FINANCE DOCKET No. 25309[1]

LOUISVILLE & NASHVILLE RAILROAD COMPANY–MERGER–MONON RAILROAD

Decided September 9, 1970

1. In Finance Docket No. 25309, (a) merger of the properties and franchises of the Monon Railroad into the Louisville & Nashville Railroad Co., for ownership, management and operation; (b) acquisition by the surviving carrier of sole or joint control of carriers controlled by the merged company through lease or stock ownership and of trackage and joint use rights over the lines of railroad of other carriers, and the terminals incident thereto, held by the merging carriers; and (c) through stock control of the surviving company, acquisition by Seaboard Coast Line Railroad Company, the Seaboard Coast Line Industries, Inc., the Atlantic Coast Line Co., and the Mercantile Safe Deposit and Trust Company of indirect control of the properties and franchises of the merged company, in (a) and (b) above, approved and authorized. Conditions prescribed.
2. In Finance Docket No. 25310, authority granted Louisville & Nashville Railroad Co. to (a) issue not exceeding 772,467 shares of its $2.10 cumulative convertible preferred stock, Series A, with a par value of $35 per share, and not exceeding 257,489 shares of its common stock with par value of $50 per share for conversion of the foregoing preferred stock; (b) assume, subject to terms and conditions prescribed, all obligation and liability in respect to the securities of the Monon Railroad; (c) effect certain changes in the first mortgage and in the second mortgage of the Monon Railroad; and (d) modify certain of the provisions of the loans of the Monon Railroad under part V of the Interstate Commerce Act, all in connection with the merger authorized hereinabove.

Fred R. Birkholz, David S. Cupps, Charles B. Evans, James W. Hoeland, Richard A. Hollander, Philip M. Lanier, Joseph L. Lenihan, Eldon Olson, Henry P. Riordan, Frank E. Van Bree, and *Harry H. Voigt* for applicants.

James A. Bistline, Robert D. Brooks, Louis T. Duerinck, Richard M. Freeman, Garson C. Grunewald, J. W. Hanifin, Edward J. Hickey, Jr., William J. Hickey, James L. Highsaw, Jr., Richard H. Kraushaar, Gordon P. McDougall, William G. Mahoney, John P. McKenna, Raymond K. Merrill, Frederick C. Nash, C. Harold Peterson, Thomas H. Ploss, C. C. Rettberg, Harold A. Ross, Edwin O. Schiewe, George J. Schwarz, James L. Tapley, George Tofaute, and *R. Allan Wimbush* for protestants and interveners.

[1]This report also embraces Finance Docket No. 25310, Louisville & Nashville Railroad Co.–Securities and Assumption of Liabilities.

REPORT OF THE COMMISSION

DEASON, *Commissioner:*

Exceptions to the hearing examiner's report and recommended order have been filed by the applicants (the Louisville and Nashville Railroad Company [L&N] and the Monon Railroad [Monon], respectively), the Detroit, Toledo and Ironton Railroad Company (DT&I) jointly with its subsidiary, the Ann Arbor Railroad Company (Ann Arbor), the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), the Chicago and North Western Railway System (C&NW), the Penn Central Transportation Company (Penn Central), the Soo Line Railroad Company (Soo), the Brotherhood of Locomotive Engineers (Brotherhood), Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), the Railway Labor Executives' Association (RLEA) and the Wabash Valley Industrial Development Council (Wabash Valley).[2]

Replies to exceptions were filed by the applicants, the Southern Railway Company (Southern), C&NW, Milwaukee, and Penn Central.

THE APPLICATIONS

In the title proceeding, Finance Docket No. 25309, the applicants on September 20, 1968, jointly sought authority under section 5(2) of the Interstate Commerce Act for merger of the properties and franchises of Monon into L&N for ownership, management, and operation and for L&N to succeed to the trackage rights over, and joint use of, the railroad lines of other carriers held by Monon on the date of merger.

On the same date in Finance Docket No. 25310, L&N, in connection with the foregoing merger, sought authority under (1) section 20a of the act to (a) issue 775,000 shares of its $2.10 cumulative convertible preferred stock, Series A; (b) issue 258,334 shares of its common stock with a par value of $50 per share upon conver-

[2]The short, or abbreviated, names for the participants herein are, where possible, those used by the hearing examiner in his report.

sion of the foregoing preferred stock; (c) to assume, subject to stated terms and conditions, obligation and liability with respect to the securities of Monon; and (2) under part V of the act, to modify certain notes of Monon guaranteed by the United States Government.

At the time the section 5 application was filed on September 20, 1968, L&N's corporate parents were the Seaboard Coast Line Company (SCL), The Atlantic Coast Line Company (Connecticut Company), and the Mercantile-Safe Deposit and Trust Company (Mercantile). The applicants and SCL are common carriers by railroad subject to our regulation under the provisions of part I of the act. Connecticut Company and Mercantile are not carriers by railroad, but Connecticut Company was subjected to the provisions of sections 20(1) to 20(10), inclusive, and 20a(2) to 20a(11), inclusive, of the act in Finance Docket No. 15015, *Atlantic Coast Line R. Co., Purchase*, 261 I.C.C. 820 (not printed in full), decided December 12, 1945. Mercantile, through its power to control Connecticut Company, was found to have acquired power to control SCL in *Seaboard Air Line R. Co.–Merger–Atlantic Coast Line*, 320 I.C.C. 122, 197.

Shortly prior to the filing of the instant applications, SCL Industries, Inc., presently known as Seaboard Coast Line Industries, Inc. (Industries), a noncarrier organized to acquire control of SCL, filed an application in Finance Docket No. 25283 for authority to acquire such control through the exchange of its own capital stock on a share-for-share basis for the capital stock of SCL. Section 5 of the act provides that a noncarrier seeking to acquire control of a carrier needs no authority to do so provided the noncarrier does not already control one or more carriers. Accordingly, Industries' application to acquire control of SCL was dismissed, as requested by Industries, by our Review Board No. 5 on October 9, 1968, for lack of jurisdiction. The control of SCL by Industries has been consummated and a supplemental application to join in these proceedings was filed on August 27, 1970, by Industries. The applicants express a doubt that Industries needed to have so joined but in our opinion Industries, as a noncarrier in control of one or more carriers, is a necessary party. See *United States* v. *Marshall Transport Co.*, 322 U.S. 31 (1944). Industries is controlled by Connecticut Company which holds approximately the same amount of Industries' stock (15 percent) as it held of SCL's before the above-mentioned exchange of capital stock.

A public hearing has been held on both the merger and securities applications and briefs have been filed. Oral argument on exceptions was requested by the applicants, DT&I-Ann Arbor, Milwaukee, Soo, BRAC, RLEA, and Wabash Valley. By order dated April 14, 1970, we denied the various requests for oral argument and recalled the proceedings from division 3 for decision. Our conclusions herein differ in certain respects from those of the hearing examiner.

HEARING EXAMINER'S RECOMMENDATIONS

In the title proceeding, the hearing examiner recommends the merger be approved and authorized, subject to the so-called *standard traffic conditions* first imposed in *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455, 492-493, for the protection of carriers generally; a condition for the benefit of Penn Central regarding the interchange of that carrier's traffic at L&N's Strawberry Yard in South Louisville, Ky.; conditions requiring L&N to grant trackage rights to Milwaukee over Monon's line between Bedford and New Albany, Ind., to consent to the sale to Milwaukee of a one-fourth interest in the Kentucky & Indiana Terminal Railroad Company (K&IT), now owned jointly by Monon, Southern and B&O, and to grant trackage rights over K&IT's line between New Albany and Louisville. He also recommended denial of various other traffic conditions requested by intervening carriers. The *standard conditions, supra*, recommended by the hearing examiner, will hereinafter be imposed as *condition No. 1* to this report.

For the benefit of railway employees, the hearing examiner recommended imposition of the so-called *New Orleans* conditions, as first imposed in the *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271, 281-282, and as modified regarding their arbitration provisions in *Southern Pacific Transportation Co.–Merger*, 334 I.C.C. 866, 871-872.

In the section 20a proceeding, embraced in the title proceeding, the hearing examiner recommended granting of the authorities requested without substantial departure from those applied for by the applicants.[3]

The conditions recommended by the hearing examiner to be imposed in connection with the merger, as well as those for which he recommended denial, will be further discussed in connection with the various exceptions filed to the hearing examiner's report.

[3] We have reduced the number of shares to be issued, as hereinafter discussed.

Detailed descriptions of the applicants and their proposals are contained in the excerpts from the report of the hearing examiner appended hereto. Also included in these excerpts are descriptions of the positions taken by interveners and protestants and the hearing examiner's conclusions thereon. These excerpts are adopted as our own and, except from time to time, for clarity of discussion, there is no necessity for a further detailed description of these matters here.

THE PROPOSED TRANSACTIONS

In general.—Briefly stated, the transactions contemplated by the applicants will result in the addition of the approximately 540-mile Monon system to the approximately 5,800-mile L&N system. The transactions will provide the latter carrier with a line from Louisville, Ky., to Chicago. L&N's present access to Chicago is via the former C&EI line through Evansville, Ind.,[4] about 125 miles west of Louisville. As stated in the appendix, L&N, through its acquisition of Monon, will also secure owner rights over the trackage of the Chicago and Western Indiana Railroad Company (C&WI), a terminal railroad in which Monon, as part owner, has certain rights for movement of traffic into and out of Chicago.

Financial terms.—As explained in detail in the appendix, the actual merger will be accomplished through the exchange of Monon's 772,467 shares of common stock for a new issue of L&N $2.10 cumulative convertible preferred stock, Series A, par value $35, on a share-for-share basis. The 772,467 shares to be issued by L&N to accomplish the exchange will have a total par value of $27,036,345. Each preferred share will have one-third vote and will be convertible to L&N common at any time, at the option of the holder, at the rate of three shares of preferred for one of common. A minimum of three preferred shares will be required for conversion. As stated in the appendix, the preferred stock may be redeemed at L&N's option for $40 per share, plus accrued dividends, at any time after the fifth anniversary of the issuance of the shares.

The appendix indicates that L&N estimates that its total operating revenues would have been increased by $21,348,531, as of

[4] L&N's Evansville-Chicago line was acquired from the Chicago & Eastern Illinois Railroad (C&EI) following acquisition of the latter's control by the Missouri Pacific Railroad Company in *Missouri Pac. R. Co.—Control—Chicago & E. I. R. Co.*, 327 I.C.C. 279.

December 13, 1968, had the merger been in effect on that date, and its net income increased by $1,608,952. L&N estimates that for the first 5 years, savings from the unification will be, by years, $808,675, $2,325,263, $2,438,181, $2,551,000, and $2,651,236. The latter figure also represents L&N's estimate of annual savings for the sixth and succeeding years of the unification.

On exceptions, DT&I-Ann Arbor contend that L&N will actually pay $30,898,680 for Monon over a 5-year period and has not explained how it will raise that much from revenues; that L&N's estimate of unification savings does not take into account the $5,030,000 that L&N intends to spend on improving Monon's line; and that L&N's estimates do not consider Monon's revenue losses resulting from diversion of traffic from its line to the Evansville-Chicago line following acqusition of the latter line by L&N.

The $30,898,680 figure cited by DT&I-Ann Arbor as the price of Monon was apparently arrived at by multiplying the number of L&N preferred shares involved in the stock exchange (772,467) by their redemption price at the end of 5 years ($40 per share). But there is no obligation for L&N to redeem these preferred shares. On the contrary, as stated above, redemption of the preferred shares will be solely at the option of L&N. Since the preferred shares will be convertible at any time, at the election of their holders, for L&N common, it is conceivable that L&N would have few, or no, shares to redeem, even if it chooses to exercise its option.

Although the hearing examiner found that $5,030,000 will probably be spent by L&N on Monon's line, he properly considered such expenditures to be nonrecurring and should not be reflected in a *pro forma* income statement.

DT&I-Ann Arbor's contention regarding Monon's loss of revenue to the Evansville-Chicago line is based, according to the protestants, on a witness' contention of a $1,800,000 loss which was referred to, without discussion, in appendix A to the Commission's report in *Missouri Pac. R. Co.—Control—Chicago & E. I. R. Co.*, *supra*.[5] The Commission made no ruling to that effect in its report. Furthermore, these protestants' own witness at the hearing in the instant case reduced the $1,800,000 figure to $500,000, and there is no clear basis in the record for accepting even that reduced figure.

In our opinion, the objections of DT&I-Ann Arbor to the stock exchange proposed by the applicants lack merit; and we find the

[5] See footnote 4.

stock exchange ratio, arrived at by arm's length bargaining, to be fair and equitable to the shareholders of both applicants and in the public interest.

Benefits from the merger.– As indicated in the appendix, the record herein shows that shippers will be benefited by the merger through the introduction of increased piggyback or TOFC (trailer-on-flatcar) service. Monon has had to cancel competitive rates on piggyback service because its small size and the short distances it covers, when compared with the high cost of pickup and delivery service, provided it no financial return. Thus, the present six piggyback ramps now maintained by Monon can be expected to be expanded in number by L&N after the merger. Also to be expected are competitive piggyback rates to and from the present Monon territory.

Increased piggyback service will also serve to support the competitive position of Monon's railroad with respect to other modes of transportation. This is because shipments susceptible to movement in a trailer on a flatcar are also susceptible to movement by trailer on a highway or a waterway if rail service is not offered. The Commission has previously found that once shipper allegiance is transferred to other modes, the obstacles to a rail carrier regaining the traffic could become practically insurmountable. See *Okmulgee Northern Ry. Co. Abandonment*, 320 I.C.C. 637, 641.

Other merger benefits which L&N claims shippers can expect include, but are not limited to, single-line service to increased numbers of on-line origins and terminations (greatly increased numbers of origins and terminations in the case of Monon) available to shippers on the lines of both applicants, increased car supply from the car fleets of the two applicants, particularly with respect to special-purpose cars, and the incorporation of Monon's operations into L&N's computerized car-tracing system.

The transaction will be of advantage to Monon's stockholders by merging the properties and franchises in which they have invested into a major railroad system. The merger could, thus, bring to an end the existing situation where, despite Monon's efficient operations as a small system, its competitive abilities as a trunkline carrier are limited by its relatively short mileage, its inability to haul a given shipment more than 315 miles, its declining intercity traffic, and the necessity for it to compete for traffic and revenues with much larger railroad systems such as Penn Central, Milwaukee, the Norfolk and Western Railroad

Company (N&W), and the system of The Chesapeake and Ohio Railway Company–The Baltimore & Ohio Railroad Company (C&O–B&O) system.

On exceptions, Wabash Valley contends that the merger is not necessary for the survival of Monon. To the extent that its annual revenues usually exceed annual expenses, Monon is a remunerative railroad operation. Perhaps by practicing rigid economies and avoiding large capital expenditures for improvement of line and service, even if such expenditures should become necessary, Monon can remain a profitable carrier for a few years more.

Nevertheless, as indicated in the appendix, Monon's traffic and revenues have remained more or less static for the past several years; the railroad lacks a sufficiently large territory to produce the capital necessary to institute the service improvements required to keep it competitive with the large railroad systems that are in the process of surrounding it; and there is no prospect for any future brightening of its income picture. In our opinion, the affiliation of Monon with a larger railroad system is definitely in the interest of its shippers, its stockholders, and the public at large.

Actually, it is not necessary for a railroad to be a "failing company" before its merger into another railroad can be approved. See *Florida East Coast Railway Company* v. *United States*, 259 F. Supp. 993, 1010 (1966). This merger may be approved, as the Commission has ruled in the past, if it is consistent with the public interest. It is not a legal requirement that a drastic need, or any need, for relief be present. It is not a legal impediment that the merger applicants find business good. If the merger is in the public interest, the applicants have a right to its approval. See *Pennsylvania R. Co.–Merger–New York Central R. Co.*, 327 I.C.C. 475, 498.

Support for the merger.– The applications herein were supported at the hearing by the States of Indiana and Kentucky and the city of Bedford, Ind., among others. The State administration of Indiana has changed since the hearings. On exceptions, Wabash Valley contends that it would be erroneous for us to assume that the present administration supports the transactions. We assume nothing; we know that the State of Indiana has taken a position favoring the merger in view of the many advantages that should accrue to Indiana shippers through the improvements in Monon's service that L&N claims it will institute, and we know that the

present Indiana administration has given no indication of a desire to recede from that position.

Also supporting the transactions are such national shippers as the National Distillers and Chemical Corporation, the American Colloid Company, the Aluminum Corporation of America, the Pillsbury Company, the Radio Corporation of America, and the Eli Lilly Company. We do not believe that the support of these national shippers constitutes mere rubber stamping of the applicant's proposals. We believe that if these national shippers, with their substantial transportation requirements, did not genuinely anticipate better service from the merger of Monon into L&N, they would not have offered their support of the proposed merger.

Opposition to the merger.– The only opposition to this merger on its merits is voiced by the employee organizations and Wabash Valley. The opposition of both these protestants is based on their concern for the future of the Evansville-Chicago line if L&N acquires, through this merger, a second route between Chicago and the South.

In support of its contention that the proposed merger will be harmful to the Wabash Valley area of Indiana because it will be detrimental to the maximum flow of L&N traffic over the Evansville-Chicago line, Wabash Valley, on exceptions, asserts error in the hearing examiner's application of statutory standards. It refers specifically to his finding that "The term 'consistent with the public interest' means compatible with, or not contradictory to, the public interest." This Commission has made identical findings in numerous section 5(2) cases. See *Scott Bros., Inc., Collection and Delivery Service*, 2 M.C.C. 155, 164; *Merchant's Dispatch, Inc.–Purchase–Smathers*, 25 M.C.C. 407, 409; *Chesapeake & O. Ry. Co.–Control–Baltimore & O. R. Co.*, 317 I.C.C. 261, 285; *Southern Ry. Co.–Control–Central of Georgia Ry. Co.*, 317 I.C.C. 557, 569; *Detroit, T. & I. R. Co.–Control–Ann Arbor R. Co.*, 317 I.C.C. 619, 626; *Georgia & F. Ry. Co.–Acquisition–Georgia & F. R.*, 317 I.C.C. 745, 750; *Seaboard Air Line R. Co.–Merger–Atlantic Coast Line*, 320 I.C.C. 123, 130; and the decision cited by the hearing examiner and referred to by Wabash Valley, *Great Northern Pac.–Merger–Great Northern*, 331 I.C.C. 228, 247.

The foregoing decisions constitute almost a roll call, with some omissions, of the major consolidation cases decided under section 5(2). Many of the decisions have undergone judicial review without

question as to the sufficiency of the Commission's definition of public interest. In fact, in the C&O-B&O control case, cited above, the Court even remarked that, "We are satisfied that the Commission has committed no error of law * * *." See *Broth. of Maint. of Way Employees* v. *United States*, 221 F. Supp. 19, 30 (1963), affirmed 275 U.S. 216 (1963).

In the *Northern Lines* case, the Supreme Court did not discuss the Commission's definition of public interest in so many words. The Court did, however, refer to the contention of the Department of Justice to the effect that the Commission did not properly apply the standards of section 5(2) in determining the consistency with the public interest of the *Northern Lines* merger. See *Northern Lines Merger Cases*, 396 U.S. 491, 506 (1970). Inasmuch as the Court upheld the Commission in that case, we can only conclude that it thereby rejected the Department of Justice's contention and that the Commission was not in error in the statutory standards that it applied.

There is enough evidence in this record to establish sufficient positive benefits from this merger to warrant its approval without the necessity for a seemingly negative finding that the merger is not contradictory to the public interest. Nevertheless, the hearing examiner has properly defined the statutory standards to be applied herein and his findings are affirmed.

Wabash Valley also contends that the hearing examiner erred in failing to fully describe the "interaction" between L&N's purchase of the Evansville-Chicago line in *Louisville & N. R. Co. Pur.–Chicago & E. I. R. Co., supra*, and the instant merger, and in giving weight to the acquisition by L&N of the trackage rights over C&WI authorized in *Louisville & N. R. Co.–Trackage Rights*, 334 I.C.C. 412.

We can see no point in further belaboring the issues involved in those two cases. They have been decided on their merits. Both of these cases are pending on certain issues before a special United States District Court for the District of Columbia in Railway Labor Executives Association *v.* United States and Interstate Commerce Commission, CA 1504-69, and we necessarily proceed here confident that our decisions in both those cases were correct and will be judicially affirmed.

Also on exceptions Wabash Valley contends that the merger is not proven to be consistent with the public interest because the routes thus formed would be uneconomical; the maximum flow of traffic over the Evansville-Chicago line would be prevented

and traffic movement over it decreased; and conventional channels of commerce would be disturbed. It also contends that the anticompetitive effects of the merger have not been adequately evaluated.

We have carefully considered the foregoing exceptions but we do not agree that they are well founded in their entirety or that Wabash Valley's objections to the merger, as well as the anticompetitive effects of the transaction, cannot be overcome by the imposition of conditions to our authorizations.

Wabash Valley's contention that the merger, as conditioned by the hearing examiner, will result in uneconomical routes does not, apparently, take into consideration the improved service to shippers that should result from the merger. Capital expenditures undertaken by L&N to effect the merger should be returned in increased revenues because of the improved service, including piggyback, that L&N can afford to provide present and potential Monon shippers but which Monon, as a small independent carrier, cannot. The same may not be quite so apparent in the case of Milwaukee, as hereinafter discussed, but even there the difference between a profitable new operation and an unprofitable one will be so small, as we will show, as not to warrant serious objections.

Wabash Valley, which is stated in the appendix to be "a nonprofit organization composed of businessmen, labor representatives and residents" presumably has some shippers included in its membership. If so, these shippers have remained remarkably silent during the course of these proceedings concerning any injury that they might suffer if traffic flow over the Evansville-Chicago line is adversely affected by the proposed merger. In the absence of any allegation of injury to individual shipper members of Wabash Valley, or to any other shipper for that matter, we can only assume that there is little likelihood of such injury, at least to the extent that an outright denial of this application would be warranted.

We would hardly expect L&N to go to the extremes, in effort and expense, to which it has gone to purchase the Evansville-Chicago line and acquire the trackage rights to make that line operable, only to downgrade its expensive acquisition in favor of the 65 miles longer and less well maintained Monon line, particularly since the two lines serve the different southern gateways of Evansville and Louisville.

Wabash Valley argues that because Southern's interchange with Monon may have exceeded L&N's interchange with Monon prior

to 1967, a Southern-Monon merger is preferable to the L&N-Monon merger. As discussed in the appendix, the hearing examiner ruled that information concerning the volume of Southern's interchange with Monon is obtainable only at a considerable expense of time and money from the files of Southern and that such data are not materially relevant to this case. Wabash Valley excepts to this ruling but we agree with the hearing examiner. The interchange information Wabash Valley seeks might be pertinent if we were considering a Southern-Monon merger. We do not, however, have such an application before us; thus, it would be pointless, on this record, for us to speculate as to the desirability or practicability of a Southern-Monon merger. See *Pennsylvania R. Co.–Merger–New York Central R. Co., supra*, 502.

Despite our not finding too persuasive Wabash Valley's argument in opposition to the merger, we are concerned with the public interest aspect of L&N's acquisition, through the merger of Monon, of a second single-line route from the South into Chicago. But we believe that this potentially anticompetitive situation can be remedied, as was a somewhat similar situation presented in the control of the Central Pacific Railway Company by the Southern Pacific Company, by the imposition of appropriate conditions.[6]

Accordingly, in order to insure that, after acquiring the Monon line, L&N does not downgrade the Evansville-Chicago line, we will also impose a suitable condition to our authorization in this case.[7] This condition, hereinafter set out in detail as *condition No. 2*, will require L&N, unless otherwise authorized, for a

[6] See *Control of Central Pacific by Southern Pacific*, 76 I.C.C. 508, where, as a condition to the Commission's authorization, Southern Pacific was required to solicit traffic for the Central Pacific route in preference to its own southern route through El Paso. The circumstances in the instant case are just the reverse of the Central Pacific case in that it is the old route that is the concern of protestants instead of the new route, as in the Central Pacific case, but the principle of protecting routes by conditions remains the same.

Because of the much smaller territory involved in this case, as well as the greater supply of alternate transportation, rail as well as nonrail, available to shippers in the area, the impact of an L&N merger does not present the same threat to competition presented by the applications of Santa Fe and Southern Pacific to acquire control of Western Pacific, denied by the Commission in *Southern Pac. Co.–Control–Western Pac. Co.*, 327 I.C.C. 387.

[7] The possibilities here for the direct preference of one line over the other are mostly limited to bridge or overhead traffic moving to or from Chicago, from or to southern points beyond Evansville or Louisville. Obviously, traffic originating or terminating on either line would have to be handled over the line on which it originates or terminates. Nevertheless, the quality of originating or terminating traffic can be affected, both by the movement of trains in overhead or bridge service as well as by the maintenance standards adhered to on the two lines. Hence, the necessity for imposition of a protective condition in the public interest.

period of 10 years to provide, on the Evansville-Chicago line, at least the same level of service and maintenance as it provided on the line at the time of service of this report. This condition will be imposed not out of any sense of necessity, but merely out of an abundance of caution, for it is apparent from the evidence on this record and the findings in *Missouri Pac. R. Co.-Control-Chicago & E. I. R. Co., supra*, that the Evansville line is an essential link in L&N's shortest, most direct, and main line between Chicago and numerous large commercial centers in the South served by L&N, and that the economics of the situation will continue to dictate that L&N place great emphasis on the maintenance and development of the Evansville line.

We will also impose a condition, hereinafter discussed, requiring L&N to extend trackage rights to Milwaukee over Monon's line between Bedford, Ind., and Louisville, thus creating a new competitive route. Further, as *condition No. 5*, we will retain general jurisdiction over the entire transaction for a period of 5 years, and specific jurisdiction over freight service and maintenance on the Evansville-Chicago line for a period of 10 years. In order to retain some measure of control over L&N's operation of the Monon properties after the merger has been consummated, we will also retain jurisdiction for 10 years to consider imposition of a condition relative to the quality and quantity of freight service and maintenance performed on the Monon lines. We will not impose a condition for the Monon line similar to *condition No. 2* at this time because we are not certain that it could be observed by L&N until some experience has been gained in the operation of the Milwaukee trackage rights condition.

Under section 20 of the act, we are "authorized to require annual, periodical, or special reports from carriers ***, to prescribe the manner and form in which such reports shall be made, and to require from such carriers *** specific, and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary ***." Accordingly, *condition No. 5* will also specifically reserve jurisdiction to require L&N to make such reports as we deem necessary concerning its operation of Monon's properties and the operation of the Evansville-Chicago line following consummation of the Monon merger.

The 10-year period contemplated by *condition No. 2* should provide enough time to establish firm traffic patterns on both the Evansville-Chicago and the Monon lines, but it will not be in

effect for such a long period that unprofitable services will be perpetuated. The service and maintenance requirements of *condition No. 2* are intended to preserve present service and maintenance standards as a minimum. *Condition No. 2* is not intended to preclude L&N from increasing traffic or maintenance on either the Evansville-Chicago or the Monon lines if such increases are justified by business conditions.

With these conditions in effect, the transaction should satisfy most, if not all, the objections of Wabash Valley and the employee organizations with respect to uneconomical service, traffic flow over the Evansville-Chicago line, and the disturbance of conventional channels of commerce and the anticompetitive aspects of the proposed merger.

We realize that the improvement in service to Monon's shippers resulting from the merger may, to some extent, be at the expense of other railroads interchanging traffic with the applicants. We will discuss this matter in detail later. As indicated previously, however, Monon's prospects for continued operation as an independent carrier are not of the brightest. We regard its eventual affiliation with another large carrier system to be inevitable if the instant merger does not succeed. A glance at any railroad map will show that this eventual affiliation, with whatever system it might be accomplished, would disturb existing routes and affect connecting carriers to as great, or even greater, an extent as the instant merger.

Accordingly, we cannot permit our decision in this case to be swayed to any great extent by the injury, slight in most cases, it will cause other carriers. Nor do we see any reason for imposing routing and gateway conditions for the benefit of competing carriers, other than the conditions contained in *condition No. 1* which are usually imposed in cases of this nature, unless it can be shown that productive competition will be strengthened by such additional conditions.

In our opinion, if L&N is willing to accept the conditions already referred to, as well as those we will hereinafter impose, it should be granted authority to accomplish the merger for which the applicants request approval.

Applications of L&N's corporate parents.-No objections have been raised to the application of SCL, Connecticut Company, or Mercantile. However, on exceptions, Penn Central contends that insufficient consideration has been given to the anticompetitive effect upon L&N-Penn Central joint-line routes of the extension of the lines of SCL into Central Freight Association territory.

We do not view the instant merger as primarily an extension of SCL's operations. SCL is the successor to, and the holder of the same proportion (around 33 percent) of L&N stock as, the former Atlantic Coast Line Railroad Company which was merged into the present SCL on July 1, 1967. L&N and its former corporate parent were traditionally operated as separate carriers with L&N free from the influence of its parent. This independent operational relationship has continued after the acquisition of L&N's stock control by SCL. See *Seaboard Air Line R. Co.-Merger-Atlantic Coast Line, supra,* 188-189. In fact, as L&N points out, diversion estimates submitted in the instant case by both Milwaukee and Southern include many instances of traffic originated or terminated by SCL which were handled by carriers other than L&N between points where L&N maintains its own competitive service. There is nothing in this record to indicate any change in the relationship between SCL and L&N as a result of the instant merger.

SCL, Industries, Connecticut Company, and Mercantile are parties to these proceedings by virtue of their stock interests in L&N or the latter's corporate parents. There is no basis in this record for denying the applications because of this stock interest and in finding that the merger of Monon into L&N will be in the public interest we must also find that the indirect control of Monon's properties and franchises thus acquired by L&N's corporate parents will likewise be in the public interest. We so find. See *Missouri Pac. Co.-Control-Chicago & E. I. R. Co., supra,* 315.

Our prior rulings, as previously referred to, respecting the carrier status of Connecticut Company and Mercantile are continued. We shall, however, in *condition No. 7* retain jurisdiction to reopen these proceedings, upon our own motion, for the purposes of considering the further regulation of Mercantile under section 5(3) of the act, should such action become necessary in the future to protect the public interest.

The applicants move that we do not subject Industries to sections 20(1) to 20(10), inclusive, and sections 20a(2) to 20a(11), inclusive, of the act which relate to reports, accounts, et cetera, of carriers, as we are empowered to do by section 5(3) whenever a noncarrier is authorized under section 5(2) to acquire control of any carrier or two or more carriers.

Industries holds 99.42 percent of SCL's common capital stock and, according to Industries' annual report to its stockholders for

the year 1969, SCL and its system of carriers are Industries' only subsidiaries. It would appear, therefore, that except for being one corporate step further removed from the performance of common carrier service, Industries is actually identical with SCL as far as its primary business is concerned. For this reason we cannot completely relieve Industries from regulation.

