FINANCE DOCKET NO. 21478[1]

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.—MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided March 31, 1966

1. Merger of the properties and franchises of Great Northern Railway Company, Northern Pacific Railway Company and Chicago, Burlington & Quincy Railroad Company, into Great Northern Pacific and Burlington Lines, Inc., for ownership, management and operation, found not to be consistent with the public interest.
2. Applications in the major and related transactions denied.

Kenneth F. Burgess, Ray Garrett, John B. Schwemm, D. Robert Thomas, Harold K. Bradford, Jr., Roger T. Crosby, E. T. Conmy, Jr., R. T. Cubbage, M. L. Countryman, Jr., Frank S. Farrell, James A. Gillen, Anthony F. Kane, Martin Lucente, Frank J. Magill, Eldon Martin, Earl F. Requa, Woodrow L. Taylor, R. Paul Tjossem, L. E. Torinus, and *James R. Walker* for applicants.

Homer G. Hamilton for the State of Nebraska, *Eldon Martin* for the State of Missouri, The Missouri Farmers Association, The Nebraska Lumber Merchants Association, the North Idaho Economic Development Association, Inc., The Quincy (Ill.) Chamber of Commerce, The Alliance (Nebr.) Chamber of Commerce, and six shippers, *Henry A. Archambo* for the Minneapolis (Minn.) Traffic Association, *I. N. Early* for the Billings (Mont.) Traffic Bureau, *H. E. Franklin, Jr.,* for the port of Tacoma, Wash., and the Tacoma (Wash.) Chamber of Commerce, *Gerald E. Franzen* for the Chicago Association of Commerce and Industry, *E. J. Hansen* for the Grand Forks (N. Dak.) Chamber of Commerce and Red River Valley Potato Growers, Association, *J. D. Paul* for the Seattle (Wash.) Chamber of Commerce and the Seattle Traffic Association, *E. C. Pewters* for the Everett (Wash.) Chamber of

[1] This report also embraces Finance Docket Nos. 21479, Chicago, Burlington & Quincy Railroad Company, et al.—Stock Issuance, et cetera, and 21480, Great Northern Pacific & Burlington Lines, Inc., et al.—Construction and Abandonment.

Commerce, *Robert B. Post* for Cargill, Incorporated, *Harry C. Sundblad* for the Omaha (Nebr.) Chamber of Commerce and the Omaha Grain Exchange, *Erv. A. Timm* for the St. Paul (Minn.) Area Chamber of Commerce, and *Lillian Widmyer* for herself, interveners in support.

John M. Agrey, John C. Stewart, and *Martin Vaaler* for the Public Service Commission of State of North Dakota, *John G. Alley* for the Province of British Columbia (Canada), *J. E. Finsness* for the Fargo (N. Dak.) Chamber of Commerce, and *Fred H. Tolan* for Whatcom County (Wash.) Traffic and Rates Bureau, Alaska Copper Companies, Inc., Washington-Oregon Shippers Cooperative Association, and Van Waters & Rogers, Incorporated, and 227 shippers and shipper associations, interveners in conditional support.

Osborne Becklund, Charles H. Clay, F. W. Crouch and *C. Harold Peterson* for Soo Line Railroad Company, *Gene F. Bennett, Edwin R. Eckersall, J. C. Garlington, Raymond K. Merrill, Robert F. Munsell, Warren H. Ploeger, Stuart W. Rider, Jr.* and *Edwin O. Schiewe* for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, *George L. Buland, Charles W. Burkett, Jr., Kenneth M. Judd, Thormand A. Miller,* and *Oglesby H. Young* for the Southern Pacific Company, *Martin Cassell* and *Thomas I. Megan* for the Chicago, Rock Island & Pacific Railroad Company, *Frank W. Davis, Jordan J. Hillman, John C. Danielson, Carl McGowan, Charles H. Dickman, Richard M. Freeman, Harry B. Otis,* and *Edgar Vanneman, Jr.,* for the Chicago and North Western Railway, *Leighton Hatch, Walter G. Treanor,* and *E. L. Van Dellen* for the Western Pacific Railroad Company, *L. W. Hobbs, Randall B. Kester, Francis J. Melia,* and *Howard E. Roos* for the Union Pacific Railroad, and *Starr Thomas* for the Atchison, Topeka and Santa Fe Railway Company, intervening rail carriers.

Elmo F. Clark, Edward F. Heitz, Charles W. Bucy, and *Joseph E. Quin* for Orville F. Freeman, Secretary of Agriculture of the United States, and *William H. Orrick, Jr., Joseph J. Saunders, Thomas S. Howard, Earl A. Jinkinson,* and *James R. Mitchell* for the United States Department of Justice, interveners in opposition.

Robert W. Mattson, Richard Musenbrock and *Walter F. Mondale* for the State of Minnesota and the Minnesota Railroad and Warehouse Commission, *C. A. Carr, Herman L. Bode* and *C. A. Merkle* for the State of South Dakota and the Public Utilities Commission for the State of South Dakota; *John J. O'Connell* and *Frank B.*

Hayes for the State of Washington, *Waldo F. Wheeler, John J. Goen,* and *Leo J. Steffen* for the Iowa State Commerce Commission, and *Ronald L. Anderson, Jack L. Chestnut, Walter F. Mondale, Oliver A. Ossanna, Elmer Petersen, Paul Rasmussen,* and *Otto A. Ratke* for the Minnesota Railroad and Warehouse Commission, *John L. McKeon, John C. Sheehy, William P. Myfich* and *Paul T. Smith* for the Board of Railroad Commissioners of the State of Montana, and *Robert Y. Thornton, Lloyd G. Hammel* and *John F. Weisser* for the Public Utility Commissioner of Oregon, interveners in opposition.

Arvid M. Falk and *Keith M. Stidd* for the city of Minneapolis (Minn.), *Richard P. Gallagher* for the city of Mandan (N. Dak.), *Anthony C. Gospodar* for the city of Breckenridge (Minn.), *Daniel A. Klas* for the city of St. Paul (Minn.), *Alva C. Long* for the cities of Auburn and Sumner (Wash.) and the Auburn (Wash.) Chamber of Commerce, *Toby E. Markewicz* for the city of Superior (Wis.), *R. G. Nerison* for the city of Jamestown (N. Dak.), *Thomas E. Plante* for the city of Duluth (Minn.), *Bernard J. Gallagher* for the Spokane (Wash.), Anti-Merger Association, *George Kargianis* for the Seattle (Wash.) Improvement Council, *Thomas Kennedy* for the Missoula (Mont.) Civic Group, *C. W. Leaphart, Jr., W. R. McGee,* and *Webb Sullivan* for the Livingston (Mont.) Anti-Merger Committee, *Harry C. Munger* for the Duluth (Minn.) Volunteer Committee Opposing Merger, and *Robert D. McMullan* for the Clark County (Wash.) Anti-Merger Association, interveners in opposition.

