creating new problems where today there are none. The Commission has in the past recognized that terminal service companies are notoriously known for providing poor service citing *Missouri Pac. R. Co.-Control-Chicago & E. I. R. Co.*, 327 I.C.C. at p. 90 and *St. Louis S. W. Ry. Co.,-Purchase-Alton & S. R. Co.*, 331 I.C.C. at pp. 537 and 576.

yea!

Furthermore, Soo's present service through its agency arrangement with Milwaukee is available at 576 firms in the Milwaukee district. An additional 154 industries on the C&NW can be reached by Soo Line through reciprocal switching. Thus, a total of 730 industries of the 753 in the Milwaukee district are presently opened to the Soo Line and would be

[95] See Footnote 93

available to the latter upon consummation of this transaction. The wide availability of Soo's service, applicants contend, is further shown by the fact that only 8 of the 75 Milwaukee-area industries shipping or receiving more than 500 carloads a year do not have Soo's service presently.

In applicant's view, there will certainly be sufficient competition in Milwaukee after the consummation of their proposed transaction. In this respect, applicants view the shippers as supporting the Metropolitan Milwaukee Association's position for added rail competition as not founded on realistic fact. Such shippers, applicants assert, despite the elimination of existing competition between themselves, will still have the services of the C&O, GTW and numerous motor carriers plus the availability of Soo for the majority of their traffic. In addition, Milwaukee is ideally located and has available extensive water carrier service. In any event, applicants argue, that for the most part, shippers at Milwaukee use the services of the railroad serving their plant directly and have not realistically resorted to competitive rail service that presently is being provided by carriers not serving their plants. Were this application approved, shippers would still have the services of Soo available as a disciplinary measure in the event the service of the unified company deteriorated plus the availability of the two car-ferry rail companies. One shipper located at Menomonee Falls, outside of the Milwaukee switching district, in fact, who appeared in support of the Metropolitan Milwaukee position would not be benefitted one iota by approval of either the conditions sought by the Metropolitan Milwaukee Association or the Soo Line. Finally, heretofore, the large majority of shippers appearing in this proceeding from Milwaukee have made but limited use of Soo's service but intend to increase use of Soo's service in the event this transaction is consummated. If Soo is permitted access to the Milwaukee area through the terminal company, a substantial volume of applicant's traffic will be diverted.

In support of their basic position that the creation of the terminal company would not provide as good service as is being provided today or as would be provided by the consolidated company, the consolidated company presented four shippers: a cold and dry storage warehousing company, a tanning company, a warehouse firm, and a seed company. These companies view the creation of a terminal company as causing a delay in the handling of traffic into and out of the Milwaukee switching district; as interfering with their operations; as providing an inferior service; and as being indifferent to their switching needs. Essentially, it is their belief that line-haul carriers perform their switching better than a terminal company could and support applicant's position that the Soo's condition should not be imposed.

GTW indicated a general lack of enthusiasm for imposition of condition 3 until or unless the details are worked out in advance.

Despite the heretofore made findings by this examiner that the value of intramodal rail competition is significantly less than in other forms of economic endeavor, under certain situations, it still has important residual values which justifies its salvation and the strengthening thereof. In this respect, the examiner's appraisal of the evidence warrants the conclusion that a significant area of competition will be eliminated at Milwaukee in the event this transaction is approved and that, if economically rational or feasible, conditions should be imposed which will provide an adequate replacement for its elimination.

RR COMP NOW VALUABLE!

The City of Milwaukee and its environs stands out as did the metropolitan complexes of New York, N. Y., and Pittsburgh, Pa., in the *Penn-Central* case and Portland and northern California points in the *Northern Lines* case, as an area in which the loss of intramodal rail competition to the extent anticipated by the proposed merger would not be in furtherance of the public interest were means available by which it could be saved.

Soo wins

The characteristics of Milwaukee including its size, population, location, and most important, the nature of its production and distribution patterns present special indicia of the need for intramodal rail competition despite its acknowledged shortcomings. The nature of the products manufactured in the Milwaukee switching district must be considered as being heavily rail oriented for which motor carrier service standing alone cannot provide a complete alternative. Nor does Milwaukee's advantageous position as a port offer a reasonable alternative for many shipments moving to and from the West and Southwest. Rail service, therefore, is essential and competitive rail service would be extremely beneficial to the continued growth of this community. In the latter respect, the examiner does not consider either C&O or GTW as providing realistic rail competition to West and Southwest and Soo Line, under its present restrictions and other disabilities, offers little

Soo position IMPROVED

more than a last resort to shippers seeking to move traffic into and out of this area. Although approval of this transaction standing alone will unquestionably improve Soo's position as the only competitive discipline left to shippers, Soo's total dependence upon the switching service of the merged company and its lack of a reciprocal base of service at Milwaukee make it less than a reasonable replacement for the elimination of the competition presently being offered by the Milwaukee Road and the C&NW.

AGCY OK but

Despite the Milwaukee Road's apparent reasonable compliance with its agency switching arrangement with Soo, the examiner believes that there is some merit to Soo's contention that an agency or reciprocal switching arrangement under the circumstances given, puts it at a distinct disadvantage. In the final analysis, it is the examiner's view that the economic activity conducted in the Milwaukee switching district demands that, to the extent economically feasible, rail competition, despite its shortcomings as a catalyst to improve service, be maintained.

As determined by this examiner, the real question posed at Milwaukee is not whether this community needs rail competition but rather how much and how should it be provided.

"MIN" cond for Soo

At the minimum, the examiner believes that approval to this transaction should carry with it conditions providing Soo with the trackage rights it seeks plus the elimination of all restrictions in the existing contract between it and the Milwaukee Road. Without such action, Soo's opportunities for providing competitive service to Milwaukee shippers would be severely limited and the dominance of the merged company in the Milwaukee area would be too strong to provide the shippers with any meaningful leverage to use Soo as a competitive discipline to the unified company. The examiner, therefore, will require the granting of such trackage rights by the merged company and a revision of the present contract to eliminate traffic restrictions as a condition precedent to the consummation of the proposed transaction.

COND.

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Even given this relief, however, Soo would suffer under a major handicap in providing a truly competitive service to shippers in this area. In this respect, the merged company would not only dominate but would have complete and exclusive control over the switching service to and from all of the shippers' plants located in the Milwaukee switching district and would

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be in a position to set schedules and govern the number of switches which each industry would secure. As heretofore indicated, a shipper, for all practical purposes, must rely on the carrier switching its plant for the major portion of its service and while each shipper may resort to carriers providing service through reciprocal switching, there is an obvious hesitance on shipper's part to utilize its secondary source. This is especially true where as at Milwaukee the non-switching carrier, the Soo Line, would have no industries which it serves directly which it can play off on a reciprocal basis against the merged company. In other words, there are two forces that insure the fact that a reciprocal switching in any given area is efficiently and effectively accomplished: The first is the basic demands of the shipper and the second, which is probably as, if not more important, the ability of the non-switching carrier to respond in kind at industries where it performs the switching service. Neither the removal of the restrictions presently inhibiting Soo nor the granting of trackage rights to Soo would, standing alone, provide a complete answer. If economically feasible, the examiner believes that something more must be accomplished if competition, as envisioned by him at the Milwaukee community, is to remain effective.

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Soo's answer on this issue is the creation of a terminal service company which unquestionably is one solution to the problem for it offers a neutral access to all railroads seeking to participate in traffic moving to and from the community. The examiner does not discount this proposal as a possible final solution to the creation of the necessary competition. On the other hand, on this record, at least, the examiner is not convinced that further exploration would not produce a better and more realistic proposal than has been offered by the Soo Line. An independent terminal company suffers from numerous disabilities. First, despite Soo's claims to the contrary, it does add an extra level of operation to the efficient service which could be performed by a line-haul carrier serving the plant directly. Secondly, it would add a layer to the mechanics of the billing and to intercorporate accounting which does not exist under present circumstances. Thirdly, it would divide responsibility between the terminal company and the line-haul carrier and despite any prearrangements adds a level of management with whom shippers must deal. Finally, it assumes that all shippers in the metropolitan complex of Milwaukee would favor a terminal company in preference to dealing with the line-haul

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carrier directly, especially where shipments may move on an intra-terminal basis or between two points served by the line-haul carrier serving its plant. Although applicants presented a few shippers which recognized these problems, the bulk of Milwaukee's major rail users were evidently willing to sacrifice these areas of efficiency for the sake of having available what they considered a truly competitive rail service.

After careful consideration of this evidence, the examiner at this juncture is not willing to accept the neutral service company as the final or best solution to the problem facing the Milwaukee community as the result of this transaction. Basic rail merger proceedings are not the best forum to arrive at a solution encompassing the details governing conditions for competitive service. In this instance, applicants approached the problem in the belief that no problem exists at all and have neither considered nor offered any reasonable alternative to the conditions proposed by Soo. On the other hand, Soo seeks to maximize its position through the creation of the neutral terminal company while the Milwaukee shippers which envision complete loss of competition at Milwaukee grasp at the only alternative, the neutral service company, which is available. While an approach which is specifically designed to meet the particular needs of the community of interests at Milwaukee other than suggested by Soo may not be feasible, given the basic conclusion by the Commission that reasonable and economic rail competition must be achieved at Milwaukee, the examiner believes that the parties, including applicants, Soo, the other railroads serving Milwaukee, and the shipper interests thereat which all have a stake in seeing that a sound transportation system evolves and will be in a better position, with new perspective, to arrive at a more practical solution. For this reason, the examiner recommends that the Commission not, at least at this time, impose part 3 of Soo's condition 3 but reserve jurisdiction to permit the parties to consider alternatives to Soo's proposal and attempt to work out a concrete solution that will more realistically achieve the desired results subject to the Commission's approval. If after 6 months from the date of consummation, agreement therefor has not been submitted to the Commission for consideration, this matter can again be presented to the Commission upon petition by any party to the record and the Commission can render a decision in a forum in which the issues will be focused in a more concrete light. In so doing, the examiner recognizes that several parties, particularly Soo and the Wisconsin Commission have urged that the Milwaukee condition be completely worked out before this

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transaction is consummated. However, the examiner believes that the practical experience encountered by the merged company at its conception may be beneficial to an appraisal of the mechanics of any realistic solution in the Milwaukee complex. Furthermore, the removal of the restrictions on Soo; the grant of trackage rights and the impending access by Soo to Milwaukee should insure that during the interim, Soo Line will be able to provide a reasonably effective competitive service.

if so, why more?

Having found that competitive rail service should be made available at Milwaukee and having set up the mechanism to provide Soo with reasonable access thereto, the next question posed by the situation at the City of Milwaukee is whether the introduction of Soo alone into the competitive scheme of the Milwaukee complex will be sufficient to meet its needs for competitive rail service.

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Historically, at the time the proposed transaction was filed, the Metropolitan Milwaukee Association sought to find a third carrier which would intervene in this proceeding to seek trackage rights into the City of Milwaukee. Santa Fe was approached but declined to intervene on the grounds that entrance into the Milwaukee would be economically unfeasible. CB&Q made a preliminary study dealing with the possibility of it seeking entry into Milwaukee, but also declined on the asserted grounds that such an operation would not be profitable. At hearing, some dispute arose on the question whether the withdrawal by CB&Q was motivated by the fact that their entry into Milwaukee would be unprofitable or rather for the reason that CB&Q entered into an agreement with applicants here not to seek conditions in this proceeding. In any event, the *Northern Lines* case approval therein was conditioned upon the reservation by this Commission to impose such just and reasonable conditions upon petition by any party in interest or on its own motion after hearing as may be necessitated by any cumulative or crossover problems stemming from approval of that merger, (the *Northern Lines* merger) and any other transaction authorized under section 5 with respect to the territory involved.

NO. N LINES problem

!! The fact therefore that CB&Q does not seek a condition here would not, in the event it was subsequently found to be in the public interest, preclude the Commission from ordering CB&Q to provide service into the City of Milwaukee. Whether the merged company here should be required to agree to the granting of trackage rights to the Burlington Northern or some other carrier !

NEW RR

is, as argued by the Metropolitan Milwaukee Association, realistically an issue to be considered in this proceeding. The fact that no carrier is presently seeking such conditions is, in the examiner's opinion, no bar to future action by the Commission were it to reserve jurisdiction in the manner set forth in the Association's request. The condition sought by the Metropolitan Milwaukee Association therefore, must be considered on its merits.

In this respect, the examiner believes that assuming the conditions heretofore granted to Soo are worked out in such a manner as to permit Soo competitive access to the City of Milwaukee that the condition sought by the Metropolitan Milwaukee Association would not be warranted. Only one specific instance cited by Krause Milling Company would indicate that Soo, given competitive access to Milwaukee, would not be adequate to meet the needs of the shipping community thereat. As heretofore indicated, the situation cited by Krause Milling was primarily a factor governed by market competition and in the examiner's opinion would have occurred whether one or more rail carriers were serving the City of Milwaukee. Although not providing as broad a scope of single-line service as either the merged company or CB&Q, Soo Line with reasonable access to shippers at Milwaukee and with direct single-line service to the key gateways of Chicago and Minneapolis will unquestionably be able to join with the many carriers serving these communities to provide through competitive joint routes and rates in a meaningful competition to the consolidated company. Despite their general support for the Metropolitan Milwaukee Association requested conditions, the majority of shippers evidenced as their primary desire, the strengthening of the Soo in the event this transaction were approved. It is the examiner's conclusion, again assuming that an adequate competitive framework can be established under the condition imposed herein, that such service will suffice for the competitive needs of the Milwaukee community.

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Recognizedly, the competition which may be provided by Soo under the best of terms will not achieve perfection but the Commission must frame the rail structure at Milwaukee in light of the realities with which it is faced.

As indicated, the above conclusions are predicated upon the assumption that in working out the conditions imposed here subsequent to the consummation of the transaction that the Soo Line will become an effective competitor at Milwaukee and to a large extent, impetus for the achievement of such realistic competition by Soo lies in the hands of the merged company and the Soo. Despite the examiner's anticipated results from such an arrangement, he has no guarantee at this time that such access by Soo would provide a solution to the problems facing the Milwaukee community. As indicated, there is one view that would urge that the entire merger program be delayed until the final details of service at Milwaukee are worked out. This examiner, on the other hand, does not believe that the Commission can arrive at a slide-rule answer on this question. The operational and other problems which can arise may bar the most desired solution and for this reason, and to insure that the end product - reasonable competition at Milwaukee - sought by the examiner will be achieved, he will impose a further condition which will permit the Milwaukee interests, including Krause, if, after a reasonable time, of not more than 5 years after the Soo condition is finally accepted by this Commission to petition this Commission for further conditions on this subject including the authorization of such other railroads, to extend their line, operations and service into Milwaukee over the merged company's tracks. The granting of such petition, however, will and should be based only upon a showing that the final scheme or plan of operation at Milwaukee does not meet the competitive needs of the shipping public at this community. The flexibility of the recommended condition should permit Metropolitan Milwaukee Association and Krause greater opportunities to protect their position than the conditions suggested by them. For this reason, the special conditions as sought by Metropolitan Milwaukee Association and Krause will not be imposed.

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NEW RR PETITION

SOO'S CONDITION 4 -

In essence, Soo's condition 4 would require the merged company (1) to grant Soo trackage rights permitting the extension of the latter's line operations into the Wisconsin River Valley between Junction City and Brokaw, Wisc.; and between Junction City and Wisconsin Rapids; (2) to act as agent for the Soo on all Soo traffic moving to and from stations on the unified company between Heafford Junction and Brokaw. Under the terms of the condition, the merged company would also be required to grant Soo the right to use yard, tracks, sidings and industry tracks at Mosinee, Rothschild, Waussau and Brokaw and all other points between Junction City and Brokaw; to use existing connections and construct new and

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improved connections at its expense at Junction City and Wisconsin Rapids; and to use terminal properties of the merged company at Waussau for switching and other operational purposes. In addition at Soo's option, the merged company would be required to perform switching service for Soo at Waussau and to handle shipments on an agency basis between Heafford Junction and Brokaw. Finally, the unified company would be required to permit Soo to abandon its use of coordinated joint trackage operations between Marshfield and Wisconsin Rapids, Wisc. The conditions also provide for reimbursement and rental charges to be paid by Soo; the right to serve new industries located on such line by Soo; the right to make such constructions, as connections, as may be necessary to the extent they do not interfere with the merged company's operations; and other comparable provisions carrying the mechanics of the above-specified arrangements into effect.

Presently Milwaukee Road in its operations from northern Wisconsin to the Twin Cities and Chicago maintain a line of road running almost due south from Heafford Junction through Tomahawk, Merrill, Brokaw, Waussau, Rothschild, Mosinee, Junction City, and Wisconsin Rapids, Wisc. The Milwaukee Road serves all of the above stated points exclusively except (1) Waussau and Rothschild where it meets the east-west line of the C&NW which runs between Marshfield and Eland; (2) Junction City where Soo's east-west route between Marshfield and Neenah intersects with the Milwaukee Road's route; and (3) Wisconsin Rapids where the various routes of Soo, Milwaukee Road, C&NW and GBW converge.

Under Soo's proposal the granting of trackage rights over the Milwaukee Road between Junction City and Wisconsin Rapids is necessary to shorten mileage and to improve the reliability of Soo's service to the paper industries at Wisconsin Rapids and Nekoosa and Port Edwards, to points south thereof. At the present time, outbound paper traffic from Wisconsin Rapids, Port Edwards and Nekoosa is moved by Soo to Stevens Point, the division terminal at which it's switched into road trains for the Twin Cities, Chicago and other points. In the event such condition is approved, the run between Stevens Point and Wisconsin Rapids will be shortened by 33 miles. The line between

Marshfield and Wisconsin Rapids is an "old end-to-end coordination" between the Soo and the C&NW and Soo argues that the proposed operations via Junction City would permit abandonment of Soo's operations over its present route without injury to the public.

In the event trackage rights are granted between Junction City and Brokaw, Soo proposes to operate new train operations by means of joint trackage rights from Junction City to be granted by the unified company. At all stations, Soo would offer switching services in addition to that of the merged company and would pick up and set out traffic at Moisinee and Rothschild where paper mills are located. Between Brokaw and Heafford Junction, under Soo's proposal the unified company would handle Soo's cars as the latter's agent, but Soo would be permitted to list all stations between Junction City and Heafford Junction as stations on its line and to publish a full line of rates and routes.

Switching at Wausau would be performed by the unified company, both for itself and the Soo for a reasonable charge and Soo would switch all industries directly but only if the volume of traffic should warrant it. Furthermore, industries along the line would be open to both the Soo and the merged company.

As contemplated by Soo, it would operate a turn-a-round train six days a week between its division headquarters at Stevens Point and Brokaw via Junction City using an existing connection. The train would leave Stevens Point in the morning with loads from Chicago, Twin Cities, Twin Ports and other areas. It would return late in the day with loads from points between Junction City, Brokaw and Heafford Junction, and subsequently be consolidated into road trains for delivery into Twin Cities and Chicago.

In addition to offsetting the traffic losses which Soo anticipates, Soo believes that the imposition of condition 4 would benefit the public interest for (1) it would shorten Soo's present operations and make them more efficient; (2) preserve rail competition which would be lost at Wausau and Rothschild; and (3) preserve Soo's ability to compete for traffic moving to and from such points as Stevens Point, Wisconsin Rapids and Port Edwards. In the latter respect, Soo presently handles a substantial volume of rail traffic, principally pulpwood and wood pulp destined to paper mills now served by both applicants and those served exclusively by the Milwaukee Road, on its north-south route. Were the direct service of Soo introduced to the valley communities indicated above, they would experience the benefit of a competitive level of car supply and road service, direct access to raw materials and have the benefit of Soo's voice in any rate negotiations which would establish competitive rates on paper products to major markets from all producers located in both the Wisconsin River and Fox River Valleys in Wisconsin.

As pertinent here, that portion of the Wisconsin River Valley involved in this proceeding includes that area extending from Tomahawk on the north to Nekoosa on the south which embraces four counties with a population totalling 214,050. The largest county, Marathon County, has a labor force of 20,210 including 9,644 persons engaged in manufacturing. The latter endeavor involves 187 establishments which had a value added by manufacture in 1964 of $88.4 million. The largest community in Marathon County is Wausau with a population of 31,943. Mosinee, Rothschild, Schofield and Brokaw which are also located in the county have populations of less than 10,000. The largest industries in the county were paper mills and manufacturing plants at Mosinee, Rothschild, Wausau and Brokaw.

Wood County with a total labor force of 15,845 persons, 8,971 of whom are engaged in manufacturing, maintains industries connected with the production of products from lumber such as paper, plywood, mobile homes, and other lumber products. It has 105 manufacturing establishments which in 1964 produced a value added by manufacture of $93.6 million. Its largest communities are Wisconsin Rapids with approximately 15,000 and Marshfield with 14,150. Nekoosa (population 2,515) and Port Edwards (population 1,849) are also located in Wood County.

The principal city in Portage County is Stevens Point with a population of 17,837 and the county has several important paper mills. Stevens Point is served by Soo Line and GB&W but not by C&NW or Milwaukee Road.

Lincoln County in 1964 had a labor force of 4,974 including 3,062 employed at 64 plants engaged in manufacturing. These plants produce a value added by manufacture of $32.4 million. The two principal industrial towns located on the railroad in Lincoln County are Merrill (population of 9,451) and Tomahawk (population of 3,408). Merrill has three factories, a manufacturer of doors and other woodwork, a paper plant, a shoe and glove factory and Tomahawk has a paper mill.

The entire area encompassed by these four counties has substantial acreage of forest land.

Seven shippers directly or indirectly offered evidence in support of Soo's condition 4. Of these, five were engaged in logging mill operations and shipped or hoped to ship pulpwood, wood pulp, lumber or other lumber products into the Wisconsin River Valley or maintain paper mills or wood producing plants in this area. Of the remaining two shippers, only one, a manufacturer of roofing granules, presently maintains a plant in the Wisconsin River Valley at Wausau and has shipments moving into and out of the Wisconsin River Valley. The other, the Upper Lakes Bureau presently has no movements into the area whatsoever.

Although the elimination of rail competition at Wausau was the basis of support by two of the seven shippers, by and large, the shippers supporting this condition were interested primarily in the opening of new markets for their goods such as pulpwood, coal, etc., or in obtaining new sources for raw materials such as pulpwood and wood pulp. In the latter respect, these shippers anticipate that were Soo to gain access to the community in which their plant was located, they would receive lower rates as a result of the single-line service which could then be afforded by Soo from and to new raw material sources. In addition, these shippers indicated that the availability of Soo would offer them an alternate source of car supply.

The two shippers at Wausau which would lose rail competition as a result of the proposed transaction ship wood and roofing granules. Their main fear is after the proposed consolidation is consummated there would be a reduction in car supply which they contend is not adequate now when they have the competitive services of the C&NW and Milwaukee Road. For this reason and on the general premise that they believe in the maintenance of rail competition, they support the condition sought.

In addition to the above seven shippers, two paper companies, heretofore discussed, with plants located collectively at Neenah, Port Edwards, Wisconsin Rapids, Stevens Point, all in the Wisconsin River Valley, oppose the application unconditionally on the grounds that competition between applicants would be eliminated. Their primary fear, however, was premised on the belief that the consummation of this transaction would adversely affect either the Soo Line and/or GB&W which serve their plants. In each case, however, these companies will continue to receive service from at least two railroads and on the basis of the evidence of record and in light of the examiner's subsequent findings herein, their fears in this respect do not warrant further consideration.

The Wisconsin Commission also supports the imposition of condition 4.

Milwaukee Road presently operates freight and passenger trains daily between New Lisbon (south of Junction City) and Wausau serving Mosinee and Wisconsin Rapids en route. In addition, Milwaukee Road has a daily way-freight train operating between Wausau and Brokaw and Wausau and Mosinee, its southbound run serving Schofield, Rothschild and Weston. Another such daily way-freight train operates between Junction City and Sprague (south of Wisconsin Rapids) and scheduled daily trains are also operated between Wausau and Heafford Junction, serving all points en route. Under the new company's proposed operations, such services would continue unchanged.

It is the applicants' contention that were the services of Soo Line introduced into the area through the imposition of condition 4 that the present services of the Milwaukee Road could not be continued by the merged company as the traffic moving to and from this area simply would not support such service. Furthermore, with reference to the so-called inadequacy of car supply in this area, applicants contend that Soo has made no study of the present car supply at points along the routes sought to be served by condition 4 and had conceded that as many as 11 "foreign line" railroads supply cars to industries in the Wisconsin River Valley between Wisconsin Rapids and Heafford Junction. In fact, applicants argue, Soo itself assigns one car to the services of a Wausau shipper but has received no requests for assignment of equipment from any industry north of Junction City.

In support of their position that the introduction of Soo into the area would not be consistent with the public interest, applicants presented the testimony of three firms. One, a millwork manufacturer of doors, sash, and molding located at Wausau ships

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most of its outbound traffic by truck and considers its present rail service adequate. Another millwork firm at Merrill feared possible diversion of traffic from the merged company to Soo and did not consider the entrance by Soo into the area as providing any material benefits. The third, a producer of canned evaporated milk in Merrill, cited truck competition as the discipline which keeps Milwaukee Road's present service on a high level.

In terms of public need for Soo's proposed condition 4, such request is predicated on three essential elements (1) to make Soo more efficient at points it now serves in competition with one or both applicants in the Wisconsin River Valley through the granting of trackage rights between Junction City and Wisconsin Rapids which will eliminate a circuity of 33 miles; (2) to permit Soo to provide service at three points at which rail competition will be eliminated as a result of consummation of this transaction, (Wausau, Schofield, and Rothschild); and (3) to permit Soo access to numerous points heretofore exclusively served by the Milwaukee Road.

The examiner believes that the evidence warrants the granting of trackage rights to Soo between Junction City and Wisconsin Rapids. The elimination of rail competition between applicants makes it desirable that the remaining competitor, Soo, be strengthened in terms of permitting it to provide as efficient service as is economically rational to facilitate the handling of shipments to and from this paper-producing area which includes Wisconsin Rapids, Port Edwards and Nekoosa. The examiner's recommendation that such trackage rights be granted is not designed to create new competition but rather to strengthen the Soo's efficiency at points it already serves in light of the loss of competition between applicants at those points. The corollary of this proposal that Soo be permitted, at its option, to abandon its operations between Marshfield and Wisconsin Rapids and for applicants to pay Soo the salvage value of the trackage owned by Soo between such points is not an appropriate matter for decision in this proceeding and is primarily designed, in the examiner's opinion, to offset Soo's anticipated losses which, as later will be discussed, will not occur in the event the conditions as proposed by the examiner are adopted by the Commission. !!

The examiner declines to impose that portion of condition 4 which would grant Soo trackage rights and would permit it access to points north of Junction City on the basis that insufficient

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relationship to this transaction for such service has been established. Except at Wausau, Schofield and Rothschild, none of the communities north of Junction City would, in any way, be affected by this transaction, except that it is highly possible that their service may be marginally improved by reason of the efficiencies attending the carrying out of the merger plans. Although competition would be eliminated at the three points indicated above, shipper support at such points is not of such caliber either in terms of volume or urgency as to demonstrate the type of need that would support the operations of more than one carrier. For the most part shippers along this line north of Junction City were primarily interested in either extending their sources for raw material or markets for products above and beyond those which they had presently available. And while such extension may well be in the public interest, it bears no relationship whatsoever to this merger proceeding which is designed exclusively to test the transaction itself and the effects flowing therefrom.

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While it is true that shippers at Wausau, Schofield and Rothschild evidenced some fear as to a loss of service through the elimination of alternative sources of car supply, this loss at best will be marginal and must be balanced against the needs of the communities involved and the practical consideration in the operation of service into this area. In the latter sense, were Soo to be introduced as a competing carrier, it is doubtful whether the merged company could or would maintain the present level of service afforded by Milwaukee Road alone for as appears of record, the evidence of volume of movement is simply not sufficient for two operations of the type provided by Milwaukee Road today. All values considered, the examiner does not recommend the extension of Soo's lines north of Junction City.

SVC EFFECT OF GRANT

SOO'S CONDITIONS 5 AND 6 -

The essence of Soo's proposed condition 5 is the granting of trackage rights by the consolidated company to Soo between Neenah and Green Bay via Appleton, Little Chute, Kaukauna and West De Pere, permitting Soo the right to use and/or purchase a portion of the merged company's yard trackage, sidings, and industrial trackage at Kaukauna, West De Pere and Green Bay. Under the terms of condition 5, the merged company, if requested by Soo, would be required to perform the switching service for Soo at a

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reasonable charge at Kaukauna and West De Pere, at points between West De Pere and Green Bay and in a specific area at Green Bay.