There is little point, however, in requiring Industries to comply with the full reporting provisions of the act when its reports, as far as its transportation activities are concerned, for the most part would only duplicate those of SCL. Likewise, we can see little point in subjecting the security issues of Industries to regulation when to do so would merely require it to obtain our prior approval for investments in areas over which we have no jurisdiction and where delays caused by the necessity for obtaining our prior approval could cause Industries to lose business opportunities that might otherwise benefit both Industries and, indirectly, its carrier subsidiaries.

Accordingly, we find it to be in the public interest in *condition No. 8* hereto to only partially subject Industries, under section 5(3), to the reporting provisions of the act.

CONDITIONS REQUESTED BY RAILROAD INTERVENERS

As stated in the previous section of this report, other railroads in Monon's territory will be affected to some extent by Monon's merger into L&N. Some, but not all, of these railroads have requested various conditions to offset the diversion of traffic they contend they will suffer as a result of the merger. With the exception of the trackage rights conditions requested by Milwaukee, a condition requiring L&N to accord the same preference now accorded Monon's cars to Penn Central cars moving between Penn Central's Jeffersonville Yard and L&N's South Louisville-Strawberry Yard complex, in Louisville (Strawberry Yard condition); and a condition requested by Southern requiring L&N to indemnify K&IT for cost of labor protection over and above the protection afforded by our conditions; all as hereinafter discussed, the hearing examiner denied the requested conditions on the ground that any injury suffered through the merger would not impair the ability to render common carrier service of the railroad requesting the condition. He made substantially the same finding with respect to Soo's request for conditions to protect it from diversions of traffic it considers likely as a result of the

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Milwaukee trackage rights condition. A discussion of the contentions of the various railroad interveners and the conditions they request, as well as an analysis of their respective diversion studies, follows.

DT&I-Ann Arbor.—The DT&I and Ann Arbor undertook a traffic diversion study in order to estimate the amount of revenue they would lose if the L&N-Monon merger is consummated. The study covered traffic moving over these lines in 1967 during the months of March, June, September, and December. To obtain an estimate of the revenue loss for the entire year, DT&I annualized the results of the 4 months by multiplying by three.

This study was based on the premise that all railroads involved have used and will continue to use all their resources to maximize their revenue and earnings and that shippers who hold the power to determine routings have exercised and will continue to exercise that power in their greatest self-interest.

DT&I believes that the diversions will result because the merger, through the efforts of the enlarged L&N to maximize revenue and earnings, would bring about changes which would lead shippers to find it in their best interests to route over the merged roads via the Louisville gateway traffic which previously they found in their best interest to route via the Cincinnati gateway.

The DT&I, about 160 miles east of the Monon, runs between Ironton, Ohio, and Detroit with direct connection at Diann, Mich., with its subsidiary Ann Arbor, which extends through central Michigan. At South Charleston, Ohio, DT&I connects with Penn Central tracks extending to Cincinnati. L&N and Penn Central interchange traffic at Cincinnati. The Monon extends northward from Louisville where it interchanges traffic with L&N to northern Indiana where it interchanges traffic with GTW, C&O, N&W, and Penn Central which serve points in northern Ohio, Michigan, and southeastern Ontario. Thus, there is a certain amount of competition between Monon and DT&I-AA for traffic moving over L&N destined for northern Ohio, Michigan, and Ontario.

The DT&I-Ann Arbor, through their traffic study, purport to show they will lose approximately 8,856 northbound cars for an estimated revenue loss of $711,608 along with 3,441 southbound cars with revenues of $479,793, for a total annual gross revenue loss of $1,191,401.

The northbound shipments contended to be divertible are divided into two groups. The first group, which accounted for

revenue totaling $544,148, were shipments for which DT&I-Ann Arbor contends they have no relationship with those who determine the routings. The second group consisted of shipments to two consignees, Dundee Cement Company at Dundee, Mich., and Ford Motor Company at Oakville, Ontario, for which there is such a relationship. In all of these northbound shipments, L&N or its affiliate serves the consigning shipper and supplies some of the freight cars.

In the first group of northbound traffic, coal shipments originating in eastern Kentucky on L&N accounted for revenue losses amounting to $452,173. Of this amount, coal moving to Detroit accounted for $140,775, coal destined for cities in eastern Michigan was worth $134,710, while coal moving to destinations in western and central Michigan and Wisconsin accounted for $176,688.

DT&I-Ann Arbor fear that after consummation of this merger L&N will exert strong influence on these coal movements and divert them to the Louisville gateway. DT&I's traffic witness testified that some of the competing routes by which L&N movements of coal to Dundee, Mich., could be routed via Louisville would be L&N-N&W-Ann Arbor; L&N-C&O-Ann Arbor; and L&N-Grand Trunk Western Railroad (GTW)-Ann Arbor. Dundee is located in southeastern Michigan just south of Detroit.

L&N after merger will interchange traffic with GTW at Haskells, Ind., which will be the nearest junction for these two railroads for traffic routed via Louisville. The record shows that a movement of coal from L&N mines to Dundee via Cincinnati over the present route L&N-Penn Central-DT&I-Ann Arbor as opposed to a routing via Louisville over L&N-Monon-GTW-Ann Arbor would be approximately 228 miles shorter. This would imply a distance increase of greater than 40 percent using the projected L&N-Monon routing instead of the present route. Therefore, it appears that at least one of the possible routes that DT&I's witness had in mind when he made his judgment as to the divertibility of coal shipments to eastern Michigan would be quite circuitous. Maps in evidence demonstrate that routing of eastern Kentucky coal over L&N via Louisville to Detroit and other points in eastern Michigan would also involve substantial circuity compared to present routes via Cincinnati and the DT&I-Ann Arbor.

Based on the above, we conclude that there will be no diversion of coal traffic which originates on the L&N in eastern Kentucky for destination in the Detroit area and eastern Michigan. Thus, it is

our finding that on coal movements shown in the first group, DT&I-Ann Arbor will not sustain a gross revenue loss in excess of $176,-688.

DT&I argues that if L&N's freight rates on coal from western Kentucky moving via Monon into southern Michigan and northern Ohio were reduced, that coal would be competitive with eastern Kentucky coal and lead to a reduction of the shipments of eastern Kentucky coal over its system. The present rail rate from eastern Kentucky mines to Detroit, for example, is lower than the rate from western Kentucky mines on both a per-ton and a per-BTU basis. DT&I claims that the market advantage would shift to western Kentucky coal fields, from eastern Kentucky, if the western Kentucky freight rates were reduced by 86 cents per ton to the same rate level as eastern Kentucky coal moving to Detroit.

Coal coming from eastern Kentucky has a higher BTU content than that located in western Kentucky. Presently, eastern Kentucky coal has a cost per 20 million BTU of $7.107 at Detroit, while western Kentucky coal on the same basis costs $7.758. If the freight rate on western Kentucky coal were reduced by 86 cents per ton, then the cost per 20 million BTU would be lowered to $7.065. The above assumptions by DT&I do not take into account possible responses by eastern Kentucky mine operators in this situation. Nor did DT&I make any attempt to show the likelihood, or the feasibility, of a reduction of as much as 86 cents (or 15 percent) in western Kentucky coal movements to Detroit. Such a decrease would imply equal per-ton freight rates to Detroit from the two mining areas, despite the significantly greater distance of western Kentucky coal mines from Detroit. It is our opinion that DT&I's concern over western Kentucky coal replacing eastern Kentucky coal in southern Michigan and northern Ohio is extreme and should be discounted.

In the second group of northbound traffic DT&I-Ann Arbor anticipates a revenue loss amounting to $150,896 from coal traffic moving to Dundee Cement Company. Dundee Cement presently receives coal shipments originating on the L&N and routed via Cincinnati Penn Central-DT&I-Ann Arbor to Dundee. This cement company is located on the line of Ann Arbor and is the largest customer of that railroad. The vice president-traffic of DT&I and Ann Arbor testified that Dundee Cement is cost conscious and interested in securing lower rates on coal. It has expressed an interest in unit-train coal movements. This witness testified that he could not predict the loss of this business, but felt that the

possibility of the working out of unit-train rates by the L&N was so substantial as to constitute one of the important justifications for the imposition of a condition that would require L&N to make available via the Cincinnati gateway and the DT&I the same multiple-car or unit-train arrangements it makes available via Louisville.

Ann Arbor is the only railroad that serves Dundee and the cement company. It supplies Dundee Cement with equipment and performs other services for it. Thus, there is a close relationship between Ann Arbor and Dundee Cement. Ann Arbor receives a line haul on all coal movements to this plant. There are no unit-train rates presently in effect to the Dundee plant, and L&N will not be able to publish a unit-train rate to Dundee, Mich., without the concurrence of Ann Arbor. Since Ann Arbor and DT&I are under the same management, it is extremely doubtful that Ann Arbor will join in any unit-train rates which would eliminate DT&I from the routing. DT&I-Ann Arbor contend that Ann Arbor would have little or no power to deter Dundee Cement from participating in unit-train arrangements offering lower rates via the Louisville gateway because of the cement company's ability to short haul the Ann Arbor on outbound shipments of cement. However, Ann Arbor, as the only railroad to serve this area, maintains a unique and strategic position in its relationships with Dundee Cement. Finally, mention has already been made above of the fact that an L&N-Monon movement to Dundee would involve substantial circuity—over 40 percent above the present routing. We agree with DT&I's traffic witness that it is not possible to predict the loss of this traffic. The witness himself admitted that DT&I had "some control" over this coal movement. The revenue loss attributed to this Dundee coal movement amounting to $150,896 should be deducted from DT&I-Ann Arbor's estimated annual revenue loss.

The other northbound shipment where DT&I-Ann Arbor has a relationship with the company who determines the routing consists of glass moving from the Ford Motor Company at Nashville, Tenn., to its plant at Oakville, Ontario. This traffic, whose revenue amounts to $16,564, is routed L&N-Penn Central-DT&I-Canadian National Railways (CN). At Nashville, the L&N serves the Ford plant and is the largest supplier of equipment. DT&I contends that because of these facts and the fact that L&N-Monon will have service routes where this traffic can move from Monon at Haskells via GTW-CN and from Monon at Lafayette via N&W-Canadian Pacific (CP), L&N will influence Ford to eliminate DT&I from the present route.

DT&I's vice president-traffic testified that historically the relationship between Ford and the DT&I has been very close. He further testified that the reason he excluded Oakville glass from the total northbound movements was due to the fact that as of this time DT&I has a few special assigned cars in this movement. Here again this witness found it difficult to predict how much of this traffic might be diverted. In his exhibit it was shown as being entirely divertible.

DT&I will continue to influence the routing of this traffic because of its relationship with Ford and the cars it provides for this movement. As for the service routed over Monon cited by DT&I's traffic witness, the route over Monon to Haskells thence GTW-CN to destination is approximately 100 miles longer than that via Cincinnati-DT&I, while the other route over Monon to Lafayette thence N&W-CP will be about 60 miles longer. We conclude that DT&I will probably continue to remain in the routing and not lose any of the Oakville glass traffic.

The southbound shipments which DT&I-Ann Arbor found divertible are also divided into two groups. The first group consists of shipments whose routings via the Cincinnati gateway have come about through the cooperative sales efforts of the L&N and the DT&I-Ann Arbor and did not depend on car supply by either carrier. This group accounted for revenue losses of $67,813. The second group involved the Ford Motor Company plant at Oakville, Ontario, and movement of set-up automobiles, where the supply of cars by the carrier has a bearing on the shipper's routings. DT&I foresees a gross revenue loss of $411,980 from this traffic.

The DT&I-Ann Arbor traffic expert testified that L&N, after merger, will be able to influence the movement of some of the set-up auto traffic originating at the Ford plant in Oakville to be routed via the Louisville gateway through the supply of cars to this plant. Here again the witness found it impossible to predict what portion of this traffic would be diverted. Therefore, he listed the total amount of $411,980 on his exhibit as being divertible.

The shipments of set-up autos originating at Oakville with destinations in Nashville and Memphis, Tenn.; Atlanta, Ga.; and New Orleans, La.; were routed CP-DT&I-Penn Central-L&N; while the remaining set-up auto shipments which terminated in Florida were routed either via CP-DT&I-Penn Central-L&N-SCL or CP-DT&I-Penn Central-L&N-SCL-Florida East Coast Railway Company. The above discussion of the Oakville glass moving to the same Ford plant from Nashville pointed out that the traffic was routed

northbound via L&N-Penn Central-DT&I-CN. This is the same route in reverse taken by the set-up autos moving from Oakville to Nashville with the exception that CP originates the set-up auto traffic, while CN terminates the glass shipments. The two alternative service routes which DT&I's traffic witness believes will be available to L&N after merger with Monon in the movement of the northbound glass will also be available to L&N in the reverse direction for set-up autos. As previously indicated, these two routes would be 60-100 miles longer. Additionally, maps in the record show that if these two alternative routes are employed, then the circuity of the set-up auto traffic destined for Atlanta, Ga., and points in Florida would be compounded still further.

The record clearly shows that DT&I believes it has a certain degree of control over the movement of traffic from the Ford plant in Oakville. DT&I's vice president-traffic stated on cross-examination that DT&I has some control over these set-up auto shipments due to its close relationship with Ford Motor Company and the equipment it has in the Oakville pool. These facts, combined with the circuity that would be implied by routing over the merged Monon, suggest the unlikelihood of substantial diversion of this class of traffic.

The following table summarizes the results of our analysis of DT&I-Ann Arbor traffic study in comparison with the intervenor's estimate.

Traffic	DT&I-Ann Arbor estimated gross revenue loss	Commission's estimated gross revenue loss
Northbound		
Total excluding Dundee coal and Oakville glass	$544,148	$268,663
Dundee coal	150,896	[1]-------
Oakville glass	16,564	[1]-------
Subtotal	711,608	268,663
Southbound		
Total excluding set-up autos	67,813	67,813
Set-up autos	411,980	[1]-------
Subtotal	479,793	67,813
Grand total	1,191,401	336,476

[1] It is possible that there may be some diversion of these classes of traffic, but we do not believe it will be significant.

It is our conclusion that DT&I-Ann Arbor will not sustain an annual gross freight revenue loss in excess of $336,476. In 1967, DT&I-Ann Arbor had combined freight operating revenues amount-

ing to $32,129,064. A gross revenue loss of $336,476 per year would represent approximately only 1.0 percent of DT&I-Ann Arbor annual gross freight revenue. We agree with the hearing examiner that the record does not support imposition of the special conditions sought by DT&I and Ann Arbor. Their request for special conditions is denied.

Penn Central.—As set out in the appendix, Penn Central neither opposes nor supports the instant merger but did request a set of conditions, some of which the hearing examiner found to be identical to the conditions imposed upon Penn Central for the protection of the Erie-Lackawanna Railroad Company and the so-called Alphabet Route in the proceedings involving the inclusion into Penn Central of The New York, New Haven and Hartford Railroad Company. Penn Central has excepted to the hearing examiner's denial of its requested conditions, with the exception of the Strawberry Yard condition previously referred to, which the hearing examiner recommended granting.

The Strawberry Yard condition provides that:

> On southbound traffic, L&N shall grant the Penn Central the right to move Penn Central cars for the L&N from Penn Central tracks in the Jeffersonville, Indiana-Louisville, Kentucky, area over L&N tracks to the South Louisville/Strawberry Yard complex, and shall accord such Penn Central cars the same handling as given those received from the lines of the former Monon Railroad. On northbound traffic, L&N shall move cars destined to Penn Central from its South Louisville/Strawberry Yard complex to the Penn Central's Jeffersonville Yard via L&N and Penn Central tracks and accord those cars the same degree of preference as cars handled from South Louisville/Strawberry to the lines of the former Monon.

L&N excepts to the granting of this condition by the hearing examiner. It contends that the Penn Central-L&N interchange at Louisville is a terminal switching operation and the condition destroys the prerogative of the two companies to designate, and to change from time to time, the location of trackage upon which interchange is received. Also, according to L&N, the condition destroys the two companies' initiative to make an interchange agreement as to how the respective interchange crews of each company shall be used on one another's rail lines and overlooks the fact that railway labor has certain rules regarding handling of interchange. This could result, in L&N's opinion, in the labor claims of both parties becoming an exclusive L&N expense; an event not at all consistent with liability rules in interchange operations. L&N argues that the interchange arrangements at Louisville

have been revised several times over the years by mutual agreement and that such freedom of action should not be impaired.

Although in its exceptions and its reply to L&N's exceptions Penn Central continues to press for the Strawberry Yard condition, as well as for the rest of its requested conditions, we agree with L&N that the operations of the Strawberry Yard should be left to negotiations of the parties concerned for the time being at least, rather than directed as a condition to this report. The Penn Central request for the Strawberry Yard condition is denied for the present.

The Penn Central did not submit a diversion study in this proceeding. Nevertheless, it is incumbent upon us to consider the likely competitive effects on the Penn Central of the proposed merger, as both Penn Central on exceptions and the applicants on reply have pointed out. It is important to consider these effects on Penn Central arising both from the merger itself and from the Milwaukee trackage rights condition recommended by the hearing examiner. At the same time, it is important to weigh these probable effects in the context of the whole eastern railroad milieu, particularly the proposed N&W and C&O-B&O merger, since even insignificant diversion effects from different consolidations can become in the aggregate quite significant.[8] And, finally, it is necessary to consider all of these factors in light of recent events emphasizing the threat to Penn Central's ability to continue providing adequate transportation service to the public.

We do not believe that the hearing examiner gave sufficient recognition to the competitive impact on Penn Central of this proposed merger. The hearing examiner stresses the fact that the proposed merger will not significantly reduce the competitive climate, in part, because "there also will remain the competitive force of the Penn Central." But we believe that the reverse is true and that Penn Central will have to struggle to compete with the combined L&N-Monon, instead of vice versa. However, the hearing examiner does acknowledge that a decision on the merger must "appraise the effects of the curtailment of competition."

The question is not whether to consider the competitive effects on Penn Central but rather how to do so in the absence of a Penn Central diversion study in this proceeding, and given our currently incomplete investigation of the diversion question in the N&W and C&O-B&O merger case, as well as our recently initiated study of

[8] Attention is not given explicitly to this problem in the examiner's report. Indeed, it received only cursory discussion by Penn Central itself.

the Penn Central bankruptcy. Some of the deficiencies in knowledge about these factors will in time be remedied by these investigative efforts. However, we must also weigh the fact, as pointed out by the applicants, that competition is merely one consideration in deliberating the proposed L&N-Monon merger. Hence, we are compelled to decide whether the information we presently have available on these issues is sufficient to provide a basis for valid conclusions about the desirability of the proposed merger. As an aid in making this assessment, we have analyzed the Penn Central submissions in this proceeding as they relate to the diversion question with the objectives of determining: (1) what type of evidence, short of a diversion study, has been offered, and (2) what conclusions can validly be drawn on the basis of this evidence. The analysis encompasses all portions of the submitted statements, exhibits, and testimony of Penn Central witnesses which appear to be relevant material for this assessment.

Before reviewing the details of the Penn Central evidence relevant to potential diversion, some general comments about the nature of the evidence are warranted.

Penn Central, on brief and in its exceptions, has excused its lack of a diversion study on the grounds that the relevant consideration regarding competitive effects in this case is not diversion but rather "opportunity to compete." It is difficult if not impossible, however, to separate these two inextricably intertwined considerations. "Opportunity to compete" is, at best, a vague concept, since there is always an opportunity to compete—whether successfully or not being another question—even under the worst of circumstances. A better conceptualization would be "conditions of competition." Given this reformulation, the usefulness of diversion estimates as a measure of the practical consequences of such conditions becomes more apparent. It is thus particularly unfortunate that Penn Central, which repeatedly stressed the need to consider these competitive effects, denied us the use of one very valuable measure of the practical impact of such effects by not submitting a diversion study.[9]

What evidence there is in the record relevant to possible diversions from Penn Central for the most part is applicable to considerations only of the merger itself. This shortcoming makes

[9] Penn Central itself must assuredly recognize the direct interrelationship of these two approaches. One of its witnesses, for example, said that examples of movements "which obviously would be susceptible of being *diverted* * * * *illustrate* the urgent need * * * [to] afford Penn Central an opportunity to compete for present and future traffic." [Emphasis supplied.]

it next to impossible to evaluate the possible diversion consequences of the Milwaukee trackage rights conditions recommended by the hearing examiner. Penn Central in its exceptions criticizes the fact that "the report is strangely silent as to the changes these trackage rights will make in Penn Central's competitive position." While we can agree with Penn Central that "a meaningful analysis of the competitive impact of the proposed merger would properly and necessarily embrace also the changes in the competitive situation resulting from the granting of the trackage rights," we cannot agree that there is anything "strange" in the fact that the hearing examiner's report is silent on this issue as it relates to Penn Central, for the very reason that Penn Central is itself largely silent in this area. One of its witnesses, for example, admitted that Penn Central had made no study to determine the adverse effect upon itself of the Milwaukee trackage rights. Penn Central in its exceptions indeed would seem to impel us to rely on the testimony submitted by Southern in making findings on the competitive impact on Penn Central. It can hardly be expected, however, that testimony designed for Southern purposes would be fully adequate to serve as the basis for conclusions about Penn Central and that expectation is fully confirmed by the record. Even the most rudimentary aggregative information is lacking in this record, such as a breakdown of major origins, destinations, and commodities interchanged between Penn Central and Southern, particularly at Cincinnati. Because of this deficiency, our analysis of the Penn Central evidence is perforce limited to considerations relevant to the effects of the L&N-Monon merger itself and not of the proposed trackage rights.

There are no definitive statements in the record by Penn Central that a particular car or type of traffic *would* probably be diverted. At its most assertive, Penn Central rises only to the level of saying that certain traffic *could* be diverted, without stating its opinion as to whether it *would* be or not. This distinction is important. It implies that even in those cases wherein we deem it unlikely that certain traffic—held by Penn Central to be possibly susceptible to diversion—would actually be diverted, such findings do not contradict any Penn Central claims since none have really been made. However, it is still important to look at the types of traffic which Penn Central has used to illustrate the potentiality of diversion as an indicator of the diversion threat.

In the absence of complete information it is not possible for us to make findings that a given example would definitely be diverted

just as Penn Central may have intimated that it might. There is always the possibility that some factor not brought to light would make diversion unlikely. However, it is possible for us to suggest those Penn Central examples which do not appear divertible for reasons already contained in the record.

Such an example is the 200 cars of steel billets or ingots moving from Steelton, Ky., to Toledo, Lansing, and Muncie introduced in the statement of a Penn Central witness. These cars presently are routed over L&N to Cincinnati then via Penn Central to one of these three destinations. After suggesting an alternative routing via Louisville and a consolidated L&N system to each destination, the witness said, "While there may be other factors that influence the routing of iron and steel traffic between rail routes, it is a rare situation where these factors can cause a shipper or receiver to employ a route that does not provide a competitive service at competitive rates." Nowhere did the witness say that the traffic would be diverted over alternative routes. Nowhere does he even say that it would probably be diverted. The greatest claim that is made is that the traffic "could move" or "could well move" over the merged L&N-Monon. The implication that the L&N and Penn Central route via Cincinnati might prove inferior in "competitive service at competitive rates," without stating that it would, or even probably would, prove so, is typical of the Penn Central evidence.

We believe that this traffic would not be diverted despite the witness' intimations for several reasons. First, his proposed L&N-Monon routing would in each case still involve at least one other carrier for a substantial portion of the haul, thus effecting no real improvement with respect to railroad interchanges. Second, reference to the maps submitted in this case is sufficient to indicate that the witness' proposed routing is more circuitous than the present, particularly for the portion of the traffic destined to Toledo. In short, although there might indeed be somewhat of an incentive to L&N to use the witness' proposed routes arising from the somewhat increased haul that could be obtained thereby, the witness' own statements about the importance of "competitive service" would tend to indicate the likelihood of diversion on this class of traffic. Similar comment could be applied to other examples given by the witness. For example, some, and probably

most, of the automobile traffic now shipped via Penn Central from the Detroit area is through the Cincinnati gateway to L&N.[10]

Much of the coal traffic shown in another witness' exhibit is apparently of a nondivertible nature for the same reasons. For example, of the Penn Central coal terminations of 1,413,335 tons shown, much would appear to be nondivertible, including 183,570 tons terminating in Ohio, 295,853 tons terminating in the Detroit area, and most probably at least 93,033 tons terminating at eastern Indiana destinations. In Indiana, there is also an additional 11,640 tons turned over to Penn Central at Louisville for extremely short hauls to New Albany and Speed, as well as a movement to Edinburg via Louisville of 875 tons which apparently could not be diverted from Penn Central.

The above conclusions about freight movements in the presentations of the two witnesses rely only on the most obvious geographical considerations. There is undoubtedly a substantial amount of traffic among the examples provided by both these witnesses which would prove nondivertible either upon more detailed geographical consideration or for other reasons such as shipper affinity, special equipment, and so on. For example, if more specific origin points had been given in the coal traffic exhibit, it would probably be possible to adjudge additional traffic nondivertible.

With regard to the east Kentucky and Virginia coal traffic, the superiority of the Cincinnati routing to many points in Illinois, Indiana, Michigan, Ohio, and other areas of concern to Penn Central is clearly evident. The L&N could have exchanged coal with Penn Central at Louisville or Evansville if these had been more suitable routes, yet 92.7 percent of Penn Central's coal terminations and 99.0 percent of its intermediate coal traffic coming over L&N from east Kentucky or Virginia originations moved via the Cincinnati gateway instead. Although improvements can be expected in the Louisville and Evansville routings with this merger and the acquisition of the Evansville-Chicago line, these would have to overcome what appear to be significant natural advantages accruing to the Cincinnati gateway for this particular traffic to be susceptible to diversion. The following table gives a breakdown of this coal traffic moved via each gateway by State of termination.

[10] The destination of such automobile traffic would be an important consideration in assessing the likelihood of diversion, but a destination breakdown is not provided by Penn Central.

Not surprisingly, the destination States of Indiana, Michigan, and Ohio are particularly dominated by the Cincinnati gateway.[11]

Bituminous coal, major moves of 500 tons or more, from East Kentucky and Virginia origins via L&N to points served by Penn Central as terminator or intermediate carrier, first 9 months of 1968, by Gateway

Destination	Penn Central terminator			Penn Central intermediate		
	Cincinnati	Louisville	Evansville	Cincinnati	Louisville	Evansville
Illinois	98,675	-----	83,003	69,506	-------	------
Indiana	157,113	4,425	6,865	1,698,110	-------	------
Iowa	-------	-----	------	1,081	-------	------
Michigan	760,387	-----	------	385,846	-------	------
Minnesota	-------	-----	------	500	-------	------
Ohio	183,570	-----	------	176,551	-------	------
Wisconsin	-------	-----	------	2,147	-------	25,218
Canada	-------	-----	------	2,854	-------	------
Unidentified	-------	-----	------	140,148	-------	------
Totals	1,199,745	4,425	89,868	[1]2,476,743	-------	25,218

[1]Of this amount, 1,645,598 tons moved from Lynch, Ky., to Gary, Ind.

The foregoing examples illustrate the vague nature of Penn Central's contentions. We fully agree with the hearing examiner that "The evidence does not establish that the applicants will divert coal traffic from Penn Central." But, by the same token, it does not establish that the applicants will not do so either. The Penn Central evidence would appear to fall, as the applicants imply, under the class of "general apprehensions of traffic diversion" which we have in the past found to be without probative effect unless supported by reasonable factual basis or data. See *Texas & Pac. Ry. Co.–Control–Kansas, O. & G. Ry. Co.*, 324 I.C.C. 309, 321. As exemplified by the above illustrations, much of Penn Central's apprehensions would appear to be lacking solid foundation.

Given the generally conjectural nature of the Penn Central submissions, we are in full accord with the hearing examiner's appraisal of the stringent nature of many of Penn Central's proposed conditions and his recommendation to deny Penn Central most of these conditions. However, the above discussion has suggested four major areas of uncertainty: (1) the insufficiency

[11]An important caveat in the Penn Central intermediate traffic destined to Indiana is a substantial movement from Lynch, Ky., to Gary, Ind. If this one route were susceptible to diversion via Louisville, the percentage of intermediate traffic going through Cincinnati would be substantially reduced.

of evidence may make a finding of nonsubstantial diversion subsequently proved inaccurate, (2) the amount of diversion, even should it prove to be relatively small, may take on added significance when combined with a possible N&W and C&O-B&O merger, (3) the largely unknown effects of the Milwaukee trackage rights may prove significant, and (4) other situations and factors may arise rendering some of Penn Central's requested conditions in the public interest. For these reasons, we will, in *condition No. 6*, hereinafter imposed, reserve the right to prescribe such of the conditions requested by Penn Central as we may later deem essential to protect that railroad's ability to render needed service to the public.

Milwaukee.–Milwaukee, C&NW, and Southern conducted separate traffic studies for the purpose of estimating revenue losses due to this proposed merger. Each used acceptable sampling techniques which were applied by the same sampling expert to the traffic of each. Based on these diversion studies, the three railroads estimate that they will suffer a combined annual gross revenue loss of $2,539,552 if the L&N's merger with the Monon and its acquisition of the Evansville-Chicago line are consummated.

The applicants and three intervenors disagree as to whether the diversion based on L&N's acquisition of the Evansville-Chicago line should properly be attributed to the proposed merger. We affirm the examiner's conclusion that the Evansville route cannot be ignored in determining the consequences to the intervenors and the public from the approval of the proposed transaction.

Milwaukee conducted a detailed traffic study to determine the revenue losses to it that would result from the L&N-Monon merger, coupled with L&N's acquisition of the Evansville-Chicago line. All interline traffic originating and terminating in 11 Southern and Southeastern States and the District of Columbia during the calendar year of 1968 was included in the study. Traffic was stratified between interline forwarded, interline received, and intermediate, and further grouped by junctions through which the traffic moved. A random sample was drawn from this traffic resulting in a total of 2,216 sample movements.

Initially, 2,051 sample shipments were visually rejected as not being susceptible to diversion. The remaining 165 sample cars were placed in the susceptible category and information sheets were mailed to the origin and destination agencies having juris-

diction over these particular movements. The origin agencies supplied information such as: location of station and railroads serving; whether consignor is located on leased property; whether or not consignor is located on industrial siding or loads on team track; whether loading is open or closed to reciprocal switching; whether equipment pool is involved; whether shipper allocates traffic; and whether transit is involved at origin. The destination agencies provided much the same information. The sales representatives in the different territories involved were not requested to express an opinion as to whether or not any of this traffic would be divertible. Milwaukee's general freight agent made all of the judgments as to the divertibility of this traffic.

Following further review, 94 additional sample shipments were eliminated from further consideration. The balance, 71 cars, were found to be potentially divertible, assuming Milwaukee is not merged with C&NW.[12] On an expanded basis, the 71 sample shipments represent an annual gross freight revenue loss to Milwaukee amounting to $550,649.