Edward J. Hickey, Jr., James L. Highsaw, and *William G. Mahoney* for Railway Labor Executives Association, and *E. L. Dirks, Charles B. Falconer, Robert Lee Kelleher, Ernest Monroe, J. H. McLaughlin, Paul E. Peterson,* and *C. W. Wellnitz,* for various other organizations of railway employees, interveners in opposition.

Joseph R. Dudley for the Minnesota Motor Transport Association, *Clifford Ferguson* for Ed Benedict, and *Samuel R. Freeman* for Wheat Producers Transportation Committee, interveners in opposition.

A. Wilford Larson and *Richard V. Maves* for the Public Service Commission of Wisconsin, *A. C. Stoddard* and *John E. Tormey* for the Michigan Public Service Commission, *Louis B. Dailey* for Northern Pacific Stockholders' Protective Committee, *Philip H. Porter* for the Wisconsin Manufacturers Association, and *Oliver Lee Stewart* for Southwest Oregon Shippers Traffic Association, interveners seeking imposition of specified conditions.

Report of the Commission

WEBB, *Commissioner:*

By joint application filed February 17, 1961, authority is sought by Great Northern Railway Company (Great Northern),[2] of St. Paul, Minn., Northern Pacific Railway Company (Northern Pacific), also of St. Paul, Pacific Coast R. Co. (Pacific Coast), of Seattle, Wash., Chicago, Burlington & Quincy Railroad Company (Burlington), of Chicago, Ill., and Spokane, Portland and Seattle Railway Company (SP&S), of Portland, Oreg., common carriers by railroad subject to part I of the Interstate Commerce Act, and Great Northern Pacific & Burlington Lines, Inc. (New Company), not a carrier, of Wilmington, Del., to consummate certain transactions under section 5(2) of the act, to issue certain securities and assume obligation and liability in respect of securities under section 20a of the act, and to effect certain extensions and abandonments of lines of railroad under sections 1(18) to 1(20), inclusive, of the act.

The several docketed applications are described fully and correctly at pages 7-10, inclusive, of the recommended report. These applications are interdependent parts of a proposal for the unified operation, control and management of the Northern lines (Great Northern and Northern Pacific), Burlington, and SP&S.

Extensive public hearings were held beginning October 10, 1961, and ending July 10, 1962. The examiner's report recommended approval of the merger and related transactions, subject to various conditions, and was served August 24, 1964. Exceptions to the recommended report and replies thereto were filed by numerous parties. Oral argument before the Commission was held on June 16, 1965.

Charges of Lack of a Fair Hearing

Before considering this proceeding on the merits, we made an exhaustive examination of the record to determine whether there was any substance to the charges concerning lack of a fair hearing. We are convinced that such charges are totally lacking in merit. Our reasons for reaching this conclusion are explained fully in the Report of the Commission on Petitions for Rehearing served concurrently with this report.

[2] In this report reference to applicants and interveners and others mentioned will be by the distinctive names in their respective corporate titles or by the designation shown in parentheses.

Year	Timber	Oil and gas	Other minerals	Total
1951	$677,224	$695,520	$551,890	$1,924,634
1952	851,253	851,253	511,449	2,144,076
1953	615,771	987,017	599,160	2,201,948
1954	1,023,063	1,327,019	1,023,711	3,373,793
1955	1,400,000	1,686,153	1,001,885	4,088,038
1956	1,914,538	3,209,362	1,224,277	6,348,177
1957	1,343,951	6,004,294	1,326,927	8,675,172
1958	2,036,313	7,074,439	752,639	9,863,391
1959	3,950,927	7,618,894	519,881	12,089,702
1960	3,584,685	7,387,183	517,457	11,489,325

Burlington's railroad operations are conducted on 8,648 miles of road, of which 5,111 are main lines and 3,536 are branch lines. Its principal main lines of railroad are located in 11 States[9] and extend from Chicago, Ill., northwesterly to St. Paul and Minneapolis, and from Chicago westerly and southwesterly to St. Louis and Kansas City, Mo., Omaha and Lincoln, Nebr., Denver, Colo., and Billings and Huntley, Mont. Connecting main lines extend to Peoria and Rockford, Ill., Des Moines and Sioux City, Iowa, Deadwood, S. Dak., and via the line of a subsidiary (Paducah & Illinois Railroad Company) to Paducah, Ky. It maintains an extensive branch line system, principally for grain in Nebraska and Kansas. Its principal points of interchange are at Chicago, Peoria, and East St. Louis, Ill., St. Joseph, Kansas City and St. Louis, Mo., Omaha and Grand Island, Nebr., Council Bluffs and Sioux City, Iowa, St. Paul, Minneapolis, Denver, Billings, Laurel and Paducah.[10]

Pacific Coast's railroad operations are all located within King County, Wash., and comprise 32 miles of road, all of which it owns. Pacific Coast provides freight service only. It does not own any motive power, rolling stock, or major maintenance equipment. Such items of equipment as it requires are leased from Great Northern.

SP&S road operations are conducted in Washington and Oregon on 599 miles of road, of which 515 are main line. The main lines of SP&S extend from Spokane westerly along the Snake and Columbia Rivers to Portland, and from Willbridge, Oreg., to Seaside, Oreg. The principal points of interchange are at Spokane, Pasco, Vancouver, and Wishram, Wash., and Portland, East Portland, North Portland, Willbridge, Bowers Junction, and Linnton, Oreg.[11]

[9] Illinois, Iowa, Kansas, Colorado, Minnesota, Missouri, Montana, Nebraska, South Dakota, Wisconsin, and Wyoming.

[10] A more detailed description of Burlington's property and equipment and that of its subsidiaries and affiliates may be found at pages 34-38 and in appendix E of the recommended report.

The SP&S is owned jointly by the Great Northern and Northern Pacific. Its main line provides the most direct route from Spokane to Portland. Since Spokane lies on the main transcontinental routes of the Northern Lines and Portland is an important terminal for both, the strategic importance of the SP&S is obvious. Through ownership of the SP&S the Northern Lines have been able to deny to their chief competitor, the Milwaukee Railroad, access to Portland. If the line of the SP&S did not exist, Great Northern would be required to reach Portland from Spokane via Everett, Wash., and the Northern Pacific via Auburn, Wash.

To summarize, applicants' operations are conducted primarily in the Midwest and South Central Plains, the northern portions of the Central Plains, the Great Plains, Mountain and Pacific Territory. The major transcontinental routes of Great Northern and Northern Pacific operate generally through the same northern States between the Twin Cities (St. Paul and Minneapolis, Minn.) and Puget Sound, and the Pacific Northwest. The major transcontinental routes of Burlington are between Chicago and the Twin Cities, and between Chicago and Kansas City, Omaha and Denver. The lines of SP&S form part of the through routes of Great Northern and Northern Pacific on traffic to and from northwest coast terminals.