A corollary to the above request, condition 6, would require the merged company to grant to the Soo trackage rights between a connection to be constructed at Neenah and points of connection at Kaukauna via a line of road extending from Appleton, through Kimberly and Combined Locks, Wisc. Under the terms of condition 6, the merged company would be required also to grant Soo to use yard trackage, sidings and industrial trackage at Kimberly and Combined Locks. Additionally,at the request of Soo, the merged company would have to perform industry switching for a reasonable charge.

Under conditions 5 and 6, Soo would have to pay a reasonable rental for said operating rights and an equitable proportion of the maintenance and operating expenses incurred for such operations.

The area subject to Soo's conditions 5 and 6 is generally known as the Fox River Valley, embracing Brown, Outagamie and Winnebago Counties. The largest, Brown County, is located at the northern end of the Fox River Valley. In 1964 it had a total population of 134,700 of which 13,508 were engaged in manufacturing at 274 establishments which produced goods with a value added by manufacture of $186.8 million. Green Bay, the largest city in Brown County, has a population of approximately 85,000, and is considered the cultural, manufacturing, retail, wholesale, economic and transportation center of northeastern Wisconsin. It is located on the Fox River which empties into Green Bay of Lake Michigan and is considered a domestic and foreign port. Approximately 2 to 3 million tons move through the Port annually including pulpwood, coal, fuel oil, gasoline, and kerosene.

Outagamie County includes the communities of Kaukauna, Combined Locks, Kimberly and Appleton. It had a population of 108,200 in 1964 and a labor force of 27,647 of which 12,013 were engaged in manufacturing. There were 160 manufacturing establishments in the county, 8 employing more than 400 persons and 2 more than 1,200. Value added by the manufacturers for the county amounted to $134.8 million. Primary industry in the county in addition to paper making included metal-working, textiles, food and wood-work. Appleton, the largest city in the county, had a population of 48,411 in 1960 and at Kimberly, Combined Locks and Kaukauna, large paper mills were located.

Winnebago County had a population in 1964 of 115,100 people and includes such cities as Neenah with a population in 1960 of 18,057 and Menasha with a population in 1960 of 14,647. In 1964, Winnebago County had a total of 20,568 persons engaged in manufacturing at 244 establishments and value added by manufacture exceeded $215.8 million. Neenah-Menasha have a large number and variety of paper manufacturing and converting plants. In addition, Oshkosh, not directly involved in the conditions sought, with a population of 45,110, is located in the county.

Today, the Fox River Valley is served essentially by four railroads, Soo, Milwaukee Road, C&NW and GB&W. The latter operates a line of road extending east-west through Green Bay to Black Creek where it meets with the north-west line of the Soo Line from Sault Ste. Marie to Chicago. The latter line runs through Black Creek, Appleton and Neenah-Menasha. The Milwaukee Road operates a line running north-south from the Upper Peninsula of Wisconsin through Green Bay, West De Pere, Forest Junction, through Hilbert to Chicago. C&NW lines extend from the Upper Peninsula through Green Bay, West De Pere, Appleton to Neenah-Menasha; and it also has lines extending from Appleton through Kimberly and Combined Locks to Kaukauna.

Green Bay is presently served by three railroads, Milwaukee Road, C&NW and GB&W. The latter only reaches major terminals on a joint-line basis. Its service to the West, particularly Twin Cities in connection with the Soo Line, is considered more direct than applicants which provide single-line service to Twin Cities. GB&W also participates in traffic moving east from Green Bay which goes to Kewaunee and across the lake by car ferry. GB&W's major connections are with the Soo Line at Black Creek, with the Kewaunee and C&NW at Green Bay and the CB&Q at Winona, Wisc. In addition, it has connections with the Soo at Amherst, Stevens Point and Wisconsin Rapids, Wisc.

In the event this transaction were approved, rail competition in the Fox River Valley would be eliminated at West De Pere and the number of carriers serving Green Bay would be limited to the merged company and the GB&W; and at Appleton and Neenah-Menasha to the merged company and the Soo Line.

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Soo contends that the granting of condition 5 will preserve pre-merger competition at and provide Green Bay with the high quality of rail service and choice of competitive routes it needs to support its present and future growth. Soo contends that all of the reasons advanced for extending Soo Line service into the paper-mill towns in the Wisconsin River Valley apply with equal force with the extension of service into the Fox River Valley paper-mill towns. With respect to Kimberly, Combined Locks and Kaukauna, Soo now renders service as originating and intermediate carrier on traffic inbound to the mills. Large quantities of pulpwood are cut for these mills in upper Wisconsin and Michigan in Soo territory. Soo, however, only gets a short haul on this movement and under single-line service, Soo would make much more efficient use of gondolas used for pulpwood loadings and reduce the turn-around time. Further, Soo contends that its car supply and direct service would be of additional benefit to the mills. While Soo recognizes that the latter three points are served exclusively by C&NW, and that it could physically interchange all of this traffic with C&NW at Appleton, Wisc., a short distance from destination, under existing routing conditions, Soo is required to give up virtually all of this traffic at more distant junctions such as Ishpeming and Larch, Mich., and Twin Cities.

Soo's request for conditions 5 and 6 are supported by the Green Bay Chamber of Commerce and eight shippers. The Green Bay Chamber, while not opposed to the proposed transaction, asserts the need for two Class I railroads to serve the city. Although the Chamber does not regard the GB&W as providing effective competition to the new company, it recognized that the new company, due to the circuities of its lines, will not provide any faster service east-west to Twin Cities than GB&W-Soo joint-line service and may benefit the city through improving present car supplies. Also, the Chamber apparently did not consider any possible diversion of traffic from GB&W through entrance of Soo to the Green Bay area. Of the eight shippers supporting conditions 5 and/or 6, two are large paper companies located at Green Bay which utilize rail service to a large extent. Their main concern is the fact that the elimination of one of the two major carriers serving the city of Green Bay would result in a deminished car supply. One considers Green Bay a deficit area in that it does not generate enough inbound cars to provide an adequate outbound supply of equipment. Both view GB&W as not having a large boxcar fleet and have some apprehension concerning its ability to provide a competitive service to the extent being offered today. This is especially true inasmuch as

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GB&W's operations are essentially east-west in nature and they view the elimination of competition between applicants as a complete elimination of competition on north-south movements. They consider that the Soo proposal would provide them with a substitute for the loss of competition resulting from consummation of this transaction. One is fearful that the transfer of Milwaukee's yard operation, which is presently adjacent to its plant, to the C&NW yard, which is more remote, would make switch operations into and out of their plant less efficient. A cement company with plants located at Milwaukee and Wausau as well as Green Bay, supports a general strengthening of Soo in the area for it does not want to depend solely upon the services of a single carrier. A large grocery chain maintains a large distribution warehouse at Green Bay and while supporting the proposed merger, it is in favor of Soo's gaining access to Green Bay. Three companies located on the Soo which are sources for pulpwood, wood pulp, and logs, also favor conditions 5 and 6. These companies view entrance of Soo into Green Bay and the other areas sought to be served by conditions 5 and 6 as opening up new markets to them to which they now cannot gain access because of their dependency upon joint-line rates which do not permit them to compete in these markets. The Upper Lakes Bureau views conditions 5 and 6 as giving their members more ready access to this area on the movement of coal in competition with the interior points served by Milwaukee Road and C&NW today on a preferred basis.

At hearing and on brief, the Soo recognized that its entrance to Green Bay may pose problems for the GB&W and not seeking to compound the latter's problems by a condition which would deprive that railroad of traffic, Soo is agreeable to any reasonable modification of its proposed condition which the Commission might feel is necessary to protect this carrier. As indicated by Soo, its proposed condition is primarily sought to generate north-south traffic which is not detrimental to GB&W, whose interest is in traffic moving primarily in an east-west direction.

No shippers from West De Pere, Kimberly, Combined Locks or Kaukauna appeared in support of Soo's proposed conditions.

The imposition of Soo's conditions 5 and 6 are opposed by applicants and Soo's unrestricted entrance into Green Bay is opposed by the Wisconsin Commission. The former views the proposed conditions 5 and 6 as merely involving an extension of

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line into a new territory for Soo Line which can only be imposed if a substantial public benefit akin to a showing of public convenience and necessity is proved by a preponderance of the evidence. At most, applicants argue, shippers testifying for Soo's extension did so from the belief that lower rates presently maintained by Soo Line for their commodities, chiefly pulpwood, would extend to them the advantages of new markets for their products or increased supply of raw materials. Applicants further contend that the Soo conditions would essentially duplicate the service of the new company by adding more trains and switch crews at points involved to handle the same volume presently handled by applicants; that Soo would only net $535,625 annually for the new service whereas the additional costs to the railroad industry would amount to roughly $910,448. On this basis they urge that the Commission reject the Soo's proposed conditions 5 and 6.

The Wisconsin Commission although recognizing GB&W as a small cross-State carrier considers it both important to the area and community immediately served and an important connection in cross-lake routes. It feels impairment of the latter's revenue levels and financial integrity should not be permitted either directly or indirectly by conditions imposed to this transaction. Other than the stipulation considered elsewhere, GB&W did not present evidence in this proceeding. Despite this, there is no question as considered by the Wisconsin Commission, that entry of Soo into Green Bay would cause diversion of traffic from the GB&W's system. Soo participates in substantial joint-line movements with GB&W which in 1965 amounted to 8,813 cars delivered to and 5,074 cars received from GB&W. A large portion of these movements consist of forest products having destinations at Green Bay and it is apparent both to the Wisconsin Commission and this examiner that the Soo's estimates of benefits to be realized from its proposed Green Bay conditions includes revenues accruing from longer hauls on traffic it now interchanges with the GB&W. In fact, Soo admits that GB&W would be shorthauled or cut out entirely on certain traffic if condition 5 were imposed.

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As an alternative, the Wisconsin Commission does not believe that limited access to Green Bay by Soo would jeopardize the operations of the GB&W. The north-south operations of GB&W-Soo joint-line service today between the Green Bay area and Milwaukee-Chicago and beyond is not competitive with either applicant for the route is circuitous and takes one day longer than applicant's route. It is the Wisconsin Commission's

INJ. TO GBW

opinion that Soo's condition 5 could be modified in a manner which would permit the maintenance of rail competition at Green Bay and at the same time protect the needs of GB&W. In this respect, it is suggested by the Wisconsin Commission that Soo's condition 5 be imposed subject to traffic restrictions which would prohibit Soo from originating or terminating traffic at Green Bay to or from points on its line lying north of the GB&W line in Wisconsin and northern Michigan and that portion of Minnesota east of and including the line from the Twin Cities to the Twin Ports. Such a condition as envisioned by the Wisconsin Commission would afford substantial protection to GB&W and at the same time provide a competitive north-south rail route for Green Bay in the event the merger is approved. The Wisconsin Commission supports Soo's request for condition 6.

Except for the reduction of competition at Green Bay, it does not appear that the proposed transaction would adversely affect any shipper which appeared in this proceeding or is sought to be served by Soo Line through the imposition of proposed conditions 5 and 6. Although recognizedly entrance by Soo as sought under condition 6 would possibly open new markets for various lumber-producing interests and the Upper Lakes Bureau which supports this condition, no specific or definitive detriment to the public will be caused by this transaction which could or would be cured by the imposition of such a condition. Other than offering Soo offsetting revenues for anticipated losses through diversion, realistically there is no relationship between the needs of the shipping public and the benefits to be derived by condition 6 that stems from this transaction. The examiner, therefore, will not recommend the imposition thereof.

Evidence of the need for Soo's condition 5 to the extent supported by the Wisconsin Commission is, however, sufficiently documented of record. Although not free from doubt, the population, economic activity, and distribution patterns at Green Bay warrant the granting of access to the Soo Line to the extent it does not jeopardize the service and operations of the GB&W. Soo has recognized the possible injury to the GB&W and has indicated a willingness to accept the reasonable modifications imposed herein. The central thrust of shippers at Green Bay which support condition 5 is a need for a continuation of service competition, particularly in terms of car supply and switching service and it is in this area that rail competition to the extent it exists today, is the

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most meaningful. Although one or two of the supporting shippers appeared to be able to use motor as well as rail service for the handling of some of their traffic, it is evident that the supporting shippers do, in fact, rely upon rail service and have no realistic substitute for the handling of many of their movements. Of equal consideration, the volume of traffic moving to and from the Green Bay area appears completely adequate to support the competitive services of Soo operating under the restrictions heretofore indicated. With reference to applicants' argument that the granting of access to Soo would result in an increased cost to the rail industry, whether true or not, our economic philosophy as embodied in the antitrust laws dictates a willingness to pay the added costs for the benefits derived from competition where necessary. Although the examiner recognizes that certain of the objectives of section 5 are designed to promote the most efficient system possible, a need for competition on certain occasions may transcend this scheme despite the added costs involved. Such a situation, in the examiner's opinion, is presented at Green Bay.

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Whether the details of condition 5 as suggested by Soo Line should be carried out in the manner suggested in light of the restrictions imposed cannot at this juncture be answered by this examiner. For this reason, therefore, and on the basis that the record is sufficient to justify the imposition of the condition requested by the Wisconsin Commission, the examiner will recommend that the details relative to the granting of trackage rights and access to Green Bay be developed by Soo Line, GB&W, and the merged company and upon agreement, submitted to this Commission for its approval. In the event no agreement can be reached, however, an appropriate petition can be filed to this Commission which after hearing will determine the matters in dispute.

AGMT REQ

SOO'S CONDITION 7 -

As proposed by Soo's condition 7, the merged company would be required to grant to the Soo Line (1) joint operating rights over former C&NW trackage from a present connection east of C&NW's passenger station to trackage of the Sterling Pulp & Paper Company on the Chippewa River and over industry trackage of the merged company at the paper plant for the purpose of switching said plant with Soo engines and crews; (2) joint operating rights over C&NW's trackage from the connection described in (1) above to Building 18 of U. S. Rubber Company to enable Soo Line to switch said building with Soo engines and crews; and (3) the right to construct at Soo's expense, a new cross-over from Soo's adjacent main line and to operate on, to, and over sufficient C&NW trackage to permit Soo to operate into and serve directly the Chippewa Valley Industrial Park just north of Eau Claire with Soo Line engines and crews. As under previous conditions, Soo would agree to pay reasonable rental for operating rights and an equitable proportion of maintenance and operating expenses.

The City of Eau Claire and its immediate industrial area is located in Eau Claire County which in 1964 had a population of 59,200. In 1963 Eau Claire County had 69 industries employing 4,650 persons with a total value added by manufacture of $52.9 million. The largest employers in the city were meat packers, a paper mill, a rubber factory, and a maker of computer parts. Recently a new industrial park was opened to the north of the city.

Soo Line presently serves Eau Claire by its own line which branches from its main Twin Cities-Chicago line at Chippewa Falls, a point eight miles distant. Applicants also serve Eau Claire, C&NW by its main-line service between Chicago and Twin Cities and Milwaukee Road through the agency of Soo over its Chippewa Falls branch from its main connection at Winona, Minn. Soo Line reaches the U. S. Rubber Plant and the Sterling Pulp & Paper Company through reciprocal switching but is not permitted access to the Chippewa Valley Industrial Park through such reciprocal switching.

Soo contends that in the event this transaction is approved that the merged company will have direct switching service at most major Eau Claire Industries. The new Chippewa Valley Industrial Park will be served exclusively by the merged company and Soo would seek through its proposed condition to provide the two industries and the industrial park with a direct switching service which it contends will put Soo on an equal footing with the merged company.

Two shippers and the president of the Chippewa Valley Development Company support the proposed condition and a manufacturer of rubber located at Eau Claire is presently served

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Chip Falls

exclusively by C&NW and has the services of Soo and Milwaukee Road through Soo through reciprocal switching. It believes that it is beneficial to have more than one carrier switching its plant for through such service it obtains the benefit of direct competition which will, it believes, provide it with a better car supply and more frequent switching service. A manufacturer of paper products employing some 700 people produces paper which is marketed nationwide. Rail service is used to meet approximately 85 percent of its transportation needs. It depends on rail carriers for transportation service on approximately 900 cars inbound of raw materials and 3,000 cars of outbound finished product annually. Failure of the railroads to provide a reasonable service on inbound materials or because of their inability to provide an adequate supply for loading can and has caused shutdowns and curtailments in plant operations. It contends that the present use of Soo's service entails a 24-hour delay which it attributes to reciprocal switching. It believes that the Commission should, as a condition to this transaction, provide for adequate safeguards to insure the ability of Soo Line to provide rail service competitive to the merged company.

The Chippewa Valley Development Corporation which holds an interest in the Chippewa Valley Industrial Park which presently contains four corporations urges that a need exists for competitive rail and switching services. Industries in the park forward and receive over 2,500 loaded cars a year and anticipate a heavy increase in the future. It does not consider it is getting an adequate service presently from the C&NW which is the only carrier which switches the industrial park and believes the granting of access to Soo Line to enter the park is necessary for it to induce new industries to locate therein. This condition is also supported by the Wisconsin Commission.

Applicants contend that Soo Line, as C&NW, serves many industries in the Eau Claire area exclusively. They further point to the fact that despite the so-called 24-hour delay in switching of Soo its service is still considered competitive and, in fact, after merger shipper's allocation policy would be reviewed to favor Soo. The Chippewa Valley Development Corporation, applicants claim, which presently follows an allocation policy, would, whether this condition is approved or not, attempt to give Soo more traffic. In sum applicants assert

CHIP FALLS

that the added service of Soo to the Eau Claire shippers would essentially duplicate those presently provided by the new company while not adding any substantial or significant benefit. Here again, applicants point to the fact that the cost to Soo would be great and their added revenues small whereas the losses to applicant would be substantial.

MERGER NOT INVOLVED

The objectives of condition 7, as heretofore indicated, are directed to meet problems which essentially have no basic relationship to the proposed transaction. Although today the paper company, the rubber company and the industrial park sought to be served directly by Soo through condition 7 would lose the benefit of a secondary source of rail service now being provided by the Milwaukee Road through the Soo agency as has heretofore been amply demonstrated by the Soo Line at the City of Milwaukee, which was accepted by the examiner, such type of rail service is at best peripheral in value. After merger these industries will continue to be switched by one railroad as they are today and as heretofore been concluded, an improved railroad. After merger, these companies will still have Soo available as a strong competitive discipline to the merged company and it would appear that even accepting the fact of a 24-hour delay caused in the reciprocal switching service presently performed by C&NW, that the Soo has been used and used effectively to provide strong competition to the C&NW in the past. Again, the examiner cannot find in this evidence any indicia that the proposed transaction will cause any particular or significant problem for the supporting shippers but rather, it would appear that their competitive position would be strengthened to the extent the consolidated company was able to strengthen its operations. Therefore, the examiner will not impose condition 7.

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THE COST OF SOO'S CONDITIONS -

Soo estimates that the following revenues would be generated and expenses incurred or avoided as a result of the imposition of the conditions which it seeks:

Condition Number	Added Revenues From Savings	Expenses	Net Income Benefit
3	$5,800,000[96]	$4,453,900	$1,010,199[97]
4	1,171,091	831,614	475,577
5	1,460,000	1,169,675	290,325
6	609,200	363,900	245,300
7	231,908	111,918	119,900
Total Effect of Conditions	$9,272,199	$6,931,007 ~~[illegible]~~	$2,141,301

Although not estimating the expenses which would be incurred by Soo, the addition of operations resulting from the imposition of the proposed conditions would, in applicants' opinion divert the following revenues from their operation:

Condition Number	Estimated Cost to Applicants
3	$ 8,588,292
4	2,033,023
5	3,737,288
6	247,080
7	106,496
Total Diversion	$14,712,179 ~~[illegible]~~

The evidence of record indicates that the estimates of gain to Soo and also loss to applicants as advanced by both traffic witnesses of applicants and Soo are rough estimates of impact. With reference to condition 3, Soo's traffic expert estimates that Soo would receive approximately 15 percent of the total volume

[96] Includes present revenues of $2.3 million

[97] Conclusion deducts net revenue after deducting expenses for pre-merger volume in and out of Milwaukee of $635,818.

handled by Soo and applicants collectively today. Despite the substantial benefits which Soo sttributes to the ability to serve shippers directly, Soo's low estimates of its ability to secure traffic at Milwaukee through this condition is founded on (1) the fact that the merged company will be substantially stronger than Soo; (2) that shippers will not change their historic relationship with applicants overnight; (3) that a substantial volume of traffic (at least 10 percent of the total now moving via Milwaukee Road) moves to local points served exclusively by the Milwaukee Road and an additional unspecified volume moves to points served by C&NW locally; (4) that the merged company will have a faster and more frequent service with a greater number of interchanges than the smaller Soo Line; and (5) that the merged company's single-line service to and from gateways not served by Soo will limit Soo's competitive ability to provide single-line service.

Applicants' study was essentially formulated in two parts under which the expert traffic witness for Milwaukee evaluated traffic specifically and anticipated that Soo would be able to divert 22.5 percent of Milwaukee Road's present traffic. The second phase of the study was, in effect, an off-hand calculation by him that Soo would be able to achieve a 30 percent diversion factor by its direct access to the shipping community at Milwaukee.

WOT!

Despite equal access to Milwaukee shippers for Soo as envisioned by this examiner under the condition recommended, there is no denying Soo's premise that it will be at a competitive disadvantage to the merged company simply on the basis that the latter's size and direct service to numerous points will continue to hold traffic which Soo could only handle in joint-line service. Obviously, Soo will not be able to make any significant inroads into this traffic for the merged company's single-line service will be a formidable barrier in this respect. On the other hand, Soo's service should prove particularly effective on traffic which applicants presently handle on an interline-forwarded or interline-received basis. In this respect, Milwaukee Road's expert witness estimated that Soo would garner approximately 39 percent of the interline-forwarded traffic to points in the East and 44 percent of interline-received traffic which originated in the East. Soo quarrels with these estimates on the grounds that its service would be less than that which would be provided by applicants with its more frequent schedules

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and service. In this respect, the examiner disagrees. While initially Soo would have a realistic job in selling its service at Milwaukee, it will take some time before any significant improvement in the merged company's service would be realized as a result of this transaction. The attitude of shippers supporting the position of the Milwaukee Association clearly demonstrates their strong desire to keep any alternative rail service made available in a strong position and the examiner is convinced that this factor alone plus Soo's demonstrated competitive abilities insure the fact that the volume of traffic handled by it into and out of Milwaukee will slightly exceed 20 percent of the traffic presently handled collectively by applicants and Soo today. This should raise the volume in terms of gross revenue traffic to be handled by Soo Line by approximately $2 million and, giving effect to a 30 percent factor for the cost of handling such traffic since the major cost for Soo's entry into Milwaukee would be absorbed by its initial penetration, this would result in an increase in Soo's projected figures at Milwaukee by $1.4 million. In total, therefore, it is the examiner's conclusion that the imposition of condition 3 should generate to the Soo a total of $5,500,000 in additional gross revenues, and using Soo's own estimate of cost, $2,410,190 in additional net revenues.

30% used

Soo 20% Milw tfc $2 mil to Soo net $1.4

The variance in conditions 4 and 5 as proposed by Soo Line and as imposed and restricted by the examiner make it impossible for a definitive determination of gain to Soo or loss to applicants with any degree of precision. Other than providing Soo with an opportunity to offer a more efficient service in the Wisconsin Rapids-Nekoosa-Port Edwards area, it is doubtful if there would be any significant effect on the existing traffic patterns in the area and the net effect of this condition 4 would appear to be a standoff in terms of traffic gains and losses. Soo, however, should achieve savings through use of the shorter route. Since the examiner does not provide for abandonment of Soo's line between Marshfield and Wisconsin, no credit for such savings will be projected.

none for Wisc Valley

With respect to condition 5, Soo's access into Green Bay, unquestionably additional traffic would be diverted from applicant's operations. Certainly, however, even without the restrictions imposed by the examiner on such service, such traffic should not reach anywhere near the proportions estimated by applicants which

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anticipated a loss of $3,737,288. Given the restrictions imposed by the examiner, it is doubtful that Soo would garner traffic above and beyond its estimate of $1,460,000 which, utilizing Soo's cost figures, would result in a net gain of approximately $290,000.

SUM GAINS & LOSS

To sum up, the imposition of the condition recommended by the examiner will result in a gain to Soo, in gross revenue, of roughly $6,960,000 and in net revenue of $2,700,000 and a loss to merged company of the same gross figure and a net loss, utilizing a 33 1/3 percent cost factor, of $4,639,995.

Given the heretofore determined predicate that Soo's traffic losses should not exceed $3 million in gross revenues and using Soo's 30 percent cost base, Soo would experience a net loss of $2.1 million, from diversion. The conditions afforded by this examiner should not only make Soo whole from the diversion stemming from this transaction but improve the latter's financial position and ability to compete with the merged company in the Wisconsin-Minnesota area.

While the merged company will suffer a significantly greater loss in gross revenues and net revenues than would be necessary to protect the Soo Line from any reasonably anticipated diversion as a result of this transaction, as indicated the conditions are necessary, not to protect Soo essentially, but rather to provide the shipping public with reasonable alternative rail facilities where the record demonstrates a realistic need therefor in areas which can support such service. In recognition that these conclusions would take away somewhat from the financial strength of the merged company which this transaction is intended to generate, the examiner would recommend that in supplementing the basic conditions imposed herein that some consideration be afforded to the disparity in the gains to Soo and losses to applicants which would result from the conditions imposed. Despite them, however, the examiner must conclude that the other benefits of this merger are of sufficient strength to bear the burden which these conditions entail and the balance in competitive forces engendered thereby is necessary to insure an adequate service to the public.

EFFECT ON TRANSPORTATION SERVICES OF ILLINOIS CENTRAL

NATURE OF ILLINOIS CENTRAL'S OPERATIONS AND CONDITIONS -

Illinois Central is an Illinois corporation created in 1851. Its corporate headquarters are located in Chicago, Ill.

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Illinois Central is controlled solely and directly by Illinois Central Industries, Inc., a holding company which owns in excess of 90 percent of its stock.

Illinois Central operates 6,458 miles of road in fourteen States. Its primary routes extend north and south along the Mississippi River from Chicago to New Orleans, serving St. Louis, Mo.; Cairo, Ill.; Memphis, Tenn.; Jackson, Miss., and Baton Rouge, La., with important lines extending to Indianapolis, Ind.; Louisville, Ky.; Birmingham, Ala.; Meridian and Gulfport, Miss.; and Shreveport, La. Illinois Central also operates lines in an east-west direction between Chicago and important cities west of the Mississippi River, such as Omaha, Nebr.; Sioux City, Iowa; Sioux Falls, S. Dak.; Cedar Rapids, and Waterloo, Iowa; and Albert Lea, Minn.

Illinois Central is in sound financial condition. It does not oppose the proposed transaction nor does it believe that it could not withstand the adverse impact derived from consummation of this transaction. It does, however, assert that the approval of the proposed transaction without the conditions it seeks will eliminate it from handling traffic moving from, to, or through the Twin Cities gateways. To avoid this result, it seeks the imposition of the following condition:

> That Illinois Central be authorized to purchase or obtain trackage rights over Milwaukee Road's line of railroad between Lyle and Northfield, Minn., or, alternatively, in the event C&NW's application to merge with the CGW is consummated prior to approval herein, that Illinois Central be authorized to purchase, or obtain trackage rights over, CGW's line of railroad between Lyle and Randolph, Minn., (hereinafter referred to as the Lyle condition).

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Additionally, it seeks as a condition to the proposed transaction:

> That Illinois Central be authorized to purchase or obtain trackage rights over a small segment of line of the Milwaukee Railroad between the site of the Illinois Central-Milwaukee Road connection in Madison, Wisc., and the site of the Oscar Mayer Company plant also in Madison, (hereinafter referred to as the Oscar Mayer condition).

I. C.

THE LYLE CONDITION:

Background - Illinois Central's Chicago-to-Omaha Line branches north at Waterloo, Iowa, extending 107 miles north-westerly through Lyle to Albert Lea. There it presently connects with the C&NW, Milwaukee Road and Rock Island which maintain lines running to and through Minneapolis. The C&NW's line extending to Albert Lea was formerly the line of the M&St.L which was incorporated into the C&NW in 1960. For many years prior to November 1, 1960, the M&St.L operated its Train No. 94 from its Cedar Lake yard in Minneapolis to Albert Lea, from which point the Illinois Central operated its train in connecting service to Chicago. Illinois Central would move its train from Albert Lea to Waterloo, where it would assemble and classify cars for forwarding to Chicago. Advertized transit time for this daily service between Albert Lea and Chicago, a distance of 360 miles, was 12 hours, 50 minutes.