Milwaukee reexamined the 165 sample shipments placed in the susceptible category in order to determine the potential revenue loss if its proposed merger with C&NW were approved and consummated. It was estimated that 54 sample cars would be susceptible to diversion, representing an expanded annual gross revenue loss of $487,545 to the proposed Milwaukee-C&NW system.

Milwaukee did not develop a study of its avoidable costs specifically associated with the traffic found to be divertible. There are no facts in evidence upon which to determine the net loss to Milwaukee. However, the record is clear that Milwaukee's estimated gross revenue loss of $550,649 would be somewhat offset by savings in the cost of handling the diverted cars.

Milwaukee's anticipated gross annual revenue loss of $550,649, assuming no merger with C&NW, is divided into the following categories:

[12] Our order of March 31, 1970, in Finance Docket No. 24182, denied the C&NW-Milwaukee merger application. Although the order reserved our jurisdiction for a period of 1 year to enable C&NW and Milwaukee to file an amended application, to date we have received no indication that they are even interested in doing so.

Category of traffic	Potentially divertible cars	Annual revenue divertible
Interline forwarded	25	$146,782
Intermediate	14	5,647
Interline received	32	395,220
Total	71	550,649

The above category of interline forwarded includes five sample shipments of Government ammunition representing an expanded revenue loss of $46,835. This traffic originates on Milwaukee at Manhattan, Ill., and is presently routed Milwaukee to Bedford, then Monon to Louisville, L&N to Atlanta, and SCL to destination at Leland, N. C. Milwaukee predicts after the merger these shipments will move via Milwaukee to Terre Haute, Ind., thence L&N and SCL to Leland, N. C., with a savings in transit time of 41 hours.

The evidence shows that the omission of junctions is standard practice of the various Federal Government agencies in the routing of Government traffic, for this policy lessens the possibility of misrouting. The Government usually specifies the carriers by which the movement should be shipped. Milwaukee argues that recently the Government has announced a new policy whereby it would allocate its traffic to carriers based upon criteria that emphasize carrier performance. Milwaukee believes because of this policy change and the new faster service to be provided by the proposed merger, the Government will in the future specify the junctions and that if this becomes a reality then L&N will short-haul Milwaukee on these ammunition shipments.

Milwaukee has overlooked the fact that, due to the merger of L&N and Monon, the present route by which these five sample shipments move will be expedited. The transit time will be reduced by 11 hours due to L&N's improved interchange at Louisville. Milwaukee as the originator of this traffic, along with the faster service which will be provided over the present route because of this merger, will continue to influence its long haul. Therefore, a portion of the $46,835 revenue loss projected for this Government traffic should probably be deducted from Milwaukee's estimated gross revenue loss of $146,782 on interline forwarded traffic.

Furthermore, it is important to distinguish, as Milwaukee fails to do, between traffic lost because of a shift in Government shipping policy and that diverted as a result of this merger. The 41

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hours improved transit time over the projected routing via Evansville constitutes Milwaukee's estimate of the improvement over the present routing *without* the merger. As indicated above, the improvement would be 30 hours compared to the present route *with* the merger. What is not known on the basis of the record, however, is how much of the 41-hour estimate is a result of the L&N acquisition of the Evansville-Chicago line and how much would result even if there were no such acquisition. If a significant portion of the improvement would be noted even without the acquisition of the Evansville-Chicago line, then by Milwaukee's own arguments concerning the new Government policy specifying optimal routings, the Milwaukee could stand to lose some of this traffic anyway. Some suggestion of this possibility is to be found in the fact that the projected routing via Evansville would be a little over 75 miles shorter than the present routing,[13] a distance advantage not affected by the merger and acquisition.

It is impossible on the basis of the record to give precise quantitative interpretation to these factors largely overlooked by Milwaukee. However, we believe that perhaps 50 percent of this traffic will not be lost to Milwaukee as a result of the Evansville-Chicago line acquisition, which leads to a revised estimate of interline forwarded traffic diverted of about $123,400.

Milwaukee's estimated traffic losses in the category of interline received amounted to $395,220. Of this amount, $256,852 was attributed to 23 potentially divertible sample coal shipments. Six of the sample coal cars accounting for expanded losses of $123,324 were routed L&N-Louisville, Monon-Bedford, Milwaukee-Chicago, while 15 sample cars with projected annual losses of $123,390 were routed L&N-Evansville, C&EI-Terre Haute, Milwaukee-Chicago. The remaining two sample coal shipments worth $10,138 were routed L&N-Cincinnati, Penn Central-Terre Haute, Milwaukee-destinations in Iowa and Wisconsin.

The two sample coal shipments with destinations in Iowa and Wisconsin were routed by their respective receivers. Milwaukee was the terminating railroad with both receivers located on its line. The receivers of this traffic are served only by Milwaukee. With these receivers controlling the routing on coal shipments, it is highly improbable that Milwaukee will be short hauled and lose revenues amounting to $10,138.

[13] Calculated on the basis of mileage figures from *The Official Guide of the Railways*.

Milwaukee asserts that the examiner erred in his judgment that the coal shipments to Chicago during the heating season would not be divertible. Milwaukee argues that this judgment ignores the impact of the through-service transit-time improvements to be made by L&N. The evidence reveals that the 21 sample coal cars moving to Chicago were all routed by the receivers. It is customary for the receiver to specify a road haul for the delivering carrier. The record shows that three fuel companies, as receivers of sample coal shipments found divertible by Milwaukee, accounted for almost half of the total revenue loss of $246,714 on coal movements destined for Chicago. Milwaukee's regional manager—sales testified that the two smaller companies both specify the junctions as well as a Milwaukee road haul on inbound coal movements, while the third, and largest, company customarily specifies a Milwaukee road haul. This witness testified that, in his experience, some of the consignors and consignees occasionally change their routing practices, but not with much regularity.

With the consolidation of L&N and C&EI railroad yards at Evansville and the proposed improvement in interchange at Louisville caused by this merger, the transit time for coal shipments during the heating season over the present routes will be shortened. As the delivering carrier, with the additional advantage of improved transit time, Milwaukee will be able in all likelihood to retain its road haul on the majority of these coal shipments. Because the evidence discloses that all of the sample coal shipments to Chicago are subject to reciprocal switching, it is impossible to say categorically that all coal shipments will not be lost. Perhaps 30 percent of this estimated diverted traffic will be lost. Therefore, we estimate that Milwaukee will have gross revenue losses amounting to approximately $74,000 on coal shipments moving to Chicago.

The table below summarizes our analysis of Milwaukee's diversion study based upon the absence of a C&NW-Milwaukee merger. At this time, an analysis of Milwaukee's traffic study assuming its merger with C&NW is moot. We conclude that in the following traffic categories Milwaukee will not have annual gross freight revenue losses in excess of those stated.

Category of traffic	*Approximate annual revenue loss*
Interline forwarded	$123,400
Intermediate	8,600
Interline received	212,400
Total	344,400

Milwaukee presented some general testimony predicting that it will probably lose much of its present Terre Haute division grain (corn) traffic to L&N's incentive grain rates and some other traffic attracted to L&N's proposed plan V piggyback rates. Milwaukee was unable to place any monetary value on the amount of this traffic that could be diverted. The record supports the fact that Milwaukee's participation in the movement of corn from the counties served by its Terre Haute line is relatively minor. If, in fact, there is any diversion of this grain traffic from Milwaukee, the impact would be slight.

As for the diversion of traffic due to L&N's proposed plan V piggyback rates, the evidence shows that there is a difference of opinion in Milwaukee's middle-management as to whether any traffic of this sort would be divertible. The manager of rail-highway sales believes that Milwaukee will not stand to lose much traffic or revenue if plan V rates are established from and to points directly north and west of Chicago, such as Milwaukee, Racine, Madison, and Beloit, Wis.; Libertyville, Rockford, and Freeport, Ill. Milwaukee's regional manager—sales at Chicago was not aware of any traffic presently moving on its line that would be susceptible to diversion because of plan V rates. Opposing views were submitted by two of Milwaukee's district managers—sales at Milwaukee, Wis. It appears that L&N's proposed plan V piggyback rates will have little impact on the traffic now handled by Milwaukee.

In 1968, Milwaukee had freight operating revenue amounting to $236.7 million. A gross revenue loss of approximately $344,000 would respresent less than two-tenths of a percent of Milwaukee's gross freight revenue. A loss of this amount, as a result of the merger of Monon into L&N, is insignificant and should not affect Milwaukee's service to the public.

Milwaukee trackage rights.—As indicated hereinabove and discussed in the appendix, the hearing examiner recommended approval of Milwaukee's request that, if the instant merger is approved, L&N be required to grant to Milwaukee trackage rights over Monon's line between Bedford and New Albany, Ind., and the

other rights and privileges necessary to enable Milwaukee to provide a through transportation service between all points and places on its lines and Louisville, via its present Terre Haute division, Monon and K&IT, through Bedford. The Milwaukee trackage rights are supported by Southern, 10-State regulatory agencies, the city of Terre Haute, and at least 37 shippers.

On exceptions, the applicants contend that before the conditions requested by Milwaukee can be imposed, Milwaukee must prove that its ability to render adequate transportation service to the public would be impaired by the merger. This contention rests on an erroneous view of the law. While it is true that a protesting competitor is not entitled to a guarantee against injury or an indemnity against all loss, it is equally true that our authority to modify a transaction through a conditioned grant is not limited to aid for railroads likely to be harmed by the transaction. In this regard Congress gave the Commission power it could utilize to establish a sound railroad structure, cf. *Erie-Lackawanna Railroad Co.* v. *U.S.*, 279 F. Supp. 316, 338, and see *Great Northern Pac.–Merger–Great Northern*, 331 I.C.C. 228, 280-281, affirmed in *Northern Lines Merger Cases, supra*, where, in discussing conditions requested by Milwaukee and C&NW, the Commission stated:

> Applicants have opposed those conditions in the belief that they were not necessary for the protection of those railroads, and that conditions to improve the position of applicants' competitors would be inappropriate in a section 5 proceeding. In view of the public interest criteria of section 5(2) and the goals of the national transportation policy there is no question of our power to improve the positions of carriers affected by a proposed merger.

In our opinion, the foregoing decisions are applicable to the situation here and definitely establish our jurisdiction to impose the conditions requested by Milwaukee if we find them to be required in the public interest, even though they may not be strictly necessary to the proper performance of its common carrier function by Milwaukee.

The applicants also contend that the trackage rights application will result in substantial diversion of traffic from L&N. Nevertheless, even on exceptions they do not contend that any diversion resulting from the trackage rights will impair L&N's service to the public. Actually, the only carrier raising any substantial question regarding diversion of traffic by reason of the trackage rights is Soo. Its contentions will be discussed shortly hereinafter.

On exceptions, the applicants also contend that Milwaukee could improve its service on the Terre Haute division without the trackage rights it requests and that public and shipper support for the Milwaukee is based on the false assumption that the trackage rights are the only way to secure improved service on the Terre Haute division.

We do not believe that the shippers and transportation regulatory agencies supporting the Milwaukee trackage rights were deceived by Milwaukee into supporting its request; a belief bolstered by the lack of any attempt at the hearing by L&N to cross-examine any of the supporters of Milwaukee other than the mayor of Terre Haute. Even Wabash Valley, the principal opponent of this merger, admits that if the merger is approved it should be conditioned by the Milwaukee trackage rights.

We agree with Milwaukee that it would probably be very difficult for that carrier to institute improved service over the Terre Haute division in the absence of the trackage rights it requests here. We can find nothing in the record to support a supposition that Monon has been a particularly friendly connection with Milwaukee at Bedford or elsewhere and we see little prospect for any greater degree of friendliness on the part of L&N after the merger. We can find nothing in L&N's brief following the hearing or in its exceptions to the hearing examiner's report that we can interpret as an offer to provide the friendly connecting service with Milwaukee and Southern which would make service improvements on the Terre Haute division feasible on the part of Milwaukee without the trackage rights it seeks.

The applicants also contend that Milwaukee's Terre Haute division cannot be operated efficiently and that the proposed trackage rights would be unprofitable. However, the hearing examiner found in his report that while the Terre Haute division is not capable of handling all types of cars, for example high-cube cars, and has maximum speed limits somewhat lower than the Monon main line, and the line needs rail replacement and replacement of ties on some points, nothing in essence is sufficiently troublesome to warrant a denial of the sought conditions; that Milwaukee is improving the condition of its ties through the application of a planned maintenance program, which was to have renewed 49,000 ties in 1969; and that there is nothing to indicate that the Terre Haute line would not be a safe line for the passage of the expedited train service which Milwaukee proposes to introduce. Nothing in the applicants' exceptions would warrant a reversal of the hearing examiner's findings in these respects.

The hearing examiner estimated that the cost of Milwaukee's proposed operation of two trains between Bensenville, in the Chicago area, and Louisville, via its Terre Haute division, Bedford and Monon, would exceed anticipated revenue therefrom by only $8,301. On exceptions, the applicants contend that the proposed operation would result in a much greater loss to Milwaukee.

One of the major differences between the applicants and the Milwaukee over the cost of the Bensenville-Louisville service lies in their respective estimates of the rentals which they contend Milwaukee could be expected to pay for the Monon track between Bedford and Louisville. Milwaukee originally estimated an annual rental of $40,018 for this track and the applicants estimated an annual rental of $341,640.

Milwaukee based its original estimates on a 5-percent return on investment on a valuation base of original cost plus additions and betterments of $2,332,071. Of this valuation, Milwaukee would assign 28.6 percent as rental to be paid for its trackage rights.[14]

The applicants' valuation of the trackage is based on their estimate of its cost of reproduction new less depreciation, at the rate of $156,000 per mile for 73 miles, or $11,388,000. This figure multiplied by a rate of return of 6 percent results in a total rental of $683,280 per year. One-half of the latter represents the $341,640 per year rental the applicants estimate Milwaukee would pay. The applicants developed the reproduction cost per mile of $156,000 from a study made by L&N of some of its main-line trackage near Tuscaloosa, Ala., in another proceeding.

The hearing examiner found that a valuation based on reproduction costs would approximate the cost of a new right-of-way which would be required if Milwaukee is not able to obtain the trackage rights they request. Accordingly, he used such costs as the basis for a reasonable rental but he based his valuation upon the valuation records of Monon rather than upon those of L&N. The valuation found by the hearing examiner for the Monon trackage was $7,216,143. A 6-percent return on this valuation, which we believe would be fair in view of the high-prime interest rates now prevalent, would produce a yearly rental charge of $432,969, of which a 28.6-percent payment by Milwaukee, based on usage, would produce an annual rental payment by Milwaukee of $123,829. This figure was used by the hearing examiner in estimating the cost of the trackage rights to Milwaukee.

[14] A total of seven trains would be operated daily over the trackage of which two trains would be Milwaukee's. Thus, Milwaukee's usage would represent two-sevenths of the total usage, or approximately 28.6 percent.

On exceptions, both the applicants and Milwaukee reiterated their positions regarding the valuation of the trackage but we agree with the hearing examiner's estimated valuation. The original cost basis urged by Milwaukee would not be justified because it does not provide for replacement value of the property, while using an L&N line involved in another proceeding in another locality as a basis for valuing the Monon line would not be warranted when the values can be obtained from Monon's own records. We believe that the rental figure arrived at by the examiner is reasonably adequate for this feasibility analysis.

Other items of cost to Milwaukee in operating the trackage rights were estimated by the hearing examiner to be: Making up of Milwaukee trains at Bensenville, $81,008; switching of cars between Milwaukee and Southern at Louisville, $248,274; line-haul cost for Milwaukee trains between Bensenville and Louisville, $1,005,232; Milwaukee's share of maintenance expenses on the Bedford-Louisville line, $130,742; cost of added employees required at Bedford to dispatch and control Milwaukee's trains, $16,784; other costs, including crew costs, interest, loss and damage, and other direct costs, $555,509, for total annual costs of $2,268,301, as against anticipated annual revenues of $2,260,000.

On exceptions, Milwaukee contends that instead of incurring a cost of $81,008 in making up trains at Bensenville, it will actually save at least $178,526 by eliminating the interchange with L&N at Chicago. However, the interchange referred to is not associated with making up the proposed trains at Bensenville and it would be improper to assign the interchange savings as a credit against the cost of making up the trains.

Milwaukee also contends that its costs should not include the $16,784 shown for added employees at Bedford. There is no doubt that Milwaukee's use of the Monon trackage between Bedford and Louisville will require additional employees at Bedford to control its access to the trackage. We believe this item of cost is near enough to what the expense of additional employees would be that we can accept it as a reasonable element of the hearing examiner's estimate of the cost to Milwaukee of the trackage rights operation it proposes. We find that the hearing examiner's estimate of costs and revenues is adequate for the purposes of this report and it is affirmed.

As previously stated, the only carrier with substantial objections to the trackage rights on the ground of diversion of traffic is Soo, whose position is described in the appendix. This carrier does

not object to the merger itself. It objects only to Milwaukee acquiring the Bedford-Louisville trackage rights, as granted by the hearing examiner.

On exceptions, Soo reiterates its objections to the Milwaukee trackage rights and contends that in the event the trackage rights are granted they should be deferred until we have decided the C&NW-Milwaukee merger application in Finance Docket No. 24182.[15] Soo also contends that the trackage rights, if granted, should be conditioned to require Milwaukee to negotiate in good faith with Soo and grant Soo such operating rights, physical access to industry, coordinations or similar rights as may be necessary to neutralize Soo's revenue losses and to fully indemnify Soo against any and all damage through traffic diversions attributable to the Milwaukee trackage rights. Additionally, Soo contends that we should also retain jurisdiction to receive evidence in the future of any additional damage to the Soo attributable to the trackage rights. In the event a new application in the C&NW-Milwaukee merger is filed, Milwaukee's trackage rights in the instant proceeding would, of course, be an added factor for consideration of the public interest for that merger, but, as matters stand now, the question of a C&NW-Milwaukee merger is moot, as we have previously indicated.

In support of its objection to the Milwaukee trackage rights and its request for conditions in the event the trackage rights are granted, Soo, principally through the testimony of a witness, who is its assistant vice president—traffic, introduced a diversion study into this case to show an alleged annual diversion loss of $450,449, before adjustment, arising from the Milwaukee trackage rights condition from Bedford, Ind., to Louisville, Ky. Milwaukee countered with a diversion study of its own, allegedly finding gross overestimates in the Soo study and setting the diversion at the much lower figure of $50,128.

In dealing with these widely differing conclusions, the hearing examiner disposed of the matter with the general comment that:

> While Milwaukee's estimate of possible diversion appears extremely low, Soo's appears too high. The amount of possible diversion would appear somewhere in between the extremes.

Milwaukee criticizes this finding as too vague, fearing that such a general conclusion would receive the same treatment in a court of law as occurred in *Chicago & N. W. Ry. Co.–Merger*, 330 I.C.C.

[15] See footnote 12.

13. In that proceeding, the Commission made the threshold observation that the diversion would be "somewhere between" $13,000 and $1,700,000 annually, which a special U. S. District Court erroneously interpreted to be a pivotal Commission finding, and then held that such a broad conclusion amounted to "no finding at all." See *Soo Line R. Co. v. United States*, 280 F. Supp. 907, 918 (1968).

While the spread between competing estimates is not as extreme in this particular proceeding, our analysis of the Soo diversion study results in identification of a narrower range than the "somewhere in between" finding reached by the hearing examiner.

As background for later specific analysis of the Soo study, a few general comments are necessary.

The general structural characteristics of the Soo study are significant. There are five major progressive levels used in the study to arrive at the cars Soo considered divertible. These levels are: Soo's actual traffic, a frame constituting 57 percent of that traffic, a random sample of the frame, a subsample of the random sample, and finally a set of cars adjudged divertible from that subsample.

The study is based on Soo's traffic during the period December 1, 1964-November 30, 1965, but the frame from which the study sample was drawn amounted to only about 57 percent of Soo's traffic in the period. To qualify for the frame, a movement had to satisfy a lengthy list of criteria including, for example, the proviso that Soo originated or terminated traffic had to be originated or terminated at points served by C&NW and/or Milwaukee. The frame, thus constituted, contained about 280,000 cars.

From the frame a random sample was drawn, whose size of 7,201 cars was determined by Soo largely on the basis of desired statistical error properties developed in prior merger cases.

From the random sample all cars satisfying the criteria of origination or termination in States east of the Mississippi River and south of the Ohio River (including Virginia), and apparently some further criteria, were considered as a subsample for further diversion study. A total of 635 cars constituted this subsample.

Within this subsample a list of guidelines was used to arrive at a final set of 144 cars upon which various degrees of diversion, ranging from 40 to 100 percent, were adjudged likely. The major criterion, among many, for inclusion in this group was that the car terminate or originate on either Southern or the Central of Georgia Railway Company (COG).

These car-by-car diversion estimates were then adjusted, principally to reflect rate increases (8 percent applied to each car's unadjusted diversion estimate) and increased volume of traffic handled by Soo since the time of the study originating on Southern or COG (25 percent applied to such traffic).

We assume that Soo made the largest estimate of diversion which it felt could be reasonably defended.

There are many areas in which Soo seems to have overstated its likely diversion estimates. It is these areas that receive our specific attention in the following analysis.

We have conducted a detailed car-by-car review of the 144 cars adjudged by Soo as subject to diversion. The ultimate reasons given for diversion in the Soo study amount to the end product of passing through a filter procedure described in general terms above. The outcome is that each car has its own complex set of reasons given by Soo for its divertibility.

As with any collection of justification, some of our reasons for disagreeing with Soo are firmer than others, and we could arrange a collection of them along a continuum involving more and more subjectivity. To avoid becoming too subjective, we have focused only upon a relative few of what we consider strong reasons for doubting the Soo diversion judgments. These reasons are discussed below.

(1) *Admitted errors.*—There are three cars upon which Soo's witness admitted during cross-examination that mistakes had been made or else indicated further considerations that would make the car not relevant to the study of the proposed Milwaukee condition's effects. In one case, the situation involved a car (Stratum 5-7, Key No. 13617) which moved from a point now served only by the C&NW, so that "the Soo, irregardless [sic], for the future is precluded from participating in this traffic." Since admittedly lost for other reasons, this car is not relevant to the effects of the subject conditions. The second car (Stratum 5-7, Key No. 14005) involved a stopoff at Nashville, not served by Southern (only by L&N), and thus would not, in the Soo witness' words, "be susceptible to the Louisville gateway routing." Finally, there was a car (Stratum 7-7, Key No. 14674), which did not involve either a Southern or a COG termination, about which the witness said, "I am going to concede very promptly * * * that there is an error here * * * under my guidelines it has been improperly coded." The following table summarizes some relevant information about these three cars.

Cars subject to admitted errors

Stratum	Key No.	Commodity	Origin	Destination	Soo projected annual loss[1]
5-7	13617	Paper	Neenah, Wis.	Chattanooga, Tenn.	$1,716.95
5-7	14005	Refrigerators	Manitowoc, Wis.	Columbus, Ga.	1,469.29
7-7	14674	Plywood	Columbia Junction, Wash.	Atlanta, Ga.	11,431.02
			Total		14,617.26

[1]These figures, though annualized, are unadjusted for the overall 8-percent and 25-percent increases described above.

(2) *No Milwaukee common points.*—Of cars originated or terminated by Soo, the Soo witness considered as divertible only those originated or terminated at points served by Milwaukee and/or C&NW. The assumption behind the inclusion of C&NW in this consideration was the anticipated resolution of the Milwaukee-C&NW merger proceeding. Given the present status of this merger case, however, it seems inadvisable to predicate diversion estimates entirely on this basis.[16] In particular, two cars considered divertible by the witness on his assumptions originate at points served by both C&NW and the Soo but *not* the Milwaukee. These two cars should thus be eliminated from the divertible traffic estimate, and are summarized in the table below. It should be noted that the first of the two cars had previously been covered in the group of admitted errors.

Cars not served by Milwaukee common point

Stratum	Key No.	Commodity	Origin	Destination	Soo projected annual loss[1]
5-7	14005	Refrigerators	Manitowoc, Wis.	Columbus, Ga.	$1,469.29
5-8	02177	Paper	Rhinelander, Wis.	Greenville, S.C.	4,598.32
			Total		6,067.61

[1]These figures, though annualized, are unadjusted for the overall 8-percent and 25-percent increases described above.

(3) *The witness' projected route inferior.*—The major ultimate justification for the diversion judgments of Soo's assistant vice

[16]See footnote 12.

president—traffic involved the better service that could be offered via the Louisville gateway by a Milwaukee-Southern combination. This superior service was said to result from two factors, shorter distance and/or fewer railroads involved. In examining in detail each car, we have determined that for a number of cars, the Soo witness' projected routing via Milwaukee and Southern is actually inferior, or no better, in *both* respects to the routing which the car actually took. These cars do not seem to be justifiable for inclusion as divertible in the Soo estimate. We note that no improvement in *both* aspects, used by us in making our judgments, is probably conservative, since in some cases a very substantial increase in distance was not used in discounting the diversion estimate simply because there were fewer railroads involved in Soo's projected routing.[17] Undoubtedly, some of these longer routes would not prove attractive diversion possibilities in actual practice.

Since there is some controversy about whether the Southern and COG should be considered as one railroad for the purposes of this diversion study, we separated this section into two groups of cars, those which prove inferior in Soo's projected routing even if the two are considered as one railroad, and those which prove inferior if they are considered separate. We believe that the two railroads should properly be considered separate for the particular application here, which is an analysis strictly in terms of service potential, and does not depend on managerial favoritism and such other factors as would presumably be affected by ownership and other ties between two railroads.[18]

The following table gives information on these cars on this separated basis.

[17]For example, the Milwaukee used a consolidated criterion of calculated elapsed transit time which would lead to much greater estimates of nondivertible traffic.

[18]It is interesting that for the purposes of its study, Soo considers Southern and COG as one road, but would consider the L&N and SCL as "two separate corporate identities." While Southern undeniably owns a greater share of the COG (99 percent) than SCL owns of the L&N (38 percent), both situations involve separated corporate identities. At the least, Soo's desire to consider the SCL and L&N as separate railroads expresses an implied recognition that it is service potential and not managerial favoritism which is relevant to the diversion estimates in this particular application.

Soo's projected Milwaukee-Southern routing no better than routing actually followed

Stratum	Key No.	Commodity	Origin	Destination	Soo projected annual loss[1]
A. *Considering COG and Southern as one railroad*					
7-2	01880	Muriate Potash	Kalium, Sask.	Augusta, Ga.	$3,556.[illegible]
7-2	06454	Lumber	Exeter, B.C.	Alexandria, Va.	3,203.[illegible]
7-2	06546	Peat	Shelley, Man.	Winston-Salem.	2,359.[illegible]
7-2	09204	Potass. Chlor.	Yarbo, Sask.	Albany, Ga.	2,149.[illegible]
7-2	10939	Potass. Comp.	Kalium, Sask.	Vertagreen, Ala.	6,425.[illegible]
7-2	10945	do	do	do	6,449.[illegible]
7-2	16382	Lumber	Greenwood	Springfield, Va.	3,215.[illegible]
7-2	20275	do	Princeton	Haleyville, Ala.	2,641.[illegible]
7-13	01826	Furniture	Morgantown	Vancouver, B. C.	2,851.[illegible]
				Subtotal	32,853.[illegible]
B. *Considering COG and Southern as two railroads*					
5-1	00370	Steel Roofing	Milwaukee	Thomas, Ala.	418.[illegible]
6-7	01685	Clay	McIntyre, Ga.	Neenah, Wis.	1,761.[illegible]
6-7	02881	do	Sandersville	Wis. Rapids	2,361.[illegible]
6-7	04785	do	do	do	2,579.[illegible]
6-7	04786	do	do	do	2,466.[illegible]
6-7	07083	do	do	do	4,031.[illegible]
6-7	09283	do	do	do	4,027.[illegible]
6-7	11545	do	do	do	4,140.[illegible]
6-7	11547	do	do	do	3,985.[illegible]
6-7	11555	do	do	do	2,425.[illegible]
6-7	18853	do	do	do	3,874.[illegible]
6-7	18863	do	do	do	4,115.[illegible]
6-7	22674	do	do	do	2,427.[illegible]
7-5	01098	Lumber	Giscomb, B.C.	Ellaville, Ga.	1,772.[illegible]
7-5	09669	do	Hixon, B.C.	do	1,454.[illegible]
7-11	01865	Clay	Gordon, Ga.	Brainerd, Minn.	5,514.[illegible]
7-11	04195	do	do	do	9,529.[illegible]
7-12	01062	do	McIntyre, Ga.	Cloquet, Minn.	2,870.[illegible]
7-12	01713	do	Sandersville	Grand Rapids.	2,326.[illegible]
7-16	08411	Toilet Paper	Tomahawk	Columbus, Ga.	504.[illegible]
7-16	14736	Fibre Board	Wis. Dam	East Pt., Ga.	894.41
				Subtotal	63,483.61
				Total	96,337.44

[1] These figures, though annualized, are unadjusted for the overall 8-percent and 25-percent increases described above.

(4) *Effects of merger itself.*—By concentrating its attention on the Milwaukee trackage rights condition to the merger, the Soo has neglected the possible compensating effect of the merger

itself.[19] Milwaukee pointed out this fact and even went so far as to say that the trackage rights condition would actually help Soo and expressed dismay that the Soo study dealt with a condition of the merger and not the merger itself. While we cannot subscribe to the notion that the trackage rights condition will help Soo, nor can we endorse Milwaukee's implication that conditions to mergers are not as acceptable subjects for diversion studies as the mergers themselves, we do agree with the general proposition that Soo should have considered the compensating effects of the merger as a possible offset to the diversion occasioned by the Milwaukee trackage rights condition.[20]

We analyzed each car in the 144 Soo considers divertible from this perspective. We consider as nondivertible only those cars which, after the merger, could have a Soo-L&N routing superior to Soo's proposed Milwaukee-Southern routing (using the same two criteria of distance *and* number of railroads involved), and which, additionally, would not necessarily involve any handling by either COG or Southern. Undoubtedly, these two specific conditions, and particularly the latter, would tend to underestimate the amount of traffic which could reasonably be expected to be protected from diversion by an anticipated stronger relationship between the enlarged L&N and Soo, but these barriers have been imposed, once again, in the effort to close out areas of even greater subjectivity from consideration. Soo's witness himself admitted that where the L&N or SCL "have some influence competitively at that particular point, let's say a common point or industry," that that fact would help to prevent diversion from the Soo, and that where a consignee was served by L&N or SCL, "I think my diversion estimate would be changed." The following table summarizes information on cars meeting the above criteria.

[19] This possibility is highlighted by the fact that in its diversion study of the effects of the *merger* on itself Milwaukee Calculated some losses from itself to Soo as a result of L&N's entrance to Chicago.

[20] Soo's witness stated that he did not anticipate any improvement in the Soo-L&N interchange "in connection with making these judgments." Nor would he consider L&N-Soo a natural competitive route for traffic in his 144 divertible cars. He later confessed that he did not know if an L&N-Soo route via Chicago would be comparable or not to a Milwaukee-Soo route via Louisville.