The main lines of the two Northern Lines are geographically parallel but the greater part of the mileage of the Northern Pacific is on the western part of its system, while most of the mileage of the Great Northern is on the eastern part of its system. Since the Northern Lines serves the same Pacific ports, the same lake ports, the same large eastern terminals, and the same tier of States over paralleling lines, each line is the most agressive and important competitor of the other. The Northern Lines have controlled the Burlington for more than 60 years through the ownership in equal amounts of approximately 97 percent of the Burlington's total capital stock. There is no substantial competition, however, between the Burlington and either of the Northern Lines. Their operations are essentially complementary rather than competitive.

[11] A more detailed description of the property and equipment of SP&S and that of its subsidiaries and affiliates may be found at pages 39-40 and in appendix E of the recommended report.

APPLICANTS' TRAFFIC

The States served by the Northern Lines produce a vast quantity of forest, agricultural, and mineral products. The consist and volume of traffic of the Great Northern and Northern Pacific are similar. Their traffic differs to some extent, however, because the lines of the Great Northern and Northern Pacific are widely separated at some points. The traffic consist of the Burlington differs from that of its parents in that forest products comprise a much smaller proportion of the total while manufacturers and miscellaneous traffic is larger than that of either of the two Northern Lines.

The area served by the Burlington is more heavily populated than the territory served by the Northern Lines. The Burlington's service area is complementary to that of the Northern Lines and provides an important market for the raw and semi-finished products of the fields, forest and mines served by the two Northern Lines. Burlington has connections at Chicago and Peoria, Ill., and St. Louis with other trunk and terminal lines serving large steel, machinery, and manufacturing plants that find a market in the Pacific Northwest. In addition, Burlington serves many packinghouse centers of the midwest, including Omaha, Denver, Chicago, Kansas City, St. Louis, and St. Joseph. Burlington serves the common terminals of Twin Cities, Sioux City, and Laurel, at which common points a large volume of freight is interchanged with the Northern Lines.

The tables below indicate for the three major applicants, total carloadings, gross freight revenues and the percentage of system revenue derived from each of the principal commodity groupings for 1960 and for 1963, the latest year for which comparable data is available.[12] In this report, we have taken official notice of certain data contained in or based on carriers' reports to the Commission for years subsequent to 1960 or 1961. Pursuant to the provisions of section 7(d) of the Administrative Procedure Act, any party challenging such officially noticed facts will be afforded an opportunity to set forth its objections.

[12] Commodity data for 1964-65 is reported pursuant to the new commodity classification prescribed by the Commission's order in *Commodity Classification for Reporting Purposes*, 323 I.C.C. 131, which is not comparable with that of earlier years.

GREAT NORTHERN

Group	Carloads	Gross freight revenue	Percent of systems carload revenue
Products of agriculture			
1960	216,313	$70,219,799	31.68
1963*	216,574	67,844,302	30.86
Animals and products			
1960	21,447	3,896,599	1.76
1963*	17,529	3,340,237	1.52
Products of mines			
1960	418,697	40,250,458	18.16
1963*	338,993	35,160,811	15.99
Products of forests			
1960	119,037	37,900,327	17.10
1963*	121,934	39,975,008	18.18
Manufactures and miscellaneous			
1960	251,799	63,831,964	28.80
1963*	252,414	68,528,765	31.17
Forwarder traffic			
1960	15,976	5,572,127	2.50
1963*	15,063	5,013,140	2.28
Total carload traffic			
1960	1,043,269	221,671,274	100.00
1963*	962,507	219,862,263	100.00

*1963 data obtained from carriers' annual reports.

NORTHERN PACIFIC

Group	Carloads	Gross freight revenue	Percent of systems carload revenue
Products of agriculture			
1960	134,272	$32,022,139	20.58
1963*	144,677	35,326,711	21.59
Animals and products			
1960	20,136	4,090,623	2.63
1963*	15,020	2,974,145	1.82
Products of mines			
1960	100,780	12,707,165	8.17
1963*	95,494	12,683,343	7.75
Products of forests			
1960	167,330	46,301,843	29.76
1963*	168,543	47,349,016	28.94
Manufactures and miscellaneous			
1960	221,780	58,013,482	37.29
1963*	226,246	63,301,323	38.69
Forwarder traffic			
1960	7,131	2,435,382	1.57
1963*	5,558	1,987,082	1.21
Total carload traffic			
1960	651,429	155,570,634	100.00
1963*	655,538	163,621,620	100.00

*1963 data obtained from carriers' annual reports.

The general balance sheets giving effect to the proposed mergers of August 1961 and income statements comparing the years 1958-60 with 1964 for the three major applicants are attached hereto as appendix A. As noted in the recommended report at page 50, the excess of current assets over current liabilities as of August 31, 1961, produced a net working capital position for Great Northern, Northern Pacific and Burlington of $32.6 million, $73.4 million, and $28.9 million, respectively, or a combined total of $134.9 million before adjustments and elimination of intercompany balances. The net working capital position for Great Northern, Northern Pacific and Burlington which exceeds by $18.2, $62.6 and $13.9 million, respectively, the mean monthly average of their respective operating expenses, less depreciation, for the first was found by the examiner to be "more than adequate to meet normal requirements." We agree with that conclusion.

Income statements for the Great Northern, Northern Pacific, and Burlington for the years 1958-1965, inclusive,[14] show the following:

Great Northern

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
1958---	$251,671,504	$27,577,798	75.04	4.52
1959---	254,559,580	26,558,273	77.43	4.35
1960---	246,024,650	20,723,214	78.87	3.41
1961---	232,951,918	18,632,420	79.44	3.07
1962---	238.940.423	25,018,986	78.60	4.12
1963---	242,810,448	29,273,689	76.75	4.80
1964---	250,387,871	28,866,329	77.86	4.71
1965---	265,629,604	36,409,825	75.70	----------------

Northern Pacific

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
1958---	$179,107,731	$22,011,976	79.87	3.68
1959---	183,608,782	23,781,165	79.74	3.97
1960---	174,915,492	18,547,194	84.54	3.10
1961---	165,412,453	16,313,322	86.60	2.72
1962---	174,262,934	20,300,535	86.02	3.39
1963---	179,604,511	24,592,470	84.98	4.09
1964---	184,300,791	23,500,657	85.32	3.90
1965---	197,913,432	28,032,787	82.70	----------------

[14] Figures for the years 1961-1964, inclusive, were taken from the carriers' annual reports filed with the Commission, except for 1965 data which is taken from the carriers' quarterly reports of revenues expenses and selected income items (Forms R & E, IBS) for the fourth quarter of 1965, showing cumulative figures for the year.