Illinois Central's daily train in the reverse direction from Chicago to Albert Lea for connection with M&St.L was scheduled to leave Chicago at 3 a.m. and arrive at Albert Lea at 9:30 p.m. the same day. The assembling point involved in this operation was also Waterloo. Traffic was received at Waterloo in dispatched trains from Chicago and other points for forwarding to or through the Twin Cities connection with a train operated by M&St.L which provided early morning delivery at Twin Cities.

During the years 1955 to 1960, the M&St.L-Illinois Central interchange at Albert Lea was operated, pursuant to contract, with pooling of diesel engines and cabooses between Waterloo and Minneapolis, allowing the trains to move through Albert Lea intact, which only necessitated the changing crews. Schedules were arranged so as to provide a through M&St.L-Illinois Central service between Minneapolis and Chicago.

Illinois Central maintains that the Albert Lea route and its operations in connection with M&St.L were to the mutual advantage of both roads for M&St.L was a natural partner and ally, cooperating fully in solicitating traffic for and insuring service over this route. Applicants, on the other hand, contend that M&St.L was never the so-called "friendly end-to-end connection" that Illinois Central now depicts. They maintain

LYLE

that the main line of M&St.L extended from Twin Cities to Peoria and almost every car which M&St.L interchanged with Illinois Central at Albert Lea represented a shorthaul to M&St.L depriving it of as much as two-thirds of its potential revenues.

Whether friendly or not, between 1949 and 1958, Illinois Central received an average of 18,647 cars from and delivered 8,237 cars to M&St.L. In 1959 it received 19,439 cars and delivered 6,420 cars and in 1960 it received 19,102 cars and delivered 6,234 cars at this same junction.

During the proceeding in which C&NW sought to purchase M&St.L, Illinois Central and C&NW entered into a stipulation wherein the latter agreed, among other things, to keep open the Albert Lea route, to maintain schedules and service so as to handle joint traffic no less expeditiously than its own and to operate under the contractual pooling arrangement heretofore described until otherwise mutually agreed to by the parties. As a result of this stipulation which was given effect in the Commission's order, interchange arrangements and schedules via Albert Lea remained essentially the same in connection with the C&NW as they were in connection with the M&St.L.

Subsequent to the merger of the M&St.L into the C&NW, traffic interchanged between the Illinois Central and the C&NW at Albert Lea declined rapidly. In 1961, the first year after consummation, traffic received by Illinois Central declined to 16,268 cars and traffic delivered to 5,041 cars. Since 1961, there has been almost a straight line decline, with the exception of 1964, to the present level of cars interchanged which in 1966 amounted to 11,501 cars received by Illinois Central and 3,277 cars delivered at the Albert Lea Junction.

Were the Lyle condition as sought by the Illinois Central imposed, it would be able to enter into joint route arrangements with the MN&S, an independent railroad with lines extending from Northfield and Randolph to the Twin Cities thereby substituting a friendly connection for the merged company, an unfriendly connection. MN&S actively supports Illinois Central's request for the Lyle condition.

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Illinois Central views the decline of traffic via the Albert Lea gateway as a result of C&NW's deliberate efforts or at least its lack of interest in seeing that the C&NW-Albert Lea-Illinois Central route remains an important competitor of traffic moving between or through the Twin Cities and Chicago gateways. Illinois Central points to the fact that C&NW trains are consistently late in meeting Illinois Central trains at Albert Lea. In this respect, the record discloses that C&NW's trains are scheduled to arrive at Albert Lea at 12:55 p.m., but that C&NW's trains normally do not arrive until 2:00 p.m. or thereafter. During the period between June 10 and June 23, 1965, C&NW's trains arrived an average of 1 hour and 5 minutes late. Despite claims of C&NW of improved interchange arrangements at Minneapolis with Great Northern and Northern Pacific, during the month of October, 1966, its trains arrived on the average of 1 hour and 47 minutes late. Since Illinois Central maintains a 1:00 p.m. cutoff time for its southbound trains, such delay evidently results in a delay of 1 day at Albert Lea in the movement of trains southbound via Albert Lea. From this showing, Illinois Central argues that it is obvious that there has been a deterioration of C&NW's service as compared to that formerly afforded by M&St.L which clearly establishes that C&NW is more interested in securing its long haul between Twin Cities and Chicago than in meeting its obligations in maintaining service via its Albert Lea interchange. Furthermore, on brief, Illinois Central alludes to the fact that despite the claimed improvements in the handling of cars through the Minneapolis gateway, C&NW has not been able to perform any better than it had prior to such improvements and that no better performance by the merged company can be anticipated by Illinois Central if the merger is approved.

Applicants, on the other hand, argue that Illinois Central has not urged either before this Commission in a separately filed petition or in this proceeding that C&NW has violated any obligation imposed in the *C&NW-M&St.L* merger case nor has the Illinois Central sought to reopen that proceeding to seek a modification of conditions for its greater protection. C&NW suggests that what in effect the Illinois Central is seeking in this proceeding is the alleviation of an injury that was caused by consummation of a prior merger and such argument is not relevant here.

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C&NW accounts for the drop-off in traffic since 1960 which it readily concedes has occurred, as not being attributable to any deterioration in its service but rather (1) to increased motor carrier competition between Twin Cities and Chicago; (2) to the fact that Illinois Central has worked to divert traffic away from the Albert Lea gateway to its Council Bluffs gateway; (3) to the fact that Illinois Central has worked to increase its interchange with CGW in preference to the C&NW; (4) to the fact that certain traffic, such as potatoes from the Red River Valley in North Dakota, has fallen off; and (5) to the fact that the improved single-line services between Chicago and the Twin Cities by existing rail carriers has placed the slower joint-line service provided by C&NW and Illinois Central at a disadvantage.

In the examiner's opinion, none of the above reasons appear to provide an adequate explanation for the decline in traffic routed via the Albert Lea gateway. The examiner cannot accept the premise that the relationship between M&St.L and Illinois Central was as intensely competitive as that which presently exists between Illinois Central and C&NW, for there is obviously much less incentive for C&NW to work with the Illinois Central, especially on the bulk of traffic moving through Chicago, than formerly existed for M&St.L. Furthermore, motor carrier competition appears no less intense between Chicago and Twin Cities than between other areas served by Illinois Central, yet there is a more significant decline on traffic moving via the Albert Lea gateway than via the Illinois Central system generally; nor does the routing of this traffic via the Omaha-Council Bluffs gateway by Illinois Central appear to be the major reason for the decline inasmuch as the record discloses that most of the traffic moving via the Albert Lea gateway is not the type or kind of traffic that would be susceptible to a routing through Council Bluffs. Furthermore, the majority of the traffic decline experienced by Illinois Central appears to have originated on the Northern Lines, or Soo or their connections and such traffic is not susceptible to routing via the Omaha-Council Bluffs gateway. Although traffic with the CGW has increased since 1960 (from 300 cars in 1960 to 2,973 cars in 1966), in light of the slower Illinois Central-CGW route, it would appear that the Illinois Central's explanation that such traffic is lumber-roller traffic is more in keeping with the facts of the situation.

Finally, the reduction in potato traffic has, in fact, been the result of diversions to C&NW which has installed a new potato terminal on its lines at Chicago and is in a better position with its direct single-line haul to compete on such traffic.

Stripping the above arguments to realistic fact, it would appear that the essential reasons for the deterioration in volume of traffic moving over the C&NW-Albert Lea-Illinois Central route stems essentially from two factors: (1) That after merger with M&St.L, C&NW had much less incentive to seek out or solicit freight moving over the Albert Lea route than its predecessor, particularly freight destined from, to, or through the Chicago gateway; and (2) that as a result, neither Illinois Central nor C&NW provided the combined service of which they were capable. In the latter respect, it appears that Illinois Central recognized rather early that the C&NW's incentive was less than that maintained by M&St.L and consequently reduced the priority of the Albert Lea traffic in relationship to other traffic moving through Waterloo with the result that its service, as was the service of the C&NW, was downgraded. For example, Illinois Central maintains a 1:00 p.m. cutoff time at Albert Lea for southbound traffic despite the fact that C&NW trains are not scheduled to arrive at Albert Lea until 12:55 p.m. Whether C&NW trains are 6 minutes late, an hour late, or 23 hours late makes very little difference for the schedules maintained by C&NW and the cutoff time maintained by Illinois Central appears to preclude the Albert Lea route from ever achieving its prior effectiveness. No efforts have been made by Illinois Central to adjust its schedules or seek to have C&NW adjust its schedules on a more realistic basis on the apparent grounds that it did not feel that C&NW was particularly interested in moving this traffic via Albert Lea.

In any event, as the situation now stands, there has been an almost steady decline in traffic moving over the Albert Lea gateway and the outlook for the future whether this transaction is approved or not is rather bleak to say the least. In fact, Illinois Central's traffic witness conceded that whether this transaction is approved or not that he would anticipate that the decline would reach the point where Illinois Central could no longer maintain its present so-called expedited joint-line arrangements with the C&NW. Whether C&NW's action does, in fact,

M/St L case

meet its minimum obligations under the M&St.L condition, is not the real issue here for, as pointed out by applicants, Illinois Central has ample opportunity to demonstrate and test this issue through the vehicle of a petition to reopen the *C&NW-M&St.L* merger proceeding. The key issues presented here with reference to the Lyle condition are (1) whether the proposed transaction in any way injures or does damage to the Illinois Central in the market place and (2) more important, whether the approval of the proposed merger necessitates the imposition of the Lyle condition to protect the public interest.

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On the first point, Illinois Central argues that approval of this proposed transaction will bring about the "cessation of the Albert Lea route as a recognized channel of commerce" because, after this transaction is consummated, the merged company will have less incentive to make it work than either C&NW or its predecessor the M&St.L; and that a strengthened C&NW-Milwaukee Road will accelerate diversions estimated at 9,291 cars with a resulting loss in revenues to the Illinois Central of 53 percent of the number of cars presently moving through that gateway.

With respect to its anticipated diversion, Illinois Central's traffic witness believed that if the transaction is approved, of the 1,239 cars moving from or to Illinois Central local points, the latter would be shorthauled by the merged company to the extent of losses amounting to $34,353; of the 8,163 cars moving to or from points served by Illinois Central in conjunction with one or more of the applicants, the former would lose 4,965 cars totalling revenues of $611,711; and of the 8,196 cars which Illinois Central handled in an overhead service, it would lose 4,302 cars, amounting to $356,941, plus it would be shorthauled on 2,619 other cars amounting to a loss of $183,870. In total, Illinois Central anticipates a loss of gross income of $1,186,875.

In contrast, applicants do not concede that the proposed transaction will result in any diversion to the Albert Lea route. Applicants contend that what in effect Illinois Central has shown through its diversion studies is that physically after merger the consolidated company could potentially divert the cars indicated. First, Illinois Central claims a total diversion of all traffic originated or terminated by it if originated or terminated at points also reached by C&NW, Milwaukee Road or by CGW. Second, Illinois Central claimed total diversions of all

I.C. DIVERSION

traffic it handled in overhead if handled to a junction also reached by one of the merged company's three components. These figures account for 80 percent of total diversions claimed.

The remaining diversion was obtained by assuming that as to traffic moving to or from points south of the Ohio River, Illinois Central would be shorthauled both as to (1) traffic moving to or from Illinois Central local points, and (2) traffic handled by Illinois Central in overhead service. Eastbound shipments were assumed to be interchanged at East St. Louis rather than Albert Lea depriving Illinois Central of its revenue attributable to the Albert Lea-East St. Louis haul. Westbound shipments were assumed to be interchanged at Chicago rather than Albert Lea, again yielding Illinois Central a lesser haul and division.

Applicants contend that consolidation of C&NW and Milwaukee would not have any appreciable influence on circumstances which determine an Albert Lea routing. Although conceding that it prefers and works for its long haul where it had a reasonable prospect of obtaining it, C&NW believes that the Illinois Central's traffic study demonstrates its great strength in retaining such traffic. Traffic now going via Albert Lea is going via this route because Illinois Central is able to influence the routing and such routing is chosen by shipper despite the fact that both C&NW and Milwaukee Road now work against it.

Based on this record, the examiner concludes that at worst, approval of this transaction would merely accelerate the presently anticipated demise of the Albert Lea route which according to Illinois Central has been already set in motion by the consummation of the C&NW-M&St.L merger. Of more importance, however, the examiner fails to see any significant factor in this proposed transaction that would materially alter the situation as it now exists. Presently, C&NW has single-line routes between Twin Cities, on the one hand, and, on the other, Chicago, Kansas City, St. Louis and other points the merged company could serve in competition with Illinois Central and there is nothing inherent in the approval of this transaction that would add to or intensify the incentive of the merged company to divert traffic away from the Albert Lea route that does not now exist. As indicated, unquestionably some of the decline in traffic over the Albert Lea gateway which Illinois Central has experienced since 1960 may be attributed to the

MERGER & A.L. RTE

greater opportunities open to and greater incentive of C&NW as a result of its merger with the M&St.L but such opportunities and such incremental incentives are not available to the merged company as a result of approval of this transaction.

MERGER NOT INVOLVED

The "added strength" and "increased ability of the consolidated company to influence" the routing of freight which Illinois Central heralds as the major factor in its diversion estimates, will not, in the examiner's opinion, so influence the routing ~~of~~ traffic from or to Illinois Central local points and certainly cannot be used to divert the volume projected by Illinois Central's traffic witness on movements to or from points served in common by Illinois Central and one or more of the resultant company's present components. In the latter respect, such added strength would not be sufficient to overcome Illinois Central's strength on traffic moving to or from industries served by Illinois Central directly and served by applicants through reciprocal switching for as heretofore indicated the dependency of such industry upon Illinois Central is too strong to justify such wholesale diversion. The ringing support of shippers served by Illinois Central clearly supports this premise but probably more significant is the fact that 71 percent of the traffic presently moving over the Albert Lea gateway is overhead to C&NW and the latter's ability to reroute this traffic no matter what the benefits of this merger, especially traffic moving to and from points served by Illinois Central, is too remote.

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On the basis of the foregoing, the examiner cannot conclude that there is any rational basis for a finding that the diversions as anticipated by Illinois Central over the Albert Lea gateway may result from any action taken as a result of this transaction and if the Lyle condition is necessary, its justification must be predicated on another reason.

Approval of the Lyle condition would enable Illinois Central and MN&S jointly to provide a coordinated service between Minneapolis and Chicago as well as other points reached by the Illinois Central. Northfield and Randolph, Minn., are the southern termini of MN&S and that road is, in large measure, dependent upon traffic interchanged with its connection at these points. If Illinois Central is permitted to extend its operations to Northfield or Randolph, it will of necessity work hand-in-hand with MN&S to encourage the flow of traffic via the joint Illinois Central-MN&S route. In this respect,

A.L. RTE DEMISE NOT DUE TO MERGER

both Illinois Central and MN&S will have every incentive to work closely together and it may be anticipated that as a result, this multi-line service will be able to provide a service which will be the substantial equivalent of "single-line service".

The interchange arrangements with MN&S are considered by Illinois Central to be superior to those presently maintained by the C&NW in that MN&S has direct connections with Great Northern, Northern Pacific and the Soo Line, which permits prompt interchanges on traffic moving via that gateway. More important, however, is the fact that MN&S lines run around the highly developed industrial center of Minneapolis and St. Paul as distinguished from the alternate routes of the Great Northern, Northern Pacific, Milwaukee, Soo and C&NW, all of which go through the heart of the metropolitan areas of Minneapolis and St. Paul.

The proposed Illinois Central-MN&S joint operations are designed to tie in their respective services at Northfield so that "substantial time can be reduced." In this respect, it is significant to note that whereas under its present schedule Illinois Central required 19 hours and 20 minutes to move its train from Chicago to Albert Lea, under the proposed schedule with MN&S, such service would be provided to a point 70 miles further north in 15 1/2 hours. Southbound, Illinois Central's present schedule from Albert Lea to Chicago consumes 14 hours and 20 minutes whereas its new schedule from Northfield would consume 14 hours and 59 mintues. Southbound, the scheduled transit time of MN&S would be 3 hours whereas C&NW's present schedule calls for 3 hours and 25 minutes. It is estimated that the Illinois Central-MN&S route on movements between Minneapolis, on the one hand, and, on the other, such communities as New Orleans, La., Birmingham, Ala., Memphis, Tenn., and East St. Louis would save 10 to 11 hours in transit time. Illinois Central anticipates that such savings would be significant in providing faster turnaround and more efficient utilization of its car supply plus make the communities along the Lyle-to-Northfield line available for industrial development through the activities of Illinois Central's Industrial Development Department. Such service, Illinois Central contends, will provide shippers throughout the territory with a more effective and efficient transportation service which is one of the main objectives of the national transportation policy.

IC-MNS RTE

Of significance, were the proposed condition granted, Illinois Central indicates that it would expect a volume of between 26,000 to 27,000 cars per year to move over its proposed route through Northfield with MN&S. The Illinois Central did not make any study of the extent to which they would divert traffic from any other roads and concedes that some traffic will be diverted from a number of different Twin Cities-Chicago and Twin Cities-Gulf of Mexico routes. It expects, however, that the carriers most vulnerable to the new route would be barge carriers operating along the Mississippi for the Northfield route will give Illinois Central an effective tool to move forward in competing in the movement of bulk commodities from Minnesota to the Gulf of Mexico. Additionally, Illinois Central expects to divert some traffic from motor carriers but concedes that the granting of the Lyle condition will "undoubtedly allow Illinois Central to divert some traffic from Twin Cities-Chicago carriers having their own single lines."

Soo Line and Rock Island presented diversion studies and generally opposed the granting of the Lyle condition. With respect to the Soo diversion estimate of $433,298, the Illinois Central concedes that such estimate is probably an "in-the-ball-park estimate" but contends that such diversion is relatively small when compared with Soo's estimate of diversion which would result from the proposed transaction itself and, in any event, conditions for Soo's benefit attached to the merger would go a long way toward making it better able to withstand the relatively limited effects of the Lyle condition. It was not as favorably impressed, however, with the Rock Island's estimate that the latter would lose 15,084 of its 28,336 cars which it interchanges with the MN&S at Northfield with a resulting loss of revenue of approximately $1.4 million. First it argues that such estimate was overstated and included traffic which Rock Island estimated it would lose as a result of approval of the basic transaction involved herein. In the latter respect, it was impossible for the Illinois Central to determine the exact extent to which "double diversion" was taken. In any event, Illinois Central contends that the Rock Island will be strengthened when and if approval of its merger transaction in the *Rock Island* case is ultimately decided and the latter's opposition should not stand as a bar to a more efficient and expeditious service in the public interest.

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R.I.

Twenty-two shippers appeared in support of the Illinois Central's Lyle condition. In addition, Illinois Central offered the verified statements of 38 additional shipper witnesses,[98] which had the examiner permitted, would have been called in support of their position. In the latter respect, the examiner concluded that any witnesses to be presented by the Illinois Central in addition to those who did, in fact, testify, would be cumulative and, therefore, he rejected any further accummulation of such testimony. In so doing, however, the examiner warned Illinois Central in advance so that it could present any witness which offered different testimony than their predecessors. Analysis of the shipper witnesses who did testify establishes (1) that each supporting shipper is served by Illinois Central or MN&S directly at one or more of its plants or consider either or both carriers important in meeting its transportation needs; (2) that such shippers manufacture and produce a variety of goods which they ship to, from, or through the Minneapolis gateway and have plants scattered in an area extending from points in Florida and Louisiana to points in North Dakota; (3) that many of the shippers have used the Albert Lea gateway in the past and found that their service has deteriorated to a certain extent since the merger of the C&NW and M&St.L was consummated, but that certain shippers still consider the Illinois Central-Albert Lea-C&NW routes as being satisfactory for their purposes; (4) that were the Albert Lea route more efficient, many would prefer to utilize such route because it would eliminate the necessity of their traffic being required to move through the Chicago gateway where interchange is slow; (5) that the proposed merger would reduce the number of competitors operating between the Twin Cities and Chicago and were the Albert Lea route destroyed additionally as a result of approval of this transaction, shippers fear that they would be restricted in their choice of alternative routes through this corridor; (6) that the Albert Lea route provides an important

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[98] It was noted that the testimony of shippers contained in the Illinois Central's brief on pp. 83-85 omitted mention of Ceco Corp., Lincoln Chamber of Commerce, Lincoln, Ill.; the Daily Pentograph, Bloomington, Ill.; Pekin Daily Times, Pekin, Ill.; The Association of Commerce and Industry of Sprinfield, Ill.; Chamber of Commerce of Austin, Minn., as well as the support of the community of Dixon, Ill. Additionally, Gilman Paper Co., is mentioned twice.

I.C. SHIPPERS

alternative inasmuch as it bypasses Chicago and were MN&S substituted for C&NW in the routing scheme, shippers would have an additional independent route available which they could use. Several shippers testified that they don't presently have plans to utilize the new Illinois Central-MN&S route if it is granted, but just like the idea of having an available alternative route. The imposition of the Lyle condition is supported by the Minnesota Commission.

In addition to applicants, Soo and Rock Island, opposition to the so-called Lyle condition was generated by the Port of Milwaukee, Port of Green Bay, Port of Kenosha and the Twin Ports of Duluth-Superior. These Ports fear that granting Illinois Central access to Twin Cities might enable the latter to establish unit train rates to New Orleans siphoning off upper midwest grain movement through that Port, badly disrupting existing traffic patterns and seriously injuring not only the Ports themselves but the St. Lawrence Seaway. Although data indicating the volume of traffic moving through the Ports was presented in support of the Ports' position, admittedly, no in-depth analysis of the impact of the proposed Lyle condition upon such movements was made. In addition to the Ports, witnesses from various labor interests appeared in opposition to the granting of this condition.

Although it is quite apparent that the granting of the Lyle condition would, in fact, offer the shippers a new, independent, viable and strong alternative in routing traffic between the East, Southeast and South through the Chicago and Minneapolis gateways, the examiner believes that imposition of such a condition would do violence to the very objective upon which section 5 of the Act is predicated, and, in fact, is not justified on the basis of either public need or public interest. In addition to numerous joint-line routes, after merger, there will be four single-line routes, (CB&Q, Soo Line, Rock Island and the merged company) available to transport traffic between or through the Chicago and Minneapolis gateways and the extension of Illinois Central's line to Lyle is simply not warranted as a necessary addition to the rail structure in that area of the country. All of the roads represented in this proceeding which operate between Chicago and Twin Cities find that the traffic moving over their lines between these points is extremely important to their operations. None of the roads, with the exception of the CB&Q, operating between these

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LYLE EVALUATION

gateways, can be considered as either robust or healthy and it would be unrealistic in this proceeding to create another "significant competitor" for traffic moving between those points.

Admittedly, Illinois Central's representatives have not at any time requested the C&NW to alter its schedules to meet the schedules of the former on a more reasonable basis and while it is true that the C&NW does not have any incentive to make the Albert Lea route strong, the imposition of the conditions in the *C&NW-M&St.L* merger case offers a guarantee that the latter road will not discriminate in the handling of its traffic against traffic moving via that route. The examiner is convinced that were Illinois Central to adjust its schedules to meet realistic schedules to be established by C&NW that the service over the Albert Lea route could be maintained. On the other hand, the extension of Illinois Central to Lyle to meet with an independent MN&S would, as admitted by Illinois Central, create a de facto single-line service which would have strong reprecussions upon such carriers as the Rock Island and Soo who can ill afford the resulting diversions. Were this a matter of economic planning in which this examiner was in a position to structure the western rail lines de novo, his answer to this problem might be completely different, but inasmuch as the question here is whether this proposed merger does such violence to competition as would justify the creation of a new route which is essentially what is involved, the examiner must conclude that the availability of four alternate routes is sufficient in meeting shippers' needs. In essence, the rationale here involves a balancing of the needs of shippers for service, on the one hand, and, on the other, the facts of the economics of the railroad industry operating in the territory involved. In the latter respect, the examiner must conclude that the damage which would be wrought by the creation of an independent route through the granting of the Lyle condition outweighs the public benefits which admittedly would flow from the imposition of such a condition.

R. I. & SOO EFFECT

THE OSCAR MAYER CONDITION:

Independent of the Lyle condition, Illinois Central seeks to be allowed to purchase Milwaukee Road trackage between the site of the present point of interchange between Illinois Central

A-L RTE CAN SURVIVE

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Osc. Mayer

and Milwaukee Road in Madison, Wisc., and the site of the Oscar Mayer Company plant, also in Madison, a distance of approximately 4 miles, or that Illinois Central be allowed to acquire trackage rights over this line.

The genesis of this request is Oscar Mayer Company's claimed need of two independent rail carriers physically serving its Madison plant. Oscar Mayer, a meat packer with national distribution of its products, has its principal plant at Madison, Wisc. The Madison plant is served directly by C&NW and Milwaukee Road. Although Illinois Central reaches Madison, it does not serve the Oscar Mayer plant directly but approaches to within 4 miles of the plant at a point of interchange with Milwaukee Road. Illinois Central traffic to and from the Oscar Mayer plant is switched by Milwaukee Road at a reciprocal switching rate absorbed by Illinois Central.

As heretofore indicated in the examiner's general discussion of railroad competition and factors influencing shippers' routing, the movement of meat and meat products is highly competitive and is not only dependent upon the availability of a reasonably adequate rail service but upon a rail service that can meet the exacting schedules of perishable train departures at Chicago. Despite the fact that 50 percent of Oscar Mayer traffic moves by motor carrier service, there is a great deal of its outbound traffic which would be impracticable, if not impossible, to divert from rail cars. Items such as lard and tankage are of low value and essentially low-grade commodities and for the movement of this traffic, the railroads are the low-cost mode of transportation and it would not be economically feasible to make such shipments by motor truck With respect to the more competitive traffic such as fresh meats and packinghouse products, many of Oscar Mayer's customers specify rail routing and it's commercially necessary that the shipper respect their preference for service. As heretofore indicated, speed of service, particularly with respect to perishable fresh meat, is of extreme importance and shipper has found and the examiner finds that with reference to Oscar Mayer, such intramodal competition is necessary and essential to meet its needs.

Although the shipper indicated the importance of other factors of a competitive service as the supply of needed equipment, the willingness to respond to shipper's needs, and an eagerness to preserve cordial shipper relationship, it is the examiner's view that the essential requirements of Oscar Mayer, the nature FINDING

OSCAR MAYER

of the commodities which it ships, and demands of its consumers require that Illinois Central be either sold trackage to the Oscar Mayer plant or afforded trackage privileges to this location at the consolidated company's option and on fair and equitable terms.

If Illinois Central is permitted to serve the Oscar Mayer plant directly, shipper anticipates shipping as much as 40 percent of its outbound traffic via the Illinois Central whereas the latter has only originated approximately one percent over the past 2 years. C&NW and Milwaukee Road have estimated that the imposition of the Oscar Mayer condition will result in losses of $72,092 and $86,682 annually, respectively, on this basis. Hence, the merged company's annual loss would be approximately $158,774 and net loss of $105,849. Such loss, in the examiner's opinion, would not materially reduce the benefits of the approval of the proposed merger but, by the same token, afford a shipper with a particular problem, the type of competition which it needs. Considering all factors, it is the examiner's conclusion that the need for competition in this special situation outweighs the loss of revenue to the applicants.

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AUSTIN CONDITION -

Despite the examiner's refusal to impose the Lyle condition, an incidental benefit of that condition--competitive service at Austin--is, in the examiner's opinion, of sufficient importance standing alone to justify separate consideration. This is especially true in light of the supporting evidence presented by Hormel, a competitor of Oscar Mayer, whose traffic manager testified in support of the Lyle condition in order to obtain a competitive rail service at Austin. The latter is an intermediate point between Lyle and Randolph, served by the Milwaukee Road and the C&NW over the lines of the former CGW. Austin has a population of approximately 24,000 and includes among its major industries, Hormel & Company. Although maintaining other plants in the Midwest, the latter maintains its largest facility at Austin at which it employs 4,000 people and from which it shipped in the year preceding the hearing 6,000 rail carload shipments, 2,100 trailer-on-flatcar shipments and 7,500 truckload shipments. Hormel is engaged in the meat and meatpacking business and as in the case of Oscar Mayer, although it makes extensive use of motor vehicles, it must have available a fast and efficient rail service which can meet the cut-off time

Tab Reads-
Austin Minn

at Chicago, St. Louis, Kansas City and Omaha, Nebr., in handling highly perishable products which must be delivered in accordance with shippers' specific schedule. A missed schedule at Chicago by as little as 30 minutes would delay a shipment, in most instances, at least by one day.