Superior Soo-L&N routing

Stratum	Key No.	Commodity	Origin	Destination	Soo projected annual loss[1]
5-7-----	09897----	Paper--------	Neenah, Wis--	Athens, Ga----	$808 [illegible]
5-7-----	15203----	Bars or Rods--	Minneapolis, Minn.	Atlanta, Ga----	1,394 [illegible]
6-7-----	03429----	Pulpboard----	Savannah, Ga-	Wis. Rapids---	1,936 [illegible]
6-7-----	03431----	---- do------	---- do------	---- do-------	1,951 [illegible]
6-7-----	05461----	---- do------	---- do------	---- do-------	1,362 [illegible]
6-7-----	17613----	---- do------	---- do------	---- do-------	1,643 [illegible]
7-2-----	20254----	Lumber------	Quesnel, B. C-	Chattanooga---	2,548 [illegible]
7-5-----	03828----	---- do------	Chemainus, B. C.	---- do-------	1,277 [illegible]
				Total----------	13,022 [illegible]

[1] These figures, though annualized, are unadjusted for the overall 8-percent and 25-percent increases described above.

(5) *Southern would not maximize haul.*—During his cross-examination, Soo's witness continually relied on the increased agressiveness of Southern in trying to obtain its longest haul as a major rationale for diversion of traffic from the Soo with the imposition of the Milwaukee trackage rights. For example, he made reference to the fact that since the Soo study period (December 1964-November 1965), "the Southern has tightened up very, very substantially on traffic off the old Central of Georgia in seeking its long haul." Later he insisted that "As opposed to 1965, I am sure that we find in 1968 and 1969, that wherever Southern equipment, or practically wherever Southern equipment is being furnished for clay loading they have disciplined both shippers and receivers by insisting on their long haul * * *. The Southern Railway, like any other railroad, is simply not going to stand for investing equipment—investing money in equipment and not obtaining a maximum haul on it * * *." These and similar statements by the witness avowing the Southern's objective to maximize its haul, as well as the admitted importance of an aggressive Southern in aiding any diversion from Soo, are difficult to reconcile with many of the Soo witness' diversion estimates wherein his projected route via Southern-Milwaukee would actually give the Southern (including COG) a shorter total haul than at present. Since presumably these cases would involve a disincentive for Southern to solicit a change in present routing,

there seems to be ample justification for disallowing the diversion estimates in these instances.[21]

There are many cases in which the Southern (plus COG) haul would be unchanged by Soo's projected routing as opposed to actual routings. Although the incentive for Southern efforts to effectuate rerouting would appear to be negligible on this basis,[22] we consider nondivertible, in the interests of conservatism, only those movements in which Southern (plus COG) would have to sustain an actual distance *loss* under Soo's projected routing.[23] In the 20 movements which we have found nondivertible on this basis, for example, the Southern (plus COG) would have to accept a distance loss of 11.8 percent from the actual to follow Soo's projected routing. Milwaukee suggests that on 12 of these 20 cars Southern would have to sustain an annualized loss of over $20,000.

The following table summarizes information on the 20 cars in this group.

[21] The Soo witness stated that his interpretation of the statement of the president of Southern led him to believe that the Louisville gateway-Milwaukee-Southern routing would be solicited "very aggressively" by Southern despite the disincentive. This interpretation is to be doubted. Despite Southern's stated intentions to solicit actively for a Milwaukee-Southern route via Louisville (see appendix), we do not believe that Southern seriously intends to solicit short hauls for itself. If it does deliberately intend to minimize its traffic revenues thereby, then it has no standing to complain of any diversion of traffic through the merger of Monon into L&N.

[22] Except insofar as other conditions might predominate, as for example, the establishment of friendly relations with the Milwaukee.

[23] It should be noted that such a distance loss is not the sole criteria for judgment, however. For example, in some cases this condition is present, yet Milwaukee agreed with Soo that some diversion would occur. Such movements, of course, were not held nondivertible in our assessment. These criteria are a good deal more strict than Milwaukee's reason for nondivertibility based on Southern and COG already being short hauled. This argument concludes that since Southern was short hauled in the actual routing, there is an indication that its influence over the routing would be so minimal as to be incapable of causing diversion. To be valid this line of reasoning depends upon the further assumption that Southern has not gotten any more powerful or eager to develop long hauls since the time of the diversion study. We grant the possibility of this development, but believe that even if this power has been increasing, it would only serve to penalize themselves for Southern to exercise it in many instances.

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Southern (plus COG) would not maximize haul

Stratum	Key No.	Commodity	Origin	Destination	Soo projected annual loss[1]
5-1	00656	Tractors	Milwaukee, Wis.	Chamblee, Ga.	$553.34
5-7	01570	Cereals	Minn. Transfer, Minn.	Chattanooga, Tenn.	2,653.07
5-7	15203	Bars or Rods	Minneapolis, Minn.	Atlanta, Ga.	1,394.59
7-2	01530	Lumber	Westley, B.C.	Shelby, N. C.	2,401.00
7-2	01540	do	Quesnel, B.C.	Spartanburg, S. C.	2,173.82
7-2	02821	do	Savona, B. C.	Alexandria, Va.	2,301.12
7-2	08695	do	Williams Lake, B. C.	Greensboro, N. C.	3,079.91
7-2	12713	Woodpulp	Dryden, Ont.	Pisgah Forest, N. C.	5,547.49
7-2	18324	Lumber	Princeton, B.C.	Louisville, Ky.	2,658.20
7-2	20254	do	Quesnel, B.C.	Chattanooga, Tenn.	[2]2,548.53
7-2	20273	do	Passmore, B.C.	Bristol, Tenn.	3,510.76
7-2	21850	do	Prince George, B. C.	Johnson City, Tenn.	1,963.62
7-5	00590	Paper	Cloquet, Minn.	Memphis, Tenn.	3,614.73
7-5	03828	Lumber	Chemainus, B. C.	Chattanooga, Tenn.	[2]1,277.17
7-5	05718	Woodpulp	Watson Island, B. C.	Rock Hill, S.C.	741.75
7-5	06805	do	do	do	718.25
7-5	07817	do	do	do	796.60
7-7	03621	Potatoes	Crystal, N. Dak.	Birmingham, Ala.	5,456.73
7-11	01721	Stoves or ranges.	Cleveland, Tenn.	St. Louis Park, Minn.	3,064.24
7-13	01826	Furniture	Morganton, N.C.	Vancouver, B. C.	[2]2,851.15
				Total	49,306.07

[1]These figures, though annualized, are unadjusted for the overall 8-percent and 25-percent increases described above.

[2]Cars previously discounted for other reasons.

The following table presents a summary tabulation of the traffic found nondivertible on the above criteria, unadjusted. The total figure of $171,204.62 would correspond, if adjusted by the 8-percent general increase and the 25-percent increase on traffic originating in the South, to about $200,000 as compared to Soo's adjusted overall figure of a little over $580,000, thus leading to a revised diversion estimate of about $380,000.

Summary of nondivertible traffic

Reason	Total Soo projected annual loss	Number of cars
(1) Admitted errors	$14,617.26	(3)
(2) No Milwaukee common point	6,067.61	(2)
(3) Soo's projected route no improvement	96,337.44	(30)
(4) L&N merger effects	13,022.38	(6)
(5) Southern would not maximize haul	49,306.07	(20)
Subtotal	179,350.76	(63)
(Less repetitions)	(8,146.14)	(4)
Grand total	171,204.62	(59)

There are other factors tending to aid Soo in preventing traffic diversion to the Milwaukee which we feel are potentially important but not as readily susceptible to objective analysis. Mention is briefly made here of three such factors as illustrative of the potential impact of these additional influences.

The first such factor is the effect of the historical ownership relationship between CP and Soo. Milwaukee has attempted to make a great deal of this relationship, even to the extent of trying unsuccessfully to submit two old history books into the record, and its argument is not completely without merit. To the extent that CP has any control over the routing of the 144 cars in question, Soo would have additional power to resist any diversion attempts. The potential impact of this factor can be appreciated by the fact that of the 25 cars on which diversion was claimed in Stratum 7-2 alone, all 25 passed from CP to Soo, and all but 7 originated on CP. In the entire sample of 144 cars, 28 cars were handled at some point by CP.

A second potentially important counter to diversion is the use of Soo's specialized cars. This factor is particularly hard to evaluate because in general there is nothing to prevent another railroad from substituting its own specialized equipment. An interesting illustration of this difficulty is contained in the list of reasons given by Milwaukee in its reassessment of the Soo study for judging a car to be nondivertible from Soo. One reason on this list, for example, indicates the utilization of Milwaukee or C&NW equipment without either railroad being favored with a line haul, the shipper electing instead to choose Soo. Another reason, on the other hand, indicates that Soo equipment was used "which would tend to protect Soo Line in future participation of movement." The specific difficulty in the Milwaukee reasons, namely, that in one case use of a railroad's equipment does not prove much help

in obtaining a line haul, but in another is supposed to provide protection against diversion, is a general reflection of the unavoidable subjectivity in this area.

Another possible factor in diversion possibilities on which we will not make definitive findings—as being too subjective—is the relationship of the shipper and receiver companies. The potential effects of such a relationship can be appreciated by the dual facts, for example, that Soo's board of directors includes the president of a paper company which in turn was the consignee on 29 cars and consignor on 1 car in the Soo diversion study. On these 30 cars Soo claimed a total diversion before adjustment of nearly $100,000 of the $450,499 total, or 21.6 percent.

Another example of a relationship to a consignee involves a company to whom Soo leases property in Minneapolis. There are four cars in the sample with this company as apparent consignee, representing a total unadjusted Soo diversion estimate of $6,391.-20.

These and other more or less subjective factors could substantially reduce Soo's diversion estimates still further.

After careful analysis of each car which the Soo line considered divertible, we discount for substantial reasons $171,205 of the total unadjusted diversion estimate of $450,499, corresponding to about $200,000 of the approximately $580,000 adjusted estimate. Thus, at a reasonable *maximum*, we find that Soo could lose about $380,-000 as a result of the Milwaukee trackage rights, which would represent less than four-tenths of 1 percent of Soo's total freight revenues of $103,390,409 in 1969. We conclude that this relatively insignificant loss is not in itself sufficient to justify a denial of the trackage rights condition requested by Milwaukee or to warrant granting the protective conditions demanded by Soo.

Although, as indicated by the foregoing, the trackage rights may result in a slight diversion of traffic from Soo and the proposed movement of freight under the trackage rights will be, initially at least, a marginal operation, we are still of the opinion that the trackage rights condition requested by Milwaukee should be granted in accordance with the hearing examiner's recommendation. As time goes on, it is probable that Milwaukee will acquire additional traffic for its new route, which should earn increased revenues to contribute toward the burden of its operation. This additional traffic will be attracted by the faster service to be provided interterritorial traffic by the operation of the two trains between Bensenville and Louisville, and traffic from Midwest points on

Milwaukee to the Southeast will probably be attracted by the possibility of avoiding time-consuming switching movements in the Chicago area. This new traffic would, of course, assist in meeting the cost of upgrading the Terre Haute division through the additional revenues which would be realized. L&N should also realize some benefits from the rentals earned from the movement of Milwaukee trains over the Bedford-Louisville segment of Monon's track.

Our principal purpose in granting the Milwaukee trackage rights request is to provide for a new competitive route between southern points and Chicago. Heretofore a large, rapidly growing area of the South has been served through interline arrangements at the several gateways, including Evansville, Louisville, and Cincinnati. For a substantial part of the area, the route via Louisville provides the most direct access to and from Chicago; and many shippers and localities therein are wholly dependent upon Southern for rail transportation, while others have available both L&N and Southern. Under these circumstances, absolute domination of the Louisville gateway would accord L&N an undue competitive edge which could be used to the detriment not only of the Southern but also the shippers, industries, and localities it serves. A proficient Milwaukee-Southern route would tend to offset such anticompetitive effects. In addition, the improved service and widened market area such a route could provide should foster the development of the territory along the Milwaukee-Terre Haute division in much the same way as we anticipate L&N's service will affect the territories of the Evansville line and the Monon. Moreover, we look to the availability of the service between the Milwaukee-Southern combination to stand as a deterrent to any letdown by L&N after gaining control of the two lines (Monon and Evansville) which previously were to some degree competitors.

We believe that if Milwaukee is willing to run the risk of incurring a slight loss for a few years by operating a new service between Bensenville and Louisville, the public interest requires that it be given the opportunity of doing so. Having once assumed operation under the trackage rights, Milwaukee may not, of course, abandon such operations without our express permission under the provisions of section 1(18) of the act. Accordingly, *condition No. 3*, hereinafter imposed, will grant the trackage rights condition essentially as requested by Milwaukee and as recommended by the hearing examiner. The condition will provide that the terms of the trackage rights be negotiated by L&N and Milwaukee or, if

they are unable to come to an agreement, the terms will be set by this Commission. The rentals for the trackage rights are to be negotiated on the basis of the track valuation which the hearing examiner found to be equitable; i.e., in the neighborhood of $7.2 million and allocated on a user basis, preferably (if feasible) on actual counts of locomotives and cars using the trackage involved. Otherwise, we will leave the terms of the trackage rights and related agreements to the parties' negotiations with the admonition that, since we view the formation of the competitive Milwaukee-Southern route as a necessary correlation to the L&N's acquisition of the Evansville and Monon routes, terms for the Milwaukee trackage rights could not be considered just and reasonable if they were to be so onerous as to defeat the purpose of *condition No. 3.*

Southern.—As discussed in the appendix, Southern claims that the merger of Monon into L&N will result in a substantial diversion of traffic and revenues from the Southern system. Southern supports the Milwaukee trackage rights condition and believes that the new route thus created will generate considerable traffic that is not now rail oriented. Southern claims that it would be willing to acquire Monon were L&N to decline to do so because of the imposition of the Milwaukee trackage rights condition *(condition No. 3).*

As a condition to approval of this merger, Southern asks that L&N be required to indemnify K&IT, of which Southern is a one-third owner, against liability for any and all labor claims by K&IT employees who may be affected adversely in the employment as a result of the merger. The hearing examiner agreed with Southern that K&IT employees might assert claims against their employer more extensive than the protection afforded by the conditions we have imposed and found that Southern's requested condition merits approval.

L&N excepts to the imposition of an indemnity condition along the lines requested by Southern on the grounds that K&IT should not have unbridled discretion to reach agreements with employees on terms more generous than those agreed to by L&N and expect L&N to bear the expense. Southern replies that it would be unfair for the other owners of K&IT to pay claims of labor as a result of the L&N-Monon merger. We agree with L&N. K&IT's employees affected by the merger will, as hereinafter discussed, be entitled to receive exactly the same protection from the adverse effects of the merger as the employees of the applicants. If K&IT employees were to obtain any additional benefits, it could not be attributed to the merger. Southern and Monon (L&N)—both beneficiaries under the merger as approved—constitute a majority of K&IT's ownership, and with cooperation *inter se*, they should be able to work toward uniform protection for all affected employees. The third owner of K&IT (B&O) has not requested indemnity and we believe that Southern will realize enough advantage from the new route afforded by the Milwaukee trackage rights to absorb any possible expense that it might incur as the part owner of K&IT in paying employee claims. Southern's request for a condition indemnifying K&IT from loss on account of employee claims is denied.

In connection with its contention of substantial traffic diversion, Southern conducted a study to determine the amount of traffic that would be diverted from its system as a result of (a) the proposed L&N-Monon merger, (b) L&N's acquisition of the Evansville-Chicago line, and (c) the combined effect of the dual entry of the L&N system into Chicago. All traffic interchanged with other lines through Southern's Ohio River junction on movements between the southeast and points north and northwest of the junctions for the year 1968 was included in the study. A sample was drawn according to established and acceptable probability sampling techniques. Traffic at each gateway was divided into forwarded, intermediate, and received categories. There were 2,409 cars included in the sample, of which 67 were found to be divertible by Southern's traffic witness. On an expanded basis, revenue from these 67 cars represented a gross annual loss of $1,068,025 to the Southern system.

Southern's traffic witness considered several factors that normally influence the routing of traffic while making his evaluation as to whether a sample car was susceptible to diversion. These factors included: the ability of the L&N and SCL family lines to furnish single-line service to and from the points involved; whether the origins and/or destinations would be local points on the L&N and SCL family lines; the perishable nature of the freight; the furnishing of special equipment; any rate advantage that would result from the L&N acquisitions; whether the movement was piggyback; whether the traffic originated or terminated at local points on Southern's lines; whether a shipper was served by a Southern team track or located on Southern and closed to switching; the custom of certain shippers to divide their traffic; Southern's past relations with shippers; and distances over Southern's routes as opposed to L&N's routes. The factor that had the most influence in determining if a shipment would be diverted was

L&N and SCL family lines' ability to furnish alleged single-line service to and from the points involved.

Southern's traffic study shows that 29 sample cars were found to be divertible due to the proposed L&N-Monon merger, accounting for an estimated gross revenue loss of $679,269. Of these 29 cars, 19 were intermediate to Southern with interchange at Louisville, Ky., and 1 at New Albany, Ind.; 7 were received at Louisville and terminated on Southern; and 2 cars were originated by Southern and forwarded at Louisville. One of the seven sample cars received by Southern at Louisville, representing expanded revenues of $19,571, originated on Penn Central at Chicago and terminated on the Southern at Atlanta, Ga. No other railroad was involved in the movement. The record thus strongly suggests that Penn Central's and Southern's combined solicitation powers as originator and terminator will be strong enough to retain control over this movement after the proposed merger. Thus, deducting the revenue for this shipment from the total loss attributed to the proposed merger, we estimate gross revenue loss to Southern of $659,698.

The second group of traffic found to be divertible by Southern is attributable to L&N's acquisition of the Evansville-Chicago line. In this category 27 sample cars were found to be affected, of which 13 were intermediate to Southern with connection at Princeton, Ind., and 8 at Evansville, Ind.; 5 were forwarded by Southern at Princeton; while 1 car was received at Evansville and terminated on Southern. These shipments represented a revenue loss of $110,-062.

All five sample shipments forwarded by Southern at Princeton were originated on Southern's system at either Mead or Krannert, Ga. The cars contained paperboard being shipped from two Georgia plants to a plant at Evansville. The consignee is a co-owner of the consignor.[24] Southern believes that these cars were routed through Princeton in order to give the delivering carrier, C&EI, a line haul. By acquiring the Evansville-Chicago line, Southern asserts that the L&N will become the delivering carrier and be able to short haul Southern from Chattanooga, Tenn.

Admittedly, the present routing via Princeton involves substantial circuity compared to the projected L&N route from Chattanooga. However, the record shows that the Southern system is the only railroad which serves the cities of Mead and Krannert. Being the only railroad available and the originator of the traffic,

[24] Further, the consignee is obligated to purchase 50 percent of the consignor's output.

Southern has a measure of control over these shipments which would enable it to resist diversion attempts. It is impossible to know how much influence these factors may have, but at least some portion of the $39,582 should reasonably be subtracted from Southern's estimated loss of $110,062, leaving a gross revenue loss of between $70,480 and $110,062 due to L&N acquisition of the Evansville-Chicago line.

The last category of traffic found to be divertible by Southern is attributable to L&N's dual entry into Chicago over the Evansville-Chicago and Monon lines. A loss of $278,694 was estimated for this group of traffic. Eleven sample shipments were found to be divertible; 6 were intermediate to Southern with interchange at Cincinnati, Ohio; while 5 were cars forwarded by Southern at the same junction.

Four of the cars forwarded by Southern originated on its line at Columbus, Ga., and moved to Chicago Heights, Ill., via C&O with interchange at Cincinnati. At one point Southern's witness estimated that SCL's route from Columbus would be about 75 miles more circuitous than Southern's and later that the SCL routes would be "substantially greater in mileage." Southern's witness stated that his two primary reasons for considering this traffic subject to diversion were "supposed coordinated service of the SCL, L&N, Monon, or C&EI" and the inability of Southern-C&O to handle high-cube trailers except on special flatcars. However, he also admitted that he had not made a comparison of the existing transit time via C&O-Cincinnati with proposed times via the L&N or SCL, Monon or C&EI, despite the further admission that speed in transit is a highly important consideration in piggyback service such as this. He further confessed that he did not know whether the shipper in question would ever use the high-cube trailers or not. These substantial doubts in addition to Southern's role as the originating carrier and its shorter route all suggest the unlikelihood that this traffic will be diverted. The four sample cars when expanded represented revenue in the amount of $107,-062. Deducting this amount from the total $278,694 estimated loss for this group of traffic leaves an estimated annual gross revenue loss of $171,632.

Summarizing the results of our analysis of Southern's traffic study, we conclude that Southern's gross annual revenue losses from traffic diversion will not exceed the following:

Loss attributed to L&N-Monon merger	$659,698
Loss attributed to L&N's acquisition of Evansville-Chicago line	70,480-110,062
Loss attributed to L&N's dual entry into Chicago	171,632
Total	901,810-941,392[25]

Southern did not conduct a study in order to determine the reduction in expenses due to the loss of this traffic. Therefore, it is not possible to ascertain the net effect on Southern's revenue. However, Southern is a strong and viable railroad and a gross revenue loss from about $902,000 to $941,000 will not affect its service to the public. Furthermore, as Southern itself argues, there will be a compensating effect with the Milwaukee trackage rights condition against any losses Southern might incur: "* * * there is sufficient traffic potential between the Southeast and points beyond Chicago to make the proposed Milwaukee-Southern connection an extremely important route, and the greatly improved service will generate considerable traffic that is not now rail oriented."

C&NW.—Like DT&I-Ann Arbor, C&NW contends that the merger of Monon into L&N will divert traffic from its lines and it also requests special conditions to protect itself against merger-caused injury. The hearing examiner found that traffic would not be diverted from C&NW sufficiently to impair or significantly affect its ability to provide adequate transportation service to the public. He concluded that the standard conditions we have imposed herein as *condition No. 1* should protect C&NW against any possible traffic losses and denied its request for special conditions. C&NW has excepted to the hearing examiner's findings.

In support of its position, C&NW endeavored to measure the effect that the proposed merger would have on its traffic moving between the territory it serves and the territory served by the L&N and its parent, SCL. To accomplish this task, C&NW undertook a diversion study of its traffic moving between specified States through the gateways of Peoria, Chicago, Benld, and East St. Louis, Ill., and all other gateways during 1968. A stratified sample was designed using the class of traffic (interline received, interline forwarded, and intermediate) and each of the pertinent

[25] The examiner stated that the rock bottom minimum total loss, taking into account the "standard deviation" sampling procedure, was in excess of $812,000. This figure was calculated by means of a statistical procedure in order to gain a 95-percent confidence level.

gateways. A total of 432,879 cars were selected into the frame, from which a sample of 2,395 cars was drawn.

Initially, 2,260 sample cars were rejected by C&NW's traffic officials as not being likely to be diverted. The remaining 135 shipments were investigated in depth. C&NW's origin and destination agencies were contacted concerning these cars. Information obtained from the origin agencies included the location of the shipper; whether the track or siding was open or closed to reciprocal switching; which railroad furnished equipment; and whether transit was involved and its effect on the shipment. With the exception of identification of car supply, much the same information was obtained from the destination agency. Following the more detailed review, an additional 72 sample cars were discarded. A total of 63 cars were judged to be subject to diversion. Of these, 48 shipments were northbound and 15 were southbound.

The record indicates that all the cars found to be divertible moved via Evansville, Ind., and were interchanged near East St. Louis through the gateways of Madison, Benld, and East St. Louis, Ill. Madison is C&NW's yard in East St. Louis, while Benld is approximately 35 miles north of the Madison Yards. At Benld, C&NW interchanges traffic with the Illinois Terminal Railroad Co., which in turn moves the traffic into East St. Louis, either for delivery or for further interchange with another road-haul carrier. In all 63 sample cars found to be divertible, both L&N and C&NW shared in the line-haul movement, while Monon was not included in the routing. Three of the cars originated in Louisville, Ky., and after merger could be diverted over the Monon. The other 60 sample cars, if diverted, would move over L&N's Evansville-Chicago line.

C&NW's accounting department furnished the divisions of freight revenue on each of the cars found divertible. In the case of cars judged to be wholly divertible, the C&NW division constituted the amount of revenue lost by C&NW. With respect to cars believed susceptible to short hauling, the difference in dollars per car between the amount C&NW actually received and the division which it would receive via the junction to which the car would be diverted established the estimated loss. Of the 63 sample cars, 2 southbound and 6 northbound cars were judged to be wholly divertible. The remaining 55 sample shipments were instances where C&NW would be short hauled. The 63 sample cars when expanded represent a total of 11,036 cars found to be subject to diversion. The potential gross revenue loss to C&NW from this diverted traffic is $920,878.

C&NW's diversion study reveals that of the 63 sample cars found divertible, 9 cars, representing $61,686, were forwarded to L&N; 8 cars worth $171 were received from L&N via Illinois Terminal Railroad, 38 cars expanded to $720,799 were received directly from L&N; and 8 cars representing $138,222 were overhead to C&NW.

Twenty-one of the sample cars received from L&N were shipments of coal. Nine of the coal shipments were destined for West Allis, Wis.; eight for Kaukauna, Wis.; two for Madison, Wis.; and one each for Beloit and Merrimac, Wis. Applying the appropriate expansion factors to the revenues from these 21 coal shipments indicates an estimated gross annual revenue loss of approximately $160,000.[26]

C&NW claims that after the proposed merger L&N will short haul it on these 21 sample coal shipments. Apparently C&NW believes the L&N will move the cars to Chicago rather than East St. Louis for interchange with C&NW. Such a routing will admittedly result in a probable service advantage compared to the present routing, since it would decrease the length of haul by up to about 200 miles to these destinations. There would also be an incentive for L&N to develop this route since its portion of the haul would thereby be increased by about 120 miles.[27] However, the record shows that C&NW is the terminating carrier on all of these coal movements. It has been our experience that the receiver of coal shipments, such as large steel companies and utility companies, normally selects the routing. The record in this proceeding supports this conclusion. As the destination carrier, C&NW will have enough influence on this coal traffic that there will be at least some assurance against diversion of this traffic. There is already circuity in the routing of these coal movements, suggesting that perhaps C&NW's solicitation power is intense enough to continue to carry many of these cars for its longest haul. Therefore, approximately $160,000 of C&NW's estimated diversion loss of $920,878 is open to serious question concerning its probability of being diverted.

[26]Sample revenue for 13 coal cars received from L&N at East St. Louis moving to destinations on C&NW amounted to $783. This amount accounts for 22.14 percent of the total of $3,537 sample revenue for all cars received at East St. Louis, which were found divertible. Applying 22.14 percent to the expanded diversion revenue total of $720,799 for this traffic results in a loss of revenue amounting to $159,585 for these 13 sample cars. The 8 other cars, which were destined for Kaukauna, Wis., accounted for a projected revenue loss of $171. Adding the expanded revenue totals for the 13 cars to the total for the 8 other coal cars results in a total loss for 21 coal shipments of $159,756.

[27]Estimates of distance based on *The Official Guide of the Railways*.

In the exceptions to the examiner's report, C&NW believes the report errs in the allegation that it has the power to retaliate against L&N. C&NW states that the L&N chief traffic witness admitted that he knew of no way that C&NW could retaliate against diversion by L&N of C&NW's East St. Louis interchange traffic and the record is not explicit as to whether there is any way for C&NW to retaliate against L&N. In our opinion, retaliation is actually only a minor factor involved in the diversion of traffic between these two carriers.

It would appear from the record that C&NW's predicted diversion loss of $920,878 is probably overstated. Even if it is not, a loss of this nature represents less than four-tenths of 1 percent of C&NW's 1968 freight operating revenues of $244,381,143 and should not impair C&W's ability to furnish adequate service to the public. Nor is a loss of this amount sufficient to warrant imposition of the special conditions which C&NW requests. The hearing examiner's findings in this respect are affirmed and C&NW's request for special conditions is denied.

SECTION 20b APPLICATIONS

L&N's stock issuances and assumptions of obligation and liability, the changes it seeks to effect in the first and second mortgages of Monon, and the modifications for which it seeks approval in the part V loans of Monon have been described in the appendix and need no further discussion here except to state that since we will approve the merger of Monon into L&N, we will, therefore, approve the stock issuances, assumptions of obligation and liability, mortgage changes and part V loan modifications required to accomplish the merger. We will, however, authorize the issuance by L&N of only 772,467 shares of preferred stock and 257,489 shares of common stock. These shares are all that are actually needed to effect the merger and L&N has given no reason for issuing the additional 2,533 shares of preferred stock and 845 shares of common stock for which it requested, and the hearing examiner recommended, authorization.

RAILWAY EMPLOYEES

At the hearing, the applicants testified that Monon, as of July 1, 1968, had a total of 1,071 employees; that L&N, at the end of 1968, had approximately 15,000; that 812 of Monon's employees would be

needed for the merged operation; that 474 of these retained employees would require relocation at a cost to L&N of $1,422,000; that L&N has around 2,200 employees leaving its service annually; and that L&N can easily absorb all of the retained Monon employees.

The applicants and the Brotherhood entered into a stipulation to the effect that, under the proposed operation of Monon, no employee represented by the Brotherhood would be adversely affected by the merger. The applicants also agree, by stipulation, that employees of K&IT affected by the merger would receive the same protection afforded the applicants' employees.

The hearing examiner found that there would be little, if any, effect upon the employees of Monon if the merger is approved. For the benefit of employees that would be affected, L&N proposed the imposition of the *New Orleans* conditions, with the modified arbitration procedure, recommended by the hearing examiner.

The hearing examiner also found no showing in this record that C&EI employees would suffer adverse effect from the merger since L&N intends to continue operation of the Evansville-Chicago line.

On exceptions, the labor organizations participating in these proceedings contend that the applicants have not met the burden of proof regarding the effect of the merger on employees. However, the number of jobs to be affected by the proposed merger is a matter under the control of the applicants and concerning which their managements should have more or less accurate information. Accordingly, we will accept the applicants' estimates in this respect.

RLEA and BRAC both contend that the *New Orleans* conditions provide insufficient employee protection. RLEA asserts that operating employees receive virtually no protection from the condition, because they work out of employee pools. Therefore, if a carrier abolishes any pool jobs, employees will have that many less jobs to work and individual employees will be faced with the necessity of proving to an arbitrator that they would have worked on one or more of the eliminated jobs during a given period of time and, therefore, are entitled to monetary protection.

BRAC contends that the *New Orleans* conditions are unable to protect its members, particularly those susceptible to adverse effects resulting from the introduction of technological advances made possible by the merger. Both RLEA and BRAC assert that C&EI employees working on the jointly owned portion of the Evans-

ville-Chicago line between Woodland Junction and Dolton Junction as well as the C&EI employees of Dolton Yard, the operation of which L&N will share with C&EI, should also be protected from the adverse effects of this merger. Also to be protected, they contend, are the employees affected by the Milwaukee trackage rights granted by *condition No. 3*.