Burlington

Year	Railway operating revenue	Net income	Operating ratios	Earnings per share
1958---	$258,027,700	$19,491,732	77.61	11.41
1959---	263,072,883	17,696,143	79.78	10.36
1960---	251,135,890	12,493,138	81.21	7.31
1961---	254,160,812	14,408,666	79.44	8.43
1962---	263,434,538	20,412,904	78.92	11.95
1963---	261,713,684	21,367,648	79.69	12.51
1964---	267,379,529	20,355,342	81.25	11.91
1965---	270,453,376	16,693,090	82.00	----------------

Comparisons between railroad earnings in recent years and those of 3 or 4 decades ago must be drawn with care. For example, the examiner noted that the combined net railway operating income of the three major applicants in 1960 was only about half of what it was in 1926. On the basis of such a comparison, the examiner concluded that the financial condition of the applicants has steadily deteriorated and that their economic future, in the absence of merger, is bleak. A comparison of applicants' earnings in one of the worst railroad transportation years in recent history with their earnings 35 years before, when rail carriers held a virtual monopoly in surface transportation, may be statistically correct but it does not support the examiner's pessimistic conclusion.

ALLEGED BENEFITS OF THE PROPOSED UNIFICATION

The prospective benefits of the proposed unification as viewed by the applicants, supporting shipper witnesses, and supporting interveners are reviewed in considerable detail at pages 146-169, 171-189, and 323-340, respectively, of the recommended report. Accordingly, we will merely summarize the examiner's findings on this aspect of the case.

In general, applicants contend that the consolidation of their properties under single ownership and management would result in better utilization of equipment, elimination of duplicate facilities at common points, and more expeditious transportation service. As a result of savings expected to be derived from the proposed unification,[15] applicants hope to meet more effectively the competition of other modes of transportation.

[15] See pages 58-63, *infra*.

Anticipated improvements in freight schedules are based mainly on the consolidation of terminal facilities at common points and the use of the shortest of most efficient internal routes available to the unified company. Applicants indicate that the New Company would establish through transcontinental freight routes over the shortest available lines and the most favorable grades. Applicants gave numerous examples of improved freight schedules that could be established following consummation of the mergers. For example, applicants indicated that the fastest schedule of the Great Northern from Seattle to Chicago would be reduced by the New Company from 94 hours and 15 minutes to 82 hours and 30 minutes or 11 hours and 45 minutes faster than the present schedule. The fastest transcontinental eastbound train of the Northern Pacific leaves Seattle at 9:00 p.m. and arrives Chicago 12:15 p.m. on the 5th day, a total elapsed time of 97 hours and 15 minutes. After unification, the departure time would be 8:30 p.m. and arrival time at Chicago would be 10:30 a.m. on the morning of the 8th day, a total elapsed time of 84 hours, or 13 hours less than present schedule.

After the hearings, however, applicants announced faster transcontinental freight schedules in response to faster schedules established by the Milwaukee. In their reply to exceptions, applicants note that the eastbound schedule time for the Great Northern from Seattle to Chicago has been reduced to 67 hours and 35 minutes, and that the time for Northern Pacific has been reduced to 69 hours and 35 minutes. It would appear, therefore, that competition between the Northern Lines and the Milwaukee has resulted in a considerably faster service than that claimed as one of the advantages of unification. In fairness to the applicants, however, it should be pointed out that the expedited schedules require the use of shorter and lighter trains than those contemplated in their direct evidence. We recognize that the proposed unification could result in generally faster freight service but, as the post-hearing freight schedules indicate, the extent of such improvement is speculative and competition is a more important factor than consolidation.

Applicants also contend that following unification, shippers would have not only the routes presently available under published tariffs, but additional routes involving the lines of the component railroads in any combination except where undue circuity would result. Such benefits would be derived by opening up the intermediate junctions to form cross-over routes between Northern

Pacific and Great Northern west of Twin Cities and new routes between them and Burlington at Billings and Sioux City. As pointed out by the examiner, those routes have been historically closed in order to preserve to the two Northern Lines their respective maximum hauls. The economic advantages envisioned by applicants from a wider choice of routing include the extension of transit and stop-off privileges at numerous additional points, and increased opportunities for diversion of shipments to meet shippers' requirements.

Ordinarily, traffic on one of the component railroads today can be given transit privileges only at points on the same railroad en route to primary markets. The basic reason for such a restriction is that the railroad which provides service to the primary area thereby protects its long haul and the revenues therefrom. The propriety of a railroad protecting its long haul is specifically recognized in section 15(4) of the Interstate Commerce Act.

The expansion of transit privileges would benefit the producers and processors of numerous commodities, as would the expansion of tariff provisions enabling shippers to stop through shipments for additional loading or for partial unloading at an intermediate point between origin and destination, at the through carload rate plus a charge for the service of stopping the car.

In the general area served by applicants, shortages of freight cars, especially general purpose boxcars, have been chronic and severe in recent years. Applicants claim that substantial savings will result from more efficient utilization of freight cars by the merged company and from unifying the car fleets of the component lines.[16] Today, when 2 or more of applicants serve the same point and obtain traffic from the same shipper, each tries to hold sufficient cars to protect the loading requirements. New Company would do the same thing, but the total number of cars held would be reduced in proportion to the number of component companies serving the common point. These savings cannot be reliably estimated but they would be derived solely from the elimination of competition.

As pointed out by the examiner, applicants have given no assurances that freight rates would be reduced following unification. However, applicants anticipate that the economies from

[16] As indicated at page 93 of this report, infra, benefits flowing from improved freight car utilization would be offset by the loss of competition which now encourages applicants to satisfy the demands of shippers at common points.

unification will tend to hold down the amount of rate increases in future years.

The tracing and location of shipments and the ordering of empty cars would be facilitated under unification, since the records would be maintained and be readily available under centralized control and responsibility. Similarly, the processing of claims by shippers for loss and damage would be simplified. Because of the reduction in the number of switch movements through elimination of interchange among the applicants and through improved yard facilities, some reduction in damage to cargo from switching should result.

Prior to the filing of the applications, extensive public relations efforts were instituted by applicants to publicize the advantages of the proposed unification. Officials, counsel and other representatives of applicants participated in meetings of trade associations, industry promotion groups, chambers of commerce, and other persons in the territory involved. Interested persons were asked to support the applications by offering testimony at the hearings, and to forward letters and resolutions endorsing applicants' objectives.