Hormel receives scheduled switching services from C&NW and Milwaukee Road daily: (1) a noon departure which is scheduled to arrive at Chicago by 3 a.m. the next morning and (2) an early morning departure which is scheduled to arrive at Chicago by 1:30 p.m. the following day. Although Hormel does not object to the approval of the proposed transaction, assuming present schedules are maintained, it believes that Illinois Central's services are necessary to supply the necessary competition at Austin. Although Hormel appeared in support of the Lyle condition, its primary concern was to obtain an alternate rail service at Austin which is presently available to its smaller competitors at points in southern Minnesota and Iowa.

Applicants argue that Hormel's request recognizedly is a "little selfish" and that Hormel does not require added rail service nor does it appear in light of the availability of motor carrier service that the new company would lack the incentive to render adequate services. Applicants maintain that Hormel's ability to grant or withhold from railroads the great bulk of traffic which can move by truck provides it with all necessary leverage to assure good service.

TRUCK COMP

Although the examiner does not consider access by Illinois Central to Austin critical to a decision here, he believes that were access obtained and service provided on economical and efficient basis, the public may be well better served than were that community dependent solely upon the merged company for rail service. This is especially true of the larger shipper at Austin, Hormel, which would be benefited by a competitive rail service.

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The record as developed in this proceeding deals with the problems at Austin as an incidental benefit to the Lyle condition, the imposition of which has heretofore been determined not to be in the public interest. The examiner believes, however, the situation at Austin, particularly as posed by Hormel, warrants a further explanation of the need for and the feasibility

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of providing a competitive rail service to that point. The examiner will, therefore, recommend that the Commission retain jurisdiction for two years after consummation to consider subsequent requests of the Illinois Central that it be granted trackage rights over that segment of the merged company's line extending from Lyle, Minn., to Austin, Minn.; that it be granted trackage rights which would permit Illinois Central to serve Hormel & Company directly; and to permit it through reciprocal switching or agency arrangements with the merged company to provide Austin with a competitive service. In the event the Illinois Central for one reason or another refuses to request such benefits as may be achieved by the exercise by the Commission's jurisdiction, such fact shall not bar consummation of this transaction. Although the examiner believes that competition for Hormel and Austin may be of significant benefit to shippers located thereat, the record is not, at this juncture, at least, sufficiently clear to warrant imposition of this condition now.

NO BAR TO MERGER

EFFECT UPON THE SERVICES PROVIDED BY GREAT NORTHERN AND NORTHERN PACIFIC

Attached Appendices I-1 through I-3 set forth the evidence in support of and opposition to the positions taken and requests made by Great Northern and Northern Pacific, hereinafter collectively referred to as the Northern Lines. Although not opposing this transaction, Great Northern and Northern Pacific allege that consummation thereof would result in diversions of traffic from them from which they derive $4.7 million and $3.3 million in revenues, respectively. This, they argue, necessitates the imposition of a number of conditions that will offset such losses, at least partially, for it is in the public interest that each road maintain and improve its present level of revenues. Although no member of the public supported the request for such conditions, the Northern Lines both contend that many of the conditions which they request would have the effect of mitigating the loss of competition resulting from this transaction, create efficiencies in rail operations generally and be otherwise in the public interest. In the event the *Northern Lines* merger is ultimately consummated, the Northern Lines indicated, of record, that they would withdraw their requests for conditions and have a contract with applicants to this effect.

N LINES

Tab Reads -
N. Lines

Applicants, however, view this merger as carrying a maximum diversion of $987,000 from the Great Northern including the SP&S and $895,000 from the Northern Pacific. They maintain that both carriers are financially able to sustain such losses without any reduction in their operations or service.

Although the examiner believes that applicants' estimates of traffic losses which Great Northern, including SP&S and Northern Pacific would experience as a result of this transaction are too low for they do not take into account the improvements in service which will produce marginal gains to the Milwaukee Road's lines west of the Twin Cities, the estimates provided by the Northern Lines place too great an emphasis upon such service improvements which will simply not materialize from approval here. Furthermore, as distinguished from its operations in the Midwest, Milwaukee Road's lines and service west of the Twin Cities labors under extensive handicaps which will effectively prevent the large-scale diversion anticipated by interveners. In this respect, Milwaukee Road's share of traffic today moving through the northern corridor is less than 20 percent and its ability to reach western gateways or for that matter switch or interchange traffic with Northern Lines at many common points is physically restricted which prevents it from providing the competition necessary to capture the traffic volume indicated by the Northern Line's studies. Certainly, diversions of traffic now handled overhead by C&NW, including CGW, and delivered to or received from the Northern Lines at the Twin Cities will be, at best, a marginal source of additional revenue for the merged company. In the latter respect, the strength of the new company will be improved and, it is not unreasonable to conclude, that such improved position will result in some new traffic sources. Although the effect of these intangibles in service is not readily measurable, given the strength of the existing companies, it is not apparent that the marginal improvements from merger would have any material effect upon either Great Northern or Northern Pacific.

Diversion "marginal"

All factors considered, the examiner believes that it is highly ~~likely~~ UNLIKELY that the merged company would carry more from and to C&NW points and junctions than the Milwaukee Road now carries and that the maximum diversion potential on this traffic is 20 percent and the examiner so finds. Given recognition to the minor improvements in service resulting from this transaction,

20% max.

N LINES

the examiner further believes that Great Northern's estimates generally are overstated by at least 50 percent and using the same basis, that Northern Pacific estimate should be reduced by 43 percent. Hence, it is the examiner's conclusion that approval of the proposed transaction will result in a maximum diversion to Great Northern of $2.1 million; to SP&S of $170,000 and to Northern Pacific of $1.9 million. Given a cost factor of 33 1/3 percent, the net effect upon Great Northern, at the maximum, should not exceed a loss in net revenues of $1.4 million; on SP&S $123,000 and on Northern Pacific $1.3 million.

Viewing the impact on the Northern Lines in that light, the examiner finds little justification for the imposition of any of the conditions sought by these lines solely on the basis of such diversion which is not otherwise justified or required by the public interest. Both of the Northern Lines are in sound financial condition in terms of working capital and net railway operating income and individually both have substantially greater traffic strength in the northern corridor than either Milwaukee Road has today or the merged company could muster, even assuming the diversions anticipated.

As has heretofore been emphasized and reiterated by this examiner, the Commission has no obligation to maintain the status quo in dealing with section 5 applications and even assuming that the so-called *Northern Lines* merger is ultimately denied, to the extent Milwaukee Road is strengthened through the northern corridor without jeopardizing the services presently provided by the Northern Lines, the public interest would be advanced. Consequently, to impose ~~the conditions requested~~ by either of ~~the Northern Lines solely on the basis~~ of an offset for anticipated losses ~~is not~~ warranted.

Diversion no reason

Nor can the examiner conclude that imposition of any of the conditions as presently proposed by the Northern Lines is justified by the public interest. As framed, each of the conditions sought by these interveners impose a burden upon the merged company which would benefit the former in terms of dollars through savings gained by efficiencies derived therefrom, revisions ~~in existing~~ terms of payment on contracts, or access to new industrial sites. Although the Northern Lines alludes to the fact that certain shippers would be benefitted in terms of increased

N LINES

competition and/or improved or more efficient service, not one shipper evidenced any support for its proposed conditions. While this fact standing alone would not preclude the granting of such conditions, it certainly demonstrates a lack of compelling interest why they should be imposed at this time.

NO SHIPPER SUPPORT

In so concluding, the examiner does not mean to dismiss the stated improvements in efficiency and operating conditions to the Northern Lines lightly. Neither is it his conclusion that access by the Northern Lines to closed points now served by the Milwaukee Road would not be of some benefit to shippers located therein. Rather, each condition presented, whether dealing with the opening of industrial sites to competition, the elimination of circuitous routes, or the creation of a more effective interchange, present an element of improvement in the transportation scheme that simply cannot be ignored. In this respect, valuable natural resources are being wasted under present operating conditions and the total economy would benefit from the elimination of such wastes. Yet, what the Northern Lines seek to accomplish here is the one-sided elimination of waste in which they would receive the benefits and contribute nothing to a more rational utilization of rail plant. In this respect, the area west of the Twin Cities abounds with points served by more than one railroad where no physical interchange is available and, even if available, no reciprocal arrangement has been entered between the serving carriers; it is abundant with situations in which coordinations of line would be of significant benefit to the public interest and is pregnant with opportunities to modify existing interchange arrangements so as to promote a more economical and efficient service. These opportunities can and should be accelerated as the merger movement in the West comes to a close and carriers operating therein should, without Commission interference, seek to negotiate these problems out for their own common good. For example, at Twin Cities alone, where today eight carriers provide line-haul rail service, there are presently over 80 yards with attending yard track, and switching and interchange facilities from which and to which cars are moved daily. Pending applications under section 5 of the Act could conceivably reduce the number of line-haul carriers in the Twin City complex to four or five.

N LINES PAST BEHAVIOR

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As programmed by the respective applicants in these proceedings, the approval of each merger would reduce the need for yard facilities but, as in this case, applicants and intervening railroads interested

N. LINES EFFICIENCIES ELSEWHERE

in such interchange look inwardly at the specific proposal involved and seek to maximize their own position solely in light of the competitive structure as it now exists. Northern Pacific's proposed condition 2 is an example of this action. No provision has been made in this proposal or as far as the examiner can determine, in any other proposal to view the present structure of interchange at Minneapolis in light of the outcome of the overall merger picture. Hence, immediate action taken after approval here might be unnecessarily wasteful and a contradiction to the overall rationalization of the Twin Cities rail complex. While the examiner concedes that the best method in achieving an efficient interchange or switching service or any other coordination between carriers must, of necessity, depend on negotiations conducted between rail carriers themselves, he is also so mindful that with the radical changes proposed for the western railroad map that the surviving carriers owe an obligation to the public as well as to themselves to structure the remaining rail plant into a model of efficient operations. If, for example, an overall consideration of the variety of yard facilities in the Midwest might result in a 75 percent reduction in the yard complex after the basic merger picture has evolved as opposed to only a 40 percent reduction where coordinations are developed by each carrier without a direct reference to what is planned by other carriers involved in the merger movement, obviously the benefits of such movement will not have been maximized. Also, coordinations planned on the broader picture upon a quid-pro-quo basis may also result in the elimination of circuitous routes as suggested by several of the conditions sought by the Northern Lines. The failure to maximize the advantages possible under the merger movement may well spell the difference between the long-range survival or failure of the rail industry itself, especially if heretofore indicated economic trends continue. Consequently, while the examiner declines to impose the conditions requested by the Northern Lines, he would hope that carriers involved in the western merger movement would think and negotiate in terms of maximizing the total efficiencies to be derived therefrom and not look solely to the temporary and immediate advantages to be gained by precipitous action which cannot be undone after the basic rail structure in the West has been determined. Of importance, as construed by this examiner, the Commission's reservation of jurisdiction in the *Northern Lines* case as will also be imposed in this proceeding is broad enough to entertain petitions requiring such coordinations after the basic structure has been achieved. Although the examiner and undoubtedly this

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Commission would prefer to see such coordinations accomplished between carriers on a quid-pro-quo negotiated basis, the failure to take action in this direction by one or more carriers may well justify the exercise by this Commission of the jurisdiction indicated.

Notwithstanding the foregoing discussion, the examiner must conclude that at this time, the conditions sought by Great Northern and the Northern Pacific have not been shown to be in the public interest and they will not be imposed. The examiner so finds.

EFFECT UPON THE SERVICES OF WESTERN PACIFIC

Attached Appendix J sets forth the position, arguments and evidence in favor of or opposed to the conditions requested by Western Pacific.

Evidence presented by Western Pacific, a central route carrier operating between Salt Lake City and the West Coast, in support of its allegations that it would suffer an adverse impact as a result of the proposed transaction was totally devoid of any rational basis upon which this examiner can justify the conclusion that it would be in any way materially affected by approval here. Although the examiner recognizes that applicants have the overall burden in establishing the variety of elements necessary for a finding that this transaction is in the public interest, an intervener alleging material injury, at the minimum, has the obligation of presenting sufficient probative evidence upon which the question of injury to it can be postulated. This is especially true, as here, where the information necessary to evaluate such injury rests essentially in interveners files exclusively. Other than the general assertion by Western Pacific that 60 percent of its traffic moves through the central corridor and that it derives $5 million in revenues from traffic which C&NW and Milwaukee Road handle, there is nothing in the record to indicate that the proposed transaction, even assuming approval of the *Northern Lines* transaction subject to conditions favorable to Milwaukee Road, would have any impact upon Western Pacific.

Although it is conceivable that the merger might cause some slight shift in traffic now handled by C&NW and Western Pacific, and some other road jointly to or from some point in northern California, no additional incentive, not created by Milwaukee Road's access to Portland would justify the conclusion

W.P. WIPED OUT

that any traffic now moving jointly via Milwaukee, Western Pacific and some other road jointly could or would be diverted to Milwaukee Road's northern line route. In the latter respect, were Milwaukee Road to gain access to Portland through the so-called *Northern Lines* conditions, it would seek its long-haul through the Portland gateway, in any event, and incorporation of C&NW into Milwaukee Road will not create the necessary service differential to and from California points to cause significant diversion to the Western Pacific. This conclusion is buttressed by the simple fact that neither of the applicants serve any point in California and must depend upon Western Pacific and/or Southern Pacific to gain access to this area.

Merger not involved

Even assuming that some traffic would be diverted from Western Pacific, there are additional factors inherent in Western Pacific's proposed conditions which preclude their approval. First, the amount of diversion conceivable as a result of this transaction even if realized standing alone does not appear sufficient to justify the imposition of the conditions sought by Western Pacific. This is especially true in light of Western Pacific's sound financial condition. In the latter respect, even were such diversion to occur, there is no reason to conclude that such diversion would in any way interfere or inhibit Western Pacific from providing the transportation services it does today.

Nor does the imposition of such special conditions appear to be justified otherwise by the public interest. To the contrary, the conditions as framed are totally unrealistic in their terms and without a sound justification therefor are contrary to the general policy as expressed by the Commission in its last decision in the *Northern Lines* case.[99] The examiner finds no basis for recommending a deviation from such policies in Western Pacific's evidence or otherwise of record. Finally, of paramount significance, in the *Northern Lines* case, the Commission did, in fact, impose special conditions upon the Milwaukee Road which will be applicable to the operations of the surviving company here. Such conditions will require the latter on traffic moving between the Midwest and northern California as described in Western Pacific's condition, to the

W/P cond. contra N. Lines policy.

[99] 331 I.C.C. 869, pp. 880-886.

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extent the surviving company has control, to maintain its freight schedules and services on an equal basis to the schedules it maintains today and on a comparable basis to those maintained by the surviving company and its connections between such carriers via any of the northern transcontinental routes; and to maintain joint through routes on a basis no less favorable than those which the surviving company shall maintain via any of the northern transcontinental routes.

In the examiner's opinion, the above condition meets all the legitimate objectives of Western Pacific's proposals in this proceeding and no further condition is necessary. The examiner so finds.

EFFECT UPON THE ADEQUACY OF TRANSPORTATION SERVICES PROVIDED BY D&RGW

Attached Appendix K sets forth evidence and arguments in favor of or opposed to the position of D&RGW. Although essentially a bridge carrier in the central corridor, D&RGW's position is somewhat similar to that maintained by Western Pacific. While D&RGW is somewhat more dependent upon connecting carriers for transcontinental traffic than Western Pacific, which serves many shippers directly, it is reasonably clear, that under the set of circumstances presented in this proceeding, that it would not lose sufficient traffic to put its service in jeopardy in any material sense. Although applicants claim that D&RGW would lose less than $3,000 were this transaction approved is unreasonable, the latter's diversion estimates are overstated. The shipments cited by applicants and discussed in Appendix K clearly evidence the fact that after merger D&RGW and its connections will still maintain the more direct route on many shipments which will overcome the advantages of having a lesser number of carriers involved in routings over applicant's line through the Portland gateway. D&RGW will have such carriers as Southern Pacific and Western Pacific preferentially soliciting for their long haul through the central corridor. Although the examiner realistically has only a slight quarrel with D&RGW's estimate of a loss of $180,000 were this transaction approved without Milwaukee Road gaining access to Portland, he cannot accept D&RGW's estimated differential of $478,000 of which only 10 percent is attributable to Milwaukee Road gaining access to Portland. Despite the fact that D&RGW claims that the Milwaukee Road's entrance into Portland is

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DRG NO DIVERS.

t to the creation of a ne , it only attributes
t percent of its estimated ich entry and
that the 90 percent increas s would be
able to merger of C&NW int ukee Road. In this
D&RGW puts particular emph an improvement in
ants' car supply. As has her ore been indicated,
the approval of this proposal will very little in
of improving applicants' car fleet this will be esp
true west coast which C&NW does not h today and
where not be any direct advantage ived from the
pooling of ment. Furthermore, altho ome service
improvements ould inure to applicants' li in the east
as a result of this transaction, it is dou l whether the
same degree of improvement, which the examiner has heretofore
found marginal at best, would ow to traffic moving trans-
continentally to and from the st Coast points. If as urged
by D&RGW the combined effect of this transaction and Milwaukee
Road's access to Portland is roughly $500,000, it would appear
to this examiner that the incremental of this merger
would contribute no more hat total figure.

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would not b offset by any public.
Hence reasonably apparent that D&RGW's will
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A iterated over and over in this report, it is
n sion's function in dealing with applications under
s maintain the status quo as between rail carriers
i oss or net revenues and shares of traffic but
r re the public that an adequate transportation
s be maintained.

Of equal importance, however, the proposed conditions
will not significantly add those benefits available to
D&RGW under the standard conditions.

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The objectives of D&RGW's proposed conditions are: (1) to insure a parity of rates between routes over which the merged company will operate in single-line service and joint-line service and those over which the merged company will operate in conjunction with D&RGW and other carriers; (2) to prevent the merged company from discriminating against the D&RGW in its schedules or otherwise in the performance of service; (3) to open up new routes and provide for joint rates via Portland and Butte and Silver Bow, Mont., in the event other carriers to the route and rate agree thereto; and (4) to require the merged company to join Rio Grande with its connection in routes and rates on rail-truck traffic which D&RGW may seek to inaugurate on certain transcontinental traffic at the same revenue division as the merged company would receive on comparable all-rail routes in connection with Union Pacific.

The first objective stated above is similar to the objective set forth in the first provision of the standard conditions in Appendix G-2, however, it is designed to insure that no questions will arise on matters concerning piggy-backing, section 22 exempt commodity traffic, and insures equality of rates with other transcontinental routes. The second objective is simply to insure non-discriminatory practices by the merged company in the future. In substance, and recognizedly with some minor exceptions, these two objectives are met by the imposition of the standard conditions as modified in the *C&NW-CGW* case. The third objective, mainly the creation of new routes and rates through Portland, Butte and Silver Bow would, in the examiner's opinion, at least based on the present record, not be in the public interest. Imposition of such conditions would result in the creation of extremely circuitous routing compared to the other routes which the merged company can maintain and requires applicants to join in routes which may be wholly unprofitable in comparison to more direct routes maintained with other railroads. While D&RGW claims that it would not insist upon a rate if it were not compensatory, i.e., that it did not exceed out-of-pocket costs to the merged company, such a requirement could well require the merged company to extend its haul uneconomically and circuitously at a division which would be substantially less than were it to provide service via the natural route. Admittedly, the final objective of D&RGW's proposed conditions is to enhance its ability to compete with Union Pacific and the condition carrying out this objective admittedly was not designed to preserve D&RGW's competitive abilities vis-a-vis applicants.

DRG'A COND. UNREAS.

In total, therefore, even assuming that the loss anticipated by D&RGW was to occur as a result of this transaction, there is no indication that such loss would in any way be detrimental to the services presently provided by D&RGW and there is nothing, of record, to justify the imposition of the conditions which it seeks otherwise in the public interest.

EFFECT UPON THE SERVICES OF LS&I

Appendix L-1 and L-2 details fully the facts and arguments supporting LS&I's request for conditions requiring the merged company (1) to "reopen" Republic Junction as an interchange point on traffic interchanged between LS&I and the merged company; and (2) to offer its line between Channing and Champion, Mich., for sale to LS&I in the event the merged company subsequently seeks to abandon such line.

Imposition of neither condition is, in the examiner's opinion, in the public interest.

LS&I is not fearful that the consummation of the proposed transaction would directly divert traffic from its operations but rather, it argues, that the merger would alter the factors governing market competition between ore producers on the Marquette Range which it serves with those on the Mesabi Range to such an extent as to eliminate its major customers, including its chief stockholder, from the marketplace in the sale of iron ore and pelletized iron ore.

The reasons advanced by LS&I are not supported by the record. Today, on all-rail movements of iron ore from mines on the Marquette Range, shippers have a choice of two routes (1) LS&I-Soo, or (2) LS&I-C&NW. Although at one time, an LS&I-Milwaukee Road route was available through Republic Junction, this route was closed as a result of a proceeding in which the Commission found that the opening of this gateway was in violation of section 1(18) of the Act, and at the same time denied applications for authority under sections 1(18) and 5 of the Act to open this gateway.

After merger, as pertinent, existing routes and competition in the Upper Peninsula of Michigan will remain unchanged. While recognizing this fact, LS&I urges that the elimination of competition between applicants will prevent the further development of a unit-train route and rate which would be competitive with comparable routes and rates available from Mesabi Range which may well be necessary for the Marquette Range iron ore producers to continue to be competitive.

LSI

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The examiner disagrees. Although recognizing that competition between the Milwaukee Road and the C&NW will disappear as a result of approval here, there is no rational basis for concluding that the merged company has any less interest in providing the Marquette Range with comparable service and rates as are available to shippers on the Mesabi Range than C&NW has today. To the contrary, facing the formidable competition of the Northern Lines on the Mesabi Range, given all factors including the existing price structure of iron ore, the going rates, and the availability of a Soo-LS&I alternative routing, it would appear that the merged company, with an opportunity to strengthen its position vis-a-vis the Soo over which it has a significant advantage today, will be as favorably disposed, if not more so, to put the Marquette Range in a position to compete with the Mesabi Range. Realistically, it will have a strong economic incentive to maintain the present position of shippers on the Marquette Range and in fact seek to improve it. Under these circumstances, the examiner cannot accept LS&I's contention that the merged company will have any less incentive after merger to supply cars than C&NW does today for the economies governing the relative competitive positions of the Mesabi versus the Marquette Range operate in contradiction to this premise. This conclusion is fully supported by the fact, as admitted by LS&I, that C&NW has not only rendered a good service to shippers on the Marquette Range but has been instrumental in developing rail service to the Upper Peninsula.

Despite the economic advantage in terms of rates which the Marquette shippers have today on multiple car movements, the bulk of iron ore moving from the Upper Peninsula moves via rail-water service, as Appendix L-2 illustrates, and were the all-rail routes in the future considered to be significant, there is nothing under existing circumstances to prevent the merged company, or for that matter Soo, from initiating unit-train rates.

Even assuming, however, for some reason or other, C&NW's interest in the Marquette Range becomes subordinate to its interest in the Mesabi Range, LS&I and its supporting shipper can utilize the competitive discipline provided by Soo in combination with LS&I in seeking to establish unit-train rates or can continue to ship rail-water to bring the merged company

LSI

NO NEED FOR COND.

into line. It is unreasonable to expect the merged company to open up an interchange on the speculative need that in the future some shipper may take advantage of all-rail rates.

Of equal significance, the opening of the Republic Junction gateway would not automatically require the merged company to publish unit-train rates and hence, the relief sought by LS&I even if it were afforded, would not place shippers on the Marquette Range in any greater position than they are today. Furthermore, the relief which LS&I seeks in this proceeding, namely, the opening of Republic Junction gateway, cannot be afforded in this proceeding for the opening of such gateway can only be accomplished by the filing of an application under section 1(18) with appropriate notice afforded to all interested parties. While the examiner recognizes that the Commission as a condition to this transaction may require the merged company to agree to open this gateway and join LS&I in seeking the necessary authority, the protection afforded to other parties by section 1(18) cannot be eliminated so lightly. This is especially true where, as here, a previous application under section 1(18) was filed jointly and denied upon the grounds that the public convenience and necessity did not warrant the operation of such interchange.

The examiner also declines to grant the LS&I's request that applicants be required to sell off the tracks running between Champion and Channing in the event the merged company seeks to abandon that line. Here again, the basis for LS&I's request is too speculative to justify the imposition of such a condition. Furthermore, after merger, were the merged company to seek to abandon this line, it would be required to file an appropriate application for a certificate under section 1(18) which, if granted, could be appropriately conditioned to meet LS&I's request if, on that record, the evidence warranted the imposition thereof. In other words, at this stage, and without a showing that the applicants intend to abandon such line, there is no justification for predetermining issues which may arise in consideration of a subsequently filed abandonment proceeding. The refusal of this examiner to impose such conditions however, does not preclude LS&I from seeking similar relief as a condition in the event the merged company subsequently files an application seeking to abandon this line but rather recognizes at this juncture that the granting of such relief in anticipation of a possible filing is premature.

LS&I COND. DEN.

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In conclusion, it is the examiner's opinion that the imposition of the conditions requested by LS&I as special conditions are not warranted either to protect the services provided by that carrier or to shippers in the Upper Peninsula of Michigan. The examiner so finds.

EFFECT UPON THE SERVICES PROVIDED BY UNION PACIFIC, SOUTHERN PACIFIC AND ROCK ISLAND

Inasmuch as all three urge that this transaction should not be approved unless or until the Rock Island is merged into the Union Pacific and the latter's proposal to sell the lines south of Kansas City to Southern Pacific is approved and consummated, the evidence, arguments and issues raised by Union Pacific, Southern Pacific and Rock Island as they bear on such condition will be considered in this section. Attached Appendices M and N set forth the evidence of record, and arguments raised in connection with the claims of direct impact upon Union Pacific and Southern Pacific and upon their revenues and abilities to maintain their operations and services.

With reference to such alleged injuries, the examiner cannot accept the premise that approval of this transaction will have any material or significant diversionary impact upon either Union Pacific or Southern Pacific. Both today compete with the much stronger Santa Fe, Northern Pacific and Great Northern which through their subsidiaries, permit them a greater avenue for penetration of Union Pacific's and Southern Pacific's central-route traffic than the Milwaukee Road could conceivably accomplish were it to merge with the C&NW and gain access to Portland and the other far-western gateways, offered by the Northern Lines conditions.

Eliminating the diversion of $1.9 million claimed by Union Pacific which cannot be attributable to this transaction, the total diversion estimate would be $5.3 million. Of this total, $2.2 million is traffic which neither of the applicants handle today and which cannot be realisticly assigned for diversion. This is especially true in light of Union Pacific's arguments that merger will not result in any significant improvement of service or car supply. Furthermore, even were the merged company to achieve the strength assigned to it by

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Union Pacific, it would not approach that of the latter nor its connections such as the N&W, Illinois Central or GM&O. All of these connections are presently cooperative, non-competitive, and will remain so, after the consummation of this transaction. The balance of interchange between Union Pacific and C&NW, namely, 90,560 cars which UP delivered to C&NW and 46,735 cars which C&NW delivered to Union Pacific makes the latter's retaliatory power substantial. Given these predicates, the examiner cannot conclude that Union Pacific's claimed loss on traffic interchanged with other lines would exceed $500,000 and its total loss, accepting its remaining estimates at face value in excess of $3.6 million which the examiner concludes to be the reasonable maximum loss to Union Pacific as a result of approval here.

Even were losses to Union Pacific as great as claimed, it would not be sufficient for this examiner, standing alone, to deny this proposed transaction or to impose the condition requested by Union Pacific. A loss of $7.2 million to Union Pacific would in no way be injurious to the quality of its present service to the shipping public.

Turning to the Southern Pacific, and particularly its claim that it would experience substantial diversion on traffic originating in northern Oregon, it is significant to note that despite their strength and the significant number of specialized equipment cars maintained by both Northern Lines today, the latter are able to penetrate so-called Southern Pacific traffic at a ratio of only 1 to 15. Clearly, this is an indication of the preference of shippers in this area for Southern Pacific's service. To conclude, as Southern Pacific suggests, that the entry of Milwaukee Road into Portland and/or the combination of C&NW and the Milwaukee Road will produce a stronger competitor for this traffic than the Northern Lines is unrealistic and the examiner cannot accept Southern Pacific's broad assertion that it will be injured in any material respect by approval of this transaction. Although the examiner believes that the estimated diversion figure presented by applicants clearly understates the degree to which the merged company will be able to penetrate Southern Pacific's hold on westbound traffic which originates on C&NW today, there is absolutely no justification on this record for the conclusion that any injury to Southern Pacific arising out of this transaction will justify either denial on the basis thereof or imposition of any particular condition not otherwise justified by the record. The examiner so finds.