The Brotherhood requests that the previously referred to stipulation entered into by L&N and the Brotherhood be incorporated into our order. In addition, the Brotherhood argues that we should impose conditions providing for income protection and full attrition, or in lieu thereof, postpone consummation of this merger for 90 days to permit negotiation of protective conditions by the applicants and employees.

RLEA and BRAC also contend that employee conditions imposed in this case should be arrived at by negotiation between employees and the applicants and also argue that consummation of the merger should be postponed for a period of 90 days to permit such negotiations to proceed. As an alternative to postponement of the merger, RLEA and BRAC propose that L&N be required to retain all employees in their present positions. In either event, the labor organizations would permit the parties to request us to impose protective conditions if agreements are not arrived at during the 90-day postponement or job-retention periods.

This merger will have no effect on employees of C&EI between Woodland Junction and Dolton Junction, and in Dolton Yard, because of the continued operational and maintenance levels required by *condition No. 2*. Protection for L&N-Monon employees affected by the Milwaukee trackage rights need not be considered here since this question will receive consideration in the supplemental proceeding required by *condition No. 3* to set the terms for the trackage rights. The Brotherhood-L&N stipulation will be adopted as paragraph (a) to *condition No. 4* hereinafter imposed.

We are required by section 5(2)(f) of the act to insure that the applicants provide "a fair and equitable arrangement to protect the interests" of those employees affected by the merger who are not protected by paragraph (a) of *condition No. 4*. In past merger cases where no job protective agreements have been negotiated between carrier applicants and their employees, we have provided the "fair and equitable arrangement" required by section 5(2)(f) through prescription of a version of the New Orleans conditions similar to the version recommended here by the hearing examiner.

We have not always prescribed the protection to be afforded affected employees because the last sentence of section 5(2)(f) provides for agreements for such protection by the parties concerned, if such agreements can be reached.[28] In those cases where agreements have been reached, we have ordinarily recognized them to fulfill the requirements of section 5(2)(f). We have never required the negotiations of such agreements as a condition to our authorization of a merger, but we have, from time to time, afforded an opportunity for their negotiation before prescribing conditions ourselves. See *Chesapeake & O. Ry. Co.–Control–Western Maryland Ry. Co.*, 328 I.C.C. 684, 710 *et seq.*, and *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 330 I.C.C. 780, 825.

In this case, in view of the limited number of employees the record indicates will be affected by the merger, we believe that the applicants can well afford to negotiate agreements for the protection of those employees that may be affected. Accordingly, the remaining paragraphs of *condition No. 4* will provide for a delay of 90 days (during which all employees are to be retained in their positions) following consummation of the merger before we prescribe employee protective conditions. This delay is to afford the applicants and representatives of their affected employees the opportunity to themselves arrive at the terms of employee protection. Unless the applicants otherwise agree, the negotiations contemplated by *condition No. 4* are to be limited to terms for the protection of L&N and Monon employees affected by the merger of Monon into L&N and not protected by paragraph (a) of *condition No. 4*, as well as the K&IT employees covered by L&N's stipulation, previously referred to. In the event employees who are presently not members of labor organizations with bargaining agents desire to participate in the negotiations, they may do so by electing representatives for that purpose. Otherwise, such employees will be protected under the provisions of *condition No. 4* applicable to nonrepresented employees. These provisions for nonrepresented employees will consist of the *New Orleans* conditions modified as recommended by the hearing examiner. We consider these conditions to afford adequate protection to the

[28] The last sentence of section 5(2)(f) states:

Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

employees they will cover. *Condition No. 4* will also reserve jurisdiction to impose the same, or other, conditions for the benefit of all employees in the event negotiations fail and will provide for the retention in their positions of all employees pending the final determination of the employee protection question.

TERMS AND CONDITIONS

Our authorizations herein are granted subject to the conditions set out below:

1. *Routing and gateway conditions.*–(a) That upon merger of Monon into L&N, the surviving carrier shall maintain and keep open all routes and channels of trade via existing junctions and gateways of said Monon unless and until otherwise authorized by this Commission.

(b) The present neutrality of handling traffic inbound and outbound shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of Monon without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise;

(c) The present traffic and operating relationships existing between Monon, on the one hand, and all lines connecting with its tracks, on the other, shall be continued insofar as such matters are within the control of L&N;

(d) L&N shall accept, handle and deliver all cars inbound and outbound, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from carriers competing with Monon and irrespective of destination or routes of movement;

(e) L&N shall not do anything to restrain or curtail the right of industries not located on Monon to route traffic over any or all existing routes and gateways;

(f) Any party or any person having any interest in the subject matter of this condition may at any future time make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceeding on the motion of this Commission for the same purpose.

2. *Evansville-Chicago line condition.*–(a) Upon consummation of the merger of Monon into L&N, the latter railroad shall, except as provided for in (c) below, furnish, for a period of at least 10

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years from the date of such consummation, freight service to the public and, to the extent of its responsibility therefor, maintenance of line and equipment on the Evansville-Chicago line and its appurtenant facilities to at least the same average levels of service and maintenance as were provided on the Evansville-Chicago line for the 6 months immediately preceding service of this report and order;

(b) State, county, or municipal agencies, shippers, or any party to this proceeding considering that this condition is being violated by L&N may, individually or collectively, file a complaint with this Commission. Complaints so filed will be handled by the Commission under the procedures developed for complaints filed under the provisions of section 13 of the Interstate Commerce Act;

(c) L&N may, by petition, a copy of which is to be served by the petitioner upon the Governors and regulatory commissions of the States of Indiana, Kentucky, and Illinois, request relief, in whole or in part, from the provisions of this condition. This Commission, or the appropriate division or employee board thereof, may, after public hearing, or without public hearing if such public hearing is not found necessary, grant the relief requested or such portion of such relief as it finds to be in the public interest, or it may deny the petition in whole or in part;

(d) Included in any petition filed under the provisions of (c) above by L&N are to be the petitioner's proposals for the protection of railway employees adversely affected by any change in the level of service or maintenance of the Evansville-Chicago line. Included in any grant, or partial grant, of relief from the provisions of this condition shall be arrangements for the protection of railway employees adversely affected thereby, either as proposed by L&N or as otherwise found just and reasonable by the Commission, or the division or employee board thereof granting such relief.

3. *Milwaukee trackage rights conditions.*—The merger of Monon into L&N is authorized subject to the conditions that:

(a) L&N shall grant Milwaukee trackage rights over the line of the present Monon between the point of connection of Milwaukee and Monon at Bedford, Ind., and the end of Monon's line at New Albany, Ind., upon reasonable terms (including a reasonable arrangement for the protection of railway employees adversely affected by paragraphs (a), (b), (c), and (d) of this condition) agreed to by the parties, subject to the Commission's approval,

or upon reasonable terms prescribed by the Commission should L&N and Milwaukee fail to agree upon such terms:

(b) L&N, upon reasonable terms agreed to by L&N and Milwaukee or upon reasonable terms prescribed by the Commission should L&N and Milwaukee fail to agree, shall consent to the sale to Milwaukee of a one-fourth interest in K&IT by the present three owners thereof or their successors;

(c) L&N shall, upon reasonable terms agreed to by L&N and Milwaukee or upon reasonable terms prescribed by the Commission should L&N and Milwaukee fail to agree upon such terms, consent to the grant of trackage rights to Milwaukee over K&IT between New Albany, Ind., and Youngstown Yard of K&IT in Louisville, and of the same kind of rights as Monon may have at present with respect to operations over, or use of, the facilities of K&IT;

(d) L&N shall cooperate with Milwaukee in obtaining all necessary consents and conveyances, including consents and conveyances by other owners of K&IT with respect to the aforesaid sale and trackage rights requested by Milwaukee;

(e) The Commission shall retain jurisdiction over these proceedings to ensure the orderly and expeditious implementation of this condition.

4. *Employee protective conditions.*—(a) This merger is authorized upon the condition that, as stipulated to by the Brotherhood of Locomotive Engineers and the applicants, no employee represented by said Brotherhood of Locomotive Engineers of either applicant will be relocated, eliminated, or in any way adversely affected as a result of the merger;

(b) This merger is authorized upon the further condition that L&N and Monon and the representatives of their employees and the employees of K&IT affected by the merger, other than those employees protected by (a) above, shall negotiate in good faith on terms leading to an agreement or agreements for the protection of railway employees affected by the consummation of the merger;

(c) This Commission shall be notified by L&N of any agreement reached immediately upon the execution of the agreement and a copy of such agreement shall be furnished the Commission for its information;

(d) If at the expiration of 90 days following consummation of the merger, an agreement concerning protective conditions has not been reached by the applicants and all employees represented in the negotiations, either the applicants or the employee representatives concerned may request that this Commission fix protective conditions;

(e) A request for the Commission to fix conditions shall be accompanied by the requesting party's proposals for protective conditions, with a statement indicating which of said proposals are in dispute. A copy of the request, with proposals and statement attached, shall be served on the other party who shall have 5 days to submit its counterproposals;

(f) The protective conditions prescribed by this Commission in response to a request under (d) above, may be based upon the proposals and counterproposals submitted in accordance with (e) above, any other conditions which the Commission may find to be in compliance with section 5(2)(f) of the Interstate Commerce Act, the modified *New Orleans* conditions recommended by the hearing examiner, other modifications of the *New Orleans* conditions, or other conditions previously imposed in other proceedings, or modifications thereof;

(g) Consummation of the merger herein authorized shall constitute irrevocable assent by the applicants to the power of this Commission to prescribe protective conditions for railway employees in the event the applicants and employee representatives fail to negotiate such conditions. The continued participation of employee organizations in this proceeding subsequent to service of the Commission's report herein shall likewise constitute such irrevocable assent, without seeking judicial review, on the part of the employee organizations. Employee organizations desiring to withdraw from further participation in the proceedings may do so prior to the expiration of 10 days following the date of service of this report. Otherwise, the continued participation of such organizations in these proceedings shall be presumed. Adversely affected railway employees represented by organizations withdrawing from further participation shall be considered unrepresented employees for the purposes of this condition and shall be protected under the provisions of (h) below;

(h) Employees who are members of organizations withdrawing from further participation in these proceedings in accordance with (g) above, and all other employees not represented in any negotiations conducted under (b) above, are to receive the protective conditions prescribed in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271, subject to the following arbitration provisions in lieu of those now contained in the *New Orleans* conditions:

In the event any dispute arises with respect to the protection afforded by these conditions or with respect to their interpretation, application or enforcement, which cannot be settled by the carriers and the employee or his authorized representatives within 30 days after the dispute arises, it may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the arbitration committee and the two members thus chosen shall select a third member who shall serve as chairman. Should the two members be unable to agree upon the appointment of the third member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a third, or neutral, member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate the third member, which designation when made will be binding upon the parties. The decision of the majority of the arbitration committee shall be final, binding, and conclusive. The salaries and expenses of the third member shall be born equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them;

(i) Until such time as agreements negotiated for employee protection, or conditions are prescribed by this Commission in the event negotiations fail to arrive at agreement, have become effective, all railway employees, represented or unrepresented, entitled to protection under these conditions, are to be retained in their employment, without change in duties, compensation, permanent duty stations, working conditions, or fringe benefits; except that L&N may, if necessary, temporarily detail employees affected by the merger to other positions under whatever work rules with respect to temporary details are in effect at time of consummation of the merger, pending a final determination of the protection to be afforded employees under this condition.

5. *Reservation of jurisdiction-general.*-(a) If the merger of Monon into L&N is consummated in accordance with the authorizations herein, this Commission shall retain general jurisdiction for a period of 5 years from the date of said consummation for the purpose of issuing such further order or orders in these proceedings as may be necessary or appropriate: *Provided*, that the jurisdiction of this Commission is expressly retained for a period of 10 years from the date of consummation for the purpose of (1) issuing further orders with respect to *condition No. 2* including orders extending the effective term of such condition or reimposing said condition in the event it shall have lapsed during the period of this reservation of jurisdiction, and (2) issuing a further order, or orders with respect to the quality and quantity of freight service and maintenance of line and equipment performed by L&N on the line and appurtenant facilities now operated by Monon: *Provided further*, that the jurisdiction of this

Commission is also expressly retained for the specific purpose of requiring from L&N, under the provisions of section 20 of the act, such regular or special reports of its operation of the Monon line and the Chicago-Evansville line as the Commission may deem necessary: *Provided further*, that this condition is supplemental to, and not in lieu of, this Commission's authority to issue supplemental orders under section 5(9), and to require reports under section 20 of the Interstate Commerce Act, which authority is also expressly retained herein.

(b) Consummation of the transactions herein authorized shall constitute irrevocable assent by the applicants to the power of this Commission to require such reports and to issue such further order or orders, including an order or orders requiring dissolution of the merger authorized herein, under the provisions of this condition and under sections 5(9) and 20 of the Interstate Commerce Act as the Commission may find necessary or appropriate.

6. *Reservation of jurisdiction–Penn Central.*–If the merger approved herein is consummated, this Commission, in addition to all other reservations of jurisdiction herein, or in the act, shall reserve specific jurisdiction to at any future time impose any or all of the conditions requested herein by Penn Central as the Commission may deem necessary or appropriate to protect Penn Central from the effects of the merger or the trackage rights granted Milwaukee pursuant to *condition No. 3* above.

7. *Reservation of jurisdiction–Mercantile.*–If the merger of Monon into L&N is consummated, this Commission, in addition to the reservation of jurisdiction contained in *condition No. 5*, shall reserve specific jurisdiction for the purpose of making such further order or orders herein as may be necessary or appropriate with respect to the common carrier status of Mercantile.

8. *Condition respecting regulation of Industries.*–The merger of Monon into L&N is authorized on condition that:

(a) Industries shall be subject to regulation under the provisions of section 5(3) of the act to the extent this Commission may hereinafter require under sections 20(1), 20(2), and 20(5) of the act;

(b) This Commission shall reserve specific jurisdiction for the purpose of making such further order or orders herein as may be necessary or appropriate with respect to the further regulation of Industries as a common carrier pursuant to either section 5(2)(b) or section 5(3) of the act.

ULTIMATE FINDINGS

As conditioned herein, the transactions under consideration meet the requirements of sections 5(2), 20a and part V of the act

and conform generally with the purposes and objectives of the national transportation policy declared by Congress.

DT&I-Ann Arbor contend that the hearing examiner erroneously found that L&N's fixed charges would increase only to the extent of the fixed and contingent charges assumed from Monon. We can find no basis for this contention. There is no financing involved in this merger. The transaction simply involves an exchange of stock which will be accounted for as a "pooling of interest." It is not a purchase. Accordingly, we confirm the hearing examiner's finding. It is clear that whatever increase in L&N's fixed charges, or any guaranty or assumption of dividends or fixed charges, that may result will be in the public interest and will not adversely affect L&N's financial position.

The requests of carriers seeking inclusion in the transactions have been considered and disposed of. Provisions have been made for the protection of railway employees and adequate transportation service to the public will not be affected.

We find in F. D. No. 25309 that, subject to the conditions imposed herein, the merger of the properties and franchises of the Monon Railroad into the Louisville and Nashville Railroad Company for ownership, management and operation, the acquisition by the Louisville and Nashville Railroad Company of the trackage rights over, and joint use of, the railroad lines of other carriers, and terminals incident thereto, held by the Monon Railroad on the date of consummation of the merger, and, by virtue of the merger, the acquisition by Seaboard Coast Line Railroad Company and, in turn, by the Seaboard Coast Line Industries, Inc., the Atlantic Coast Line Company, and the Mercantile-Safe Deposit and Trust Company, of control of the merged properties, franchises, and trackage or joint use rights, all as described herein, and upon the terms and conditions found to be just and reasonable, are transactions within the scope of section 5(2) of the Interstate Commerce Act and will be consistent with the public interest.

We further find in F. D. No. 25310 that (1) the issuance by the Louisville and Nashville Railroad Company of not exceeding 772,467 shares of its $2.10 cumulative convertible preferred stock, Series A, with a par value of $35 per share, and of not exceeding 257,489 shares of its common stock, with a par value of $50 per share, upon conversion of the foregoing preferred stock; (2) the assumption by the Louisville and Nashville Railroad Company, subject to stated terms and conditions, of obligation and liability with respect to the securities of the Monon Railroad; and (3) the proposed modification by the Louisville and Nashville

Railroad Company in the first mortgage of the Monon Railroad with respect to their provisions for amounts payable into the Additions and Betterments funds of such mortgages, all in connection with the merger authorized hereinabove are (a) for lawful objects within the corporate purposes of the Louisville and Nashville Railroad Company, compatible with the public interest, necessary or appropriate for, or consistent with, the proper performance by the Louisville and Nashville Railroad Company of service to the public as a common carrier and will not impair its ability to perform that service, and (b) are reasonably necessary and appropriate for such purposes; and (4) that it is equitable to consent to the removal of restrictions on the loans of Monon Railroad under part V of the act with respect to payment of dividends, reacquisition of capital stock, and making investments, as discussed herein or in the appendix hereto, upon the assumption of obligation and liability regarding these loans by the Louisville and Nashville Railroad Company.

We further find that any contentions, arguments, or requested conditions not specifically discussed herein have been considered and are without material significance.

An appropriate order will be entered.

COMMISSIONER GRESHAM, concurring:

I agree with the result reached by the majority and most of the conditions that it would impose. But I would also approve this unification subject to one other condition.

The dedication of Seaboard Coast Line and Louisville and Nashville to providing economical and efficient rail service to the public is well known. However, the present picture of the transportation industry in this country has given rise to questions about the conglomerate activities of certain carriers. I do not mean to imply that such questions will arise concerning Seaboard Coast Line Industries. But out of a mere abundance of caution I would impose the condition that Seaboard Coast Line Industries shall not, without the express approval of this Commission, require or permit any of its common carrier subsidiaries or affiliates to

(1) Declare or pay any dividend or dividends, in cash or otherwise, in any 1 year in excess of 50 percent of its net earnings for that year;

(2) Make any advances, either in cash or property, to subsidiary, parent, or other affiliated companies;

(3) Encumber any of its assets, or the assets of any of its subsidiary or affiliated companies, for noncarrier purposes; or

(4) Engage in any other monetary or property transaction within its system of carrier subsidiaries or affiliates.

APPENDIX

Excerpts from the report of the hearing examiner

* * * * * * *

PROTESTANTS AND INTERVENERS

The following rail carriers intervened in this proceeding: the Soo Line Railroad Company (Soo), the Penn Central Company now styled Penn Central Transportation Company (Penn Central), the Detroit, Toledo and Ironton Railroad Company (DT&I), the Ann Arbor Railroad Company (Ann Arbor), the Southern Railway System Lines (Southern), the Chicago and Northwestern Railway Company (C&NW), the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee), the Chesapeake and Ohio Railway Company (C&O), and the Baltimore and Ohio Railroad Company (B&O). The Railway Labor Executives Association (RLEA) and the Brotherhood of Locomotive Engineers (Brotherhood) intervened ***. The Wabash Valley Industrial Development Corporation (Wabash Valley) an organization composed of businessmen, labor representatives, and residents of the Wabash Valley area of Indiana particularly in the counties of Parke, Vermillion, Vigo, and Fountain also intervened ***.

POSITION OF PROTESTANTS AND INTERVENERS

DT&I and Ann Arbor oppose the merger but in the event of approval seek the imposition of certain conditions. Milwaukee favors the proposed transaction but subject to conditions mainly the grant of trackage rights by the applicants over the present Monon line between the present point of connection of Milwaukee and Monon at Bedford, Ind., and the end of the present Monon line in New Albany, Ind. Certain other conditions concerning the Kentucky and Indiana Terminal Railroad Company (K&IT), now jointly owned by Monon, B&O, and Southern, which is a switching line at Louisville, are also sought which will allow the Milwaukee to serve Louisville, Ky. Southern intervened *** in support of Milwaukee's trackage rights request and also seeks the imposition of the standard conditions. Penn Central intervened neither in support or in opposition to the merger but sought certain conditions other than the standard conditions if the merger was approved. C&NW intervened and asks that unless certain other than standard conditions it requests are imposed and unless the Milwaukee trackage rights as sought are imposed that the applications be denied. The Soo line does not oppose the merger as proposed with the so-called standard operating and traffic conditions but opposes the trackage rights condition sought by Milwaukee ***. The C&O and B&O intervened to protect B&O's interest against possible adverse effects on the K&IT if the requested Milwaukee conditions are granted. Wabash Valley opposes the merger as does RLEA. RLEA asks for protection of employees involved if the merger is approved. The Brotherhood and the applicants stipulated at the hearing that no employee of either railroad represented by the Brotherhood will be relocated, eliminated, or in anyway adversely affected as a result of the merger.

* * * * * * *

APPLICANTS

L&N operates approximately 5,800 miles of track* * * east of the Mississippi River, south of the Ohio River, and west of the Allegheny Mountains. The main lines extend from Cincinnati, Ohio, via Birmingham, Ala., to New Orleans, La.; from Cincinnati to Atlanta, Ga.; and from Louisville, Ky., to St. Louis, Mo., and Memphis, Tenn. Its properties are located in * * * Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, and Virginia.

Of the total 5,573 miles operated by the L&N as of December 31, 1967, 3,724.-68 are main-line miles and 1,848.411 branch-line miles. Of the total miles operated 406.30 are held under lease, 77.72 under trackage rights, and 10.23 under contract. As of the time of filing of briefs, L&N had some 5,800 miles in operation.

The principal interchange points of the L&N are Cincinnati, Ohio, Louisville, Ky., Evansville, Ind., St. Louis, Mo., Memphis, Tenn., Nashville, Tenn., Birmingham, Ala., Montgomery, Ala., New Orleans, La., Chattahoochee, Fla., Knoxville, Tenn., Atlanta, Ga., Paducah, Ky., Jackson, Tenn., Martin, Tenn., Chattanooga, Tenn., and Gadsden, Ala.

The Monon owns 512 miles of railroad all located in Indiana. It operates 541.1 miles of track extending from Chicago, Ill., to Louisville, Ky., with branch lines to Michigan City, Ind., and to Indianapolis, Ind. It has 326.45 miles of main-line track and 214.65 miles of branch-line track which it owns and 28.85 miles of track operated under leases or trackage rights. Monon's line to Chicago actually terminates at Hammond, Ind., with Monon gaining access into Chicago by trackage rights over the Chicago and Western Indiana Railroad Company (C&WI) of which it is a part owner. It has a 1/5 interest in that line. Monon is also one of the owners of the Belt Railway Company of Chicago (Belt) a terminal and interchange facility in Chicago of which it has a 1/12 interest, and of * * * K&IT with terminal facilities at Louisville. It has a 1/3 interest in the K&IT. L&N if this merger is accomplished will acquire Monon's interests in these switching and terminal companies. Monon also owns certain affiliated companies which will be acquired by L&N including Indiana Creosoting Company at Bloomington, Ind., Chicago and Indianapolis Coal Company which owns mineral rights on various tracks of land in southern Indiana, and Monon Transportation Company which is engaged primarily in the leasing of rolling stock and locomotives to Monon. On December 31, 1968, Monon had outstanding 772,467 shares of capital stock common of no par value held by 1,072 stockholders and was not controlled by any other corporation or corporations.

The principal interchange points of the Monon are at Chicago and Louisville, and at Hammond, Michigan City, Indianapolis, Haskells, Lafayette, and Bloomington, Ind.

Monon is one of the few remaining class 1 railroads in the eastern district not affiliated in some way with a larger railroad system. It has * * * been faced with possible diversion of traffic from L&N acquisition of the Chicago and Eastern Illinois Railroad (C&EI) Evansville line.

The Monon oppose the purchase of the C&EI-Evansville line by the L&N during the proceedings * * * in *Missouri Pac. R. Co.–Control–Chicago & E. I. R. Co.*, 327 I.C.C. 279 (1965). The Commission in the proceeding imposed a condition requiring the MoPac [Missouri Pacific Railway Company] to cause C&EI to negotiate in good faith for the sale to L&N of much of C&EI's line of railroad as would enable L&N to provide service between Evansville and Chicago. The Evansville line runs between Chicago and Evansville with access at Chicago over the C&WI and the Belt.

* * * * * * *

The purchase by L&N of the Evansville line was approved * * * October 23, 1968, in * * *, *Louisville & N. R. Co.–Pur.–Chicago & E. I. R. Co.*, 334 I.C.C. 273. It was later reopened by the Commission for the purpose of imposing standard routing conditions * * * by order dated February 3, 1969.

As the L&N and C&EI could not negotiate successfully with the C&WI for one-half of C&EI's interest and use of the track and facilities of the C&WI as an owner because certain of the five owners of the C&WI were unwilling to allow the L&N to operate on the same terms as the shareholders, an application was filed by L&N for trackage rights over the C&WI.

The application of the L&N for trackage rights over the C&WI was approved in *Louisville & N. R. Co.–Trackage Rights*, 334 I.C.C. 412 (1969), and over the Belt in F. D. Nos. 25653-4 on August 6, 1969. The agreement granting trackage rights over the C&WI expires July 1, 1972, and does not grant the L&N the right to serve any industries on the C&WI except those exclusively served by the C&EI. If the merger of the L&N and Monon is accomplished, the L&N will have a propriety interest in the C&WI as well as a right to serve all industries located along its lines.

FINANCIAL TERMS

Under the joint agreement of merger the Monon will be merged into the L&N, and L&N shall on the merger date possess all the rights, privileges, immunities, and franchises of Monon, and all property and debts due, and all other interests of or belonging to or due to Monon shall thereafter be rested in L&N without further act or deed. L&N shall thereafter be responsible for the liabilities and obligations of Monon as set out in the joint agreement of merger, and subject to the provision of such joint agreement of merger neither the rights of creditors nor any liens upon the property of L&N or Monon shall be impaired by the merger.

* * * * * * *

STOCKHOLDERS APPROVAL

A special meeting of the L&N stockholders was held on August 28, 1968. The number of shares of capital stock of L&N the holders of which were entitled to vote were 2,475,779. There were 2,050,414 shares represented at the meeting of which 2,045,560 shares, or 82.6 percent, voted for adoption of the agreement

of merger between L&N and Monon. The number of L&N shares voted for adoption of the amendment to L&N's charter to permit the creation of the new class of preferred stock were 2,041,904, or 82.5 percent of the outstanding stock.

A special meeting of the Monon stockholders was also held on August 28, 1968. The number of shares of capital stock of Monon the holders of which were entitled to vote were 772,467. There were 680,669 shares represented at the meeting of which 672,742, or 87.1 percent, voted for adoption of the agreement of merger between L&N and Monon.

BACKGROUND OF MERGER PROPOSAL

* ** Monon interchanges more traffic with the L&N than with any other connection although Southern runs a very close second. The total amount of revenue received by Monon from traffic interchanged with L&N during a 4-month sample period in 1967-1968 was $1,709,407, from 12,384 cars, while during the same period, Monon interchanged 12,320 cars with the Southern and received revenue of $1,703,162. Of the protestants, the Milwaukee ranked fourth with $749,877 revenue received on interchange of 6,392 cars, the C&NW ranked sixth with $546,487 received by Monon from interchange of 3,570 cars, the Soo ranked eighth with Monon receiving $447,339 from interchange of 3,710 cars, and the Penn Central ranked ninth with Monon receiving $443,474 from interchange of 4,644 cars.

During the same period the percentage of Monon traffic originated, terminated, and overhead was as follows:

	Local	Interline forwarded	Interline received	Overhead
		Percent		
Carloads	11.53	22.24	26.59	39.64
Tons	8.88	22.14	29.09	39.89

* * * * * * *

Monon competes with Penn Central on traffic between common points of Penn Central and Monon such as Chicago, Indianapolis, and Louisville, also on traffic between the North and South moving via Chicago and Indianapolis or Chicago and Louisville. On traffic to the East when Penn Central and Monon have the same common points for origin or destination, the Monon uses other roads to make a route competitive with the Penn Central.

The Monon competes with Milwaukee on traffic between the North and South via Louisville and Chicago. The Milwaukee has a route between Chicago and Bedford, Ind.

Monon also competes with the *** Norfolk and Western Railway Company (N&W) between common points with the N&W in Monon territory such as Chicago, Michigan City, Lafayette, and Indianapolis. Monon also competes with the B&O-C&O system on bridge traffic between the North and South.

Monon lately has found its area for handling traffic narrowing because of the various mergers of railroads serving their territory. Where formerly several

smaller lines competed in the territory now the Monon is faced with merger of these carriers into large systems such as N&W or Penn Central.

Among other problems resulting from merger of these smaller lines into big systems are problems of service and equipment. Where formerly the several small roads worked together on service and equipment Monon now finds that it cannot compete with the large roads in purchasing special equipment. As a result of its failure to purchase needed special equipment, Monon loses additional traffic.

Monon has found itself unable to acquire much piggyback traffic. Because of its small size and the short distances involved as compared with the high cost of pickup and delivery service many competitive rates furnished no financial return to Monon for its transportation service. Its average haul is only 168 miles, and its longest possible haul is only 315 miles. As a result, Monon has to cancel competitive rates applying to piggyback service.

* * * * * * *

Monon also has yards located at [Hammond] Bloomington, Lafayette, Michigan City, and Monon. It handles approximately 2.8 billion gross ton-miles per year divided 60 percent northward and 40 percent southbound. Approximately 31 percent of the tonnage is originated on the Monon while 69 percent is received from connections.

* * * * * * *

Monon now owns 44 diesel-electric locomotives including eighteen 2,000-hp. units purchased in 1966 and 1967, and nine 1,500-hp. units rebuilt in the same year. It will be desirable or necessary if traffic remains at or near present levels to acquire 6 additional 2,000-hp. units permitting release of ten 1,500-hp. units purchased in 1947 and 1948. Other units would be rebuilt or replaced and at the conclusion of the program, Monon would have 39 units in its motive power fleet all with a new or rebuilt date of November 1965 or later.

As of November 1, 1968, Monon had 3,004 freight cars under its control. Two thousand of these cars are owned by Monon, 962 by a subsidiary, Monon Transportation Corporation, and 42 covered hoppers are leased from North American Car Corporation. Monon leases an additional 126 cars of various types. Monon does not own any piggyback trailers. All trailers it uses on its line are leased. It has 289 trailers under lease at rates varying from $3.13 to $4 per day. When the leased trailers go off-line, Monon receives $5 per day. In addition, Monon has 383 trailers from REA Leasing Corp. pool. Monon has one hundred 50-foot, 70-ton capacity boxcars on order, as well as one hundred 100-ton capacity, covered hoppers, and 10 trilevel racks to be moved on leased flatcars. The new covered hoppers when received will permit cancellation of the lease of 42 similar cars and the retirement of a number of Heavy Bad Order cars. Monon also wants to acquire 200 additional boxcars within the next several years.