Partially as a result of this public relations campaign, 307 witnesses (237 shippers and receivers of freight, 39 representatives of shipper associations, and representatives of various business and civic organizations) testified in support of the proposed unification. Of the total number of shipper and other public witnesses, the great majority supported the proposal. Their testimony reiterates the prospective public benefits asserted by applicants, is fairly summarized in the recommended report, and need not be further discussed in this report.

Almost 400 individuals, firms, associations, civic groups, and municipalities intervened in support of the proposed merger, although some urged that particular conditions be imposed. A total of 292 of these intervening parties were shippers or receivers of freight, or others directly interested in transportation services. Their position, as well as that of intervening shipper associations and chambers of commerce, is generally the same as that of the applicants.

Position of Govermental and Railway Labor Interveners

A total of 11 States or State regulatory commissions intervened. Only the States of Nebraska and Missouri supported the merger

substantially as proposed by applicants. The other States or their regulatory commissions either opposed the merger with little or no regard to conditions that might be imposed[17] or urged the imposition of conditions that are strongly opposed by applicants.[18] Thus, most shipper and related transportation interests in the territory involved support the applicants' case, while most of the affected States, as well as some of the major terminal cities affected by the Northern Lines merger,[19] express varying degrees of opposition. This conflict makes it difficult, of course, to appraise the impact of the proposed merger on the general public.

If the weight of the testimony were determined on the basis of numbers of witnesses, we would have no difficult in finding, as did the examiner, that the general public overwhelmingly supports the proposed merger. Shippers, of course, are a part of the general public and their testimony is entitled to great weight. However, we believe that this public support is counterbalanced by the opposing testimony and arguments of vitally affected agencies of government—Federal, State, and local.

The Department of Agriculture intervened because of its dual interest as a representative of the Nation's farmers and as the largest single shipper or agricultural commodities. Agriculture contends that if the Commission should determine that the unification be approved, the following conditions should be imposed: (1) that all existing gateways among the railroads seeking merger and competing railroads be maintained under through routes and joint rates; (2) that additional gateways, through routes and joint rates be established between the New Company and competing railroads so as to accord producers, shippers, and receivers adequate access to all markets and to all sources of supplies; and (3) that no lesser quality of service than at present be furnished over any of the existing main or branch lines of the railroads included in the merger without approval of the Commission. Conditions (2) and (3) were opposed by applicants and not recommended by the examiner.

[17] Oregon, Minnesota, Montana and Washington. The Governor of Washington, then newly-elected, advised the Commission on the eve of oral argument that he does not oppose the merger.

[18] North Dakota, Michigan, Iowa, and South Dakota. Wisconsin neither supported nor opposed the merger and recommended no specific conditions. Although the Governor of the State of Iowa testified generally in support of the merger, the Iowa Commerce Commission strongly opposed the merger except with conditions vigorously opposed by applicants.

[19] E.g., Superior and Milwaukee, Wis., Duluth, Minneapolis and St. Paul, Minn., and Auburn, Wash.

The Department of Justice contends that the only benefits from the proposed unification and the elimination of competition as between the two Northern Lines would be increased revenues to applicants at the expense of competing and connecting railroads; that applicant lines are in a sound, healthy financial condition; that the Northern Lines compete vigorously with each other; that important advantages of rail competition would be lost if the merger is approved; and that such approval would contravene the policy of the anti-trust laws and cannot be found to be consistent with the public interest within the meaning of section 5(2) of the act.

More specifically, Justice contends that the proposed merger, if approved, would (1) destroy the competition which now exists among and between Great Northern and Northern Pacific; (2) seriously damage and eventually jeopardize the existence of intervener Milwaukee; (3) result in a rail monopoly in a geographical market area extending from Twin Cities to the northwest Pacific coast along the northern tier of States; (4) seriously injure other competing railroads and other competing carriers by diverting freight revenues from them; (5) deprive many communities and shippers of the advantages and benefits of competitive rail service; (6) impair adequate transportation in a growing region of the country; (7) impose an unnecessary hardship on many communities and shippers; (8) have an adverse effect upon Federal establishments and would not benefit national defense; and (9) would stimulate new merger applications by and among railroads competing with applicant lines and each other in order to attempt to offset the power of the New Company.

The Railway Labor Executives Association (RLEA) intervened in opposition to the merger and to protect the interests of affected employees. The examiner found that the merger would eliminate approximately 8,072 jobs and would require 2,900 employees to change their present job locations to other points where the merged company would operate. Thus, the examiner found that the merger would result in a net loss of 5,172 jobs. This loss would not be fully realized, however, until after 5 years following consummation. The examiner also found that at July 1, 1960 price and wage levels, payroll costs would be reduced approximately $32,670,000 annually as a result of consummation of the proposed merger. In other words, he found that approximately 81.9 percent of the savings anticipated from the merger would be derived from reductions in the labor force.

The examiner found that approximately 80 percent of the employees losing their jobs as a result of the merger could be re-employed by the merged company within 1 year, and at the same location, in jobs created by normal attrition. He also found that another 908 could be re-employed within 1 year by transfer to jobs for which they are qualified at other points. Applicants estimate that the cost of providing protection to adversely affected employees would be $4,961,728.

In general, RLEA contends (1) that applicants have failed to show clearly any public gain to be derived from the proposed unification; and (2) that the unification "will not only result in no public gain but will do positive injury to the public interest." Moreover, it contends that the adverse effect on employees involved, their families and the communities in which they live, when coupled with other adverse effects, warrants denial of the applications as not consistent with the public interest. It argues that this would be no merger of the weak with the weak, or the strong with the weak, but a three-way merger of the strong with the mighty.

RLEA also fears that the proposed unification, by adversely affecting other carriers through diversion of traffic, would also injure numerous employees on other railroads. Accordingly, RLEA asks, if the merger is approved, that protection be afforded employees of all carriers adversely affected by the proposed unification.

In view of our ultimate conclusion that the proposed unification is not consistent with the public interest, it is not necessary to discuss the contentions of RLEA and applicants relative to the conditions that should be imposed for the protection of adversely affected employees.

Position of Railroad Interveners

Ten major railroads[20] intervened in order to secure routing and other traffic conditions designed, in general, to prevent undue diversion of traffic not presently handled by the applicant railroads. In *Detroit, T. & I. R. Co. Control,* 275 I.C.C. 455 (1950), the Commission prescribed a set of conditions for the protection of connecting carriers. Since then, conditions is sub-

[20] Santa Fe, Milwaukee, North Western, Rock Island, Denver and Rio Grande Western Railroad Co., Illinois Central, Soo Line, Southern Pacific, Union Pacific, and Western Pacific. The Denver Rio Grande and the Illinois Central did not participate in the hearings or oral argument.

stantially the same form have been imposed in numerous proceedings under section 5(2) of the act and have become known as the "standard routing conditions." See *Pennsylvania R. Co.–Control–Lehigh Valley R. Co.*, 317 I.C.C. 139, 151. In their application, applicants proposed 6 conditions similar to the conditions imposed by the Commission in other merger or control transactions.