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R.I.

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The remaining issues posed by the briefs of the Union Pacific, Southern Pacific and in conjunction therewith, Rock Island, in support of their basic argument that consummation of this transaction should be deferred until their respective merger or purchase proposals are approved in the *Rock Island* case, are predicated on the premise that this merger will materially injure the Rock Island, will jeopardize the services it provides to the public and that prior to the consummation thereof, the Rock Island must be strengthened through its proposed amalgamation into the Union Pacific and Southern Pacific to preserve essential competition in the Midwest and on transcontinental traffic. With respect to the arguments of Union Pacific and Southern Pacific that their other connections would be adversely affected and the latters' services put in jeopardy by this transaction, such arguments have been considered in the context of arguments of particular carriers in the examiner's prior discussion and subject to the conditions heretofore imposed, the examiner concludes that such carriers and the services performed by them will continue to be strong and not materially affected by approval of the proposals embraced herein. In the examiner's opinion, however, the issues with regard to injury to Rock Island are of pivotal significance to approval of the proposed merger at this time and a discussion of the background, nature and scope of Rock Island's operations, its financial condition and its present relationship to applicants and other carriers and a determination of the issues involved follows.

R.I.
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"PIVOTAL"

Rock Island's operations have had a checkered history. Although initiating operations in 1852, Rock Island was not a full-grown system until 1915. In the latter year, it was adjudged insolvent and managed under a receivership until 1917. While operating successfully until approximately 1930, it was found to be bankrupt in 1933 when trustees-in-bankruptcy were appointed. Its properties were managed under trusteeship until 1948 when it was successfully reorganized and reincorporated under the laws of Delaware.

Rock Island's lines radiate west and south from Chicago to points in 14 States for some 7,275 miles. As of December 31, 1967, it maintained miles of road in: Illinois (300); Iowa (2,002); Missouri (510); Minnesota (276); South Dakota (10); Nebraska (189); Kansas (1,082); Colorado (258); Oklahoma (1,051); New Mexico (153); Arkansas (598); Louisiana (188); Tennessee (1); and Texas (657). Its principal routes run west from Chicago,

R.I. ARGT

through Iowa, Nebraska, Kansas and Colorado to Denver and Colorado Springs, Colo.; north through Minnesota to the Twin Cities; southwest via Kansas City through Kansas and New Mexico to Santa Rosa, N. Mex.; south through Texas to Ft. Worth, Dallas, Houston and Galveston; west from Memphis, Tenn., through Arkansas and Oklahoma to Tucumcari, N. Mex.; and west from St. Louis to Kansas City, Mo. As pertinent to these proceedings, its major points of service, besides those indicated above, include Little Rock, Ark.; Peoria and Rock Island, Ill.; Cedar Rapids and Des Moines, Iowa; Topeka and Wichita, Kans.; Alexandria, La.; Albert Lea, Minn.; St. Joseph, Mo.; Omaha-Council Bluffs, and Lincoln, Nebr.; Sioux Falls, N. Dak.; and Oklahoma City, Okla.

Rock Island's financial condition is bleak. Despite an increase in railway operating revenues from $200.9 million in 1962 to $230.4 million in 1966, costs have spiraled upward resulting in a reduction of net railway operating income from $9.9 million to $1.2 million and a steady decline in net income from $6.6 million to a deficit of $3.6 million. During this period it also experienced a deficit of $1.4 million in 1965. Despite the fact that its railway operating income remained relatively high in 1967 ($221.9 million), its net income dropped to a deficit of $17.9 million which was offset to a minor extent by extraordinary and prior-period income of $1.2 million. Its return on investment[100] has not exceeded 4 percent since 1956 and not exceeded 3 percent since 1958. It is no small wonder, therefore, that Rock Island's working capital declined from $16.1 million as of December 31, 1962 to $2.9 million on December 31, 1966 and to a deficit working capital position of $5.7 million as of December 31, 1967. Ostensively, at least, the discrepancy between 1966 and 1967 in terms of net income was caused by the fact that while railway operating revenues were dropping by approximately $8.5 million, railway operating expenses actually increased by $600,000, and equipment and net rents increased from $22.3 million to $27.5 million. Rock Island's debt maturities exceed $7 million per year until 1972. Given the benefit of all optimistic estimates for the national and regional economies served by

[100] Ratio of net railway operating income to net investment.

R.I. "bleak"

the Rock Island and the future of the rail industry, the best that can be said for the Rock Island is that it is precariously close to insolvency.

The management of the Rock Island attributes its present position to the facts (1) that its freight revenues per mile of road is but 72 percent of the average level of revenue per mile of road for western railroads; (2) that the 13 States[101] in which Rock Island operates while containing 40.2 percent of the rail route mileage in the United States, and producing 43.9 percent of the farm marketing receipts, contains or produces less than 25 percent of the population, personal income, electric energy, retail sales, and value added by manufacture; (3) that 76.4 percent of the Rock Island's freight revenues are generated at 55 competitive stations and that out of its grand total of 952 stations served, 765 of which 606 are local, produce average gross revenues of less than $100,000 a year; and (4) that Rock Island, because of its financial condition has not been able to expend monies to maintain its properties and make capital expenditures which would reduce costs and improve service. Additionally, Rock Island is faced with a continuing passenger deficit which although reduced from $16.9 million in 1960 to $14.7 million in 1967 still poses a major burden upon its freight operations.

No one realistically attacks these assessments and there is no reason, of record, to dispute them. Given Rock Island's present condition, no matter what the outcome of this proceeding may be, there is serious question in this examiner's mind whether Rock Island can continue to operate as a solvent railroad for much longer. This conclusion was not only accepted by Rock Island's management but also is recognized and accepted as fact by the chief operating official of C&NW and was not disputed by any party of record.

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AGMT R.I. INSOLVENT

Since 1958 Rock Island has consistently originated over 60 percent of its revenue freight tonnage on line. Its receipts of carload shipments at its 20 major interchange points, however, has dropped from 454,346 in 1948 to 381,156 in 1965. The 10 largest interchange points for Rock Island in terms of cars received were Chicago (69,250); Kansas City (62,118);

[101] This computation does not include the State of Tennessee in which Rock Island has only one mile of road operation.

R.I. almost insolvent

Tucumcari (58,917); Council Bluffs (27,211); Twin Cities (23,970); Memphis (20,817); Denver (19,283); Peoria (17,103); St. Louis (16,825); and Northfield (16,313).

Its largest single interchange is with the Southern Pacific at Tucumcari. The basis of this relationship is predicated on a preferential solicitation agreement entered into by Southern Pacific and Rock Island under which both are obliged to preferentially solicit traffic over Tucumcari between southern California, Arizona and New Mexico, on the one hand, and, on the other, certain midwestern areas heretofore indicated. Beyond the strict confines of this agreement, however, it is to the obvious self interest of Southern Pacific ~~to solicit~~ and utilize the services of the Cotton Belt, Southern Pacific's subsidiary, to handle transcontinental traffic which may be moved through St. Louis.

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At its Denver gateway, Rock Island must work with either the Union Pacific or D&RGW. The Union Pacific has no reason to prefer Rock Island at this junction point since it's lines extend to Omaha and solicitation for a Union Pacific-Denver-Rock Island route would be contrary to Union Pacific's basic economic interests. Consequently, on the majority of traffic interchanged with Union Pacific today, Rock Island is short-hauled at the Omaha-Council Bluffs gateway. Although D&RGW is independent, it has no special reason to work for or against Rock Island preferentially.

In the Twin Cities area (including Northfield) of the 40,000 cars received by Rock Island, over 33,000 were received from Northern Pacific, Great Northern, and MN&S. This traffic, according to Rock Island's officials, is more important than traffic presently interchanged at Council Bluffs. Inasmuch as both Northern Pacific and Great Northern each have a 50 percent interest in the CB&Q, which serves the Chicago and St. Louis gateways, Rock Island's major gateway, the latter's management believes that little by way of a close-working arrangement between the Northern Lines and Rock Island could be achieved. Admittedly, however, today Rock Island has the fastest schedules from Twin Cities to Kansas City, Oklahoma City, and major points in Texas.

Eastern lines, as western lines, are significantly influenced in their working arrangements with connecting carriers by the volume which the western connections provide. Were Rock Island

R.I. TFC

to establish a strong affiliation or working arrangement with the merged Penn-Central, such arrangement would assist Rock Island immeasurably in dealing with its western connections. It has had a good working arrangement with the former New York Central Railroad which made substantial contributions to its overall increase in traffic during 1966.

Although some cooperative relationship existed between Rock Island, on the one hand, and, on the other, C&NW, Milwaukee Road and the former CGW, their basic relationship has been competitive. Collectively, Rock Island serves 106 stations which are also served by C&NW including CGW and/or Milwaukee Road. At 85 points only one of the components of the proposed company, either C&NW including CGW or Milwaukee Road, provide service today and at 21 points, both applicants provide service. The major gateways served in common by Rock Island and at least one of the components of the merged company are Chicago, East St. Louis, and Peoria, Ill.; Council Bluffs, Iowa; Kansas City and St. Louis, Mo.; Minneapolis and Northfield, Minn.; Omaha, Nebr.; and Sioux Falls, S. Dak. Other major common points include Cedar Falls, Cedar Rapids, Davenport, Des Moines, Mason City, and Waterloo, Iowa; Joliet and Rock Island, Ill.; and Albert Lea, Minn. At 84 of the common points, including East Moline, Ill., Muscatine, Oskaloosa, Waterloo and West Des Moines, only Rock Island and C&NW including CGW, or Milwaukee Road, provide rail service and at 4 common points (Dundas, Minn., Faribault, Owatonna and Mason City, Iowa), Rock Island and both applicants provide the only existing rail service. At the remainder of the common points at least one additional competitive railroad is available besides Rock Island and C&NW and/or Milwaukee Road.

In 1965 Rock Island interchanged 19,255 cars with C&NW at 10 interchange points of which the interchanges at Chicago, Des Moines and Council Bluffs produced 75 percent of the traffic; and 45,075 cars with Milwaukee Road at 14 interchange points of which 75 percent of the volume was interchanged at Chicago, Kansas City, Cedar Rapids, Des Moines and East Moline, Ill.[102] No statistics were given for the interchange between Rock Island and the CGW.

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[102] C&NW interchange figures do not include any switch cars either line-haul-to-switch or switch-to-switch whereas Milwaukee Road interchange figures include switch-to-line-haul interchanges.

R. I. v. APPLICS

It is the position of the Rock Island that because of its precarious financial condition that any action which would divert as little as $100,000 in traffic from its operations may result in its insolvency or at the minimum frustrate its efforts to continue to serve the public with an adequate transportation service. While admitting that there is too much rail plant in the areas served by it in common with applicants and that most railroads in the area would benefit by merger or consolidation, Rock Island looks upon approval of the proposed transaction as strengthening the C&NW and Milwaukee Road which are its competitors, through the creation of a massive system which will afford shippers faster schedules, better car supply, and generally a better service, all of which would put Rock Island in a less favorable position and result in a significant loss of traffic which Rock Island can ill afford. For this reason, as will be discussed subsequently, it opposes the proposed consolidation unless and until concurrently therewith or prior thereto it is permitted to merge with the Union Pacific.

In support of its basic position, Rock Island contends that the merger will result in an intensified competition which will be provided by the merged company. In this regard, it asserts that the merged company will gain direct access to points not now served by both applicants. For example, of the 106 points which Rock Island serves in common with one or both of the applicants, 39 are now served by the Milwaukee Road but not by C&NW including CGW, and 44 are served by C&NW but not by the Milwaukee Road. After merger, however, the resulting company will be able to provide a single-line service between those points where heretofore only a joint-line service could have been provided. Also, Rock Island contends that the merged company will be able to improve the present single-line service provided by its components between Wisconsin points, Council Bluffs, Twin Cities, St. Louis, and Kansas City and beyond due to the improvement of its schedules, and car supply and more effective solicitation. Merger, it is contended, will also put the merged company in a stronger position at the major terminals at the Twin Cities, Des Moines, Mason City, and Cedar Rapids where the Rock Island would have to depend upon the merged company whose interests will be in achieving its maximum haul, for industry switching at least to the extent Rock Island now depends upon the components to provide such service. Finally, Rock Island asserts that it will be faced with a financially-stronger competitor which will be more readily able to sell its services.

R. I. DIVERSION

Such increase in competition, Rock Island contends, will result in large-scale revenue losses to it through diversion which it cannot absorb. Potentially, Rock Island claims that it could lose as much as $1,921,792 in gross revenues derived from traffic now interchanged with applicants; $4.4 million in gross revenues on traffic now interchanged with other carriers moving through the Twin Cities gateways and unspecified revenues derived from the movements of 21,000 cars which moved between Chicago and Missouri River gateways, particularly Kansas City, Mo. Much of this traffic, it is contended, is overhead traffic which would be the most vulnerable to diversion to the merged company. Additionally, were the merged company to attain the benefits of the conditions described in the *Northern Lines* case, ~~that~~ traffic on which it participates to and from the Pacific Northwest and points in California would also be subject to diversion. Finally, compounding the problem arising from approval of this merger, Rock Island asserts that it will be or would be further weakened as a result of other mergers which have been recently approved or which are presently pending in the event they are ultimately approved.

Union Pacific which has an interest in seeing that Rock Island service is maintained as a connection to its line and also an interest in Rock Island under its contract to merge with the latter which is presently the subject of hearings in the *Rock Island* case, also views the merger proposal as injurious to Rock Island. Although contending that the improved service to be derived by the public from this transaction is limited or non-existent, which arguments have heretofore been discussed, it asserts that Rock Island will be "destroyed" by approval of the proposed transaction. In this respect, it argues that it is clear from the testimony of Rock Island's expert witness that were this merger approved $9.3 million[102A] in Rock Island's revenues would be subject to potential diversion including $1.9 million in traffic presently interchanged with applicants; $5 million in bridge traffic[103]

[103] This figure was predicated on the testimony of Rock Island's witness that traffic now moving through the Twin Cities gateway in a bridge service produced approximately $100 a car which figure was evidently applied to the total traffic moving to and from the Missouri River gateways.

[102A] As indicated above, the underlying figures which compose the estimate of potential diversion contain certain duplications which were not delineated or explained by either Union Pacific or Rock Island.

R.I. & U.P. IMPACT ARGT.

and $3 million on non-bridge traffic in revenues derived from and to or through the Twin Cities. No estimate of actual diversion was presented by either Rock Island or Union Pacific.

In addition, although arguing generally that approval of the proposed merger would create a vast monopoly in the Midwest which argument has heretofore been considered, Union Pacific also claims at least implicitly that points served in common by applicants and the Rock Island would suffer a severe loss of competition and that assurance must be made through the strengthening of the Rock Island to insure the fact that its competitive service would remain. It is in the latter sense, that Union Pacific contends that its merger with the Rock Island must be accomplished prior to or concurrently with this transaction to insure the fact that Rock Island will provide competitive service which will be lost as a result of consummation here. Although Union Pacific also argues that the injury to be inflicted upon other carriers with which it connects and their services to the public, would be avoided by approval of a Union Pacific-Rock Island merger, as indicated, subject to the conditions heretofore imposed, approval of this transaction will not affect the services performed by such other carriers and in this respect, Union Pacific's arguments need not be considered further.

The studies produced by applicants and Rock Island evidencing an impact which the proposed transaction would have upon the latter are not too helpful in estimating the degree of diversion which Rock Island would experience. Applicants, in their initial study, went as far as their records would permit in evaluating any damage that may befall Rock Island on traffic which the present components of the proposed merged company interchange with Rock Island by isolating that traffic which applicants' experts determined would be potentially divertable and thereupon making an estimate of actual impact in terms of diversion.

Rock Island, on the other hand, merely reviewed applicants' study of traffic and arrived at its own estimate of potential diversion on traffic which it interchanged with applicants and then called attention to the fact that there was additional traffic moving east-west, north-south, and even via the southern corridor which may be or may not be susceptible to diversion if this transaction were approved.

U.P. "COND."

The stated reason for Rock Island's failure to make a complete traffic study and estimate was due to its poor financial condition. It could not afford the costs which such a study would entail. Its chief operating official, in fact, stated "that Rock Island could ill afford to expend the manpower and costs intended in view of its marginal financial condition". Subsequently, however, Rock Island's expert traffic witness indicated that such costs would have amounted to approximately $4,000 to $5,000 plus the loss of time of its salesmen in evaluating the statistical data produced by the study. It is inconceivable to this examiner that if, as argued by Rock Island, Union Pacific, and Southern Pacific that the proposed merger will have the impact claimed that these costs would pose any bar to the necessary study, even for a carrier in Rock Island's precarious position. In light of the above, the examiner has no choice but to conclude that the failure of Rock Island to produce a reasonably adequate traffic study was a decision governed by strategy in the handling of its own merger proceeding rather than by costs as claimed.

Despite this conclusion, the examiner must consider the issue that if the injuries to Rock Island will, in fact, be significant, not only Rock Island but the shipping public would be the loser were Rock Island's service to deteriorate as a result thereof. In other words, in light of the obligation imposed by the Act neither the examiner nor this Commission can simply write off Rock Island's plight in terms of its failure to meet its burden of going forward with the evidence in this proceeding. In this regard, as distinguished from a judicial tribunal where the determining factor is governed by evidence presented by the parties in direct interest, the function of an administrative tribunal is to assess matters coming before it in terms of the public interest and not in terms of the niceties of tactical maneuvers.

In analyzing the issues posed by Union Pacific, Southern Pacific and Rock Island concerning the latter's fate, five foundational facts must be noted initially. They are (1) that Rock Island's financial condition is extremely poor, hovering on the brink of bankruptcy, upon which any significant adverse impact either from the economy, or its competitors, all other factors remaining equal, would force Rock Island into bankruptcy;

R. I. "NO STUDY" STRATEGIC

(2) that the proximate cause of Rock Island's present precarious position is in no way connected with the pendency of this proceeding and its existence as a viable corporation, even were this transaction denied, is shakey unless it suddenly acquires the ability to generate substantially more freight, reduce costs significantly, promote efficiencies or otherwise rehabilitate its plant and operations; (3) that were this transaction approved and consummated, Rock Island would experience some traffic losses amounting to a figure less than $9.3 million as computed by Union Pacific by a highly questionable analysis to a figure of not less than $92,000 which is admitted to by applicants; (4) that a significant diversion of traffic to Rock Island ranging between the figures indicated could conceivably be the straw that broke the camel's back and while not the ultimate cause might well be the immediate blow behind Rock Island's insolvency; and (5) that the latter's bankruptcy could well result in a deterioration of its service to the public.

"REAL Q"

Given these fundamental conclusions as a predicate, the real question posed before this Commission is whether approval of this transaction with its significant advantages to the public which have been unquestionaly established on this record should be withheld pending a determination in separate proceedings pending before this Commission that Rock Island should or should not be included in either the Union Pacific, Southern Pacific, C&NW and/or the Santa Fe systems; or whether this transaction should be approved subject to conditions which would keep Rock Island whole, at least insofar as this transaction is concerned, until its ultimate fate is decided. It may well be that the only answer for Rock Island is that it be placed in receivership through which it may rationalize its organization and operations through the normal course of reorganization. On the other hand, the contingency that such extrication may come from the revitalization of its plant and operations through present management programs cannot be eliminated.

Union Pacific as joined by Southern Pacific and Rock Island would, as heretofore indicated, offer approval of their respective merger proposals as the only solution to this problem. Realistically, however, other than the disability or injury to Rock Island from approval of this transaction stemming from diversion to the latter, there is no justification for the adoption of such a drastic solution. Furthermore, Rock Island's

NO JUSTIF.

UP/SP "COND." NOT JUSTIFIED

problem may as well be cured by approval of C&NW's control of its operations as well as consummation of the merger of Rock Island into Union Pacific and Southern Pacific. This issue is in direct focus in the so-called *Rock Island* proceedings and will be decided there and how or whether the public interest would be better served by a Union Pacific-Rock Island merger, a C&NW control of Rock Island, or denial of both applications can only be decided in that proceeding.

Although Union Pacific alludes to the fact that without a Union Pacific-Rock Island merger the public would suffer a monumental loss of competition were this transaction approved, the examiner finds no basis in the record to accept such assertions. Although Rock Island and applicants serve 106 points in common, 85 of them are served by only one of the applicants and approval of this transaction would not, in any way, reduce competition at such locations. To the contrary, in the event Rock Island's service did deteriorate for causes other than approval of this transaction, the added strength provided through this merger would be of benefit to these communities in meeting their transportation needs. Of the remaining 21 communities which Rock Island serves in common with both applicants, 17 have available the services of other major carriers such as Illinois Central, CB&Q, and/or the N&W which, in the examiner's opinion, are fully capable of providing a competitive service in the event Rock Island's service were to deteriorate. At the four points at which competition would be eliminated entirely were this transaction approved and Rock Island's service to disappear from the transportation scene, there would be nothing to justify withholding approval of this transaction to preserve the competitive services of Rock Island. With reference to those four communities, it is significant to note that no representative from any of them or any shipper located thereat evidenced any concern relative to the loss of Rock Island service. To the contrary, in fact, the only evidence presented on behalf of these communities was the statement of position indicated by the Owatonna Chamber of Commerce which indicated its complete support for this transaction.

The examiner does not discard the fact that several shippers cross-examined by Union Pacific's counsel indicated that they would be in favor of a strengthened Rock Island if this transaction were approved, but the fact remains that whether it be strengthened by its amalgamation with Union Pacific or with C&NW is an issue directly involved in the *Rock Island* case whether this transaction is ultimately approved or not.

Turning to the second solution indicated by the examiner, it is apparent to this examiner that if this merger is to be approved at this time and prior to the ultimate disposition of the *Rock Island* case, that he must also conclude that such merger is consistent with the public interest even though Rock Island remains as an independent carrier. The examiner has recognized that the Commission in dealing with the so-called *Rock Island* case may not only approve one or more of the applications therein but it also may well deny them all. Hence, the solution reached herein must be founded on the assumption that Rock Island remains an independent carrier.

As has heretofore been indicated, the record clearly indicates that the approval of the proposed transaction is consistent with the public interest for in its aftermath, a strengthened railroad system will emerge. In alleviating the marginal condition of applicants and in improving the service to the public through consummation of this transaction, however, the result may be a further weakening of an already debilitated Rock Island. To withhold action here simply to protect Rock Island or until the time that Rock Island's problems are cured, could well result in the ultimate denial forever of the benefits flowing from this merger. Proposed transactions of this size and scope cannot be held together in perpetual limbo pending possible changes which may or may not occur in the future. This is especially true inasmuch as consummation of the proposed transaction would not be the basic cause of the problems which presently face the Rock Island but rather only an added impediment to Rock Island's already precarious situation.

Ideal aim to R.I. problem

Insofar as this examiner can determine from what is recognized as an imperfect record, the ideal answer obviously would be to approve this transaction subject to a condition that would not render consummation thereof as either the direct or indirect cause of a further weakening of Rock Island and of more importance, a deterioration in the services that road presently performs. As indicated, the key to injury to Rock Island stemming from this transaction is the possibility of "diversion of traffic"--nothing more or less--and were this injury eliminated from the scene, while certainly it would not cure Rock Island's present problems, the benefits

R. I. assumed independent

of this transaction would be obtained without, in any way, doing violence to the remaining transportation facilities.

In the *Penn-Central* merger proceeding, the Commission faced a somewhat similar situation. In restructuring the eastern railroad system, the Commission was presented with a definitive showing that approval of the merger of the Pennsylvania Railroad Company (PRR) and the New York Central Railroad Company (NYC) would materially and substantially injure several smaller eastern railroads; (Erie-Lackawanna [E-L], Boston and Maine [B&M] and Delaware & Hudson [DH] Railroads), and that for the basic merger to be approved, indemnification for the losses to these roads must be provided for. Union Pacific equates the fate of the Rock Island in this proceeding to the plight of the New York, New Haven and Hartford Railroad (New Haven) in the *Penn-Central* proceeding wherein the Commission found that given its existing volume, New Haven, a bankrupt railroad, would have little, if any, opportunity to undergo normal reorganization and must obtain additional traffic now moving via other railroads or other modes if it is to survive. The Commission concluded that even if New Haven were not to lose more than $1 in freight revenues, the proposed merger would effectively destroy its ability to reorganize into a viable railroad.

P-C & N.H.

Neither the relationship of this transaction to the present plight of the Rock Island nor the present condition of Rock Island is comparable to that posed by the New Haven in the *Penn-Central* case. As hereinafter indicated, the diversions from Rock Island resulting from this transaction will not, in the examiner's opinion, prevent revitalization of Rock Island were it to remain as an independent railroad and, for that matter, forced into bankruptcy and required to reorganize its plant and facilities. Secondly, liquidation of the Rock Island is not the problem here as it was facing the New Haven, for even if Rock Island were not able to extricate itself from its present dilemma, it would still have the option, assuming it remained an independent railroad, to reorganize its plant and service. Finally, as distinguished from the New Haven plight, Rock Island is presently involved in its own merger proceeding which may or may not offer an opportunity to extricate itself from its present predicament without reorganization.

but!

NOT applic.

P-(NH) C NO SIMILARITY

The plight of Rock Island in this proceeding is almost identical to that experienced by E-L and B&M in the *Penn-Central* case where both had experienced heavy losses in earnings, both were faced with the possibility of diversions resulting from merger, and both were seeking inclusion into another system. In that instance, the Commission found that the merger should not be approved unless adequate indemnification was provided to insure that approval of the transaction would not in any way injure these carriers. There was no requirement, that the indemnification should be set at a figure which would cure E-L's or B&M's basic problems, but rather indemnification was established at a figure which would insulate such carriers against the diversions which might result from that transaction.

The difference between the issues facing the Commission in the *Penn-Central* case in connection with E-L and B&M and the issues facing this examiner in dealing with the fate of the Rock Island are: (1) That in the *Penn-Central* case there was a clear and definitive showing by both E-L and B&M that they would be injured and injured materially were this transaction approved without such an indemnification whereas in the instant proceeding although Rock Island will be injured at least to the extent of a loss of $92,000, such loss would, at most, be a secondary cause to its ultimate insolvency or demise; (2) that in the *Penn-Central* case the possibility of indemnification was never raised in the initial hearings, as opposed to this proceeding where this examiner called the parties attention to the possibility of indemnification and in light of the evidence, all but specifically required the parties to put forth proposals which would assist him in coming up with an indemnification provision.

Although Rock Island's chief operations official claimed that no indemnification could be granted which would cure Rock Island's basic problems, this proceeding is not the forum for such basic "cure". Certainly, Rock Island had an obligation to this Commission to at least provide it with a concrete estimate of the damage--namely diversion--that would result from this transaction. Applicants also were less than helpful in developing a basis upon which indemnification could be founded. Although presenting a positive study of their estimate of Rock Island's loss on traffic which they interchanged between themselves, they failed in any way to rebut Rock Island's general assertion of losses on traffic which the latter interchanged with other carriers, evidently proposing to stand on the practical position that Rock Island had simply not made a definitive case.

P-C (B&M, E-L) SIMILAR

Tab Reads -
R.I. Indemnity

Despite these handicaps, the examiner believes that the record is sufficiently clear so that an indemnification condition can be drafted which will achieve its purpose, namely to insulate Rock Island from any possible injury which would result from the proposed transaction. While in so doing, the examiner must resolve all doubt in favor of Rock Island in the formulation of its terms, the latter's desperate need for cash is such that the examiner believes if an error is to be made, it should be made in favor of Rock Island rather than applicants. While admittedly the indemnification to be imposed by this examiner would not cure Rock Island's basic problems which have nothing to do with this transaction, the consummation thereof would not be the cause of its bankruptcy or demise.

As stated by Rock Island in its brief, the competitive impact from the proposed transaction will come from two sources: (1) Traffic presently interchanged with applicants upon which applicants will be in a position to obtain a longer haul; and (2) traffic presently interchanged by Rock Island with other carriers upon which applicants will be able to exert greater solicitation efforts through reason of the merged company's improved service.