* * * * * * *

The Monon line between Monon and Michigan City is 60 miles long and has had a relatively low traffic density with a resultant tendency to minimize mainte-

nance on the line. It is presently subject to a 35 m.p.h. speed limit. In recent years though there has been a substantial movement over this line of automobile traffic interchanged with the Grand Trunk Western at Haskells, Ind., and this line has also carried large quantities of breakwater stone from southern Indiana to Michigan City. With this increased business, additional maintenance has been required. A considerable program of rail replacement some of which has already begun will be required in the near future.

The line between Monon and Indianapolis is well maintained although a light density line. The main line between Hammond and Louisville is maintained for heavy freight operations with a speed limit of 50 m.p.h. The 300-mile track between Hammond and New Albany is composed of approximately 80 percent controlled cooled 112- and 115-pound section while the balance is noncontrolled cooled 100- and 130-pound rail. The majority of the branch lines (Indianapolis, Michigan City, Midland, and French Lick) are laid with 90- and 100-pound sections having rolling dates from 1911 to 1937.

Main-line and branch-line operations are controlled by train orders and timetables. Automatic block signals are in use on the main line to increase the safety of operations. The communication system provides for voice communication via overhead wires. Monon owns and uses train radio to implement train operations when desirable. Modernizations of the signal and communication facilities is overdue and must be provided for at some time in the near future although the present systems are adequate for safe operations under present conditions.

During the last 5 years Monon has made substantial progress in purchasing equipment for track work and mechanizing its maintenance-of-way operations. Over the period 1958 to 1968, inclusive, 364,000 ties have been renewed at an annual renewal of 1.66 percent of the 2,206,770 ties in track.

Since 1954 new terminal buildings have been constructed at South Hammond, Indianapolis, New Albany, and Bloomington. Monon's maintenance of locomotives and cars is centered in its Lafayette shop. Facilities at Lafayette are adequate for heavy maintenance and repair of cars, but locomotive and car maintenance facilities at South Hammond, Indianapolis, and Bloomington are outmoded. After the merger L&N plans to relocate the Monon medium and heavy car and locomotive repair facilities at the L&N's shops at Louisville. All locomotive repairs will be performed at the Louisville shops.

Monon had somewhat static operating revenues for the period 1964-1968 with revenues of approximately $19.3 million to $19.8 million for the years 1964, 1965, and 1967 with increase to $21.1 million and $21.3 million in 1966 and 1968, respectively. Its operating costs were also static during the period with costs of about $15.5 million for the years 1964, 1966, and 1967, a low of $14.8 million in 1965 with a peak of $16.3 million in 1968.

* * * * * * *

*** The L&N and Monon are generally noncompetitive and have historically cooperated in the movement of traffic between the North and the South. Consummation of the merger will give the L&N a single-line service between points served by it in the South on the one hand, and Chicago and other points presently served by the Monon on the other via the Louisville gateway.

* * * * * * *

The L&N is a profitable railroad. In 1967, L&N's revenue ton-miles were 75 percent greater than the average for the 1957-1959 years while Monon's 1967 revenue ton-miles were only 3 percent greater than the 1957-59 average. For all class I roads the gain was 24 percent in the period 1961-1967. L&N originated 73-78 percent of its freight traffic whereas Monon originated only 31-36 percent of its tonnage. *** That Monon has had below average growth and also increasingly heavy dependence on receipts from connecting carriers.

During the past 5 years L&N has shown operating revenues from $259 million in 1964 to $302 million in 1968. During the same period operating expenses rose from $209 million to $239 million.***

The L&N is *** found in *Seaboard-ACL* merger case, *supra*, to be under the control of Seaboard, which is controlled by the Connecticut Company, which in turn is controlled by Mercantile Trust. As a result of this relationship with Seaboard, the family lines of Seaboard would if this merger is approved run from Richmond on the east to Chicago. The Seaboard lines are profitable and well run operations.

* * * * * * *

The Monon *** while having a surplus in operating revenue over the last several years has had difficulty in maintaining itself in a surplus position due to the increasing competition of merged lines as well as intermodal competition from private and public motor carriers.

The Monon has been unable to increase or maintain its percentage of intercity traffic but has been faced with increasing costs of operation. It has found it necessary to seek means of lowering its costs and improving its efficiency to regain its share of traffic lost to competing modes of transportation.

The Monon believes that it, as well as the L&N, will gain from consummation of the merger. For example, more extensive solicitation will be made for traffic moving to, from, or via the Monon single-line service with resultant improved transit time which will benefit shippers as well as applicants. With merger into the L&N more extensive, industrial development efforts will be made along the lines of Monon from the use of L&N's more extensive and experienced industrial development department.

The L&N has a large car fleet with an average age of less than 10 years. It has a diversified, specialized car fleet as well which will improve the Monon's ability to secure and participate in a larger share of available traffic. Monon also will gain the advantage of L&N's computerized car tracing system which will aid in the location and expedition of cars.

Not only will merger allow the L&N to provide direct single-line service between its service area and points served by the Monon, but it will give the L&N an interest in certain switching lines in which the Monon has an interest. The Monon as pointed out earlier owns one-third of the stock of the K&IT, a switching line serving over 150 industrial locations in Louisville. In 1967, the L&N interchanged 12,942 carloads with K&IT. The Monon also owns stock in the C&WI and the Belt switching lines serving the Chicago area.

Among the great advantages claimed by L&N to result from approval of the proposed merger will be savings in transit of over 24 hours on traffic moving

from Chicago to southern and southeastern points. With approval of the proposed merger by eliminating time now used to interchange traffic at Louisville, large savings in transit time will be made on present L&N-Monon traffic.

L&N showed that for the period July 1, 1967 to June 30, 1968, Monon delivered a total of 10,698 loaded cars for certain selected destinations or offgoing junctions on L&N. Using these selected destinations and improved transit-time expected to result from the merger, the following transit car-day savings are possible:

Destination	No. loads delivered	Improved transit time	Transit car days saved
		hours	
Atlanta, Ga.	6,227	11.5	2,984
Birmingham, Ala.	1,386	24	1,386
Montgomery, Ala.	826	24	826
Nashville, Tenn.	2,259	16.5	1,553
	10,698		6,749

Such an improvement in time schedules will greatly improve the competitive opportunities of L&N-Monon in their service areas.

One of the main traffic growth possibilities resulting from the merger as pointed out previously would be the growth of piggyback traffic. The Monon mainly because of its short-haul characteristics has not developed piggyback to any appreciable extent while L&N on the other hand aggressively seeks such business. Only 793 trailer loads were interchanged between L&N and Monon in 1968 while L&N interchanged 43,398 trailer loads with the C&EI during the same year. L&N also increased from 3,906 trailer loads in 1960 to 92,803 trailer loads in 1967 and has annual revenue from piggyback traffic of $15 million. If the merger is approved, the problems presently facing Monon in developing piggyback traffic will largely disappear. Upon merger L&N will establish competitive rates and single-line service between Monon territory and the fast growing industrial areas of the South. In addition, the L&N believes that additional piggyback traffic can be developed between stations on the L&N in Kentucky such as Lexington and Bowling Green, and Tennessee, such as Knoxville and Nashville on the one hand, and, points on the Monon on the other, where at the present time it has been considered uneconomical for either road to establish joint piggyback rates and services.

Monon maintains only 6 piggyback ramps at Lafayette, Crawfordsville, Indianapolis, Bloomington and Hammond, Ind., and Louisville, Ky., whereas L&N presently maintains 60 ramps. L&N after merger plans to also establish a piggyback ramp at Michigan City, Ind., to serve the industrial area in and around Michigan City to and including the Burns Harbor Development along Lake Michigan. L&N believes also that considerable plan V motor-rail traffic will be developed with motor carriers via Michigan City. L&N states that its policy though is not to establish plan V rates and service in competition with all-rail service when the latter is competitive and can control the traffic.

L&N believes that it will be able to generate ample piggyback traffic via both Monon and the C&EI-Evansville line, if they secure both lines. The C&EI has a piggyback ramp in downtown Chicago that will be used along with Monon's

ramp at Hammond, which is in the general industrial and commercial area of Chicago.

It is anticipated that sufficient traffic can be generated to justify a daily auto and piggyback train between Chicago and Birmingham, Ala., over the Monon-L&N lines similar to the special piggyback service L&N presently operates between Chicago and Atlanta in connection with the C&EI, via Evansville. The L&N presently handles automobile traffic on multilevel rack cars with the Monon which would be the nucleus of a solid piggyback auto-train and enable L&N to give Monon shippers a new and fast service not available in the past.

Monon's piggyback facility at Hammond would enlarge L&N's handling and competitive capabilities in the Chicago area. It has ample room for expansion and provides an excellent location for traffic not convenient to the C&EI facility.

New traffic in grain shipments will be developed also as a result of the proposed merger. L&N is a substantial transporter of grain and grain products with 109,509 carloads and 5,904,235 tons of such traffic handled in 1967 yielding revenue of $15,141,541. L&N has substantially increased its grain traffic to the South in recent years due to the establishment by L&N and connecting carriers of reduced incentive loading rates and the development of the "Big Blue" 100-ton covered hopper cars of which L&N presently has in operation a total of 642 cars.

The Monon has been unable to attract much grain traffic to its lines. In 1967, it only carried 6.9 percent of the grain produced in the counties of Indiana served by it. With one factor incentive loading rates on grain in effect to southern districts after merger, substantial reductions would be made in the present combination rates applicable on grain from and to points in the Southeast, with a resultant generation of new traffic over the Monon route.

L&N is willing to have the Commission impose the standard DT1 conditions ***for the benefit of protestant and intervening rail carriers. It believes that these conditions would keep open existing routes and channels of trade, and since shippers or consignees route the vast majority of their traffic, *** that L&N after the merger would be able to divert substantial tonage.

The applicants state that the merger within 5 years after its consummation will produce annual savings of $2,651,236, composed of savings of $2,368,336 in payroll, $111,600 in office rental, $136,300 from the closing of the Lafayette shops of Monon, and per diem savings of $35,000.

* * * * * * *

Among public and shipper witnesses favoring the proposed merger were the Governors of the States of Indiana and Kentucky as well as the Lieutenant Governor of Indiana and the mayor of the city of Bedford, Ind. Governor Branigin of Indiana, the governor at the time of preparation of statements, supports the merger as being in the best interests of the State of Indiana and its people. He states that the Monon as a small carrier is particularly susceptible to fluctuations in economic conditions, competitions from other railroads, and other modes of transportation. He believes it essential that Monon be affiliated with a large trunkline carrier that will strengthen and develop it, so as to provide for the people of Indiana, first-class rail service and promote the State's economic development. He believes that the merger of Monon into L&N will accomplish this.

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Governor Nunn of Kentucky supports the merger as one which will promote the public interest of the Commonwealth of Kentucky, its industry, and its people. He testified that the merger will benefit Kentucky by providing for the first time direct single-line service to Chicago via Louisville from large portions of Kentucky.

Lieutenant Governor Rock of Indiana supports the proposed merger as one that would increase the potential industrial development of the State of Indiana. He believes that a single-line service to points in the State of Indiana would be much more advantageous to all concerned than the present available dual or multiple-line service.

The mayor of Bedford testified in support stating that the merger will strengthen rail transportation through Bedford and will materially aid Bedford's program of industrial development.

A number of shippers filed statements in support of the merger. Supporting shippers include National Distillers and Chemical Corporation, American Colloid Company, Aluminum Company of America, the Pillsbury Company, Radio Corporation of America, Eli Lilly and Company among others. These shippers testified generally that the merger would result in improved and more efficient service between the South and points north and west of Chicago, improved transit time between Chicago and Louisville, elimination of interchange delays, improved car supply, increased availability of specialized equipment, and reduced transit damage among other major benefits to be secured from the merger.

Applicants also agreed and stipulated with Penn Central that if the public and shipper witnesses submitting verified statements in support of the application were called and examined by Penn Central as to the factors that influence the routing of the traffic that they control, they would respond by testifying (1) service (time in transit) is a prime consideration in the choice of mode of transportation and in the choice of alternative rail routes, (2) equality of competitive rail service routes generally requires equality in rates, (3) single-line rail routes are generally preferred to joint-line routes, and (4) adequate car supply is essential to the maximum movement of traffic via railroads.

* * * * * * *

Relevant statutory criteria.– In order for the proposed merger to be approved under section 5 of the act, the transaction must be shown to be in the public interest.

In determining whether a proposed transaction is consistent with the public interest, the Commission is required under section 5(2)(c) to give weight to the following considerations, among others, (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 failure to include, other railroads in the territory involved in the proposed transaction, (3) the total fixed charges resulting from the proposed transaction, and (4) the interest of the carrier employees affected.

The term "consistent with the public interest" means compatible with, or not contradictory, or hostile to, the public interest. See *Great Northern Pac. & B. Lines–Merger–Great Northern, supra,* and cases therein. The Commission, in deciding whether a proposed merger is consistent with the public interest, is

required "to give consideration to the effect (of the transaction) on competitors, and on the general competitive situation in the industry, in the light of the objectives of the national transportation policy." *McLean Trucking Co. v. United States,* 321 U. S. 67, 87.

The Commission *** must, in rendering a determination on a merger proposal, estimate the scope and appraise the effects of the curtailment of competition, which will result from the proposed consolidation, and consider them, along with the advantages of improved service, safer operations, lower costs, et cetera, to determine whether the consolidation will assist in effectuating the overall transportation policy, *McLean Trucking Co.* case, *supra,* at 87.

In numerous cases, it has been pointed out, that the Commission should accommodate section 5, and antitrust legislation, but that the Commission is not required to measure proposals for merger by the standards of antitrust legislation.

Competition is one factor that must be taken into account in rendering a decision on a merger proposed, but it is merely one of several considerations.

The examiner, in rendering his determination as to the justification for the proposed merger, has taken into account the various legal guides mentioned above, and has appraised the proposed merger in light of such guidelines.

* * * * * * *

Competition.– While the L&N, with the acquisition of the Monon, will have two routes into the Chicago gateway, the competitive situation from the Southeast will not be substantially changed. Not only with the approval of the Milwaukee trackage rights proposal will competition be enhanced, but there also will remain the competitive force of the Penn Central, which competes on traffic between common points such as Chicago, Indianapolis, and Louisville, and on traffic through both the Louisville and Cincinnati gateways to Chicago. Its service should also be improved with the imposition of the condition regarding Strawberry Yard. The Norfolk and Western Railway Company is also a competitive influence in the territory concerned, as is the C&O-B&O lines, and the grant of the trackage rights in particular will give the Milwaukee-Southern a new, faster service route to Chicago. The record warrants a finding, that subject to the conditions imposed herein, the approval of the proposed merger will not be anticompetitive in its aspect, but, instead, will lead to strong intramodal competition in the territory, will promote the effective development of rail transportation for the shippers and receiving public, will bring about many significant services and other advantages to the Monon with resultant benefits to the shipping and receiving public, will aid the applicants in their competitive posture with motor and barge carriers in the territory, all in line with the objectives and purposes of the national transportation policy.

* * * * * * *

BENEFITS OF MERGER

The grant of this merger application will enable the applicants to speed up operations between L&N points in the Southeast, and Chicago, or Michigan City, with an improvement of as much as 2 days in transit. This, together with the

influx of capital, as well as know-how to the Monon line, will enable the shippers and receivers, in the territory concerned, to compete with shippers in other areas, with resultant generation of substantial amounts of new traffic. In the area of piggyback traffic and grain traffic, in particular, it is expected that substantial tonnage will be secured for the Monon line.

A strong reason for approving the proposed merger, is the question of the continued ability of the Monon to remain competitive, in view of its position as a small carrier, surrounded by other, much larger systems in the territory. While Monon, with good management, has succeeded in reducing its debt and achieving net income averaging about $1 million per year for the last 5 years, it still is not in a position, even with such an improved financial picture, to maintain its property and make necessary capital improvements.

Monon is not only faced with consolidation of other lines in the area into major systems, but also with competition from other modes. *** 41 motor common carriers, some of which are the largest in the country, are operating in Monon's area. *** /A/lso, *** additional intermodal competition is threatened by the proposed construction of a waterway for barge traffic from the Ohio River to Lake Erie and Lake Michigan via the Wabash River and adjacent streams. While that project has not materialized as yet and may never materialize, it is just one of the potential competitive forces Monon would face alone if this merger was not approved.

The L&N has, over a period of years, worked closely with the Monon, with the two railroads connecting at the Louisville gateway. The Monon has interchanged more traffic with L&N over the years than with any other carrier, with Southern running a close second. Monon's interchange of traffic with L&N has also been increasing steadily over the last few years.

It is clear, *** that merger of Monon and L&N will result in a substantial improvement in transit time between points in the Southeast, served by L&N, and Chicago, served by Monon. A substantial saving in time will also result on traffic from Chicago destined to industries on the L&N in Louisville. The merger, with resultant single-line service, should attract more customers, and thereby increase revenues. More efficient operations, with greater profits to the L&N, will also result from the merger.

As was also pointed out earlier, Monon shippers will benefit from the car records system and car tracing system now used by L&N, which will be instituted on the Monon after merger. With the vast modern car fleet available to Monon shippers after merger, the shortages in available cars, especially during peak business seasons, will be alleviated. With a more efficient system for repair of cars at the new proposed repair car shop at Lafayette, less time will also be lost in use of such cars.

The lines of the Monon, while presently in good condition, will be improved after merger so as to make it more capable of meeting increased traffic demands. New welded rail will be installed on 7 miles of track each year. Ten additional miles of welded rail will be installed each year for 5 years. The radio and signal system of the Monon will also be improved. Six bridges will be replaced within 5 years. Mechanization of track maintenance work will also be increased. All of this work will amount to $5,030,000 over a 5-year period, over the amounts spent by Monon on similar items during the 5-year period, 1963 through 1967.

As was pointed out earlier, L&N expects to provide Indiana shippers completely new service via a daily auto and piggyback train between Hammond and Birmingham over the Monon lines. The grain movement is also expected to be increased with single-line service to Southeastern points.

Among other arguments in favor of the merger, is that with the much larger resources of the L&N available to Monon, it will be much more successful in inducing new industries to locate in its Indiana territory.

* * * * * * *

PROTESTANTS AND INTERVENORS

The DT&I and its wholly owned subsidiary Ann Arbor intervened in this proceeding to oppose the proposed merger, or in the event of approval *** to seek *** conditions. DT&I *** connects with the Penn Central tracks extending between South Charleston and Cincinnati. At Cincinnati the Penn Central interchanges with the L&N.

* * * * * * *

The DT&I is a wholly owned subsidiary of Penn Central. Ann Arbor in turn is wholly owned by DT&I. The DT&I though is operated independently of Penn Central, *Detroit, Toledo & Ironton R. Co., Control, supra,* 275 I.C.C. 445, although members of the Penn Central organization are predominant on the DT&I Executive Committee.

The L&N handles a large share of traffic to and from Southern Freight Association that moves through Cincinnati and over the Penn Central, DT&I, Ann Arbor, and connecting railroads north of Cincinnati. ***

* * * * * * *

DT&I and Ann Arbor oppose the merger arguing that the acquiring by the L&N of its interest in the C&EI, Evansville line, and then the acquisition here of the Monon, would place under the control of a single, large affiliated carrier system in the South two largely parallel lines from the vicinity of the Ohio River into Chicago with a resultant adverse affect on the public interest and on the DT&I-Ann Arbor.

DT&I and Ann Arbor consider the standard conditions offered by the L&N here to be inadequate and instead ask if the merger be approved that the conditions sought by them *** be imposed.

* * * * * * *

*** /T/he conditions sought by the DT&I, which are similar to those sought by Penn Central, are not called for and not necessary in the public interest.

* * * * * * *

It is possible that some traffic might be diverted from DT&I to the Monon routes, but if such diversion should occur, it would appear to be slight. There-

fore, the standard traffic conditions agreed to by the applicants and imposed here, * * * should be adequate to protect the interests of DT&I and Ann Arbor. The Penn Central lines should also be able to exert their influence to protect the traffic of DT&I and Ann Arbor. The record does not support the imposition of the conditions sought by DT&I and Ann Arbor.

Penn Central.—Penn Central neither opposes nor supports the applications of the L&N and Monon to merge, but asks the Commission to prescribe conditions * * * to * * * preserv[e] * * * the existing and longstanding L&N, Penn Central routes * * *.

The Penn Central position is that if the merger is found to be in the public interest, it must also be found that the public interest requires that the existing joint L&N-Penn Central routes via Louisville, Cincinnati, and Evansville be maintained as fast service routes competitive with the single-line L&N routes via Louisville and Evansville.

* * * * * * *

The Penn Central believes the conditions it seeks are essential to the preservation of intramodal competition which would otherwise be diminished by L&N's proposal to render an efficient, economical, and expeditious single-line service to and from Chicago.

* * * * * * *

The evidence * * * fails to show a need in the public interest for Penn Central to be accorded the conditions sought by it. There is no indication on this record that the public interest requires the imposition of the sought conditions * * *.

* * * * * * *

Several of the conditions which the Penn Central seeks are in most material respects identical to the conditions imposed upon Penn Central for the protection of the Erie Lackawanna and the Alphabet Route as a result of the New Haven Railroad's inclusion in the Penn Central merger. While the Penn Central disclaims any intention to freeze traffic by use of the proposed conditions, it appears * * * that L&N could not make any change in train schedules without the written consent of the Penn Central if such changes would increase the time in transit via the Penn Central route, would result in freezing such traffic with resultant loss to the public of service improvements which otherwise could be effectuated through this merger.

The same circumstances are not here that prevailed as a result of New Haven's inclusion in the Penn Central. Contrary to the evidence in the New Haven case of possible interchange problems at Maybrook which called for certain conditions there, this record does not indicate that L&N would downgrade its service via Cincinnati, which is a main interchange point, or that even if some changes occurred at that point, Penn Central would suffer any serious consequence to its efficiency or that the national transportation system would be impaired. Penn Central would still have an interchange with the Southern at Cincinnati and thus would have access to the South and Southeast via Ohio River gateways.

Penn Central's requests imposition of the Roanoke agreement as a condition. The Roanoke agreement is an agreement entered into in 1944 between the Southern and official territory lines and applies on traffic moving via a Southern line in official as well as in southern territory. It provides that if a Southern line moves traffic on a joint rate between official and southern territory and interchanges the traffic with a Northern line at an interior junction, the Southern line will receive less revenue on its proportion north of the river than would be received by a Northern line moving the traffic between the Ohio River and the Interior Junction. The result of imposing the Roanoke agreement as a condition would be to force the L&N to receive less revenue than the Monon now receives on traffic moving between official and southern territory via the L&N and another Northern line.

There appears no reason for the imposition of the Roanoke agreement as a condition. The Penn Central will receive after merger the same revenues on Monon traffic that it receives now. If the Penn Central believes that the Roanoke agreement should be applied under its terms to the situation that will arise here after merger, it may either bring an action for relief under section 15(6) or action in the courts on the application of the agreement.

The total evidence presented shows no need in the public interest to prescribe the conditions sought by Penn Central. The standard conditions as agreed to by applicants are sufficient to protect the Penn Central as against any possible consequences of this merger. * * *

Milwaukee.—Milwaukee favors approval of the proposed transaction subject to the following conditions:

(1) That L&N, the surviving entity following merger of Monon into it, grant Milwaukee Road trackage rights over the present Monon line between the point of connection of Milwaukee Road and Monon at Bedford, Ind., and the end of the present Monon line in New Albany, Ind.;

(2) That L&N agree to sell the interest of the present Monon in the Kentucky & Indiana Terminal Railroad Company (hereinafter "K&IT") to Milwaukee Road or, in the alternative, agree to the sale to the Milwaukee Road of a 1/4 interest in the K&IT by the present three owners or their successors;

(3) That L&N agree that Milwaukee Road be granted trackage rights over K&IT between New Albany, Ind., and K&IT Youngtown Yard in Louisville, Ky., and the same rights as the present Monon may have with respect to operations over or use of the facilities of K&IT;

(4) That L&N agree to cooperate with Milwaukee Road in obtaining all necessary consents and conveyances, including consents and conveyances by other owners of K&IT, with respect to the aforesaid sale and trackage rights requested by Milwaukee Road; all to the end of enabling Milwaukee Road to provide a through transportation service by rail between all points and places now on its lines and Louisville, Ky., via its present Terre Haute Division and the present Monon and K&IT, through the common intersection at Bedford, Ind.

Milwaukee contends that the merger proposed herein is a direct result of L&N's success in obtaining the C&EI's Evansville line which Monon had strenuously opposed. Monon had been apprehensive of major loss of traffic by diversion of traffic from L&N's connection with Monon in Louisville to the L&N's new line via Evansville. Following agreement on merger between L&N and Monon, Monon withdrew its opposition to the acquisition by L&N of the

Evansville C&EI line. Milwaukee believes that the L&N with the acquisition of Monon after previously securing the Evansville Branch of the C&EI has effectively blocked an expansion of Southern, its chief competitor in the South and Southeast, and will have captured for itself two of the formerly competitive Chicago-Ohio River bridge lines which are important constituents of Chicago South and Chicago Southeast through routes.

Milwaukee states that while L&N and its "family lines" form a prosperous railroad system in the United States, blanketing the South and Southeast and while Monon's financial status is quite comfortable with steady improvement, it forms a stark contrast to the Milwaukee's own financial position which was described in the Northern lines merger report *Great Northern Pac. & B. L.-Merger-Great Northern R. Co.*, 328 I.C.C. 46 at 488, as anemic.

Milwaukee claims that it is in a much weaker position than the L&N as evidenced by its present financial picture. Among other financial differences it points out that unlike L&N's capital surplus of $22.1 million and Monon's of $5.8 million at the end of 1968, Milwaukee has none. Milwaukee's income account for 1968 unlike those for applicants shows a decline in net railway operating income of $4.2 million, a decline in total income of $0.9 million, and a decline in income available for fixed charges of $575,942 to a level of $16.0 million. Also, while L&N paid common shareholder dividends of $5 per share in both 1967 and 1968 totaling some $24.8 million and Monon paid common shareholder dividends for both years over $1.1 million, Milwaukee was forced to omit payment of any dividend on common stock in 1968. Milwaukee also points out that its per common share earnings of $1.58 for 1968 were more comparable to Monon's $1.05, than to L&N's $9.24 per share.

* * * * * * *

While the Milwaukee claims that the proposed merger here would have an adverse impact upon its whole system unless its trackage rights conditions are imposed, the line of the Milwaukee immediately involved is its Terre Haute Division.

*** The Terre Haute Division runs from Bensenville Yard in the Chicago area owned by the Milwaukee, to Faithorn, Ill., 42.8 miles southeast over the combined IHB-BOCT trackage, the IHB is jointly owned by the Penn Central and Milwaukee. By use of the IHB-BOCT trackage, Milwaukee is able to operate its trains from Bensenville through to the Terre Haute Division and thereby bypass many of the terminal congestion problems of the Chicago area. The Terre Haute Division of the Milwaukee actually begins at Faithorn then runs south through Bedford, Ind., terminating at Seymour, Ind.

The Terre Haute line is presently used for freight service only. *** Direct interchange on the Terre Haute line is had with the Monon at Bedford and at Midland, Ind. Direct interchange facilities are also had with the C&EI at Momence, Ill. Other interchanges with the Monon and the C&EI are made at other points in the area by use of intermediate carriers.

The distance from Bensenville Yard to Terre Haute is 190.8 miles, from Bensenville Yard to Bedford 269.7 miles, and from Bensenville Yard to Seymour 306.2 miles.

* * * * * * *

Milwaukee claims that the merger of the L&N and Monon would divert $550,649 in traffic from the Milwaukee alone, or $487,545 if Milwaukee merges with the Northwestern.

Milwaukee contends that the conditions it seeks, calling for trackage rights from Bedford to Louisville, would result in improved service and significant benefit to the public interest. It would inaugurate two new trains daily between Bensenville Yard and Louisville on through schedules, with one intermediate stop at Terre Haute. There would be resultant savings it is alleged of two car days for every car being moved by the railroad. The southbound train will be scheduled to connect with Southern at Louisville with a saving of as much as 2 days in transit. Pre-blocking of cars is planned for Southern by Milwaukee which will aid in the speeding of movements over the proposed route. Milwaukee contends that the new service proposed would probably result in increased Milwaukee annual revenues *** from transportation of 45 cars per train in each direction. The traffic would be largely an extension of haul for Milwaukee load of traffic it already carries north and west of Chicago.

* * * * * * *

The grant of the trackage rights will the Milwaukee asserts enable it to hold traffic to the railroads against encroaching intermodal competition, permit its shippers to compete for markets, reduce transportation costs to shippers, and enable the Milwaukee to attract industry to its Terre Haute Division. One of the main benefits from the grant of the sought conditions Milwaukee concludes would be in improvement of car supply. This will result from the elimination of delay in movement of freight cars through the congested Chicago terminal area. Shippers along Milwaukee's present routes if the conditions are granted will have available expedited single-line service between all points on the Milwaukee, including Seattle, Tacoma, Minneapolis, St. Paul, Council Bluffs, Sioux City, Milwaukee, Chicago, and Terre Haute, on the one hand, and Louisville on the other, and expedited two-line service to Southern and Southeastern points without time consuming interchange in Chicago.

The C&O, B&O stipulated with the Milwaukee that if Milwaukee is granted trackage rights to extend /its/ operation to Louisville, the B&O will cooperate in permitting Milwaukee to become a full partner in the ownership of the K&IT.

* * * * * * *

SHIPPER AND PUBLIC TESTIMONY IN SUPPORT OF MILWAUKEE'S PROPOSED CONDITIONS

Milwaukee submitted statements of 10 State transportation regulatory bodies (the Southern submitted a statement from the South Carolina Commission) supporting the proposed conditions calling for trackage rights. They were from the States of Idaho, Illinois, Iowa, Minnesota, Michigan, Montana, North Dakota, South Dakota, Washington, and Wisconsin. These agencies through their spokesmen favor such approval because of the possible 2-day speedup in transit time

service between the West and Southern points by use of Milwaukee around Chicago to Louisville and Southern into the Southeast. This resultant improvements in service between these States and the Southeast they believe would cause all improvement in the car supply and strengthening of the Milwaukee system all to the betterment of the industrial climate of their individual States.

The mayor of Terre Haute testified in favor of Milwaukee securing the conditions it seeks. He believes the grant of trackage rights to applicant will improve service on Milwaukee's line with resultant benefits to Terre Haute and its industries. Thirty-seven shippers presented written testimony supporting Milwaukee's sought conditions. Seven shipper witnesses presented by the Southern also testified in favor of the Milwaukee conditions. * * * The shippers favor the sought Milwaukee trackage rights conditions as a means of expediting the movement of their traffic from their plants to points in the South and Southeast. They feel generally that severe delays at the Chicago terminal area would be avoided if the conditions are imposed, and that there would be a resultant speedup of movements through Louisville through an interchange there with the Southern. As a result of this improvement in transit, customer satisfaction would be secured.