During the hearings, applicants offered certain clarifying changes in their proposed conditions. These changes were incorporated in a stipulation entered into between applicants and Union Pacific. Subsequently, the Rock Island, Southern Pacific, Western Pacific, Santa Fe, and Soo Line, concurred in the form and substance of the general conditions contained in the stipulation between applicants and Union Pacific. Those conditions deal with such matters as the continuance of operating arrangements between applicants and connecting carriers and the continued application of existing rates over joint routes generally used between the origins and destinations involved.

Special traffic conditions were urged by Southern Pacific, Western Pacific, Santa Fe, and Soo Line; were accepted by applicants; and were approved by the examiner. The special conditions involved these 4 carriers are opposed by the Department of Justice.[21] For the reasons stated by the examiner at pages 236 and 237 of his recommended report, we do not agree with Justice that the stipulations in question are unjust, unreasonable, and contrary to the public interest. In general, these agreements respecting special traffic conditions, by reducing anticipated diversion of traffic, eliminated opposition by intervening carriers to the merger as originally proposed. In view of our ultimate conclusions herein, no detailed discussion of the special traffic conditions is necessary.[22]

CONDITIONS SOUGHT BY NORTH WESTERN AND MILWAUKEE

Whether the proposed merger is consistent with the public interest depends to a considerable extent on the conditions which are necessary to enable the North Western and the Milwaukee to compete successfully against the New Company. The former is a

[21] The Milwaukee excepts to Condition 9(b) of the examiner's report on the ground that Southern Pacific would be required to solicit against it on traffic moving through the Portland gateway.

[22] A full discussion of these matters may be found at pages 226-237 of the recommended report.

substantial competitor of the Northern Lines and the Burlington, while the latter would be completely engulfed by the lines of the New Company. Neither intervener is a match for the New Company in terms of size, earnings, financial strength and economic capability. Neither can provide the quantity and quality of service made possible by the proposed merger. In fact, if the Milwaukee and the North Western were protected only by the standard routing conditions proposed by applicants, the North Western would be materially weakened and the Milwaukee's ability to survive would be highly doubtful. Both the North Western and the Milwaukee now provide essential and efficient rail service to hundreds of communities that would not be served by the New Company.

If all the conditions sought by the North Western and the Milwaukee were to be imposed, the benefits derived by applicants from the proposed merger would be minimal. In fact, applicants indicate in their pleadings that imposition of all the sought conditions might preclude consummation. Failure to impose a number of the important conditions sought by the North Western and the Milwaukee would preclude a finding that the merger is consistent with the public interest. The balance of this section of the report will be devoted to a discussion of this aspect of the proposed merger.

The importance of the conditions sought by the North Western and the Milwaukee is reflected in the position of numerous parties who intervened on behalf of a large segment of the general public. Such interveners, who are now opposed to the merger as proposed or whose support is qualified, would favor approval of the transaction if it were conditioned substantially as proposed by the North Western or the Milwaukee. These interveners include or represent the States of Iowa, North Dakota, Michigan, Wisconsin and South Dakota; and the U. S. Department of Agriculture.

For many years the operations of the North Western have been marginal in nature and its earnings erratic. From 1952 to 1961, it suffered serious losses in all but 5 years, its cumulative net loss amounting to about $6 million. As the examiner noted, at the time the record in this proceeding was closed, the North Western had made no dividend payments on common stock since 1950 and no payments on preferred stock since 1954. During the past several years, the North Western has enjoyed a modest net income. However, it is unlikely that the North Western's earnings in the reasonably near future will equal in size and consistency the earnings of any one of the 3 major applicants.

262-237 O - 69 - 32

hold all such interline traffic not now handled by the Burlington. In addition, we believe that applicants and the examiner overlooked the tremendous solicitation advantages that would be enjoyed by the merged company. Scores of shipper witnesses testified concerning the advantages of single-line service and, in the light that testimony, it would be naive to think that North Western's competitive position on traffic moving through the Twin Cities gateway would not be adversely affected. And finally, applicants' opposition to conditions designed to improve North Western's interchange operations with the New Company at Minneapolis indicates that the amount of diversion would exceed their conservative estimates.

In estimating diversion of traffic from the North Western, the examiner failed to include traffic handled at such major terminals as Twin Cities, and Head-of-the-Lakes by the Northern Lines in switching service only and carried beyond by the North Western. Today, the North Western handles a considerable volume of such traffic in competition with one or more of the major applicants. After merger, however, the originating carrier will be able to handle a considerable volume of traffic in line-haul movements which is handled today in switching service. The North Western estimates that it would lose $453,557 in revenue from this type of traffic.

For the reasons set forth above, we are persuaded that the North Western's loss of traffic to the New Company would be much closer to its estimate of $4,375,600 per year than to applicants' estimate of $2,518,688.

To offset the adverse impact of the merger, the North Western requested that the following conditions be composed:[25]

1. That the New Company be required to open the gateway at Crawford, Nebr.;
2. That the New Company be required to open the gateway at Oakes, N. Dak.;
3. That the New Company join with the North Western in the following operational arrangements—[26]

(a) New Company to deliver interchange traffic to the North Western at the latter's Lyndale and E. Minneapolis Yards, and accept interchange traffic from the North Western at the New Company's Lyndale and Union Yards;

[25]Clarification of Condition 1 of applicants' Standard Traffic Conditions, requested by North Western, would also affect Milwaukee.

[26]Three of the eight operating conditions originally proposed by North Western were denied by the examiner and no exceptions were taken to that action. Information concerning those three operating conditions may be found at pages 320 and 321 of the recommended report.

(b) New Company to cancel North Western's contractual obligation respecting rental of tracks and facilities which would no longer be used by North Western following unification;

(c) New Company to sell or lease to North Western Great Northern's Union Yard trackage at Minneapolis;

(d) New Company to rescind contractual obligations requiring North Western to pay for use of Great Northern's Minneapolis passenger station and related facilities no longer used by North Western;

(e) Northern Lines to withdraw objection to direct interchange of traffic between North Western and Duluth, Winnepeg & Pacific Railway at Head-of-the-Lakes; and

4. That Condition 1 of the Standard Traffic Conditions offered by applicants be clarified.

The examiner recommended that the requested conditions designated above as Conditions 1, 3(a), and 3(b) be granted and that requested Condition 4 be denied. We have reviewed the exceptions and replies of the parties respecting these findings and conclusions of the examiner and we find the conclusions of the examiner to be correct in all material respects. Accordingly, no further discussion of the North Western's requested conditions identified above as Conditions 1, 3(a), 3(b), and 4 is necessary.