The first source, traffic interchanged by applicants with Rock Island, the Rock Island estimates would result in a "potential diversion" of $1,921,791 in gross revenues which, after giving affect to admitted incremental costs of 33 1/3 percent, would net out to a loss of $1,281,195, assuming that all potential traffic was actually diverted. Applicants on the other hand, estimate potential diversion as $1,180,830. The distinguishing features between applicants' estimate of potential diversion and Rock Island's estimate is that (1) the former excluded all traffic on which it was being presently shorthauled on the theory that the applicants' influence on such traffic was so small at present that it could not gain its maximum haul; and (2) traffic on which the merged company would have no incentive to divert from Rock Island because its divisions on interchanges at the various gateways would be higher or the same in handling the traffic via existing routes. Although there is much to be said for the elimination of the traffic on which applicants are presently shorthauled and of traffic which the merged company would not have any incentive to divert from Rock Island, there is some merit to Rock Island's claim that the improved service of the merged company and its increased strength would put this traffic in the realm of potentially divertable

R.I. INDEMNITY

traffic even though ~~o~~n the latter category the merged company would not have any incentive to achieve this end. Therefore, for purposes indicated, the examiner will accept Rock Island's estimate of potential diversion.

Although recognizing that all of the potentially divertable interchange traffic would not be lost to it, Rock Island refused to provide the examiner or this Commission with an estimate of actual diversion whereas applicants' estimate was $92,790. Based upon an evaluation of the character of the traffic involved, the cross-examination of traffic witnesses representing applicants and Rock Island, and the heretofore discussed testimony relative to railroad competition and the bases upon which shippers route traffic, the examiner cannot conceive of a diversion which would be greater than 40 percent of the total traffic assigned by Rock Island as traffic potentially divertable, insofar as such traffic is interchanged with applicant. Rock Island's advantageous track location for the handling of many of these shipments, shippers' allocation policies, and its relationships with other rail carriers makes it realistically impossible for the impact of this merger to cause a diversion which would exceed the 40 percent figure. Hence, although recognizing that the estimate is quite probably overstated, it is the examiner's conclusion that of the $1,921,791 assigned by Rock Island as potentially divertable, at the most it would lose gross revenues of $768,716 and net revenues of $512,734.

40% max to actual

NET

Turning to the second source of diversion, traffic which Rock Island interchanges with other carriers, the contention is made that while Rock Island obtains much of this traffic through Missouri River gateways, despite the competitive efforts of individual members of the merged companies today, undoubtedly the merged company will obviously afford stronger competition in the future and the "faster, more frequent schedules and better car supply" will necessarily enable it to make inroads on traffic received or given to connections. This is especially true, Rock Island contends, of bridge traffic which makes up in excess of 50 percent of the traffic which Rock Island presently delivers to or receives from Missouri River connections.

Rock Island is especially fearful that it will lose traffic which it presently receives from Northern Pacific, Great Northern and MN&S in the Twin Cities area which in 1965 contributed $4.4 million in gross revenues including $1.4 million derived from bridge traffic on cars moving to competitive destinations

R.I. CALCULATIONS

or interchange points, many of which could be served by the consolidated company. Of this traffic $322,608 of revenue traffic was attributable to traffic moving to Kansas City connections; $1,070,706 was attributable to movements beyond Kansas City on which Rock Island could at least be shorthauled; and $848,545 was attributable to movements to Chicago connections. Other than a few specific examples, no realistic breakdown in terms of revenue was given on northbound traffic which would move via or from Kansas City and Chicago to Twin Cities; between St. Louis and the Twin Cities; or between any of the other points such as Fort Dodge, Duluth, Council Bluffs or any of the other points from and to which the individual components of the merged company provide services today but the general allegation is made that this traffic is also "highly vulnerable to diversion to the merged company". In fact the only figure produced by any party which would indicate the degree to which Rock Island traffic which it interchanges with other carriers that would be susceptible to "potential diversion" was the $7.4 million which was set forth by the Union Pacific in its brief. Again, no figure of actual diversion was provided but the assertion again is made that this traffic would be susceptible to a high degree of diversion.

Applicants on the other hand argue that today the Northern Lines and other carriers such as Union Pacific which take a neutral position or favor one of the applicants at their various Missouri River gateways will be required to turn to the Rock Island as a non-competitive route through the Twin Cities, Omaha-Council Bluffs, and other common junctions on traffic now handled by the C&NW or Milwaukee as individual carriers, that the present volume of traffic interchanged with Rock Island at such points as Twin Cities or Omaha-Council Bluffs should not only be maintained but increased as a result of such change in the situation. Furthermore, applicants argue that Rock Island's failure to undertake and present a traffic study of its own warrants a reasonable inference that such a study would have been unproductive, especially in light of the limited costs involved.

With reference to the potential traffic which applicants could conceivably divert from Rock Island which it interchanges with carriers other than applicants the only presentation, even resembling an estimate of potentially divertable traffic,

R. I. DIVERSION

was formulated by the Union Pacific which unquestionably included traffic which moved to junctions and points not served by applicants and upon which there would not be even the remotest possibility of such diversion. Despite this, the examiner is faced with the stark realism that if this transaction is to be approved or consummated prior to a determination of Rock Island's ultimate fate, he has but one course open and that is to accept the Union Pacific's figure of $7.4 million in this respect. Such traffic, however, appears to be the outer limit of any conceivable type of potential diversion of this type which may befall the Rock Island. Although Union Pacific and to some extent Rock Island itself generally alludes to some vague type of traffic which might be susceptible to diversion, the record clearly does not support this possibility and the examiner concludes that on traffic interchanged by Rock Island with other carriers the maximum potential diversion figure should be set at $7.4 million.

On this traffic, the components of applicants today can provide service and in fact compete for it without success. After the transaction is approved and the merger consummated, unquestionably roads that have heretofore worked with the applicants' individual components, such as the Northern Pacific, Great Northern, Union Pacific and other roads at the Missouri gateways will not have the same incentive to work with the merged company which will compete with these roads to the West Coast. This is especially true if the *Northern Lines* merger is approved and it is apparent that railroads operating west of the Missouri River gateway will find it to their own economic interest to work more closely with the Rock Island insuring the maintenance of the latter's route to the Chicago, Kansas City and St. Louis gateway.

In assessing actual diversion, the examiner is convinced that the strong possibility exists that Rock Island will benefit rather than be injured through the strengths it will gain from its closer working relationship with such carriers as the Union Pacific, Soo Line and the Northern Lines. Certainly, these carriers will solicit traffic moving from shippers located at common points with the merged company and even at closed points via routes that do not involve the merged company. Although the merged company's improved service will unquestionably result in some diversions from not only the Rock Island on this

R I COULD GAIN

traffic but the Northern Lines and the Union Pacific, such ~~diversion traffic but the Northern Lines and the Union Pacific, such~~ diversion should be minimal and certainly under any conceivable set of circumstances should not exceed 10 percent of the total traffic potential which the Union Pacific has so adroitly put together on traffic which is not handled by applicants today. This estimate fully recognizes that the merged company will be able to provide somewhat faster schedules and have a slightly improved car supply and achieve other improvements through merger but such improvements cannot be considered, standing alone, capable of producing any major shift in the present flow of traffic.

All factors considered, it is the examiner's conclusion that at the most[104] the proposed transaction would result in actual diversion of $1,508,716 of gross traffic from the Rock Island including $768,716 of revenues on traffic interchanged with applicants today, which, giving effect to a cost factor of 33 1/3 percent will produce a net loss of the Rock Island of $1,005,811. In light of the above analysis and in order to insulate Rock Island from any losses resulting from consummation of this transaction, the examiner will impose as a condition to this transaction, the requirement that the merged company indemnify Rock Island by payment of an amount not to exceed $1,005,811 annually to be paid in quarterly installments until such time as the Rock Island is included by merger or otherwise into another railroad system or until the merged company is otherwise relieved of such obligations by this Commission.

Under the terms of this condition, and in light of the fact that all doubts have been resolved in favor of Rock Island, the merged company may file a petition, after consummation of the proposed transaction, seeking modification of the terms of said condition including the amount payable upon a showing that the above-estimate of actual diversion is too high. In the latter respect, the condition will reserve in the Commission jurisdiction to alter the amount of the indemnity including the

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[104] Because of variables not present in the *Penn-Central* case, it was not feasible to develop a *Penn-Central* type indemnification formula but the above diversion is considered the maximum diversion possible under any reasonably foreseeable circumstances.

R. I. & LOSS

right to apply such alterations retroactively to the date of consummation. Furthermore, the objective of this condition is to prevent the diversions resulting from this merger to trigger the insolvency of Rock Island and not to perpetrate the existing division of traffic as between carriers. Hence, a change in Rock Island's financial condition may well justify a further modification or elimination of this condition.

On the basis of the above-analysis, the examiner concludes that approval of this transaction subject to the conditions imposed for the benefit of Rock Island and other carriers which provide a connecting service to Union Pacific, Southern Pacific, and Rock Island will not materially or adversely affect the transportation services provided by the rail components of the transportation system; that to the extent competition is eliminated directly, the adverse impact therefrom is outweighed from the benefits to be derived from merger without further consideration of the benefits to be derived from the approval of a *Union Pacific-Rock Island* merger; that even were the Rock Island to disappear from the transportation scene as a result of problems not connected with this merger, competition as it presently exists would be eliminated at only four points as a result of the Commission's approval here and such elimination is not of such significance nor does it justify the reopening of this record to further consider evidence in support of the conditions requested by Union Pacific, Rock Island, or Southern Pacific; that while the strengthening of Rock Island will be beneficial to the public through its inclusion into a stronger system or otherwise, such inclusion is not a necessary prerequisite for approval of this transaction which carries with it many benefits to the public without in any way injuring the latter's service or operations; and that under these circumstances and in light of the pendency of the C&NW's application to control Rock Island, no need appears prevalent for, nor has anyone filed a petition seeking inclusion of Rock Island or any other railroad into the merged company. Upon these bases, the examiner finds that no reason exists for further consideration of the requests of Union Pacific, Southern Pacific, and Rock Island for the imposition of a condition which would have the net effect of withholding approval in this transaction pending the ultimate merger or purchase of Rock Island by Union Pacific and/or Southern Pacific.

Tab Reads -
Labor Prot.

F. D. No. 24182

EFFECT ON LABOR AND CONDITIONS NECESSARY TO PROTECT THE INTERESTS OF RAILROAD EMPLOYEES AFFECTED BY THIS TRANSACTION

A detailed analysis of impact upon labor is set forth in Appendices O-1 and O-2. As indicated therein, as a result of approval of this transaction, between 4,473 and 4,536 employees would be directly affected by consummation of the proposed transaction in that their present positions would either be abolished or transferred to a new location. Also, as employees are displaced or dismissed, through the exercise of the so-called "bumping" process built into the seniority system which dictates the management-labor relationship between applicants and its employees, the merger will affect other employees. Inasmuch as this secondary effect depends upon the seniority rights held by the individuals to be affected, there is no way to quantify this impact with any degree of precision. Of the total employees which would be directly affected, 3,850 would find that their jobs were abolished and the remainder, that their jobs were transferred to a new location. Some 434 new jobs would be created as a result of this transaction which would have the effect of providing the new company with an opportunity to achieve a net reduction of 3,416 positions or jobs.

Recognizedly, the above figures may be slightly overstated because of applicant's failure to produce appropriate estimates to take account of the prior inclusion of CGW into C&NW, but such findings are necessary to insure that the Commission will have before it and may properly assess the maximum impact upon labor as required by section 5(2)(c) of the Act.

The actual impact upon employees would not be as severe as indicated by the above figures for the elimination of positions would not occur overnight after this transaction is approved but would be achieved over a minimum of a 2.5 year period. During the interim, applicants heretofore experienced attrition rate, approximating 5 percent a year, should provide 4,167 vacancies which can be used, at least in part, to take care of the employees dismissed or displaced by merger. While the examiner has no illusion that the new company will be able to fill the jobs created by attrition with employees dismissed or displaced as they become available for the jobs and employees available are not so readily matched, he also recognizes that many employees will accept lump-sum payments as provided by the conditions offered by applicants, thereby minimizing, to a major degree, the difficulties which would be experienced by the surviving company in intergrating its excess employees into the merged operations.

One of the issues to be considered in any section 5 proceeding by this Commission is the impact upon labor. Although not presenting any evidence to indicate that the impact upon labor as a result of this transaction is in any way different from that set forth in applicants' studies, BLE argues specifically and RLEA implicitly that such impact would be extensive, severe and oftentimes impossible and that on this basis the merger should be denied.

Applicants, on the other hand, argue that approval of the proposed transaction would be advantageous to labor in the long run despite the fact that numerous jobs would be abolished within several years after consummation. In support of this premise, applicants argue that rail employment today, especially in the area served by applicants, is subject to instability due to the complete dependence by railroads, and particularly applicants, upon the upward and downward trends in the economy. In this respect, the nature of applicants' marginal operations require an almost immediate contraction in rail employment as the economy falls and applicants, in the past, during time of economic adversity, have eliminated a great deal of maintenance work. Hence, if stability can be achieved through this consolidation, it would inure to the benefit of labor. On this basis, applicants argue that merger would bring a greater degree of employment stability to rail labor due to the improvement in the surviving company's financial condition which would permit it to maintain its labor force on a more stable basis despite economic downturns, over a longer period of time.

While the statistical approach used above cannot measure the impact upon individual employees faced with dismissal or displacement notices, it does, when coupled with an understanding of what the statistics mean, provide a basis upon which the benefits of this merger can be balanced in light of such impact. Although the examiner recognizes the significance of the short-run dislocations which many employees may experience upon consummation of this transaction, the long-run benefits of approval to applicants, the public and those employees who remain in the surviving company's employ transcend the adverse impact on labor depicted above. The objectives and results of the merger as portrayed on this record are similar to those which the Commission has determined would be acheived in other merger proceedings for which approval has been given. Neither BLE nor RLEA specified any type of impact upon applicants' labor force were this transaction consummated other than has heretofore been determined in other proceedings where the Commission has imposed conditions to meet such impact.

With regard to the imposition of conditions to protect applicants' employees, BLE urges that the Commission depart from the imposition of so-called standard *New Orleans* conditions and impose employee protection similar to that agreed upon by applicants with labor representatives in the *Northern Lines* case. BLE argues that the imposition of such conditions would: (1) Provide for compensatory allowances to an employee, no matter how long, until he is returned to railroad employment; (2) adopt procedures in which the labor representatives would have stronger voice in the allocation and rearrangement of forces; (3) broaden the definition of protected employees; (4) provide for protection of supervisory personnel and organizational representatives; (5) provide for a more definite test to determine whether employees are affected by fluctuations in business or by the consummation of the proposed transaction; and (6) other changes in the method of computation of allowances, etc. The conditions proposed by BLE would greatly broaden the protection, heretofore provided by the Commission through the imposition of the *New Orleans* conditions but are considered necessary by BLE to meet the requirements of the minimum protection dictated by section 5(2)(f) of the Act and fully comports the conditions which this Commission imposed in the *Penn-Central* case, *supra*.

RLEA, on the other hand, indicates that insofar as applicants' employees are concerned, it would be willing to accept the conditions imposed in the *New Orleans* case[105] without the modifications subsequently imposed by the Commission in *Southern Railway Co., - Control - Central of Georgia Railway Co.*[106] It argues that the *New Orleans* conditions as

[105] 282 I.C.C. 271.

[106] 317 I.C.C. 557, 317 I.C.C. 729, 320 I.C.C. 377, and 331 I.C.C. 151.

initially promulgated have worked out well in the past and provide for full and complete protection and permit full negotiation between the parties to resolve their mutual problems before they are submitted to arbitration. RLEA contends that the modification of the *New Orleans* conditions as initially adopted in the *Southern-Central of Georgia* case have caused nothing but problems for everyone since they were imposed and RLEA suggests that the Commission return to the accepted standard conditions as set forth in the *New Orleans* case. It particularly suggests that the arbitration clause as provided for in the *Southern-Central of Georgia* case, permits parties to a dispute to wait 30 days before subjecting the matter to arbitration rather than actively negotiating which is the realistic key to the satisfactory resolution of disputes between labor and management arising after the merger is consummated. No one, RLEA argues, can fully appreciate the problems created by the so-called *Central of Georgia* conditions without seeking to return to the historic benefits of the *New Orleans* conditions. Furthermore, RLEA contends that in *New Orleans & Northeastern Railroad Company v. Bozeman, et al.*[107]-the Court recognized that either party to the *New Orleans* conditions as initially imposed "had the absolute right to select arbitration as a means for settling a dispute" and hence, the amendment to the arbitration clause as set forth in the *New Orleans* conditions which was adopted in the *Central of Georgia* case is no longer necessary.

The issue of what labor conditions should be imposed to comply with the statutory mandate of section 5(2)(f) of the Act has been the subject of extensive thought and experimentation by this Commission in the past. From the inception of the Commission's jurisdiction under the Transportation Act of 1940 on this matter, labor representatives have urged the expansion of such protection over that previously provided. The imposition of the *New Orleans* conditions was a result of the blending of the protection afforded by the so-called Washington Agreement with the *Oklahoma* conditions[108].

BLE's request for the imposition of labor protective conditions similar to those agreed upon by applicants in the *Northern Lines* case is not justified on this record. The Commission and the

[107]312 F. (2d.) 264.

[108]Imposed in *Oklahoma Ry. Co., Trustees, Abandonment,* 257 I.C.C. 171, 193, 196 (1944).

Courts on numerous occasions have concluded that the *New Orleans* conditions meet at least the minimum requirements imposed by section 5(2)(f) to protect labor, and there is no positive showing on this record that the impact upon labor is in any way different than indicated as resulting from other rail mergers nor any evidence demonstrating a need for additional protection over that provided by the *New Orleans* conditions. In this respect, the examiner is fully cognizant of the Commission's action in the *Penn-Central* proceedings and in other instances where management and labor have agreed on conditions other than those afforded by the *New Orleans* case. Such action, has been based essentially on agreement of the parties and a showing that a different approach in formulating conditions was warranted. Nothing has been presented on this record which would justify or which could be used to develop a new approach to this vexing problem.

Although the examiner can recognize the basis for RLEA's fears concerning the imposition of conditions similar to those imposed in the *Central of Georgia* case, the Commission's interpretation of those conditions in its most recent report in that case and its imposition of similar conditions in the *C&NW-CGW* case should dispel any fears relevant to the imposition thereof. The net effect of the *Central of Georgia* case was to develop arbitration features which would insure quick settlement of disputes between the parties. This modification was made at the insistence of RLEA which now evidently seeks a longer period of negotiation before either party can resort to the arbitration features. These features were carried forward and imposed in the *C&NW-CGW* case and in the examiner's opinion are necessary in this proceeding to achieve results consistent with the objectives of this merger which are found to be in the public interest. Such fast settlement not only insures that the coordinations proposed by applicants will be achieved rapidly but that individual employees will obtain a decision expeditiously. This, in the examiner's opinion, is all to the benefit of the public interest and accordingly, the *New Orleans* conditions, subject to the modification set forth in the Commission's order of September 27, 1967 in the *C&NW-CGW* case, will be imposed. The examiner so finds.

In addition to its request that conditions be imposed for the protection of applicants' employees, RLEA also urges

N. O. COND AS CNW-CGW APPLIED

that conditions be imposed to protect employees of other railroads whom the record shows will be adversely affected by diversion of business from their respective rail carriers. In the latter respect, although not presenting any evidence to indicate an adverse effect upon such employees, RLEA points out that eight carriers have requested conditions to protect them from the adverse effects of the merger. In all cases, it points out that these roads have indicated that consummation of the proposed transaction will result in substantial losses of revenue which in RLEA's opinion would in turn affect employment on these roads. It cites the request of Southern Pacific and Soo Line as examples of such loss. It points to the fact that Southern Pacific has indicated that, in the event the losses which it estimates could result from the transaction do occur, it would have to cut back its capital expenditures which would inevitably result in an adverse effect on employees. Also, it contends that if Soo were to lose the traffic which it anticipates, it would seek to reduce expenses rather than reduce dividends which would have the net effect of abolishing jobs on the Soo Line and thereby adversely affecting employees.

Historically, the Commission has construed section 5(2)(f) of the Act as only requiring it to afford protection to employees of the carriers directly involved in the transaction under consideration. In two recent decisions[109] the Courts have stated that section 5(2)(f), does not limit its security to employees of the carriers involved in the transaction. In *Soo Line R. Co. et. al.* v. *United States, et. al., supra,* the Court remanded the Commission's decision to approve the *C&NW-CGW* merger on the grounds, among others, that the Commission failed to impose protective conditions for the benefit of employees of Soo who would be directly and adversely affected by the merger through the diversion to it caused thereby. In the *C&NW-CGW* case, there was direct evidence presented by Soo that if it suffered a diversion of $1.3 million that the latter "would have to reduce expenses" and would be required to abolish jobs as a result. As to Soo employees, the Court concluded "that if no injuries to them would result, then no protective conditions would be necessary".

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[109] *RLEA, et al.* v. *United States, et al.*, (E. D. Va., March 21, 1963), 216 F. Supp. 101 and *Soo Line R. Co., et. al.* v. *United States, et. al.*, (D. Minn., 4th Div., January 25, 1968) F. Supp. .

Tab Reads -
No Labor Cond.
Other RR

Subsequently, in its report on reconsideration in the *C&NW-CGW* case[110], the Commission although implying disagreement with the District Court's construction of section 5(2)(f) concluded that the conditions which it imposed in that report were sufficient for the protection of Soo and adequate to the preservation of Soo's operations and service and therefore, that no protection for Soo employees against job loss was necessary.

Hence, even assuming that the District Court was correct in its construction of section 5(2)(f), as construed by the examiner, the *Soo Line* decision of the Minnesota District Court restricts the protection of section 5(2)(f) to employees of a carrier which establishes diversions which would result in a contraction of operations or service, thereby necessitating the reduction of its labor force. As has heretofore been discussed, the proposed merger will have no impact upon the services or operations of any of the carriers which seek conditions to protect their interests. Through the imposition of the conditions, both Soo Line and Rock Island are thoroughly insulated from any injury and the diversion which would result to other carriers is not such as would permit any of them to reduce service, contract operations or interfere in their ability to make capital expenditures.[111]

RLEA would equate the necessity for the imposition of conditions as entitling employees of railroads for whom the conditions are imposed to protection. To the contrary, however, the conditions imposed particularly for the benefit of Soo and Rock Island in this proceeding fully compensate Soo and Rock Island for any injury which they would suffer and hence, no contraction in this service or operations would cause any losses in employment.

In light of the fact that the examiner has refused to impose the conditions requested by the LS&I, RLEA's further argument that employees affected by the imposition of such conditions should receive protection under section 5(2)(f) need not be considered.

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[110] 333 I.C.C. 236.

[111] See prior discussion of ability of carriers experiencing diversion to reduce costs.

EFFECTS OF MERGER UPON NET INCOME OF THE SURVIVING COMPANY AND CASH FLOW NECESSARY TO IMPLEMENT MERGER

Attached Appendix P-1 reflects a pro-forma income statement, based upon the year ended December 31, 1967, which combines the net income statement of C&NW, CGW and Milwaukee Road for that year, making adjustments (1) for the ultimate savings to be realized from this transaction ($31,700,845), the *C&NW-CGW* merger ($5,937,778), and the acquisition of D.M.&C.I. and subsidiaries ($2 million); (2) for net increases in traffic which applicants concede the merged company will divert from other railroads ($2,596,126)[112]; (4) for the amortization of the cost of labor protection ($1,374,653); and (5) for other factors such as prior period items, dividends from C&NW's wholly-owned chemical subsidiaries, unification costs, etc., which applicants claim should be eliminated from consideration in evaluating the net effect of merger. Although the examiner has some questions relative to the adjustments indicated in (5) above, the failure to consider them would not alter his judgment on the issues posed in this proceeding one way or another.

As indicated in Appendix P-1, the result would be a net income for the surviving company of $42.1 million. Not included in Appendix P-1, however, are adjustments for the minimum increase in traffic through diversion from other carriers which the examiner believes would be greater than those estimated by applicants; the cost of conditions imposed for the benefit of the public through the granting of trackage rights, etc., to Soo, Rock Island and Illinois Central ($5,752,158);[113] nor the increase in gross traffic revenue which would be available to the merged company were the *Northern Lines* merger consummated.[114] As heretofore determined, the maximum increases which the merged company can anticipate as

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[112]Applicants estimated that they would benefit from traffic diversion from other carriers in the amount of $3,894,189, which, less 33 1/3 percent, the cost of handling, produces the above-figures.

[113]Recognizedly this does not include the cost to the surviving company of Illinois Central's access to Austin if subsequently imposed or the cost of other conditions for which jurisdiction is reserved. However, such cost factor is an element to be taken into consideration when and if any supplemental conditions are imposed.

[114]As heretofore indicated, the Commission estimated that the net benefit to both C&NW and Milwaukee Road to be somewhat (Footnote continued on page 359).

Tab Reads-
CMNW Income
$ Cash

a result of diversions of traffic from Soo, Rock Island, Union Pacific, Northern Pacific, Great Northern, and DRGW alone would exceed those projected for these carriers by applicants by approximately $10.2 million. Since these are maximum estimates, the degree to which these diversions will actually materialize and may be assessed in terms of the merged company's projected income, may be questioned. If, however, only 50 percent of such increased traffic gains materialize, it would be of substantial assistance in offsetting the cost of the conditions imposed by this examiner.

In essence, therefore, and whether the *Northern Lines* merger is consummated or not, even given the understated net income benefits to be derived from this merger by applicants as reflected in Appendix P-1, the improvement in applicant's income position would obviously be significant and completely adequate to absorb any costs incurred as a result of the conditions imposed herein. Of more importance, however, the outlook for the merged company would be considerably brighter and should provide the incentive necessary to accomplish the objectives for which this merger was designed.

The timetable for execution of the merger plan now that CGW is included in C&NW and a year-by-year cost breakdown in implementing applicant's merger program are set forth in Appendix P-2. As indicated therein, the entire merger program including merger of CGW will take 5 years to complete.[115]

Here again, the examiner has used applicant's estimates of savings and traffic benefits less cost of handling despite the fact that he considers such estimates as being understated.

(Footnote 114 cont'd)
less than $11.6 million in increased gross revenue and using the 33 1/3 percent cost factor, somewhat less than $7.7 million in net railway operating income.

[115]As indicated in Appendix P-2, savings to be realized from the merger of C&NW and Milwaukee Road will be realized by the end of the third year after consummation.

The objective of this assessment, however, is to insure the fact that applicants will have sufficient resources to complete their merger program.

As indicated from Appendix P-2, approval of the proposed merger would permit the merged company to obtain benefits building from \$5 to \$6 million in the first year to a total annual benefit of \$38,860,096 less benefits of \$5,937,778, which would be obtained from the merger of CGW into C&NW upon completion of the program.

From a standpoint of cash flow, however, the picture would be slightly different. Below is a statement indicating the cash effect which the proposed transaction would have upon the new company were this transaction approved.

C&NW-CGW-MILWAUKEE RAILROAD[116]

Year	Cash Benefits to be Derived from Savings and Traffic Increases	Cost of Labor Protection	Cash Provided or Required per: Report on Economies	Net Increase or Decrease in cash
1.	\$ 8,008,905	(\$ 6,904,519)	(\$14,195,557)	(\$13,091,171)
2.	25,040,187	(6,480,568	(7,259,087)	11,300,532
3.	39,734,391	(11,022,180)	10,057,498	38,769,709
4.	40,153,579	(2,568,125)	2,510,840	40,096,294
5.	40,234,749	(517,667)	-	39,717,082

As depicted above, the only year in which the new company would face any problem in carrying out the merger program would be the first year when in excess of \$13,000,000 cash would be needed. In this respect and as supported by the analysis of pro-forma financial condition of the merged company, the latter should experience no difficulty in carrying it out and without any need to issue additional securities.

[116] Includes benefits to be derived from *C&NW-CGW* merger.

CASH FLOW

Tab Reads-
NWI

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EFFECT OF CONTROL OF THE SURVIVING COMPANY BY INDUSTRIES

As heretofore indicated, in the *C&NW-CGW* case[117] the Commission considered the impact which control of Industries would have upon the then merging C&NW and CGW combination. Although subjecting Industries to the provisions of section 5(3) to the extent of requiring it to make such periodic and special reports as the Commission may require pursuant to section 20(1) and 20(2) of the Act, and reserving jurisdiction for the purposes of determining whether Industries should be subjected to further regulation at a future date, it was the Commission's view at that time that Industries should not be subjected to the provisions of other sections of the Act.