Diversion.—The Milwaukee, C&NW, and Southern retained a sampling expert, * * *, to make a random sample of 1968 freight traffic for the purpose of estimating revenue losses due to the L&N-Monon merger. The sampling expert designed his sample according to established and acceptable probability sampling procedures. The study was confined to origins and destinations in 11 Southern and Southeastern States and the District of Columbia and was composed of traffic interline forwarded, interline received, and intermediate and further grouped by Ohio and Mississippi River junctions through which the traffic moved. He arrived at combined losses to the three carriers of $1,851,888.

* * * * * * *

It appears that the Milwaukee's estimate of diversion is somewhat in excess of its probable losses.

* * * * * * *

The overall evidence indicates that it is most likely that while Milwaukee will suffer some slight diversion of traffic if this merger is approved, it will be far less than the figure claimed by Milwaukee. * * *. [I]t is clear that such losses would not be sufficient to impair its ability to provide reasonable service to the public.

* * * * * * *

Southern.—* * * Southern supports the Milwaukee proposal as being in the public interest and is ready to implement this support by coordinating its service with the Milwaukee connection at Louisville, and by soliciting for the route on traffic bound to and from points beyond Chicago.

* * * Southern had discussions with Monon about the possibility of acquiring that carrier in 1967, but decided against proceeding with such discussions at that time because, among other things, it was felt that it would be better to work with its connections north of the Ohio River and to Chicago rather than try to buy a competitive line. * * * [T]he situation has since changed as a result of various mergers, and that Southern would now be willing to acquire Monon were L&N to decline to do so because of the imposition of the Milwaukee trackage right condition.

Southern believes that the Milwaukee condition will significantly improve service to the public, and should be approved. It would improve car utilization and thereby assist in alleviating the car shortage problem. The proposal, the Southern believes, gives the Commission an opportunity to contribute toward the vigor of competition in the Southeast between Seaboard Coast Line System, of which L&N is a part, and the Southern System. The Southern believes that without the condition, the competitive situation in the entire Southeast, which it considers already weighed in SCL's favor, would be further disrupted.

* * * * * * *

Southern asserts that the proposed Milwaukee service will greatly improve the service between the Southeastern United States and the Midwest and Northwest when moving by way of the Louisville gateway. By securing the trackage rights from Bedford to Louisville, the Milwaukee will be able to provide fast and expeditious service to and from points on its many lines west and north of Chicago to a direct connection with Southern and other rail carriers at Louisville. This service would bypass Chicago with resultant transit time savings previously noted.

Southern introduced evidence from seven shippers in the Southeast who testified to the need for improved service on shipments beyond Chicago and the desirability of a route that would reduce transit time by eliminating the interchange delays in Chicago. As pointed out earlier, the Public Service Commission of South Carolina also supports the granting of trackage rights to Milwaukee for generally the same reasons.

Southern believes there is sufficient traffic potential between the Southeast and points beyond Chicago to make the proposed Milwaukee-Southern connection an extremely important route, and that greatly improved service will generate considerable traffic that is not now rail oriented. As Southern indicates, it proposes to coordinate schedules and to preblock cars for Louisville interchange with Milwaukee. If traffic develops as anticipated, Southern also contemplates instituting additional trains specially coordinated with the Milwaukee schedule. Southern also states that it will solicit actively for a Milwaukee-Southern route through the Louisville gateway even though other gateways theoretically might give Southern a longer haul.

Southern does not believe that other Ohio River gateways offer the same possibilities for improving service. Cincinnati is considered to involve ad-

ditional intermediate carriers on shipments beyond Chicago with a consequent increase in the number of interchanges. The East St. Louis gateway is not considered any more suitable as an alternative route than Cincinnati.

Southern states the Milwaukee conditions will result in such reduction in transit time that it will greatly improve car utilization by as much as 10 percent in the case of Southern.

* * * * * * *

Southern contends that the Milwaukee trackage rights conditions will not injure any other carrier such as Soo. ***

* * * * * * *

***Southern also seeks the standard conditions which will be imposed.

* * * * * * *

***[N]o exact finding can be made as to the amount of traffic that would be diverted from the Southern if the L&N merger proposal is approved. It appears though that the Southern, just as the other interveners, is overly pessimistic concerning possible diversion.

* * * * * * *

The acquisition of the C&EI-Evansville route by the L&N cannot be ignored in determining the consequences to the interveners and the public from the approval of the instant proposal. There is an interaction between the two proceedings which cannot be ignored in making findings in this proceeding.

While, *** the Southern appears unduly pessimistic in its estimate of the impact of approval of the L&N-Monon merger on its traffic flow, there does appear to be a good opportunity for L&N to divert a considerable amount of traffic from Southern if this merger is approved without the imposition of Milwaukee's trackage rights conditions.

The imposition of the trackage rights conditions, *** plus the imposition of the standard conditions, should improve Southern's service to the public without any impairment of its present operations. ***

C&NW.– C&NW *** does not oppose this merger per se, but does oppose this merger unless, and until specific conditions are prescribed for the protection of those who would be unduly injured.

* * * * * * *

In addition, C&NW supports the trackage rights conditions sought by Milwaukee.

* * * * * * *

C&NW believes that the continued participation by it in traffic interchanged to and from the L&N, via the gateway of East St. Louis, is in serious jeopardy,

and that the conditions proposed must be imposed if an intolerable diversion is not to take place.

* * * * * * *

While, as pointed out previously, we cannot ignore the interrelationship of the L&N's acquisition of the C&EI-Evansville line and its merger here with the Monon, it appears clear that whatever injury occurs to the C&NW as the result of L&N's acquisition of these routes, occurs from its acquisition of the Evansville line, and not the Monon. In the *Acquisition* case, the Commission imposed the standard routing conditions for the protection of other railroads, including the C&NW. ***

The evidence presented does not show that traffic would be diverted from C&NW sufficiently to impair or significantly affect its ability to provide adequate transportation service to the public, and therefore its request for special conditions will be denied. The standard conditions imposed herein plus the trackage rights conditions later *** imposed should protect C&NW against any possible traffic losses.

Soo.– The Soo line intervened in this proceeding and entered into a stipulation with applicants. The stipulation states that the Soo line is not opposed to the L&N-Monon merger as specifically proposed by applicants, and further that Soo agree with the applicants that the standard operating and traffic conditions with light modifications should be imposed. ***

Soo vigorously opposes the Milwaukee's request that as a condition of this merger it be granted trackage rights over the Monon from Bedford to Louisville. *** [I]t also asks that should Milwaukee be granted its sought trackage rights conditions in this proceeding, that the grant of such rights should be deferred until the Commission has finally decided the C&NW-Milwaukee merger and should be denied if that merger is approved and consummated. ***

It further argues *** that if the trackage rights conditions are approved, *** the Commission should require as a further condition thereof that Milwaukee shall, prior to extending its line to Louisville, negotiate in good faith with Soo, and grant it such operating rights, physical access to industry, coordinations, or similar rights as may be necessary to neutralize Soo line's revenue losses. To the extent those losses are not neutralized by other conditions, the Soo requests that the Commission require Milwaukee to fully indemnify Soo against any and all damage through traffic diversion attributable to said Louisville conditions.

* * * * * * *

The overall evidence does not support Soo's estimate of diversion. *** While Milwaukee's estimate of possible diversion appears extremely low, Soo's appears too high. *** But even if Soo's estimate is correct, it does not warrant denial of Milwaukee's sought condition. For the reasons hereafter stated in relation to that proposed condition, Soo's arguments here are not persuasive.

MILWAUKEE TRACKAGE RIGHTS CONDITIONS

While the potential diversion from the Milwaukee is not large as a result of this merger, the merger herein, together with L&N's acquisition of the Evansville line, *** will *** cause a diminution of intramodal competition in the territory. It would appear in the circumstances herein that the grant of the trackage rights to the Milwaukee would enhance intramodal competition without impairing the benefits to be received by the applicants from the merger.

As has been shown earlier in this report, support for Milwaukee conditions was evidenced by 11 State regulatory agencies, *** the city of Terre Haute, the Wabash Valley Industrial Development Council, and a large number of shipper interests. It also, as pointed out previously, has the enthusiastic support of the Southern and C&NW. Southern, in particular, considers this proposal a method by which it can compete successfully with the L&N-SCL on traffic to and from the Southeast and the Chicago gateway.

***[T]he new proposed Milwaukee-Southern service would appear to be a benefit to the public. It would help maintain a competitive balance on traffic to and from the Southeast through the Chicago gateway and would not appear to divert any substantial traffic from the Monon. ***

While the Terre Haute branch is not capable of handling all types of cars, for example high-cube cars, and has maximum speed limits somewhat lower than the Monon mail line, and the line needs rail replacement of ties on some points, nothing in essence is sufficiently troublesome to warrant a denial of the sought trackage conditions. Milwaukee is improving the condition of its ties through the application of a planned maintenance program, which will renew 49,000 ties in 1969. There is nothing to indicate that the Terre Haute line would not be a safe line for the passage of the expedited trains Milwaukee proposes to introduce.

* * * * * * *

While the profitableness of the trains over the Terre Haute branch, and over the tracks of the Monon and K&IT into Louisville, is a close question, the grant of the trackage rights to Milwaukee appears to be in the public interest. The benefits gained by the public from the grant of trackage rights outweigh the close question of the profitability of operation.

***[T]he *** sought trackage rights conditions are in the public interest. The proposed rerouting around Chicago through the inauguration of the proposed Southern-Milwaukee service, could be of substantial benefit to the public as recognized by the large shipper and public support. ***

The Terre Haute branch of the Milwaukee will be put to better usage with the inauguration of the proposed new service. The applicants will also receive an income from the Milwaukee, as a result of Milwaukee's use of the Monon's tracks. ***

The grant of trackage rights to Milwaukee should not only preserve competition in the area and alleviate any losses to Milwaukee suffered from diversion of traffic, but also improve competition in the territory by permitting faster movement of traffic between the South and Southeast, and the Midwest and Northwest, bypassing the Chicago interchange with savings in transit of

as much as 2 days. Southern is prepared to coordinate service with the Milwaukee at Louisville to speed such traffic, and is also prepared to acquire the Monon, should the L&N decline to do so, and to grant Milwaukee the traffic rights it seeks.

The inclusion of Milwaukee, a railroad in the territory involved in this proceeding, in the proposed transaction, is consistent with the public interest for the purpose of improving Milwaukee's ability to provide adequate transportation service to the public and enhance intramodal competition for traffic in the Chicago-South and Southeast rail routes.

* * * * * * *

Overall, the evidence supports the imposition of the trackage rights conditions sought by the Milwaukee.

* * * * * * *

Wabash Valley.—Wabash Valley Industrial Development Council, styled as a nonprofit organization composed of businessmen, labor representatives, and residents, chartered in the State of Indiana to promote the advantages of the resources, transportation facilities, and economic conditions of the Wabash Valley area of Indiana, particularly the counties of Parke, Vermilion, Vigo, and Fountain, opposes the merger because it contends that the merger will be detrimental to the maximum flow of L&N traffic over the Evansville branch of the former C&EI line.

***Wabash Valley fears the erosion of traffic from the Evansville line if the Monon merger is approved. Wabash Valley at the hearing sought *** information as to the amount of traffic interchanged at Louisville between the Monon and the Southern during the period 1963-1968. The information for the last 4 months of 1967 and all of 1968 was secured. An attempt was made to secure the remainder of such information *** but it was found that Monon's records for that period had been destroyed, *** Except from the files of Southern, which would require a time-consuming, expensive search, such data is unavailable. The examiner, *** finds the data not to be materially relevant. The information available as to interchange at Louisville between L&N-Monon and Southern-Monon since 1956 shows an increase over that period in Monon-L&N interchange, and in no way indicates that L&N and Monon are not logical partners to a merger. *** The information sought by Wabash Valley, while missing here, appears of minor significance in relation to the amount of such data available in the record.

* * * * * * *

A professor of business at Indiana State University testified for Wabash Valley that there appears little doubt that control by L&N of both the Monon and the Evansville line would have an adverse impact upon competition in the area. ***

***[The professor] also considers that the physical connections and service relationships of the Monon with Southern Railway are stronger and more compatible than the relationship of the Monon and the L&N. ***[T]he professor

stated his preference that the merger should be denied, as not in the public interest, but that if it was approved, * * * the grant of trackage rights to Milwaukee would be in the public interest, in that it would provide to the Southern an * * * access to the Chicago rail system, independent of eastern rail carriers.

* * * * * * *

Applicants contend that Wabash Valley does not speak for any shippers or receivers, and that it is difficult to find that it speaks for anyone other than its president, that it offered no probative evidence that either its members or anyone in the area will be harmed, and that it has only six or seven active members who do not meet regularly.

Applicants consider it ridiculous to assume that L&N plans anything other than the best possible return on its substantial investment in the Evansville, that indeed the Evansville line is in better condition than the Monon, its route is 65 miles shorter to Chicago, and historically has been L&N's preferred connection.

The applicants do not intend to take any traffic from the Evansville line, but believe the new business will come from other modes of transportation. They also point out a very important benefit from this merger. At present the L&N is forced to operate into Chicago over the C&WI via trackage rights, but with approval of this merger, the L&N will become an owner of, and equal partner in, the C&WI, thus eliminating the trackage rights, and making the Evansville line more competitive.

The applicants further state that there has been no abrupt change in Monon-Southern and Monon-L&N interchange at Louisville, that Monon-Southern interchange has been steadily declining since 1956, while Monon-L&N interchange has greatly increased, and that this shows that L&N is Monon's logical merger partner.

* * * * * * *

The contentions of Wabash Valley, that the proposed merger would not be in the public interest because there is no need for L&N to secure two parallel lines between the Ohio River and Chicago, and that the Evansville line will be downgraded, with resultant harm to the communities in its area, are not supportable. The evidence shows that instead of removing traffic from the Evansville line, L&N's intention is to secure as much traffic as possible for that line. It has a substantial investment in the Evansville line's continuance as a well maintained highspeed line. The Evansville line has been a preferred connection of the L&N, and will continue its status if this merger is approved. There is no indication that approval of this merger will cause harm to the communities in the Wabash Valley area, or that employees of the Evansville line will suffer loss of employment as a result of this merger.

* * * * * * *

[SECTION 20a APPLICATIONS]

Authority is sought * * * to issue a maximum of [775,000 shares of L&N preferred stock to effect the stock exchange, and to issue not exceeding] 258,334 shares of L&N common stock upon the exercise by the holders of L&N Series A preferred stock of their respective options to convert the Series A preferred stock into common * * *. The number of shares of common stock authorized by L&N's charter * * * is 3 million shares of $50 par value each, or a total of $150 million. There were 2,475,779 shares outstanding at the time of the application with a par value of $123,788,950. * * *

ASSUMPTION OF MONON LIABILITIES BY L&N

* * * L&N seeks to assume obligations and liability in respect of securities of Monon as follows: (a) First Mortgage bonds, (b) Second Mortgage bonds, (c) Income Debentures, (d) Notes evidencing its two Government guaranteed loans, (e) equipment trust certificates, and (f) contingent liability of Monon under its guaranty of certain bonds of C&WI, of the Belt, of the K&IT, and of Monon Transportation Corporation.

Had the proposed merger of Monon into L&N been consummated on December 31, 1968, * * * L&N would have assumed Monon's long-term debt aggregating $22,306,879. Further, * * * L&N would have become contingently liable for $7,781,366, or more under Monon's guarantees and suretyships.

SUPPLEMENTAL INDENTURES

The indentures in Monon's First and Second Mortgage bonds provide that Monon's board of directors shall set aside from available net income of previous calendar year an amount for the additions and betterments fund equal to two (2) percent of the Monon operating revenues for such calendar year, or $200,000, whichever is greater. Each mortgage further provides that in the event of merger of Monon with or into any other corporation a separate income account need not be maintained in respect of the operation of the properties subject to the lien of each mortgage, but in lieu thereof, provisions may be made which shall be equitable and practical with respect to the apportionment of the revenues and expenses of the successor corporation for the purpose of determining the amount of payments required to be made into or out of the additions and betterments fund.

In accordance with the foregoing, the applicants propose to substitute ".15%" (15/100 of 1 percent) for "2%" as the percentage figure by which to mutiply the operating revenues of L&N, as the surviving company of the merger in order to determine the amount payable into the additions and betterments fund (as defined in the First and Second Mortgages) out of available net income as defined therein.

Based on reasonable historic basis, the foregoing proposed change will provide substantially more dollars for the fund after merger than prior thereto, thus no materially adverse alteration of the rights of the bondholders appears

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to be sought by the applicants. The following tabulation shows operating revenues of Monon and L&N * * * with present and proposed payments into the additions and betterments fund. The contention of the applicants that more funds would be available under their proposed change in the mortgage indentures is supported in this tabulation which shows greater payments over a 5-year period aggregating approximately $253,000. Available net income out of which payments into the fund would be made would increase materially after merger as such income would be greater for two reasons; (1) L&N is a much more profitable railroad, and (2) the merger savings would enhance such income.

Year	Operating revenues		Payments into fund	
	Monon	Combined Monon and L&N	Monon present 2 percent	Monon and L&N proposed 0.15 percent
	(000 omitted)			
1968	$21.349	$323.061	$426.980	$454.592
1967	19.799	305.163	395.980	457.745
1966	21.101	313.317	422.020	469.976
1965	19.424	294.037	388.480	441.056
1964	19.274	278.775	385.480	418.162
Total for 5 years			2.018.940	2.271.532

The * * * aforesaid proposed change in the mortgage indentures should be approved.

UNITED STATES GOVERNMENT GUARANTEED LOANS

Upon consummation of the merger of Monon into L&N, liabilitiy for the Trust Notes ($2,600,000 and $1,500,000) and the Collateral Trust Notes ($4,100,000) * * * which have been guaranteed by the United States Government through the Interstate Commerce Commission under its part V loan program, would be assumed by L&N.

A trust agreement and collateral trust agreement in connection with these loans impose certain restrictions on Monon as to; (1) payment of dividends, (2) reacquiring of its capital stock, and (3) making certain investments. The obligation of L&N to merge with Monon is subject to the condition precedent that L&N would not be required to observe these restrictions. Release from such restrictions requires the Commission's written consent to modification of the terms and conditions of any guaranty which it has entered into pursuant to part V, whenever the Commission shall determine it to be equitable to do so.

It should be noted that similar restrictions were imposed in other part V loans, but not in all loans. Where a financially strong railroad was indicated, such restrictions were not imposed. In view of the sound financial condition of the merged company (L&N), as indicated in this report, * * * consent should be given for the removal of the restrictions when L&N assumes obligation and liability in respect of these loans.

* * * * * * *

In F. D. 25310, * * * authority should be granted under section 20a of the act for applicant to issue its Series A preferred stock in * * * exchange for Monon's outstanding stock as of the merger date, as well as the additional shares listed herein of L&N common stock upon conversion of such Series A preferred stock into common stock at the holders' option, and to assume obligation and liability in respect of Monon securities outstanding as of said merger date.

* * * [A]lso, consent should be given for the removal of the restrictions in the trust agreement and collateral trust agreement in connection with the part V loans to Monon, when L&N assumes obligation and liability in respect of these loans.

* * * [T]he proposed changes in the Monon indentures should be approved, and that no materially adverse alterations of the rights of the bondholders will be effected by such modification.

* * * * * * *

LOUISVILLE AND NASHVILLE RAILROAD FINANCIAL DATA ON A CORPORATE ENTITY BASIS

A. General

The L&N financial data presented below are on a corporate entity basis in order to provide comparable statistics with those of Monon * * * which are also on a corporate entity basis. The statistics of subsidiaries of both L&N and Monon would not add materially to either.

As will be seen herein, the L&N is financially sound with a good performance record. The merger of Monon into L&N should add materially to such a record * * *.

* * * [Total L&N assets * * *] as of December 31, 1968, were] $1,033,345,000, consisting of current assets $97,632, special funds $33,716,000, investment $36,162,000, properties (net of depreciation and amortization) $857,289,000, and other assets and deferred charges $8,555,000. * * * [T]otal L&N liabilities of $533,750,000 consisted of: current liabilities $57,244,000, long-term debt due within 1 year $27,516,000, long-term debt due after 1 year $429,059,000, reserves $5,613,000, and other liabilities and deferred credits $14,318,000. The equity of L&N's stockholders * * * [was] $499,604,000, consisting of capital stock $123,966,000, capital surplus $22,129,000, and retained income $353,509,000.

B. Operating revenues, operating expenses, and operation ratios:

* * * [R]ailway operating revenues and railway operating expenses for the years 1964 through 1968 * * * [are] indicated in the summary below. Operating ratios for each of these years were computed as shown in this tabulation. A comparison of the average operating ratio for the last 3 available years, for class 1 railroads, namely, 1965—76.9 percent, 1966—76.2 percent, and 1967—79.1 percent indicate a higher ratio for L&N for the years 1965 and 1967, while 1966 was the same.

Year	Railway operating revenues	Railway operating expenses	Operating ratio percent
	(000 omitted)		
1964	$259,501	$208,927	80.51
1965	274,613	215,006	78.29
1966	292,216	222,591	76.17
1967	285,365	231,225	81.03
1968	301,712	239,415	79.35

L&N operating revenues rose steadily with the exception of 1967, from $259 million in 1964 to a record high of $302 million in 1968, for an increase of $45 million, or 16.6 percent.

During the period 1964-1968, railway operating expenses rose from $209 million to $239 million, for an increase of $30 million, or 14.4 percent.

The operating ratio decreased materially in 1965 and 1964 to a low of 76.17, followed by a high of 81.03 in 1967 which was caused by a drop in revenues coupled with a rise in operating expenses in that year. A substantial increase in 1968 revenues over those of 1967 caused a substantial decrease in the 1968 operating ratio (79.35 percent) over that in 1967 (81.03).

C. *Net income:*

*** [L&N performance has been] consistently successful *** for the last 5 years with the attainment of a record high in net income of over $28 million. The drop in 1967 revenues and the increase in 1967 operating costs reflected themselves in a decrease of $8.6 million in 1967 net income which was followed by an increase of $3 million in 1968, as compared to 1967. In any event L&N's performance in this respect is good.

D. *Working capital:*

Working capital as determined by the Commission is shown in the following tabulation. It is noted that current liabilities shown therein do not include long-term debt due within 1 year. ***

Year	Current assets	Current liabilities[1]	Working capital	
			Amount	Ratio
		(000 omitted)		
1964	$86,480	$39,732	$46,748	2.18
1965	85,615	46,296	39,319	1.85
1966	90,425	54,992	35,433	1.64
1967	88,773	59,147	29,626	1.50
1968	97,632	57,244	40,388	1.71

[1]Exclusive of long-term debt due within 1 year.

L&N's working capital has consistently been well in excess of 1 month's operating expenses (exclusive of depreciation), the Commission's test for adequacy of working capital.

E. *Long-term debt:*

*** L&N's total long-term debt rose from $348.3 million on December 31, 1964, to $456.6 million on December 31, 1968, or $108.3 million during this

5-year span. *** [M]ost of the $108.3-million increase arose from increase in indebtedness on equipment obligations amounting to $88.4 million. Financing of heavy expenditures for property and equipment in 1964 (approximately $87 million) and 1966 (approximately $77 million) largely caused the aforesaid increase of $88.4-million increase in equipment obligations.

As at December 31	Total long-term obligations	Mortgage bonds	Equipment obligations
		(in millions)	
1963	$348.3	$199.3	$149.0
1964	390.1	196.5	193.6
1965	386.6	185.8	200.8
1966	411.3	184.2	227.1
1967	417.8	183.0	234.8
1968	456.6	219.2	237.4
5-year increase 1968 over 1963	108.3	19.9	88.4

F. *Capital expenditures:*

As reported in the L&N annual reports to the Commission, the value of total properties exclusive of depreciation and amortization rose from $710.2 million on December 31, 1963, to $857.3 million on December 31, 1968, for an increase of $147.1 million. This increase and the following tabulation of capital expenditures and depreciation during the 5-year interval, 1964-68, reflect L&N's efforts to maintain modern and efficient facilities in its continuing quest to meet the needs of its customers. ***

Year	Capital expenditures			Depreciation
	Total	Equipment	Road	
		(000 omitted)		(000 omitted)
1964	$86.9	(a)	(a)	$25.5
1965	52.5	$44.7	$7.7	27.7
1966	77.1	65.0	12.1	29.4
1967	54.7	41.3	13.4	31.2
1968	47.7	36.6	11.1	32.2
Total	318.9			146.0

Note (a)—Breakdown not available.

G. *Dividends and capital stock:*

The following tabulation shows dividends paid by L&N in each of the 5 years 1964 through 1968; the book value per common share at the end of each such year; and the market price range in each of those years. The steady increase in the book value per share of common as depicted in this tabulation is indicative of L&N's improvement in financial posture.

Year	[1] Dividend	Book value per share	[2] Market price range	
			High	Low
1964----------	$4	$183.88	94 3/4	74
1965----------	5	188.96	92 1/2	66 1/2
1966----------	6	194.37	102 1/2	73 3/4
1967----------	5	197.31	101 1/4	75 1/2
1968----------	5	201.51	90 3/8	72 1/4

[1] ICC reports Form A.

[2] Moody's for years 1964-1967 and Bank and Quotation Record for 1968.

H. *Fixed charges:*

*** [W]hile L&N has earned its fixed charges two to three times over in each of the 5 years 1964-1968, pretax income available for fixed charges declined from 3.01 times in 1966 to 2.00 times in 1967 followed by a slight increase in 1968 to 2.20 times. Nevertheless, the merger of Monon into L&N should result in a higher coverage for the merged L&N if the objectives of the merger are reached. In the 5-year period reviewed herein, L&N has more than adequately met its fixed charges by earnings.

I. *Rate of return:*

The following tabulation shows shareholders' equity, net investment in transportation property, net income, the rate of return on shareholders' equity, and the rate of return on net investment in transportation property. The rate of return on shareholders' equity peaked in 1966 at 5.92 percent and was lowest in 1967 at 4.07 percent, during the 5-year interval shown therein. The rate of return on net investment in transportation property also peaked in 1966 and was also lowest in 1967, during the 5-year interval 1964-1968.

Year	Shareholders' equity	Net investment transportation property	Net income	Rate of return (percent) on	
				Shareholders' equity	Net investment in transportation property
		(000 omitted)			
1964------	$454,215	$756,859	$20,307	4.47	2.68
1965------	467,605	778,786	25,500	5.45	3.27
1966------	481,399	820,314	28,516	5.92	3.48
1967------	489,028	838,194	19,908	4.07	2.38
1968------	499,604	848,409	22,905	4.58	2.70

Louisville and Nashville Railroad Company condensed balance sheets as at December 31:

	1968	1967	1966	1965	1964
			(000 omitted)		
Assets:					
Current assets----------	$97,632	$88,773	$90,425	$85,615	$86,480
Special funds----------	33,716	3,248	4,121	3,491	13,648
Investments----------	36,162	36,134	30,904	29,231	27,452
Property—less depreciation and amortization----------	857,289	847,226	829,496	788,249	766,358
Other assets and deferred charges----------	8,555	9,278	9,907	9,299	8,643
Total assets----------	1,033,354	984,659	964,853	915,885	902,581
Liabilities and stockholders' equity:					
Current liabilities----------	57,244	59,147	54,992	46,296	39,732
Long-term debt due within 1 year----------	27,516	26,752	25,121	23,964	31,009
Long-term debt due after 1 year----------	429,059	391,040	386,179	362,640	359,091
Reserves----------	5,613	5,645	5,130	4,255	3,476
Other liabilities and deferred credits----------	14,318	13,047	12,032	11,125	15,058
Total liabilities----------	533,750	495,631	483,454	448,280	448,366
Stockholders' equity:					
Capital stock----------	123,986	123,921	123,836	123,731	123,510
Capital surplus----------	22,129	22,123	22,113	22,102	22,081
Retained income----------	353,509	342,984	335,450	321,772	308,624
Total stockholders' equity----------	499,604	489,028	481,399	467,605	454,215
Total liabilities and stockholders' equity----------	1,033,354	984,659	964,853	915,885	902,581

Source.—I.C.C. reports—Form A.

Note.—According to *** L&N's comptroller, in hearing testimony *** the above balance sheets would not have changed materially had they been consolidated with subsidiaries ***.

Louisville and Nashville Railroad Company condensed income statement

	1968	1967	1966	1965	1964
			(000 omitted)		
Total railway operating revenues	$301,712	$285,365	$292,216	$274,613	$259,501
Total railway operating expenses	239,415	231,225	222,591	215,006	208,927
Net revenue from railway operations	62,297	54,140	69,625	59,607	50,574
Railway tax accruals (excluding Federal income tax)	21,358	21,697	20,769	19,526	19,054
Pretax railway operating income	40,939	32,443	48,856	40,081	31,520
Net rents payable	4,859	2,583	5,013	2,369	4,966
Pretax net railway operating income	36,080	29,860	43,843	37,712	26,554
Other income (nonoperating)	10,231	7,543	8,256	8,075	6,692
Total pretax income	46,311	37,403	52,099	45,787	33,246
Miscellaneous deductions	2,530	660	939	1,167	1,186
Pretax income available for fixed charges	43,781	36,743	51,160	44,620	32,060
Total fixed charges	19,876	18,385	17,002	16,120	15,227
Pretax income after fixed charges	23,905	18,358	34,158	28,500	16,833
Contingent charges	----------	----------	----------	----------	----------
Ordinary income before Federal income tax	23,905	18,358	34,158	28,500	16,833
Federal income tax	1,000	(1,550)	5,642	3,000	(3,574)
Net income as reported to I.C.C. (Form A)	22,905	19,908	28,516	25,500	20,407
Pretax coverage for fixed charges	2.20x	2.00x	3.01x	2.77x	2.10x
Pretax coverage for fixed and contingent charges	2.20x	2.00x	3.01x	2.77x	2.10x

Monon Railroad

FINANCIAL DATA ON A CORPORATE ENTITY BASIS

A. *General discussion:*

The financial data presented herein for the Monon are on a corporate entity basis as reported in its annual reports to the Commission. Monon's data on this basis would be properly comparable to that of L&N.

* * * * * * *

B. *Operating revenues, operating expenses, and operating ratios:*

*** [R]ailway operating revenues and railway operating expenses for the years 1964 through 1968 *** [are] indicated in the summary below. Operating ratios for each of these years were computed as shown in this tabulation.

Year	Railway operating revenues	Railway operating expenses	Operating ratio percent
	(000 omitted)		
1964 ----------	$19,274	$15,547	80.66
1965 ----------	19,424	14,811	76.25
1966 ----------	21,101	15,753	74.66
1967 ----------	19,798	15,495	78.27
1968 ----------	21,349	16,343	76.55

The above tabulation shows somewhat static railway operating revenues of approximately $19.3 million for the years 1964, 1965, and 1967 with increases to $21.1 million and $21.3 million in 1966 and 1968, respectively, or a spotty increase of 10.8 percent in revenues from 1964 to 1968.