However, we do not agree with the examiner's recommended denial of conditions identified above as Conditions 2, 3(c), and 3(e). If such conditions were imposed, in addition to the others recommended by the examiner, it does not appear that the North Western would be opposed to the merger. Imposition of these requested conditions, other than Condition 3(d), would be essential, in our opinion, if the proposed merger were approved. Our reasons follow.

As indicated, the examiner denied the North Western's request for the establishment of a new gateway at Oakes, located in southwest North Dakota. Facilities at Oakes can accommodate a substantial increase in traffic without additional investment. Operations at Oakes are simple and conducted in an uncongested area, in contrast to the complex interchange, at the Twin Cities. Presently the average daily interchange between the North Western and Northern Pacific at Oakes in 6 cars. North Western's present service to and from Oakes is limited, since the volume of traffic in recent years has permitted North Western to operate trains only 3 days a week, except when livestock traffic justifies additional train service. The average consist of trains to Oakes is 3 loads and 11 empties per trip. Similarly, the light traffic has not required more than minimum track maintenance. The grades and curves to and from Oakes are not excessive and North Western could handle a considerable increase in traffic over the line with its present facilities. Northern Pacific now provides 6-day a week service to and from Oakes, where it also connects with the Soo Line. Tariff provisions applicable to transcontinental traffic interchanged with Great Northern and Northern Pacific restrict the use of routes via Oakes, with minor exceptions, to a small area adjacent to that gateway. The practical effect of those tariff provisions is the North Western receives a maximum haul of 404 miles between Twin Cities and Chicago, instead of a haul of 759 miles via Oakes.

North Western seeks opening of the Oakes gateway to the extent routing will be available to New Company through Twin Cities or through the Dakotas and Minnesota. North Western estimates that opening of both the Oakes and Crawford gateways would enable it to increase its revenues by $1,256,559 a year. The examiner recognized that the conditions he recommended, including opening of the Crawford gateway, would not make the North Western whole. The traffic which North Western seeks to interchange with the merged lines at Oakes can now be interchanged at Twin Cities or at the Missouri River crossing point of Sioux City, Iowa. After unification, North Western, under the standard routing conditions, could obtain that traffic for interchange at Twin Cities or Sioux City. The additional gateway at Oakes would enable it to obtain on a shipment, for example, from the Twin Cities, a route via Oakes, 355 miles west of Twin Cities.

The examiner concluded that opening of the Oakes gateway would provide no significant advantage to the shipping public or to the carriers involved. We do not agree. Obviously, the requested condition would benefit the North Western by enabling it to make more efficient use of its tracks in competing with a much larger competitor. Imposition of the Oakes gateway condition would tend to neutralize the adverse impact of the merger on North Western.

In declining to recommend that the Oakes gateway be opened, the examiner gave little or no weight to the testimony of shippers that they would benefit. In recommending approval of the Crawford gateway condition but disapproval of similar condition for Oakes, the examiner apparently applied the criteria in section 15(3) of the act and found that North Western had failed to demonstrate a substantial shipper need. However, the applicable standard for determining whether routes should be opened as a condition to a merger is whether the condition is just and reasonable. *Atlantic Coast Line R. Co.* v. *United States*, 284 U. S. 288, 295 (1932). In fact, the Commission has required gateways to be opened without citing shipper benefits and solely for the purpose of minimizing traffic diversion. *Seaboard Air Line R. Co.–Merger–Atlantic Coast Line*, 320 I.C.C. 122, 208 (1963).

One reason given by the examiner for not opening the Oakes gateway was that the requested condition would result in inefficient transportation service by the carriers involved. Mileages over an Oakes-North Western route between representative points would be longer in most instances than mileages via the shortest New Company route or via Minneapolis-North Western. The range of circuity, however, is almost *de minimis*. Whatever additional interchanges might result from opening the Oakes gateway would be more than offset by the simplicity of interchange at Oakes as compared with the complexity of interchange operations at the Twin Cities.

Assuming, *arguendo*, that the merger is otherwise consistent with the public interest, we believe the examiner erred in rejecting North Western's proposed condition relative to the sale or lease of Great Northern's Union Yard trackage. The tracks in question are required by the North Western to reduce the time required to move cars through the Twin Cities in competition with the improved single-line service made possible by the merger. Applicants contended that consideration of operating conditions at Minneapolis was premature and that, at some appropriate time following consummation of the merger, they would work out improved interchange arrangements with the North Western. The examiner accepted this argument. However, if the competitive instincts of the two Northern Lines now preclude coordination and improvement of their own interchange operations and facilities at Minneapolis, assurances that the New Company would help a competitor are entitled to little weight.

Finally, and again assuming that the proposed merger should be approved, we believe the examiner erred in failing to recommend, as a condition to the merger, the withdrawal of the Northern Lines' objection to direct interchange between the North Western and the DW&P at Head-of-the-Lakes. If the North Western could make such interchange using Northern Pacific tracks, it would eliminate the time and expense involved in effecting such interchange via an intermediate carrier, Lake Superior Terminal & Transfer Railway. LST&T is owned jointly by the Northern Lines, North Western, and the Soo Line. The requested condition would enable the North Western to compete on more equal terms with the New Company. Although LST&T is used today to interchange cars between Great Northern and Northern Pacific, the services of that intermediate carrier will not be used on the movements in question by the New Company.

Approval of the merger would combine the two strongest transcontinental railroads operating between the Twin Cities and the Pacific Northwest and the strongest midwestern carrier. The chief competitor of this giant combine would be the Milwaukee whose financial condition, even today, is anemic. Milwaukee and the New Company would serve 11 States in common: Idaho, Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Washington, and Wisconsin. It is far from certain that the Milwaukee, almost entirely encircled by the lines of the New Company, could survive absent special conditions to ameliorate the impact of the merger. It is inconceivable that the merger could be approved without reasonable assurance that the essential transportation services of the Milwaukee would be continued.

Comparison of Milwaukee's net income and total railway operating revenues with that of the major applicants shows for the years 1960, 1964, and 1965:

	Railway operating revenues	Net income
1960		
	Millions	*Millions*
Milwaukee	230.4	1.3
Burlington	251.1	12.1
Northern Pacific	174.9	18.5
Great Northern	246.0	20.7
1964		
Milwaukee	228.2	5.3
Burlington	267.4	20.4
Northern Pacific	184.3	23.5
Great Northern	250.4	28.9
1965		
Milwaukee	241.3	7.3
Burlington	270.4	16.7
Northern Pacific	197.9	28.0
Great Northern	265.9	36.9

The decline in the Milwaukee's share of traffic in the Pacific Northwest is reflected in a decrease in railway operating revenues, 1960 under 1951 of approximately $30 million compared to decreases of approximately $15 million for the Burlington, $2 million for the Great Northern, and an increase of $1 million for the Northern Pacific. When the earnings of the Milwaukee and applicant railroads, including other income, are carried through to net income, the Milwaukee's inability to keep pace is brought into sharp focus.