As indicated, in this proceeding, after the hearings were initially closed, the Commission reopened these proceedings for further hearing with respect to issues dealing with the effect which the entrance of the so-called holding company, Industries, will have upon the consolidation agreement and stock exchange ratios between applicants and also to consider the broad regulatory significance of the holding by Industries of the controlling interest in the outstanding stock of the surviving company.

Although of the opinion that control by Industries of the surviving company would not be inconsistent with the public interest, the Bureau of Enforcement urges that in the event the proposed transaction is approved that conditions be imposed to require that (1) Industries continue to be considered a carrier under the provisions of section 5(3) of the Act for the purpose of filing such annual and special reports pursuant to section 20(1) and (2) of the Act as may be required by this Commission; (2) that Industries be subjected to the provisions of section 20(5) of the Act; and (3) that certain information be filed, as subsequently described.

Alleging again that the record in this proceeding is incomplete, the D&RGW, Rock Island, Soo and Union Pacific argue that control by Industries of the surviving company will increase the financial strength of the latter to such an extent that these roads will experience additional diversion. In this respect, they point out that the significant investment which Industries will have in the rail operations of the surviving company will cause it to inject new and material financial support for its rail subsidiary's endeavors to capture traffic from other railroads. Of interest, they point to the fact that the C&NW's chief executive admitted on cross-examination that the financial strength

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[117] 333 I.C.C. 239-241

NW IND CONTROL

which Industries will add to the merged company would provide the latter with additional strength in its competitive efforts with the Rock Island. Industries control, these carriers assert, establishes a greater need for the special conditions which they individually seek.

As will hereinafter be detailed, applicants oppose the requests of the Bureau that Industries and its non-transportation subsidiaries be required to file certain data. Applicants view control by Industries as a major plus factor in its merger proposal. For on the one hand, Industries will provide the merged company with added financial strength and a more talented management, and the filing of a joint tax return by Industries and its subsidiaries, including the surviving company, will permit the railroad, at least, indirectly to take advantage of tax losses and credits accumulated in the past and generated in the future. Furthermore, applicants do not foresee any problem caused by the fact that among Industries' subsidiaries are manufacturers and producers who ship commodities. For under Industries plan of operation, the management of each of its subsidiaries operate independently with instructions to maximize their own profits. In any event, applicants argue that none of Industries' non-transportation subsidiaries, except Lone Star Steel Company, which shipped by applicants a total of 105 carloads in 1967, have used applicants.

Applicants point to the fact that the C&NW's relationship to Industries has already paid dividends to the former's operations when the holding company advanced $14 million to C&NW to purchase D.M.&C.I. and 50 percent of Alton & Southern at prime interest rates. Hence, applicants contend that it cannot be argued that Industries controlling interest in C&NW has proven disadvantageous in any respect nor that it would in the future "raid" the railroad to enhance its profit picture. To the contrary, applicants argue that the diversification program of C&NW is a step in the direction of maintaining and improving the railroad plant.

Finally, applicants argue that Industries is not a railroad and consequently cannot provide the surviving company with any cars or traffic but only may improve its financial strength and that factor alone will not permit the surviving company to increase its competitive ability to divert traffic from other carriers.

Attached hereto as Appendix Q-1 is a pro-forma consolidated balance sheet for Northwest Industries, Inc., as of December 31, 1967. The balance sheet includes Milwaukee Road, C&NW, CGW and all non-transportation subsidiaries controlled by the applicants and Industries. The adjustments therein give effect to the

N.W.I.

Tab Reads Conglomerate

exchange offers of Industries to Philadelphia and Reading and C&NW security holders and on a pro-forma basis, the merger of CGW into C&NW, all on a pooling of interest basis.

Following consummation as of December 31, 1967, Industries treated on a consolidated basis, would have had available working capital of approximately $113.4 million and a working capital ratio of approximately 2 to 1. The long-term debt of the consolidated company, including debt due within 1 year, would have totaled some $714 million or approximately 50 percent of the $1.4 billion net operating property. The ratio of total debt to combined total debt and shareholders' equity (including minority interests) was a favorable 52 percent.

The consolidated company's maturities appear to be well spaced with no sizable bond maturities due until 1985 when some $14.5 million of C&NW's first mortgage bonds would become due and payable. Such spacing will strengthen the credit standing for the combination and should permit it to finance any improvement or modernization program.

Attached hereto as Appendix Q-2 is a pro-forma consolidated statement of income for the year ended December 31, 1967 for the Milwaukee Road, C&NW, CGW and all non-transportation subsidiaries controlled by the applicants and Industries. As reflected on a pro-forma pooling of interest basis, which assumes merger of C&NW-CGW, in 1967, the pretax net income from Philadelphia-Reading and the non-transportation operation of C&NW, CGW and Milwaukee Road was approximately $63.8 million compared to the combined rail operations for those three roads which indicated a pretax net loss from transportation operations of $11.3 million before extraordinary items and non-recurring prior period items.

The transaction proposed herein encompasses a conglomerate or multi-market company headed by a holding company. As construed by the examiner and as developed by the parties of record, the Commission's order assigning this matter for further hearing to invest the "broad regulatory significance" of such holdings involves three essential questions:

(1) Whether the holding company would so influence the surviving company as to prefer the holding company's non-transportation subsidiaries in the movement of their products?

(2) Whether the holding company would act as a substantial source of financial assistance to the merged company and possibly put competing railroads at some type of economic disadvantage?

CONGLOMERATE

(3) What are the rights, obligations, opportunities, and incentives for the holding company to see that the operations of its proposed rail subsidiary are developed and kept viable in the public interest?

The non-transportation subsidiaries of Industries, the location of their plants and their products are specified in the following table:

Corporation	Location of Plants	Products
Acme Boot Company, Inc.	Ashland City, Clarksville, Cookeville, Springfield and Waverly, Tenn.; Stoughton, Mass.	Boots and Shoes
Imperial Reading Corporation	Anniston, Ala.; Lynchburg and Christiansburg, Va.; Lafayette, La Follette and Bristol, Tenn.; Marshall, Tex.; Salem, Va.	Jeans, shirts, sportswear, dungarees
Lone Star Steel Company	Daingerfield, Tex.	Steel tubular goods, cast iron pressure pipe, concrete reinforcing bars, ingots, slabs, skelps, coke by-products and chemical derivatives
Union Underwear Company, Inc.	Aliceville, Brundige, Fayette, Jacksonville and Winfield, Ala.; Bowling Green, Campbellsville and Frankfort, Ky.; Bechtelsville, Pa.; Columbia, S.C.	Yarn, cloth, shirts, underwear, elastic web
Universal Manufacturing Corporation	Bridgeport, Conn.; Simpson County, Miss.; Paterson and Totowa, N.J.	Ballasts and insulated wire

These manufacturing subsidiaries all market their products nationally, except Lone Star Steel, whose product market is in the South and Southwest. The products of Lone Star and of Universal Manufacturing are essentially sold to industrial users and accounted for $162 million in sales in 1967. The other four companies market consumer products and their total sales in 1967 were $149 million. Only Lone Star Steel utilizes rail transportation to any significant extent and only it, among the non-transportation subsidiaries, has used the transportation service of either C&NW or Milwaukee in 1967. In that year it moved 47 cars over C&NW and 58 over Milwaukee Road. Industries' chief executive officer indicated that the rail routing policy for the Lone Star Steel will be determined in the future by its own management, independently of Industries.

In light of the above, the examiner sees little danger of unlawful or discriminatory reciprocal trading between Industries' non-transportation subsidiaries and the surviving company. Although Soo argues that a possibility exists that the surviving company could favor its non-transportation affiliates in the handling of raw materials to their respective plants, such action can be effectively dealt with by virtue of the Commission's existing power under section 12 of the Act to inquire into the management of common carriers subject to the Act and the prohibitions and remedies presently available under sections 2, 3, and 10 of the Act and section 1 of the Elkins Act.[118]

The primary benefit to applicant from its association with Industries will be easier access to the capital market under good or bad business conditions. Industries, by virtue of its superior credit standings and the cash surplus of non-railroad subsidiaries will be able to provide the surviving company with funds at interest rates which the latter could not possibly obtain. The virtues of its association with Industries has already achieved this result for C&NW in providing it with the capital funds at prime rates of interest for the acquisition of D.M.&C.I. and the Alton & Southern.

Benefits

The access to such capital will enable the surviving company to make cost reducing additions and betterments to plants at lower interest rates. Of equal importance, it will also afford it the opportunity to embark upon programmed maintenance schedules that need not be interrupted by minor or moderate business declines, something that neither C&NW nor Milwaukee Road have been able to do in the past. Programmed maintenance of this nature can provide better maintenance at lower cost.

In evaluating the degree to which the merged company would divert traffic from other roads, the examiner has heretofore used the predicate that the merger savings would significantly strengthen

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[118] 49 U.S.C. 41 (1), (2), (3), and (10).

NO RECIPROC. w/NWI

applicants' ability to make the necessary capital improvements to provide the efficient and economical service required by shipper demands to the extent they were economically justified. Consequently, although Industries' financial strength will provide the merged company with certain benefits heretofore described, such added strength, in the examiner's opinion, will not provide any additional factor that has not heretofore been accounted for in assessing the competitive impact upon other carriers. In other words, it is the examiner's conclusion that the savings and other benefits to be derived from merger will provide the wherewithal by which the merged company can purchase equipment, increase motive power, and finance other capital expenditures to the extent economically justified and the addition of Industries into the structure, while adding internal benefits, would not justify an increase in expenditures that would not otherwise be made. Hence, the examiner finds that no adjustment to his estimates of diversion to other carriers heretofore determined is necessary by reason of the proposed control by Industries of the surviving company.

No add'l DIVERS

The most significant problems posed by the association of the surviving company with Industries is to what extent the holding company will affect the flow of capital into the rail enterprise and the ability of this Commission to regulate the railroad in the interest of economical and efficient transportation. This means first, the possible effect on railroad income, expenses and assets, and second, the possible lack of knowledge of and ability to control undesirable developments by the Commission.

RR DIS-INVEST-MENT a GOAL

The primary purpose for a holding company in most instances in a railroad complex is to invest in companies showing substantially greater rates of return than generated by the railroads themselves and to provide a greater return for the stockholders thereof. This is true whether the parent in the organization is the railroad itself or a holding company which owns the capital stock of the railroad. By whatever measure the holding company is assessed, it may have the effect of disinvestment in railroad plant.

It is generally conceded and certainly apparent in the area served by applicants that there is substantial over capacity in railroad plant. Indeed a fundamental objective of the proposed merger and the examiner's recommended approval here is to create the opportunity to reduce the size of plant rationally, i.e., disinvestment in rail assets without materially affecting service in the area. The creation of this opportunity via merger is under the control and guidance of the Commission and its conditioning powers under section 5. Merger, therefore, permits the internal rationalization of economic units in the rail industry.

On the other hand, there is a broader rationalization which relates the railroad industry to the economy as a whole. Other things being equal, the national economy is at maximum efficiency (creating maximum benefits to industry and the consummer) when rates of return are equal for each industry and each company in the economy. This is so because when such rates of return are equal, each firm and each industry is using the exact amount of assets to produce maximum consummer benefits. This condition of equilibrium, however, is never achieved in fact because it is a static condition. Hence, in this economy, rates of return tend to vary significantly as between industries and as between companies in the same industry. The result is that capital has a tendency to, and should in a free market, flow out of low return or overinvested industry into those with high returns since the latter suffer from underinvestment.

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Railroads and other utilities are regulated, in part, to achieve goals in addition to efficiency and heretofore and despite their low return, the exodus of capital has not been of such significance as to interfere with other social goals upon which regulation is based.

Despite regulation, however, the rail industry has not been insulated from the capital market. Hence, C&NW at the initiation of its diversification program was able to take $30 million from the sale of its real estate and from its cash drawer for investment in its chemical subsidiaries without Commission approval. Such action produced returns far in excess of those that could be anticipated were the same amount committed to its railroad plant. And while the returns from its chemical companies have been significant and have, in fact, benefited its rail operations by reason of strengthening C&NW's overall financial position, the obvious lesson to be learned is that if C&NW's management continues to be prudent, the rail enterprise must stand on its own if it is to receive the capital input which may be necessary to provide an adequate and efficient service to the public. Under these circumstances, there is and would be no problem for this Commission from disinvestment if the railroad is a profitable concern earning an adequate rate of return which goal this merger is intended to promote.

The problem from diversification arises for management, for this Commission and for rail transportation users, however, when the railroad becomes unprofitable and its management or the holding company owning its stock views the long-run prospective as an extention of such unprofitable operations and thereupon, determines to use its capital funds for non-transportation investment. In other words, given alternative investment opportunities, if management

NO DANGER IF RR PROFITS

arrives at the conclusion that there is no future in railroading, it will focus its investment on non-transportation activities. If such judgment is premature, then obviously the transportation system will suffer unnecessarily, but even if such judgment is correct, in the long run, the rail system as is known today, would die a natural death unless government action were interposed to maintain it or defer its demise.

Whether the effects would be different if it is a railroad itself that seeks to divest or whether such divestment is accomplished through the vehicle of a holding company is questionable, but in either respect, at present, the reporting requirements of this Commission are inadequate to provide it with the knowledge necessary for it to act either in exercise of existing authority under the Act or in its recommendations to Congress.

Disinvestment[119] may be achieved by many methods. In the case of a capital intensive industry, such as the railroads, two primary methods are available:

(1) The undermaintenance of plant; and

(2) The payment of excessive amounts for service charges, including management fees where there is a superimposed holding company.

Another method, where the possibility exists, is the sale of assets or the spin-off of subsidiaries by the railroad to the holding company at book value or at less-than-market value. Where tax losses exist, they can be denied to the railroad by virtue of adverse tax allocation agreements. Under limited circumstances, a railroad could be operated as a loss company through high maintenance, depreciation or high service charges, etc., in order to produce significant tax losses to counteract the profitable return from the non-transportation activities of the conglomerate enterprise. The latter method only appears feasible as a short-run vehicle to achieve disinvestment in which a true "raid" upon assets of the railroads was contemplated. Mitigating against the latter possibility is the fact that the "sunk" capital or initial investment in rail plant appears high enough to foreclose this approach.

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[119] As the examiner sees it, disinvestment is not a dissipation of assets but rather the controlled and deliberate movement of capital from one endeavor to another.

As indicated, in the examiner's opinion, the most likely avenue in a programmed disinvestment would be through the undermaintenance of plant, excessive service charge and the collateral payment of excessive dividends up to the maximum limit permitted by bond indentures.

As directly applied to the rail industry generally, the above-stated views on disinvestment offer particular meaning for if the past history of the industry is any indication of the future, decisions in favor of rail investments may be increasingly more difficult to make. As heretofore analyzed in this report, the history of the rail industry for the past 13 years has been governed by three paramount factors:

(1) Increased intermodal competition resulting in lower revenues per unit of output (revenue ton miles);

(2) Innovation, heavy capital expenditures and cost-cutting programs to offset increased costs; and

(3) Only marginal increases in output despite the phenomenal growth of the economy.

Basically the rail industry today is generally little better off than it was at the beginning of the period when only marginal returns were achieved. Furthermore, barring a fundamental change in the economy or the industry itself, all of the available data before this examiner indicates an extension of the above-indicated factors into the future.

All of the above-stated problems were pursued by this examiner with chief operating officials of Industries and applicants under cross-examination on this record and as a result thereof, the examiner is convinced that at least at its inception, the surviving company, including Industries, will provide a sound basis upon which an adequate return from rail activities may be achieved and that its management harbors an adequate incentive to see that investment in rail plant is maintained to achieve a more effective and efficient service to the public as envisioned by the merger plan. Consequently, despite the examiner's misgivings concerning the role of a railroad enterprise in a conglomerate structure, he views the proposed merger to be consistent with the public interest and as a necessary step to the rationalization of the existing rail plant.

Recognizing, however, that the best information available today upon which we can estimate the future may not prove to be adequate, the examiner believes that the imposition of conditions

NWI WILL HELP

are necessary to require Industries and the merged company to supply this Commission with the information necessary upon which future action may be taken under existing law or recommendations to Congress can be made.

In its supplemental brief, as amended by its reply to Industries' supplemental brief, the Bureau urges that as conditions to this transaction, Industries should be required to file:

(A) A special report in each of the 5 years following merger which should include: (1) a copy of any tax allocation agreement, formal or informal, under which Industries would use any or all of the tax credits of the unified company applied as a credit against Industries' taxable income indicating the method of selection under section 1552 of the Internal Revenue Code for allocation of said tax liability, the compensation actually received therefrom by the unified company for the periods considered which the Bureau would require to be put in a special fund, and the disposition of such funds; and (2) financial data to the extent applicable as required by the Commission's Railroad Form A reports including a consolidated balance sheet, and income statement;

(B) A performance and status report as required by this Commission in other recent major merger proceedings[120]

In setting forth the requirements for filing of financial data indicated in (A)(2) above, the Bureau would require, as conditions, that Industries file extensive schedules providing for information detailing the financial relationship, not only between the surviving company, on the one hand, and Industries and its non-transportation subsidiaries, on the other, but also extensive schedules to show the inner workings of and interrelationship between Industries and its non-transportation subsidiaries. In fact, several of the schedules would require details relative to the products produced by the non-transportation subsidiaries including profits derived

[120] F. D. No. 23566, *Chesapeake and Ohio Railway Company--Control--South Shore and South Bend Railroad*, and in F. D. No. 21755, *Missouri Pacific Railroad Company--Control--Chicago & Eastern Illinois*, by orders dated September 7, 1967, and in F. D. No. 21989, *Pennsylvania Railroad Company--Merger--New York Central Railroad Company*, by supplemental order dated May 21, 1968.

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therefrom, programmed changes in production, ownership of any patents, etc., and a schedule of management services performed by or for Industries for or by its non-transportation subsidiaries. Certain other detailed information was suggested by the Bureau for filing in the "performance and status" reports.

Finally, the Bureau specifically requests as a condition to this transaction, that Industries be subjected to section 20(5) of the Act which would entitle the Commission to investigate various intercompany transactions between the merged company and Industries should such information be needed in the future.

Applicants in their supplemental brief and reply letter urge that Industries should not be singled out among so-called conglomerates which harbor a railroad enterprise in their structure for special treatment and argue that if such requirements as demanded by the Bureau are imposed, they should be determined in a rule-making proceeding embracing the entire railroad industry; that much of the information sought through the Bureau's request are trade secrets which management is loathe to supply and which would interfere with the normal conduct of Industries non-transportation activities; and, that much of the information which the Bureau seeks simply cannot be provided.

Industries indicates a willingness to accept as a condition to the proposed transaction the conditions imposed by the Commission in the *C&NW-CGW* case. Furthermore, applicants indicate a willingness to supply a status report similar to that required in recent unification cases be filed which condition will be imposed herein but they object to the broad requests of the Bureau for information concerning the internal affairs of Industries and its non-transportation subsidiaries. In the latter respect, Industries evidenced a willingness to supply the Commission with a copy of its report to stockholders but nothing more. It also indicated a willingness to supply a copy of any agreement or report relative to Industries' utilization of tax benefits of the unified company as a credit against Industries' taxable income, but urge that the additional requirement that it provide a detailed explanation of the circumstances under which it was executed or arrived at and the factors considered in determining any compensation payable to the unified company be not required.

Applicants urge that the issues posed by control of Industries in this proceedingare identical to that posed before the Commission in the *C&NW-CGW* case, where the Commission only subjected Industries to section 5(3) to the extent of making such periodic and special reports as may be required under sections 20(1) and 20(2).

CGW case

In the examiner's opinion, at least, at this stage, the Bureau's detailed requests for information ENCOMPASS more than is necessary for this Commission to evaluate Industries' activities in relationship to the Commission's function, namely: to insure an adequate transportation service to the public. In this respect, it is the examiner's view that the Commission's concern should be limited to the relationship of Industries and its subsidiaries to the activities of the surviving company, and dealings between Industries and its non-transportation affiliates which have no relationship to the surviving company are of no matter or concern to this Commission. In this respect, the products, plans, conditions, and other activities of Industries non-transportation affiliates, have no particular significance to this Commission unless they have some basic relationship to the activities (transportation, financial or otherwise), of the surviving company. Consequently, the examiner believes that where such relationship exists by reason of contract, issuance of dividends, the utilization of tax or investment credits, provision of service either for or by the surviving company, the supply of funds, or otherwise, whether compensated for or not, such relationships should be reported, whether between the surviving company and Industries or the surviving company and Industries' non-transportation affiliates. Additionally, if deemed necessary by the Commission's staff, the examiner would also suggest that Industries be required to submit a consolidated balance sheet and income statement to keep the Commission appraised of the role which the surviving company plays in the conglomerate structure.

Other than financial data, there are many elements of operation and service of the surviving company that would indicate downgrading of rail service caused by disinvestment. The examiner suggests that analytical reports be required to be filed by the surviving company containing such information as on time performance data; schedules; speed restrictions; number of bad order cars and locomotives; capital expenditures; maintenance expenditures; and other data by which changes in service can be assessed. Such reports if they indicated a subsequent downgrading of service would be particularly helpful in gauging the impact of any deliberate program of disinvestment. Much of the information is already supplied by carriers in their Form A report or kept by them for their own purposes.

Although making such suggestions, the examiner does not deem it appropriate for him to set up the detailed information to be supplied in the form of a condition to this transaction. The detailing of information as suggested by the Bureau is more appropriate for consideration by the Commission's staff after the transaction has been consummated.

many benefits can be achieved therefrom. Nor, without further information, would the examiner recommend that action by the Commission is necessary or should be taken. Rather it is his view that the Commission, at the beginning stages of the broad diversification programs entered into by the railroad industry generally, secure the information and determine what, if any, action is necessary to carry out its obligation in insuring an adequate rail service to the public.

In summary, therefore, the examiner recommends (1) that the conditions imposed upon Industries in the *C&NW-CGW* proceeding under section 5(3), as more particularly contained in sections 20(1) and 20(2), be carried forward and be imposed upon Industries in the instant proceeding and that jurisdiction be reserved for purposes of determining whether Industries should be subjected to further regulation; (2) that although the examiner suggests that certain special reports containing certain areas of information be filed, that ~~a determination~~ of the type and kind of reports that should be filed is more properly the function of the Commission's staff after the transaction has been consummated; (3) that no special conditions are necessary to bring Industries within the terms of section 20(5) of the Act for the Commission, without the imposition of such a condition, may authorize its staff to review Industries' books, as a party in control of a railroad, to the extent necessary to fulfill its obligations; and (4) that the Commission institute a general investigation, formal or informal, into the question of the role of the railroad in a diversified company or conglomerate situation.

FAIRNESS OF STOCK EXCHANGE RATIO

Essentially at issue in this proceeding are two ratios. The first being the exchange ratio of C&NW and Milwaukee Road common and preferred stock for the preferred and common stock of the surviving company and second, the exchange ratio of the common and preferred stock of the Milwaukee Road for the common and preferred stock to be issued by Industries. Although no one raises any issue relative to the appropriateness of such ratios, it is incumbent upon this Commission to assess the exchange ratios to determine the fairness thereof, insofar as it is able, to applicants' respective shareholders. This is especially true, where, as here, the proposals in their present form have not been submitted to the stockholders but approved only by the respective board of each corporate entity to the transaction.

Any conditions imposed herein specifying the information to be filed could only be modified by order of Commission and the examiner believes that a broader flexibility would be more appropriate. The examiner, therefore, declines to impose the specific conditions requested by the Bureau requiring Industries to file specific schedules and other information which may be required under sections 20(1) and 20(2). The examiner does not now recommend the merged company set up an account showing tax credits afforded by any agreement. Furthermore, there is no need to make Industries subject to section 20(5) as a condition to this transaction for, in the examiner's opinion, Industries is already subjected thereto. In the latter respect, section 20(5) provides that:

> The Commission or any duly authorized special agent, accountant or examiner thereof shall at all times have authority to inspect and copy any and all ... accounts, books, records, memoranda, correspondence and other documents of any person controlling...such carrier, as the Commission deems relevant to such persons relation to or transactions with such carrier. (Emphasis supplied).

Clearly, as heretofore indicated, Industries is a person in control of a carrier subject to the Interstate Commerce Act and it is the examiner's view that the interests of this Commission are such in Industries' activities as would warrant the granting of authority to the Commission's staff, if not already provided, to inspect Industries' records to the extent indicating a relation to or involving transactions with the surviving company.[121]

The examiner recognizes that the obligations imposed upon Industries and the suggestions of the examiner indicated above, single out Industries for special requirements, not imposed on some other holding companies or conglomerates which control or contain a railroad enterprise. In light of the foregoing analysis, however, the examiner believes and recommends that the Commission institute a general investigation into this question and determine what additional reporting requirements, if any, are necessary and what other action should be taken under the Act or what recommendations should be made to Congress to fulfill the Commission's functions under the National Transportation Policy. The examiner does not intend by the latter recommendation to infer that it is improper for any railroad to engage in a diversification program, for as indicated,

[121] Compare *United States* v. *Clyde S. S. Steamship Co.*, 36 F.(2d) 691 (1929).

INSPECTION RTS

Tab Reads -
Stock Exch -
Ratio

As indicated and as initially filed, the exchange ratio as approved by applicants' respective Boards of Directors and by an overwhelming majority of the stockholders of C&NW and Milwaukee Road contemplated the creation of the Chicago, Milwaukee and North Western Transportation Company, a new company, in which both applicants would be consolidated. As initially proposed, the outstanding shares of capital stock of Milwaukee Road and C&NW would be exchanged and converted into the capital stock of the new company as follows:

(a) each share of preferred stock of Milwaukee Road would be converted into one share of preferred stock in the new company;

(b) each share of common stock of Milwaukee Road would be converted into .7 of a share of common stock in the new company;

(c) each share of preferred stock of C&NW would be converted into one share of preferred stock of the new company; and

(d) each share of common stock of C&NW would be converted into one share of common stock in the new company.

Although the transaction has been significantly altered so that the C&NW would be merged into the Milwaukee Road, the essential stock exchange relationship has not been altered. Under applicants' amended proposal:

(a) each share of preferred stock of the Milwaukee Road shall be converted into one share of preferred stock of the surviving corporation;

(b) each share of common stock of the Milwaukee Road shall be converted into .7 of a share of common stock in the surviving corporation;

(c) each share of preferred stock of C&NW shall be converted into one share of preferred stock of the surviving corporation; and

(d) each share of common stock of C&NW shall be converted into one share of common stock of the surviving corporation.

The exchange ratios indicated above in the amended agreement were considered by the chief executives of both applicants to be fair and reasonable to their respective shareholders. The terms have been approved by the Board of Directors for both applicants.

Although based on a predicate of consolidation rather than merger of C&NW into Milwaukee Road, the fairness of the basic exchange ratios was attested to as well by independent experts employed by applicants' managements. In this respect, one firm focused on the relative earnings contribution each applicant would make to the combined operations. Earnings of both companies were examined for long periods of time but the judgement of this firm was essentially on the last 5 years, making such adjustments in these earnings as unusual circumstances required to assure comparability. The adjusted pre-tax earnings for the 5 years, 1961-1965, averaged $7.80 per share for Milwaukee Road and $11.05 per share for C&NW. This reflects a 0.706 Milwaukee Road to C&NW ratio. This consultant also examined the book-value ratio (favorable to C&NW in relation to the 0.7 merger ratio) and the market values (unfavorable to C&NW in relation to the 0.7 merger ratio). Neither of these disparities were considered significant.

A second independent firm also considered the exchange ratios as fair and equitable, based on a review of the financial histories, traffic, earnings records and capitalization of both Milwaukee Road and C&NW. Although comparisons made by this firm included consideration of relative book values and stock prices of applicants, none of these were considered critical to its analysis. Basic reliance in judgment was placed on the relative earnings contributions of the two companies to the merged company. These comparisons required some adjustments in reported income including those reflecting differences in capitalization and accounting practices. This firm concluded that both applicants' common shareholders would receive that proportion of the common stock of the consolidated company to which they were entitled by their respective companies' earnings contributions.

The merged company will provide Milwaukee Road preferred stockholders with a $1 higher dividend rate, without making such dividends contingent upon the amount of payment to common shareholders. On the other hand, C&NW's preferred stock which is set at a rate of return of $5, contains a participating feature and is convertible at the stockholder's option into an equal number of C&NW's common shares. The reviewing experts employed by applicants agreed that the greatly increased earnings coverage of the proposed company would so strengthen the position of these stockholders so as to justify the conclusion that the terms were favorable to them.