The tabulation also reveals static operating costs of about $15.5 million for the years 1964, 1966, and 1967, a low of $14.8 million in 1965, with a peak in operating costs in 1968 at $16.3 million. The fluctuating increase in operating costs from 1964 through 1968, of about 0.8 million, was about 5.1 percent increase.

C. *Net income:*

*** [N]et income for 1967, $1,620,000, [was the highest for] *** the 5 years 1964-1968. However, in the 1967 net income there is included extraordinary profit of $1,050,000, thus for a better comparison one should look at Monon's ordinary income for the 5 years under review in this report. On this basis record attainment was reached in 1966 which shows ordinary income of $1,584,000. In spite of the substantial increase in operating revenues experienced in 1968 as compared to those of 1964 (10.8 percent increase), ordinary income for 1968 ($358,000) was slightly higher than that of 1964 ($300,000). Increases in rents payable and miscellaneous deductions appear to be largely the cause of the relatively poor performance by Monon in 1968. Generally, *** the need for merger of Monon into a carrier such as L&N, [as shown] if it is to survive the tough competition it faces by the increasing trend in railroad mergers and competition of other modes of transportation.

D. *Working capital:*

The following tabulation shows working capital as determined by the Commission which excludes long-term debt due within 1 year from current liabilities in such determination. * * *

Year	Current assets	Current liabilities[1]	Working capital	
			Amount	Ratio
		(000 omitted)		
1964	$4,443	$6,567	None	None
1965	7,893	5,497	$2,396	1.44
1966	6,538	4,784	1,754	1.37
1967	6,833	4,766	2,067	1.43
1968	7,995	5,235	2,760	1.53

[1]Exclusive of long-term debt due within 1 year.

Under the Commission's test for adequacy of working capital, the monthly average operating expenses, exclusive of depreciation, for Monon in the years shown above were $1,192,000, $1,134,000, $1,223,000, $1,199,000, and $1,274,000 for the years 1964 through 1968, respectively. As can readily be seen, with the exception of 1964, Monon's working capital in the tabulation exceeds the Commission's test as aforesaid. Furthermore, Monon's working capital has improved considerably in the years 1967 and 1968, which indicates that Monon will not be a burden to L&N upon merger.

E. *Long-term debt:*

As indicated * * * in the tabulation below, Monon's total long-term obligations decreased steadily from a high of $27,203,000, on December 31, 1964, to $22,307,000, on December 31, 1968, or a total decrease of $3,133,000 over the 5-year period shown therein. Equipment obligations decreased steadily and substantially during the years 1964-1968 as shown in this tabulation for a decrease of $1,808,000. This decline in equipment obligations, particularly in the years 1967 and 1968, was due largely to the cutback in capital expenditures in those years as shown in the summary of such expenditures in item F, below. The obligations on First and Second Mortgage Income Bonds also decreased during the 5-year period 1964-1968 by $1,325,000.

As at December 31	Total long-term obligations	Mortgage bonds guaranteed notes	Equipment obligations
		(000 omitted)	
1963	$25,440	$23,348	$2,092
1964	27,203	25,501	1,702
1965	26,355	25,016	1,339
1966	24,676	23,812	864
1967	23,105	22,592	513
1968	22,307	22,023	284
5-year decrease 1963 through 1968	3,133	1,325	1,808

F. *Capital expenditures:*

Capital expenditures for road and equipment betterments by Monon were as follows during the 5 years 1964-1968:

Year	*Amount*
1964	$3,659,000
1965	499,000
1966	3,126,000
1967	1,914,000
1968	449,000

The curtailment of capital expenditures in 1967 and 1968 helped in the improvement of Monon's working capital position in 1967 and 1968 as indicated in item D above.

G. *Dividends and capital stock:*

The following tabulation shows dividends paid by Monon in each of the last 3 years, 1966, 1967, and 1968; the book value per class B common share; and the market price range in each of those years.

Year	Dividend[1]	Book value per share	Market price range[2]	
			High	Low
1966	[3]$3.56	$37.51	29 5/8	17 3/4
1967	[4]1.00	36.90	34 1/4	20
1968	[5]0.50	35.79	33 1/4	24 1/2

Notes:

[1]Per I.C.C. Report Form A.

[2]Per Moody's 1966 and 1967, and Bank and Quotation Record 1968.

[3]Paid on 39,861 class A common- redeemed in 1966.

[4]Paid 5-percent stock dividend in addition to cash.

[5]Paid 3-percent stock dividend in addition to cash.

H. *Fixed charges:*

* * * [A] fluctuating pretax coverage of fixed charges [is revealed] for the 5 years 1964 through 1968, ranging from a low of 3.38 times in 1964, to a record high of 6.61 times in 1966, and to 3.90 times in 1968. Pretax coverage for fixed and contingent charges fluctuated similarly, from a low of 1.24 times in 1964, to a record high of 2.36 times in 1966, and to 1.51 times in 1968.

While Monon has earned its pretax coverage for fixed and contingent charges in each of the 5 years 1964 through 1968, with the exception of 1965 and 1966 the margin of ordinary income before Federal income tax was not great enough to provide adequate income for Monon in the years 1964, 1967, and 1968. As a result, Monon curbed its investment in road and equipment betterments during 1967 and 1968. The merger of Monon into L&N, with the resulting savings and increased revenues to be achieved, should improve the L&N performance in this respect.

I. *Rate of return:*

The following tabulation shows shareholders' equity, net investment in transportation property, net income, the rate of return on shareholders' equity, and the rate of return on net investment in transportation property. The rate of return on shareholders' equity peaked in 1966 at 5.91 percent and was lowest in 1968 at 1.29 percent, during the 5-year interval shown. The rate of return on net investment in transportation property peaked in 1967 at 4.19 percent and was lowest in 1964 at 0.88 percent, during the 5-year interval shown. If the profit from sale of common stock was disregarded in 1967, net income for purposes of computing rate of return would have been $570,000 and the revised rate of return on shareholders' equity would be 2.06 percent and the revised rate of return on net investment in transportation property would be 1.52 percent. This revision of 1967 net income results in low rates of return for 1967, as indicated, which, together with a similar low performance for 1968, leads to the conclusion that generally Monon's low net income produces inadequate rates of return. ***

Year	Shareholders' equity	Net investment transportation property	Net income	Rate of return (percent) on Shareholders' equity	Rate of return (percent) on Net investment in transportation property
	(000 omitted)				
1964 ----	$20,306	$33,977	$300	1.48	0.88
1965 ----	21,625	32,899	1,170	5.41	3.56
1966 ----	26,791	39,618	1,584	5.91	4.00
1967 ----	27,679	38,691	[1] 1,620	5.85	4.19
1968 ----	27,648	37,482	358	1.29	0.96

[1] Includes profit from sale of Chicago, South Shore and South Bend Railroad common stock.

Monon Railroad condensed balance sheets as at December 31st

	1968	1967	1966	1965	1964
	(000 omitted)				
Assets:					
Current assets	$7,995	$6,833	$6,538	$7,893	$4,443
Special funds	437	601	578	3,212	4,320
Investments	9,347	9,290	8,969	8,793	10,168
Property–less depreciation and amortization	38,306	39,523	40,457	33,923	34,961
Other assets and deferred charges	521	482	817	1,116	1,230
Total assets	56,606	56,729	57,359	54,937	55,122
Liabilities and stockholders' equity:					
Current liabilities	5,235	4,766	4,784	5,497	6,567
Long-term debt due within 1 year	894	679	901	875	860
Long-term debt due after 1 year	21,413	22,426	23,775	25,480	26,343
Reserves	795	649	594	898	463
Other liabilities and deferred credits	621	530	514	562	583
Total liabilities	28,958	29,050	30,568	33,312	34,816
Stockholders' equity:					
Capital stock	9,656	9,375	8,929	9,501	9,501
Capital surplus	5,836	5,548	5,246	116	116
Retained income	12,156	12,756	12,616	12,008	10,689
Total stockholders' equity	27,648	27,679	26,791	21,625	20,306
Total liabilities and stockholders' equity	56,606	56,729	57,359	54,937	55,122

Source: I.C.C. Reports–Form A.

Monon Railroad condensed income statements

	1968	1967	1966	1965	1964
			(000 omitted)		
Total railway operating revenues	$21,349	$19,798	$21,101	$19,424	$19,274
Total railway operating expenses	16,343	15,495	15,753	14,811	15,547
Net revenue from railway operations	5,006	4,303	5,348	4,613	3,727
Railway tax accruals (excluding Federal income tax)	1,623	1,408	1,246	1,208	1,195
Pretax railway operating income	3,383	2,895	4,102	3,405	2,532
Net rents payable	1,943	1,611	1,487	1,196	1,182
Pretax net railway operating income	1,440	1,284	2,615	2,209	1,350
Other income (nonoperating)	414	546	214	218	216
Total pretax income	1,854	1,830	2,829	2,427	1,566
Miscellaneous deductions	121	59	84	47	33
Pretax income available for fixed charges	1,733	1,771	2,745	2,380	1,533
Total fixed charges	444	485	415	438	454
Pretax income after fixed charges	1,289	1,286	2,330	1,942	1,079
Contingent charges	706	716	746	772	779
Ordinary income before Federal income tax	583	570	1,584	1,170	300
Extraordinary and prior period items	225	[1]1,050	-------	--------	--------
Pretax net income	358	1,620	1,584	1,170	300
Federal income tax	---------	---------	-------	--------	--------
Net income as reported to I.C.C.—(Form A)	358	1,620	1,584	1,170	300
Pretax coverage for fixed charges	3.90x	3.65x	6.61x	5.43x	3.38x
Pretax coverage for fixed and contingent charges	1.51x	1.47x	2.36x	1.97x	1.24x

[1] Profit from sale of Chicago, South Shore and South Bend Railroad common stock.

Monon Railroad long-term debt as at December 31, 1968

Kind of obligation	Date issued	Maturity date	Interest Rate	Interest Payable	Amount of obligation
			Percent		
First Mortgage Income Bonds[1]	January 1, 1943	January 1, 1983	4	4- 1	$3,631,100
Second Mortgage Income Bonds[1]	January 1, 1943	January 1, 2003	4 1/2	4- 1	3,496,100
Income Debentures[2]	January 1, 1957	January 1, 2007	6	4- 1	6,695,525
Guaranteed Trust Notes[3]	July 1, 1961	July 1, 1976	4 3/4	1- 1 and 7- 1	2,600,000
Guaranteed Trust Notes[3]	July 1, 1961	July 1, 1976	5	1- 1 and 7- 1	1,500,000
Guaranteed Collateral Trust Notes[4]	October 1, 1963	October 1, 1978	4 5/8	4- 1 and 10- 1	4,100,000
Equipment Trust of 1956	November 15, 1956	November 15, 1971	4 1/4	5-15 and 11-15	210,000
Equipment Conditional or Deferred Payment Contract	August 10, 1964	September 1, 1969	5	3- 1 and 9- 1	50,000
Equipment Conditional or Deferred Payment Contract	August 12, 1965	August 1, 1969	5	2- 1 and 8- 1	24,154
Total long-term debt					22,306,879

Notes:

[1] Issued pursuant to Indenture of Mortgage and Deed of Trust, as amended, between Chicago, Indianapolis and Louisville Railway Company (now Monon Railroad) and The First National Bank of Chicago, as trustee.

[2] Issued pursuant to Indenture between Monon Railroad and Manufacturers Trust Company (now Manufacturers Hanover Trust Company), as trustee.

[3] Issued pursuant to Trust Agreement between Monon Railroad and Continental Illinois National Bank and Trust Company of Chicago, as trustee, and Guaranty Agreement as of July 1, 1961, between the United States of America acting through the Interstate Commerce Commission and Continental Illinois National Bank and Trust Company of Chicago, as trustee, as those documents have been amended.

[4] Issued pursuant to Collateral Trust Agreement between Monon Railroad and United States Trust Company of New York, as trustee, and Guaranty Agreement between the United States of America acting through the Interstate Commerce Commission and United States Trust Company of New York, as trustee.

Monon Railroad guaranties and suretyships as at December 31, 1968

Principally and primarily liable	Description of obligation	Maturity date	Amount outstanding	Monon's proportion	Guarantee
The Belt Railway Company of Chicago.	First Mortgage 4 5/8 percent Sinking Fund Bonds Monon control 1/12 interest.	August 15, 1987---	$32,771,000	$2,730,917	Joint and several principal and interest.
Chicago and Western Indiana Railroad Co.	First Collateral Trust Mortgage 4 3/8 percent Sinking Fund Bonds, Series A Monon control 1/5 interest.	May 1, 1982 ------	8,816,000	1,723,200	Joint and several principal and interest.
Kentucky and Indiana Terminal Railroad Co.	First Mortgage 4 7/8 percent Bonds Monon control 1/3 interest.	March 1, 1986-----	5,653,000	1,884,333	Joint and several principal and interest.
Monon Transportation Corporation.	Continental Illinois National Bank and Trust Co. of Chicago Equipment Loan Agreement.	March 31, 1970----	26,550	26,550	Sole
Monon Transportation Corporation.	Continental Illinois National Bank and Trust Co. of Chicago Equipment Loan Agreement.	July 31, 1971 -----	267,699	267,699	Sole
Monon Transportation Corporation.	Continental Illinois National Bank and Trust Co. of Chicago Equipment Loan Agreement.	July 31, 1974 -----	484,236	484,236	Sole
Monon Transportation Corporation.	Continental Illinois National Bank and Trust Co. of Chicago Equipment Loan Agreement.	February 28, 1975--	664,431	664,431	Sole
Total ----------			48,482,916	7,781,366	

THE MERGED COMPANY

Louisville and Nashville Railroad Company

A. *General discussion:*

*** [Immediately following the narrative discussion are] pro forma balance sheet [and a pro forma income statement] giving effect to the proposed merger of Monon into L&N on December 31, 1968. Had the proposed transaction been in effect during 1968, the merged operations would have been as depicted in *** [the income statement]. Both *** were prepared on a corporate entity basis. Financial aspects of the merged company are presented below.

B. *The merged L&N balance sheet:*

The pro forma balance sheet ***gives effect to the merger of Monon into L&N by the exchange of 772,467 shares of Monon common stock (no par value with a stated value of $12.50), on a share-for-share basis, for 772,467 shares of newly created L&N 2.10 Cumulative Preferred Stock, Series A, (par value $35). The excess ($17,380,507) of par value of the L&N $2.10 Cumulative Preferred Stock issuable as of December 31, 1968, over the stated value ($9,655,838) of the Monon Common Stock as of that date was charged to capital surplus.

The surviving company, L&N, would have had total assets of $1,090.0 million, consisting of: current assets, $105.6 million; special funds, $34.2 million; investments, $45.5 million; properties (less recorded depreciation and amortization), $895.6 million; and other assets and deferred charges, $9.1 million. The liabilities would have totaled $562.7 million, consisting of: current liabilities, $62.5 million; long-term debt due within 1 year, $28.4 million; long-term debt due after 1 year, $450.5 million; reserves, $6.4 million; and other liabilities and deferred credits, $14.9 million. The shareholders' equity would have been $527.3 million, consisting of: capital stock $151.0 million; capital surplus, $10.6 million; and retained income, $365.7 million.

C. *The merged L&N income statement:*

Had unified operations of the L&N and the Monon been conducted in 1968, and reflecting therewith the full merger benefits claimed by applicants would be achieved in the 5th and subsequent years following unification, *** [the pro forma income statement] reveals: total operating revenues, $323.1 million; total operating expenses before unification savings, $255.7 million; net revenue from railway operations before unification, $67.3 million; taxes and net rents payable, $32.2; net railway operating income, $35.1 million; savings from unification, $2.6 million; net railway operating income after merger, $37.7 million; other income and deduction (net), $8.0 million; net income before fixed and contingent charges, $45.7 million; fixed and contingent charges, $21.0 million; ordinary income, $24.7 million; and extraordinary and prior period items, debit, $0.2 million; resulting in net income of $24.5 million, or a net increase in net income (after income tax) of $1.25 million due to unification. Anticipated increases in operating revenues resulting from the creation of a single-line service to Chicago were not stated by applicants. Such revenues would add to the projected increase of $1.25 in net income.

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D. *Other financial data: working capital, capitalizable assets–capitalization comparison, and debt-equity ratio:*

Working capital.– The merged company, L&N, would have had current assets of $105.6 million and current liabilities (exclusive of long-term debt due within 1 year) of $62.5 million, or working capital of $43.1 million.

* * * [O]perating expenses after unification [would amount to] * * * $255.8 million from which depreciation of $33.3 million is excluded to arrive at total operating expenses exclusive of depreciation of $222.5 million. The Commission considers as adequate working capital 1 month's average operating expenses so determined, or one-twelfth of $222.5 million, or $18.5 million. As can readily be seen, the surviving company's working capital of $43.1 million is far in excess of the Commission's standard.

Capitalizable assets–capitalization comparison

In millions

Working capital	$43.1
Transportation property (net)	885.9
Investments	----
Total capitalizable assets	929.0
Long-term debt	478.9
Capital stock	151.0
Premiums on capital stock	0.3
Total capitalization	630.2
Excess capitalizable assets over capitalization	298.8

From the foregoing it can readily be seen that no overcapitalization would have resulted from the merger had it been consummated on December 31, 1968.

Debt-equity ratio

	Amount (in millions)	Percent
Long-term debt	$478.9	47.6
Stockholders' equity	527.3	52.4
Total	1,006.2	100.0

The debt-equity ratio of 47.6 percent for the merged L&N as indicated above is favorable.

E. *Ability to meet long-term debt at maturity:*

The surviving company, L&N, should have no difficulty in meeting long-term debt at maturity as is evidenced by the following brief cash flow statement:

In millions

Net income appendix H	$24.5
Depreciation charged to operating costs	33.3
Total cash available	57.8
Long-term debt due in 1 year, appendix H	28.4
Cash available	29.4

The assumption of Monon's long-term obligations would pose no problem for the surviving L&N as indicated above.

F. *Fixed and contingent charges assumed from Monon:*

The fixed and contingent charges of L&N will increase after the merger only to the extent of fixed and contingent charges on the obligations assumed from Monon since the exchange of stock requires no further financing. The condensed pro forma income statement of L&N, * * * indicates that such fixed and contingent charges would be adequately met out of earnings, thus the assumption thereof, by L&N, would not be contrary to public interest.

G. *Reasonableness of the exchange of stock:*

The exchange of Monon Common stock for L&N $2.10 Cumulative Preferred Stock, Series A, on a share-for-share basis, resulted from arm's-length bargaining. The Series A Preferred may, at the option of the holder, be converted into L&N Common stock at the rate of three (3) shares of Series A Preferred for each share of common. After five (5) years, L&N may redeem the Series A Preferred at $40 per share plus an amount equal to accrued dividends. Stockholders of both companies approved the merger and the exchange terms by overwhelming majorities * * *.

Two independent financial analysts, one * * * engaged by L&N, and the other, * * * engaged by Monon, submitted detailed statements at the hearing supporting the reasonableness of the stock exchange ratio.

If under the conversion privileges *all* of the former Monon stockholders exchanged all of their $2.10 Cumulative Preferred Stock, Series A, obtained from L&N, into L&N Common stock, then L&N's capital stock structure would have been as follows on December 31, 1968:

Number shares

Total L&N Common outstanding December 31, 1968, before merger	2,479,173
Issuance of L&N Common to meet conversion privilege of L&N Preferred stock, assuming full conversion of L&N Preferred	257,489
Total L&N Common outstanding after merger, as of December 31, 1968	2,736,662
Ratio of L&N Common issued to Monon's stockholders to total outstanding L&N Common after merger 257,489 divided by 2,736,662	9.41 percent

The above tabulation shows that if the merger was consummated on December 31, 1968, and full conversion of the L&N Preferred had occurred, 9.41 percent of L&N's outstanding Common would have been utilized to acquire Monon.

To support the above exchange ratio, earnings and income per share of applicants are primarily used for comparison and generally other factors, such as net asset contributions to a merger, are given some consideration. In this merger the earnings approach was used by L&N witness * * *. The ratio of Monon adjusted pretax income per share are compared to L&N and the percent of adjusted pretax net income contributed by the Monon to the merged company were used by [the] witness * * *. Pretax net income in this exhibit was adjusted to give effect to the elimination of passenger service loss from Monon's net income, since Monon discontinued passenger service after September 1967. The * * * [witness] further adjusts pretax net income of applicants to include pretax merger savings ($2,651,236) on a 50-50 basis. * * * [T]hus computed the ratio of Monon pretax net income per share * * * [is] 33 percent and 34 percent of L&N's net income per share for the 3-year and 5-year period ended 1967. Since three shares of Monon common could, after conversion, be exchanged for one of L&N common, the 33- and 34-percent ratios appear to be proper and reasonable with one slight exception. * * * [I]ncluded in Monon's earnings [were] those of its subsidiaries but * * * [this is] not * * * so in the case of L&N.

[L&N] witness * * * further determined * * * that Monon and its subsidiaries contribute 9.3 and 9.6 percent of the combined adjusted average pretax income for the 3-year and 5-year period ended 1967. Since, as discussed previously, 9.41 percent of total L&N common stock after merger would, assuming full conversion, be issued to Monon stockholders, a contribution by Monon of 9.3 and 9.6 percent of total combined pretax net income compares favorably with the same slight exception mentioned in the previous paragraph. Here again, * * * [were] included in Monon's earnings those of its subsidiaries but * * * not * * * in the case of L&N.

Since the * * * aforesaid * * * approach [is] generally appropriate, and since the 1968 results (latest results) should be given consideration in the exchange ratio determination, new computations were made on a corporate entity basis for Monon so as to arrive at a more equitable basis for determining the income per share ratios and the percent of contribution of pretax net income by Monon to such combined net income of L&N and Monon. The applicants' witnesses maintained in their testimony that the inclusion of the earnings of L&N's subsidiaries in L&N earnings would not have materially altered * * * ratios * * * discussed above. The examiner's computation is submitted below. A comparison of these ratios with those of [L&N] * * * does not reveal material differences, thus the exchange ratio as proposed by the applicants appears to be reasonable.

ADJUSTED PRETAX NET INCOME PER SHARE

(Monon statistics adjusted to eliminate direct loss in passenger service)*

Year	L&N	Monon	Ratio Monon: L&N
Based on shares outstanding December 31, 1968			
L&N–2,479,173			
Monon–772,467			
1968	$9.64	$0.75	.08
1967	7.40	0.99	.13
1966	13.78	2.48	.18
1965	11.50	1.82	.16
1964	6.79	0.71	.10
1963	8.92	1.87	.21
3-year average ended 1968	10.27	1.41	.14
6-year average ended 1968	9.67	1.44	.15
Adjusted to include estimated Merger savings split 50-50**			
3-year average ended 1968	10.81	3.12	.29
6-year average ended 1968	10.21	3.15	.31

COMBINED ADJUSTED PRETAX NET INCOME

Year	L&N	Monon	Combined	Percent contribution L&N	Percent contribution Monon
1968	23,905	583	24,488	97.6	2.4
1967	18,358	762	19,120	96.0	4.0
1966	34,158	1,915	36,073	94.7	5.3
1965	28,500	1,413	29,913	95.3	4.7
1964	16,833	546	17,379	96.8	3.2
1963	22,104	1,443	23,547	93.9	6.1
3-year average ended 1968	25,473	1,087	26,560	95.9	4.1
6-year average ended 1968	23,976	1,110	25,086	95.6	4.4
Adjusted to include estimated Merger savings split 50-50**					
3-year average ended 1968	26,799	2,413	29,212	91.7	8.3
6-year average ended 1968	25,302	2,436	27,738	91.2	8.8

*Adjustment reflects elimination of direct passenger loss as reported each year in Form A, account 300, column H, line 3 minus line 4.

**Estimated merger savings $2,651,236 divided equally between two roads ($1,325,618) or $0.53 per share of L&N and $1.72 per share of Monon.

The reasonableness of the exchange ratio is further illustrated in the following comparison of market values of the common stocks of L&N and Monon as quoted on the New York Stock Exchange in 1968.

L&N		Monon	
High	*Low*	*High*	*Low*
90 3/8	72 1/4	33 1/4	24 1/2

It can readily be seen from the foregoing quotations that the market values of L&N and Monon common support the exchange ratio of one share of L&N common for three shares of Monon common (on conversion basis of L&N preferred to be created into L&N common).

H. *Conclusion (financial)*

The * * * merger of Monon into L&N is desirable * * * for * * * Monon, which lacks the ability to compete effectively for long-haul business, particularly now and in the future, when many railroad mergers are taking place with one major objective (among other objectives) and that is to create single-line service for long-haul traffic which is more lucrative for railroads.

* * * [T]he L&N [is] financially fit to consummate the proposed merger of Monon into itself. The aforementioned financial tests of the merged L&N, such as adequacy of working capital, the favorable capitalizable assets-capitalization comparison, the favorable debt-equity ratio, the ability to assume Monon's long-term obligations and to meet maturity thereof, and finding that fixed and contingent charges can be adequately met out of earnings and, therefore, not adverse to public interest, all indicate the soundness of the merger from a financial point of view. And last but not least, the * * * recomputation of the basis for the exchange of stock proposed in this merger of Monon into L&N supports the exchange ratio and, therefore, [is] found reasonable. The potential dividend obligation (approximately $1,600,000) on the $2.10 Cumulative Preferred Stock, Series A, as proposed for this merger, should not be a burden on the merged L&N.

The Commission has continuing jurisdiction over bonds which originally were issued with Commission approval. The * * * aforesaid proposed changes in the Monon indentures should be approved and * * * no materially adverse alteration of the rights of the bondholders is thereby affected.

APPENDIX

Pro forma condensed balance sheet as at December 31, 1968, after giving effect to merger of Monon Railroad into the Louisville and Nashville Railroad Company

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

	Before merger L&N	Before merger Monon	Merger adjustments	After merger L&N
Assets:				
Current assets	$97,632,424	$7,994,640		$105,627,061
Special funds	33,716,192	436,935		34,153,127
Investments	36,161,908	9,346,916		45,508,824
Property-less depreciation and amortization	857,288,622	38,305,906		895,594,528
Other assets and deferred charges	8,554,997	521,496		9,076,493
Total assets	1,033,354,143	56,605,893		1,089,960,036
Liabilities and stockholders' equity:				
Current liabilities	57,243,909	5,234,972		62,478,881
Long-term debt due within 1 year	27,516,428	894,154		28,410,582
Long-term debt due after 1 year	429,058,922	21,412,725		450,471,647
Reserves	5,612,898	794,411		6,407,309
Other liabilities and deferred credits	14,317,793	621,182		14,938,975
Total liabilities	533,749,950	28,957,444		562,707,394
Stockholders' equity:				
Capital stock-common	123,958,634	9,655,838	$(9,655,838) (1)	123,958,634
Capital stock-preferred			27,036,345 (1)(2)	27,036,345
Stock liability for conversion	7,066			7,066
Capital surplus	22,129,309	5,836,271	(17,380,507) (1)	10,585,073
Retained income	353,509,184	12,156,340		365,665,524
Total stockholders' equity	499,604,193	27,648,449		527,252,642
Total liabilities and stockholders' equity	1,033,354,143	56,605,893		1,089,960,036

Notes:

(1) To reflect the issuance of 772,467 shares of L&N $2.10 Cumulative Preferred Stock, Series A (par value $35), for 772,467 shares Monon Common Stock (no par, with stated value of $12.50), on a share-for-share basis. The excess ($17,380,507) of par value of the L&N $2.10 Cumulative Preferred Stock issuable as December 31, 1968, over the stated value ($9,655,838) of the Monon Common Stock as of that date has been charged to capital surplus.

(2) Each share of L&N Cumulative Preferred Stock, Series, A, will be convertible at any time at the option of the holder thereof into one-third of a share of L&N Common Stock. The L&N Cumulative Preferred Stock, Series A, will be redeemable at the option of L&N at any time after the fifth anniversary of the date on which such shares are issued, at the redemption price of $40 per share, plus accrued dividends.

APPENDIX

Pro forma condensed income statement as of December 31, 1968, after giving effect to merger of Monon Railroad into Louisville and Nashville Railroad Company

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

	L&N	Monon	Pro forma adjustments	Pro forma L&N merged company
Operating revenues:				
Freight	$288,127,445	$20,479,116	----------	$308,906,561
Passenger and allied services	2,653,271	----------	----------	2,653,271
Mail and express	4,196,510	111,165	----------	1,607,675
Other	6,134,818	758,250	----------	6,893,068
Total operating revenues	301,712,044	21,348,531	----------	323,060,575
Operating expenses:				
Transportation	112,833,941	7,832,121	----------	120,666,062
Maintenance-of way and structures	10,019,989	2,926,116	----------	12,916,105
Maintenance of equipment	63,174,757	3,121,440	----------	66,296,197
Traffic	7,177,856	964,526	----------	8,142,382
General	15,227,842	1,498,627	----------	16,726,469
Dining and buffet and miscellaneous	680,800	----------	----------	680,800
Total operating expenses	239,415,185	16,342,830	----------	255,758,015
Net income from railway operations	62,296,859	[illegible]	[illegible]	[illegible]

Pro forma condensed income statement as of December 31, 1968, after giving effect to merger of Monon Railroad into Louisville and Nashville Railroad Company—Con.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY—Continued

	L&N	Monon	Pro forma adjustments	Pro forma L&N merged company
Taxes and rentals:				
Taxes other than Federal income tax	$21,357,692	$1,622,852	----------	$22,980,544
Federal income tax	1,000,000	----------	$1,399,853[2]	2,399,853
Equipment and other rentals (net)	4,859,718	1,943,264	----------	6,802,982
Total taxes and rentals	27,217,410	3,566,116	1,399,853	32,183,379
Net railway operating income	35,079,449	1,439,585	(1,399,853)	35,119,181
Savings from unification	----------	----------	2,651,236[1]	2,651,236
Net railway operating income after merger	35,079,449	1,439,585	1,251,383	37,770,417
Other income	10,230,584	413,552	----------	10,644,136
Miscellaneous deductions	(2,529,839)	(121,316)	----------	(2,651,155)
Net income before fixed and contingent charges	42,780,194	1,731,821	1,251,383	45,763,398
Fixed and contingent charges:				
Fixed charges	19,875,453	143,108	----------	20,318,861
Contingent charges	----------	706,070	----------	706,070
Total fixed and contingent charges	19,875,453	1,149,478	----------	21,024,931
Ordinary income	22,904,741	582,343	1,251,383	24,738,467
Extraordinary and prior period items	----------	(224,774)	----------	(224,774)
Net income	22,904,741	357,569	1,251,383	24,513,693

Source: I.C.C. Form A

[1]Estimated by applicants: 1st year $808,675; 2d year $2,325,263; 3d year $2,438,181, 4th year $2,551,100; 5th and subsequent years $2,651,236.

[2]Estimated at 52.8 percent of $2,651,236 merger savings.