DARMSTADTER'S REPORT

F. D. No. 24182

After consideration of the many factors and as supported by the recommendations of those financial experts whose judgements have been accepted by this Commission on prior occasions, the acceptance of the stock-exchange ratio as fair by the officers and Boards of Directors of both applicants and as ratified by the vast majority of stockholders of each applicant as to the basic terms and nothing appearing to indicate otherwise, the examiner must conclude that the stock exchange ratio, subject to stockholder approval, as now proposed is fair, equitable and reasonable and justification therefore is fully supported by the record and the examiner so finds.

In addition to the option of accepting the surviving company's stock in exchange for Milwaukee Road's stock, under the merger plan, Industries will offer to exchange one share of its 6%, non-convertible preferred stock for each share of Milwaukee 5%, non-convertible preferred stock and four-tenths of a share of Industries common stock for each shareof Milwaukee Road common stock. The exchange ratio with respect to the common stock as heretofore indicated, is subject to adjustments so that each share of Milwalkee Road common stock tendered will receive common stock in Industries with a market value of not less than $80 or more than $120.

NWI - MILW EXCH.

The evidence is clear that this exchange ratio is completely fair to Milwaukee Road's stockholders. The guaranteed floor of $80 per share to Milwaukee Road common stockholders is above the all-time high market price for Milwaukee Road common stock According to applicants, a wide variety of considerations entered into the formulation of Industries' offer. In this respect, Industries reviewed such significant relationships as earnings, the market price of their respective stock and assets. Operating and financial data for more recent years were considered, including capital expenditures and relative changes in property accounts. Developments such as C&NW's acquisition of its chemical companies, its merger with CGW and Industries' acquisition of Philadelphia-Reading were taken into account. Average earnings for Industries and Milwaukee Road for the past 3 years were constructed, adjusted to reflect merger savings and anticipated growth in the earnings of the non-transportation company. On the basis of such constructed earnings, the pro forma earnings of Industries improved only slightly per share when 0.4 percent of a share of Industries common stock was issued for each share of Milwaukee common stock. Milwaukee Road's management considered the stock market values, income and earnings per share of the respective parties, the non-transportation income of Industries and C&NW, the operating performances, the past record of CGW and other matters. The guaranteed minimum market value of the offer to Milwaukee Road common stockholders and their opportunity

NB: NO DETERM. AS TO NWI COMMON S/H!

EXCH RATIO FAIR TO MILW

to participate in future earnings from several types of industrial operations were also important factors. The ultimate judgements by the management of Milwaukee Road was that the exchange offer made by Industries is fair to all Milwaukee Road stockholders.

Applicants argue, that the merits of Industries' offer stands on rather different footing than the merits of the exchange ratios in the unified railroad company. An exchange offer by Industries gives Milwaukee Road shareholders an opportunity to accept Industries stock. If they determine not to take this opportunity, they will receive stock in the newly-merged railroad company upon a ratio, the fairness of which, the Commission will fully determine. Any Milwaukee Road stockholder who disputes the fairness of the exchange offer by Industries is not bound by the will of the majority and may simply reject Industries' offer. This, applicants claim, is a consideration pertinent to the Commission's consideration of the exchange offer's general fairness. Applicants further argue that the absence of shareholder opposition to the exchange ratios is also evidence of its fairness.

The examiner cannot accept applicants' premise that Milwaukee Road shareholders have an unrestricted option in either accepting Industries stock or in lieu thereof, stock to be issued by the company without some strong reservations. But based on all data available, the examiner considers such offer fair and equitable. The guaranteed floor of $80 per share to Milwaukee Road common stockholders is approximately $10 per share above the all-time high market price on Milwaukee Road common stock. Furthermore, the acceptance by the officers and Board of Directors of present Milwaukee Road of such offer was based upon a careful consideration of the factors that determine an appropriate ratio. In light thereof and the examiner's independent assessment of these same factors, he must consider the exchange offer as just and reasonable and subject to subsequent stockholder approval, justification therefore fully provided of record.

JURISDICTIONAL ISSUE

One party, Southern Pacific, questions the Commission's jurisdiction to deal with the merits of these proceedings. At hearing and on brief, Southern Pacific urged that the failure of applicants to comply with the statutory requirements and the Commission's rules thereunder governing the filing of applications for authority under section 5 of the Act to consolidate, merger, purchase or lease operating rights and properties of motor carriers, renders the Commission powerless to act and that the applications must be dismissed for the lack of jurisdiction and denied on the merits. Although

Southern Pacific argues that it would only interpose the jurisdictional argument in the event the relief which it seeks is not afforded, were, as suggested by Southern Pacific, the application fatally defective, any relief afforded hereby would be null and void.

The jurisdictional issues raised by Southern Pacific arise from the failure of applicants to file a separate application seeking the transfer of C&NW's motor carrier certificates to the surviving company[122] and the failure of the surviving company to seek authority by separate application for authority to control the operating rights held by C&NW and those by Milwaukee Road's subsidiary, Milwaukee Motor Transportation Company (Milwaukee Motor) a motor common carrier operating in interstate commerce. In support of its position, Southern Pacific points out that the proposed merger of C&NW's motor carrier operating right into the Milwaukee Road, a person in control of a motor common carrier, is subject to section 5(2)(a) of the Act. As provided in section 5(2)(b) such a transaction is governed by the Commission's rules and by the notice requirements as set forth in section 205(e) of the Act. Under the Commission's rules[123] where applications of the nature indicated above are filed, applicants must provide certain information, including among other things, an abstract of actual shipments transported during the 6 months preceding the filing of the application under the operating authority involved in the proposed transaction and such financial data and explanations as are set forth in the Commission's form governing such filing. In addition, section 205(e) of the Act requires that notice of such applications be afforded to all interested parties and the Commission's regulations[124] state that appropriate notice of the pendency of applications will be given through publication in the Federal Register.

In support of its basic position, Southern Pacific argues (1) that C&NW holds certificates authorizing motor carrier operations in interstate commerce which are complementary, at least in part, to those held by Milwaukee Motor; (2) that C&NW

[122] The amendment to the application converting this proceeding from a proposal to consolidate applicants into a new company to a proposal to merge C&NW into the Milwaukee Road was filed subsequent to the date on which Southern Pacific filed its brief. The examiner, therefore, will consider Southern Pacific's arguments in light of the amendments made.

Tab Reads
SP vs MMT

[123] 49 CFR 1100.180

[124] 49 CFR 1100.240

SP vs MILW MTR

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is not only a railroad under part I of the Act, but also a motor common carrier under part II as is Milwaukee Motor; (3) that both motor carriers are competitive with each other in providing service to and from at least 19 points, including Chicago and Rockford, Ill.; Green Bay and Madison, Wisc.; and Des Moines and Council Bluffs, Iowa; (4) that approval of the proposed transaction and the incidental transfer of C&NW's motor carrier operating rights to Milwaukee Road would have the effect of creating new rights and allow the surviving company to tack and interline traffic for movement between points which it is not now authorized to serve; and (5) that the refusal of applicants to comply with the mandatory rules means that the record is deficient on such matters as dormancy of present operating rights, public need for the institution of new services; and the competitive injury which independent motor carriers would experience at the hand of the surviving company.

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Although not touching this point on brief, at hearing, applicants argued that they had fully complied with the Act and with the Commission's rules and regulations governing the proposed merger of two railroads which incidentally held certificates of public convenience and necessity authorizing operations in interstate or foreign commerce. In this respect, they argue a proper application in the form required by the Commission for railroads involved in this proceeding under section 5[125] which asked for a disclosure of carriers subject to the Act subsidiary to any applicant and of any motor carrier authority held by such applicants.

This is an application to merge two railroads including their stock ownership and subsidiary companies. They do not agree with Southern Pacific that the Commission's rules nor section 205(e) governing the joining together of two motor carrier properties in one company, either through consolidation, merger, purchase or lease is involved. Applicants point to the *Penn-Central* and the *Northern Lines* cases in which motor carrier rights were held by the components of the merging lines there. Despite this, the Commission has approved such transactions without the necessity for the carriers involved therein in meeting the regulations and statutes governing the merger, consolidation or control of motor common carriers.

The merger of properties of C&NW into Milwaukee Road encompasses not only a request by Milwaukee Road for authority to merge into it the railroad properties of the C&NW but, among other things,

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[125] 49 CFR 1100.152

the certificates presently held by C&NW authorizing the latter to conduct motor common carrier operations. The filing of their joint application, as amended, fully complied with the Commission's rules[126] governing the filing of applications by carriers subject to part I of the Act. In this application, applicants here indicated the degree to which they conducted operations subject to other provisions of the Act or controlled carriers also subject to the Act. Although recognizedly, applicants have not specifically complied with the provisions of the Commission's rules governing a section 5 application filed by carriers authorized to conduct motor carrier operations only, through their filing, pursuant to the rules, applicants met the essential jurisdictional requirement to bring the issues raised by their applications to the Commission's attention. No one argues, including Southern Pacific, that the failure to issue notice pursuant to the Commission's notice rule[127] has prejudiced it in any sense and hence, the issue raised by Southern Pacific is not one of jurisdiction but rather whether this Commission has sufficient information upon which to make a determination of the issues involved. In the latter respect, Southern Pacific has not shown how or why it has or will be prejudiced by the failure to comply with the rules governing the acquisition, merger, control, etc., of motor carrier properties operated by applicants.

OK

Of more importance, however, is the fact that if this transaction is approved, applicants do not intend to coordinate the motor carrier operations presently conducted by C&NW with those conducted by Milwaukee Motor but rather have specifically indicated that such motor carrier operations will be conducted separately and as they have been in the past. In other words, approval of the proposed transaction at least at this stage envisions merely a change in form but not in substance.[128]

The examiner is not unmindful that the routes presently operated by C&NW and those operated by Milwaukee Motor under their respective certificates involve, at least to a limited extent, duplicate or overlapping points of service. In light of this, and the examiner's conclusion that eventual coordination of such motor

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[126] 49 CFR 1100.152

[127] 49 CFR 1100.240

[128] Compare *Missouri-K.-P. R.--Consolidation,* 312 I.C.C. *Greyhound Mergers,* 1 M.C.C. 342; *Atchison T. & S.F. Ry. Co.--Control--Santa Fe Trail Transp.,* 15 M.C.C. 459, *Santa Fe Trail Transp., Inc., Co.-pur.- Santa Fe Transp. Co.,* 90 M.C.C. 123.

JURISDIC OK

carrier operations and elimination of duplicating operation rights would be in the public interest, a condition will be imposed to effectuate this objective. In this respect, the examiner's action is comparable to that taken in the *Northern Lines* case and the *Penn-Central* case.

COND.

Therefore, as a condition to approval of this transaction, the examiner recommends that the Commission impose a condition upon the merged company requiring it within two years from the date of consummation to filed for appropriate authority to merge or otherwise coordinate the motor carrier operations presently conducted by C&NW and Milwaukee Motor; that until authority permitting such coordination is obtained, the merged company will be restricted from interlining, joining, or otherwise coordinating the motor carrier presently conducted by C&NW with those of Milwaukee Motor; and that in dealing with issues raised by the subsequent filing by the merged company for appropriate merger or consolidation, the latter shall accept the retention by this Commission of jurisdiction to cancel such duplicating and dormant operating rights or impose such conditions as may be warranted by the evidence presented in that proceeding.

RESERVATION OF JURISDICTION TO HANDLE CUMULATIVE AND CROSSOVER EFFECTS

In its decision of December 15, 1967, in the *Northern Lines* case, acknowledging the pendency of this proceeding as well as the *Rock Island* proceeding, the Commission recognized:

(1) The fact that some parties, though not seriously affected by any one transaction standing alone, could face adverse consequences from the cumulative effects of a second or third merger; or

(2) Subsequent approval of the second or third merger, could require adjustments which, in the first case, would have been imposed had the three proceedings been decided simultaneously.[129]

Upon this basis, in its order, as modified in its report of April 11, 1968,[130] the Commission imposed a condition reserving jurisdiction for 5 years following consummation of the *Northern Lines* merger or such other period as the Commission, for good cause shown, may hereafter prescribe, to impose such just and reasonable conditions

[129] 331 I.C.C. 228, at p. 287.

[130] 331 I.C.C. 869, at p. 879.

Tab Reads - Cum. + X-over effects

upon petition by any party of interest, or on its own motion, after hearing, as may be necessitated by the cumulative or crossover problems stemming from approval of this merger and any other transaction authorized under this section with respect to the territory involved. In addition, the Commission also specifically retained jurisdiction in the *Northern Lines* proceedings for a like period of time for the purposes, among others, of considering petitions, under section 5(2)(d) of the Act, by any railroad in the territory involved requesting inclusion in the merger so authorized.

A careful reading of the *Northern Lines* decision clearly indicates that the Commission contemplated a like reservation of jurisdiction be made in this proceeding. Whether the examiner's interpretation is correct or not, he believes that this record provides an ample basis [131] for a similar reservation of jurisdiction in this proceeding and the examiner so finds. Therefore, he recommends that approval of this transaction be conditioned upon a like condition as imposed in Appendix L, condition 33 in the *Northern Lines* case, 331 I.C.C. 229, as modified, 331 I.C.C. 869.

FINAL CONCLUSIONS

STATUTORY STANDARDS

In determining the merits of an application falling under section 5(2) of the Act, the Commission must determine whether the proposed transaction meets the fundamental test of consistency with the public interest (section 5(2)(b)) and the burden of proof in this respect falls upon the proponents of the transaction. [132]

In determining whether a proposed transaction filed under section 5 is "consistent with the public interest", the Act provides:

I. Under section 5(2)(c), that the Commission consider:

(1) The effect of the proposed transaction upon adequate transportation service to the public;

(2) The effect upon the public interest of the inclusion, or the failure to include, other railroads in the territory involved in the proposed transaction;

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[131] See particularly the prior discussion of arguments presented by D&RGW and Northern Lines.

[132] Section 55b(d), Administrative Procedure Act. [5 U.S.C.C. 556].

(3) The total fixed charges resulting from the proposed transaction; and

(4) The interest of the carrier employees affected.

II. Under section 5(2)(e), where as here, a transaction contemplates a guarantee or assumption of payment of dividends or fixed charges, the Commission must find that such guarantee or assumption is not inconsistent with the public interest and where, as here, there is an increase of total fixed charges, the Commission must additionally find that such increase would not be contrary to the public interest.

III. Under section 5(2)(f), the Commission also, in the event approval of a proposed transaction is contemplated, must require that a fair and equitable arrangement to protect the interests of railroad employees be imposed.

Furthermore, although not specifically provided for in the Act, the Commission must consider the proposed transaction in light of the "anti-trust laws."[133] In essence, in dealing with the "anti-trust"laws, the Commission must:

> ...estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy.[134]

Finally, in addition to those areas specified above, the Commission; as indicated by the language in section 5(2)(c), must deal with other factors or considerations which it deems relevant to the basic test imposed by section 5(2)(b).

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[133] *McLean Trucking Co.* v. *U. S.*, 321 U.S. 67 (1944); *Minneapolis and St. Louis R. Co.* v. *United States*, 361 U.S. 173, 185-189 (1959); *Seaboard Airline R. Co.* v. *United States*, 382 U.S. 154 (1964); and *Penn-Central Merger* and *N&W Inclusion* cases, 389 U.S. 486, at p. 500 (1968).

[134] *McLean Trucking Co.* v. *U. S.*, *supra*, at p. 87.

Tab Reads- Ultimate Funding

Subject to the conditions recommended by this examiner, it is his finding that approval of the proposed merger will insure an adequate transportation service, not only as provided by applicants, but as provided by other railroads to the extent possible under existing conditions. Insofar as conditions imposed herein do not fully afford protection to competing railroads from diversion, it is the examiner's finding that the net effect of approval here will be to permit an improvement in the services presently rendered by applicants without any curtailment in the services presently provided by other railroads and other modes of transportation.

No evidence was presented to indicate that the public interest would be benefited by inclusion of any other railroad operating in the territory involved in this transaction and the examiner's independent assessment of the record justifies the finding, at least at this time, that the public interest warrants approval of this transaction without the inclusion of any railroad. In the event further events may justify the inclusion of other roads, as provided for in section 5(2)(d), the conditions set forth in Appendix S are sufficient to protect such railroads and permit inclusion thereof if found to be in the public interest.

The examiner specifically finds that while the fixed charges of the Milwaukee Road will be increased to the extent of existing obligations of C&NW, that the merger will not increase the aggregate fixed charges of the two companies; that there is no assumption or guarantee of payment of dividends by Milwaukee Road, except to the extent that C&NW presently assumes or guarantees the payment of dividends; that the economies to be effectuated by the merger, the increased earning power of the merged company, and the assets to be obtained by Milwaukee Road fully justify the increase in its fixed charges; that the aggregate of fixed charges will not be an undue burden upon the merged company; that the guarantee or assumption by the Milwaukee Road of the fixed charges of C&NW is not inconsistent with the public interest; and that the resulting increase in Milwaukee Road's fixed charges will not be contrary to the public interest.

The examiner further finds that the benefits of the merger to applicants, shippers, and the general public outweighs the adverse effect upon applicants' employees; that pursuant to section 5(2)(f) of the Act, a fair and equitable arrangement for the protection of the interests of employees of applicants and the rail subsidiaries they control, who may be adversely effected as a result of the merger herein approved, will be provided by imposition of conditions set forth in the order of the Commission of September 27, 1967, in the *C&NW-CGW* case; and that inasmuch as the conditions imposed herein for the protection of other railroads are fully adequate to preserve their existing operations and service, that no additional conditions are necessary to protect the employees of other railroads, even assuming such action is required by section 5(2)(f).

Although the examiner has heretofore recommended the imposition of conditions preserving rail competition where a need therefore has been indicated, of record, the conclusion is inescapable that at and between certain points heretofore specified in this report, rail competition to the extent it presently exists between applicants will be eliminated and at other points it will be curtailed. To the extent such elimination or reduction of competition occurs, which is not or cannot be preserved through the imposition of conditions, the advantages of lower costs and improvements of applicants' financial condition, services and efficiency of operations, outweigh such loss; and approval here, subject to the conditions imposed, will be of significant assistance in effectuating the overall transportation policy.

In short, the record as heretofore analyzed, in the examiner's opinion, clearly warrants the conclusion that approval of the proposed transaction, subject to the conditions imposed is consistent with the public interest and the examiner so finds.

SECTION 20a APPLICATIONS

In F. D. 24183, among other things Milwaukee Road seeks authority to issue 7,000,000 shares of common stock and 2,500,000 shares of preferred stock to carry out the terms of this transaction. Of record, however, the surviving company would be only committed to issue 5,242,954 shares of its common stock and 1,534,719 of its preferred stock.

Although the examiner recognizes that the surviving company should have some degree of flexibility for the issuance of stock to accomplish the transaction, no reason was advanced by applicants why authority is required to issue in excess of 6,000,000 shares of common stock and 2,000,000 shares of preferred stock. Authority sought in F. D. 24183 will be restricted accordingly.

In F. D. No. 24184, the Milwaukee Road requests authority to alter their First and General Mortgages, dated January 1, 1944, which were entered into pursuant to a plan of reorganization under Section 77 of the Bankruptcy Act. The plan of reorganization was certified by order of the Commission. Attached Appendix R contains a full description and analysis of the merits of the proposed modification alterations.

Supplemental indentures setting forth the alterations proposed meet the requirements set forth in section 20a of the Act, and their implementation is authorized conditioned upon applicants' acquisition of requisite bondholder approval.

Applicants also requested a finding under section 5 of the Act that an apportionment of income formula to determine Available Net Income effects no material alteration in the rights of the bondholders. As discussed in Appendix R, authority for implementation of the formula for the apportionment of income must be achieved under section 20a of the Act, and is granted thereunder, also conditioned upon applicants' acquisition of requisite bondholder approval.

OFFICIAL NOTICE

In discussing various matters herein, the examiner has referred to certain facts and data obtained from recognized publications issued by various agencies of the Federal Government or otherwise used in finance and industry. The examiner takes official notice of those facts and pursuant to the provisions of section 7(d) of the Administrative Procedure Act, any party challenging them, upon timely petition setting forth its objections, shall be afforded an opportunity to show the contrary.

ULTIMATE FINDINGS AND ORDER

The examiner finds that in F. D. 24182, subject to the conditions set forth in Appendices G-2 through 6, and S and as contained in the body of this report, merger of the properties and franchises of Chicago and North Western Railway Company into the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for ownership, management and operation, acquisition through ? stock ~~ownership~~ of sale or joint control of the carriers subsidiary to or affiliated with the Chicago and North Western Railway Company by Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and acquisition of the leases of and contracts to operate properties of other carriers and trackage rights now held jointly or otherwise by the Chicago and North Western Railway Company over the line s of other carriers and terminals incidental thereto by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; upon the terms and conditions and such modifications indicated above, which terms, conditions and modifications are found to be just and reasonable, constitute transactions within the scope of section 5(2)(a) of the Interstate Commerce Act, and will be consistent with the public interest.

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The examiner further finds that applicant, Northwest Industries, Inc., a non-carrier in control of Chicago and North Western Railway Company, which would obtain control of Chicago, Milwaukee, St. Paul and Pacific Railroad Company through acquisition of its stock as a result of this transaction is a necessary party to these proceedings pursuant to section 5(2) of the Act; that control by Northwest Industries, Inc., of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company through acquisition of its capital stock and through such stock ownership, such control of other carriers, subsidiary to or affiliated with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, upon terms and conditions contained in the body of this report which have been found to be just and reasonable, constitute a transaction subject to section 5(2)(a) of the Act and will be consistent with the public interest; and that applicant, Northwest Industries, Inc., should be made subject to section 5(3) to the extent of requiring it to make such periodic and special reports as the Commission may hereinafter require pursuant to section 20(1) and (2) of the Act, jurisdiction for purposes of determining whether Northwest Industries Inc., should be subject to further regulation to the extent provided for in section 5(3) being expressly reserved.

No finding contra "will affect mutl. alt." "will be fair"

The examiner further finds that approval of a formula for apportionment of certain revenues and expenses under section 5(2) as a basis for determination of available net income under the various mortgages and indentures of the respective applicants in lieu of maintaining separate income accounts is a matter that must be considered in F. D. 24184 under section 20a of the Act and not, as requested by applicants, under section 5(2).

The examiner further finds that, in Finance Docket No. 24183, the issuance by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company of not exceeding 6,000,000 shares of common stock, without par value and not exceeding 2,000,000 shares of its preferred stock to be issued in exchange for the outstanding capital stock of the Chicago and North Western Railway Company, pursuant to the plan of merger authorized herein; and the assumption by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company of the obligations and liabilities of the Chicago and North Western Railway Company existing on the date of merger herein and in respect to certain securities and obligations of companies subsidiary to or affiliated with the Chicago and North Western Railway Company which are guaranteed by said carrier either solely or jointly with guarantors; (a) are for a lawful object within the corporate purposes of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and are compatible with the public interest which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common

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carrier, and which will not impair its ability to perform that service, and (b) are reasonably necessary and appropriate for such purpose.

The examiner further finds that, in Finance Docket No. 24184, modification of the First and General Mortgages of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, including the formula for the apportionment of certain revenues and expenses as a basis for the determination of available net income in the various mortgages of the merging companies, in lieu of maintaining separate income accounts, through the execution of specified Supplemental Indentures, are for (a) a lawful object within the corporate purposes of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and are compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) are reasonably necessary and appropriate for such purpose; subject to the acquisition if necessary of bondholders approval.

Premises considered, it is the ORDER of the Hearing Examiner:

Merger of the properties and franchises of the Chicago and North Western Railway Company into the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; acquisition of sole or joint control of the carriers subsidiary to or affiliated with such carriers and trackage rights over and joint use of certain lines ~~by~~ other railroads; and through acquisition of capital stock pursuant to the approved plan of merger; and, acquisition by Northwest Industries, Inc., of control of the Chicago, Milwaukee St. Paul and Pacific Railroad Company through acquisition of its capital stock, and, through such ownership of its stock, such control of other carriers subsidiary to or affiliated with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as it may possess; be, and they are hereby, approved and authorized subject to specified terms, conditions and modifications.

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Northwest Industries, Inc., should on and after the date of consummation of the transaction authorized herein be subject to part I of the Interstate Commerce Act to the extent of filing such reports as may from time to time be [redacted] required;

The issuance by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company of not exceeding 6,000,000 shares of common stock and 2,000,000 shares of preferred stock pursuant to the aforesaid plan of merger; and the assumption by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company of the obligations and liabilities of the Chicago and North Western Railway Company existing on the date of merger, and in respect of securities and obligations of companies subsidiary to or affiliated with the latter, which are guaranteed either solely by Chicago and North Western Railway Company or jointly with other guarantors, upon terms and for the purposes described, be and it is hereby, authorized;

Except as herein authorized, the aforesaid stock should not be sold, pledged, repledged, or otherwise disposed of by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company unless or until so ordered or approved by the Commission;

The amendments proposed to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's First and Supplemental Mortgages, upon terms and for the purposes described, be and are hereby, authorized;

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The Chicago, Milwaukee, St. Paul and Pacific Railroad Company shall report concerning the matters involved herein in conformity with the order of the Commission, Division 4, dated August 9, 1946, as amended, respecting applications filed under section 20(a) of the Interstate Commerce Act (49 CFR 1115.4 and 1115.6).

For each of five calendar years beginning with 1968, the Chicago, Milwaukee and North Western Transportation Company be, and it is hereby, required to file six copies of a "Performance and Status Report" with the Interstate Commerce Commission, Bureau of Accounts, Washington, D. C., 20423, by March 31 of the year following that for which the report is made; and that this Performance and Status Report shall, among other things, designate and identify the resulting savings and effects of (1) elimination and consolidation of offices, departments, and divisions including off-line offices, (2) use of shorter or more economical routes, including net reduction in number of train miles operated, (3) elimination of duplicate passenger train service (4) elimination of duplicate freight train service, (5) handling of LCL freight, (6) rentals and other incidental revenues, (7) property taxes and insurance, (8) change in average daily car shortage, by months, compared to same months in the three years preceding merger and savings in per diem expenses, (9) number of employees terminated or relocated in each work classification, with resulting savings in the cost of wages and fringe benefits, and with protection allowances paid to such employees, (10) costs under labor contracts, (11) changes in rates between points where, prior to merger, Chicago, Milwaukee and North Western Transportation Company interline service was involved, (12) change in volume of traffic over new single-line routes as compared to former Milwaukee Road or C&NW single-line routes or combinations of such routes, (13) change in frequency of service, by routes, (14) reduction in transit time in the Chicago, Milwaukee and North Western Transportation Company's single-line service as compared to former Milwaukee Road or C&NW or combinations of such services, (15) maintenance savings resulting from (a) reduced locomotive miles due to reduction of the locomotive fleet, (b) retirement of steam tugboats, barges, carfloats and other marine equipment, and (c) consolidation of facilities for heavy repairs, (16) construction and scrapping of freight and passenger cars, (17) changes in the performance of running repairs to freight and passenger cars, (18) elimination and consolidation of freight stations and terminals, (19) elimination of yards, and efficiencies in the operation of yards, (20) reduction in joint facility payments, (21) costs of operating additional trackage rights, (22) changes in passenger terminal operations, consolidation of commissaries and (in) operation of dining cars, (23) consolidation of maintenance of diesel passenger locomotives, (24) reduction of material and supply inventories, (25) other actions resulting in economies, such as maintenance of way methods, and simplification of corporate structure, (26) net effect on railway operating revenues and on net income for the period of all actions taken under the merger program, and (27) capital improvement projects started or completed and total funds spent.

The authority granted herein shall not be exercised prior to the date of service of a notice or order stating that this recommended order has become the order of the Commission, nor until applicants notify the Commission in writing of their acceptance and to the extent necessary acceptance of stockholders and bondholders of the terms and conditions set forth herein;

Jurisdiction is expressly reserved to receive such petitions, institute such investigations, and make such orders that accomplish the objectives and purposes of the conditions prescribed herein, and this reservation of jurisdiction is in addition to those orders which may be issued under the provisions of section 5(9) of the Interstate Commerce Act which are deemed necessary or appropriate to supplement this order;

Nothing herein shall be construed to imply any guarantee or obligation as to said securities or dividends thereon, on the part of the United States; and

If the authority granted herein is not exercised within one year from the effective date hereof, or such further time as may be fixed by the Commission, it shall be of no further force or effect.

By the Commission, Henry C. Darmstadter, Hearing Examiner.

Dated at Washington, D. C., this 4th day of December, A. D. 1968.

H. NEIL GARSON,

Secretary.

(SEAL)