The three major applicants steadily improved their working capital position in the period 1951-60 except for the year of 1960. On the other hand, the working capital position of Milwaukee steadily declined. The trend in working capital is particularly significant in appraising the ability of the Milwaukee to continue providing efficient transportation service as a competitor of the New Company.

The net additions and betterments on the Milwaukee for the 1951-60 period have not been as great as those made by the Great Northern, Northern Pacific or Burlington, despite the fact that the miles of road owned and operated by Milwaukee exceeds substantially the miles owned and operated by any of the three major applicant railroads.

Burlington has not experienced a deficit nor missed a dividend in 35 years. Great Northern has had only 3 years (1932-34 inclusive) of deficit operations, and Northern Pacific only 2 (1932 and 1939) since 1926. While, beginning in 1942, applicants have been able to pay increasingly larger amounts in dividends, the Milwaukee has experienced deficit operations in every year but 2 from 1926 to and including 1940. During the war years, its net income was erratic. Since 1952, and until very recently, its net income has been declining. Milwaukee's dividends during the 5 years 1956-60 were lower than those during the preceding 5 years.

The examiner correctly found that "artificial and geographical handicaps limit Milwaukee's ability to participate in traffic to and from the growing Pacific Northwest. Milwaukee traffic volume on its lines west of Twin Cities and the Missouri River has failed to keep pace with that of its competitors * * *."

The lines of the Milwaukee total 10,596 miles in 13 Northwestern and Midwestern States.[27] The Milwaukee's main lines extend

[27]Mileages in those States, where indicated by the record, are in parenthesis: Michigan (178), Indiana, Illinois, Wisconsin (1,520), Missouri, Iowa (1,781), Minnesota (1,329), Nebraska, North Dakota (366), South Dakota (1,738), Montana (1,251), Idaho, and Washington (1,063).

from Chicago west to Twin Cities, Sioux City, Omaha and Kansas City, serving a territory comparable to that served by Burlington, and from Chicago west via Sioux City, Twin Cities, Aberdeen, S. Dak., Miles City, Forsyth, Butte and Missoula, Mont., Plummer, Idaho, Spokane and Marengo, Wash., to north Pacific points, including Seattle, Tacoma, Everett, and Longview, Wash., serving a territory comparable to that served by the Northern Lines.

Milwaukee opposes the applications on the ground that the merger would seriously threaten its competitive position and even its survival. It contends that approval of the proposed unification would be adverse to the public interest unless the public is assured effective rail competition by the imposition of conditions adequate to enable Milwaukee to realize its full service potential.

The record clearly shows that the Milwaukee now provides an essential and efficient rail transportation service in the area where it is a principal competitor of the applicant railroads. Evidence to that effect was adduced by the testimony of 6 of Milwaukee's officials, 1 consultant, public witnesses called by it, at least 86 of the shipper witnesses called by applicants, 18 independent interveners representing various Federal and State agencies, and by a number of associations of shippers. We agree with the following summary of this evidence by the examiner:

> In spite of wide divergence of position expressed on the proposed unification, each of the intervening Federal and most State agencies, as well as numerous important shippers, whose shipments approximate many thousands of carloads annually, called by both applicants and interveners, forcibly evidenced the vital importance of and dependence upon the Milwaukee both at points competitive with one or more applicant railroads, and at stations and areas noncompetitive with applicant railroads. They look to the Milwaukee for active, vigorous and healthy railroad competition both in rate negotiations and in quality of service to the shipping public.

As found by the examiner, freight traffic on Milwaukee's lines east of St. Paul and Sioux City compares favorably with density per mile of road on Burlington during the period 1956-60, but on its lines west of St. Paul and Sioux City, Milwaukee's density was only about half that of the Northern Lines and only about half of that of Milwaukee's lines east of those cities. In the six States in which Great Northern, Northern Pacific and Milwaukee each operate, Milwaukee in 1960 handled a smaller percentage of total ton miles for the State than its percentage of total miles of road in that State. On the other hand, applicants handled a greater

percentage of ton miles than their percentage of total miles of road.

Since Milwaukee's lines do not reach Portland or Bieber, the Milwaukee has no direct connection with Southern Pacific or with Western Pacific. Since applicants and Union Pacific do not participate in through routes and joint rates with each other or with Milwaukee at junctions which provide them with less than a maximum haul, Milwaukee cannot participate in alternate transcontinental through routes via junctions west of Twin Cities and the Missouri River gateways to and from all major west coast terminals. Nor can it participate in north-and-south traffic between major west coast cities.

Traffic originating at Milwaukee points east of Twin Cities or Sioux City or originated by its connections at points east of Chicago and Kansas City, and moving westbound to points in North Dakota, Montana and west served by the Northern Lines, routed for line-haul delivery over those lines, must be interchanged at Twin Cities or Sioux City regardless of whether such traffic could have been carried to a more westerly junction as efficiently by Milwaukee. The restrictive routing applies not only to such traffic going to Northern Pacific, Great Northern or SP&S points not served by Milwaukee, but to traffic in which they participate as line-haul carriers to destinations served directly by Milwaukee, such as Great Falls, Missoula, Spokane, Seattle, or Tacoma. It also applies where the Northern Lines, including SP&S, are overhead or intermediate carriers between Twin Cities and Portland, Bieber, or Sumas.

Such routing restrictions prevent Milwaukee from participating in westbound movements over its lines west of Twin Cities where there is a stop to part unload or complete load or a noncompetitive Great Northern or Northern Pacific point. Presently, Milwaukee, Northern Pacific, and Great Northern each can provide three stops on its single-line route between Twin Cities and its Pacific north coast terminals. However, each of the three northern routes now has certain geographical advantages and disadvantages in providing a combination of stop points on a single railroad.

Although Milwaukee participates in westbound transcontinental routes with Northern Pacific and Great Northern to all points on their lines west of Twin Cities or Sioux City, and on their western connections, whether common with Milwaukee or not, from all points on Milwaukee and its eastern connections, enabling Great

Northern and Northern Pacific to obtain their long haul from Twin Cities, the latter lines do not generally reciprocate with respect to eastbound traffic by routes via western junctions to points east of Twin Cities, and in no case to Chicago and points east and south thereof, affording Milwaukee a long haul over its western Lines. Thus, traffic cannot go off one line for transit or stopoff at a point on another line west of Twin Cities or Sioux City. Even at some points jointly served by Milwaukee and one or more of applicant lines, there may be no track connection or interchange for local switching service.

There are some exceptions to such general routing practices between Milwaukee and the Northern Lines. Eastbound lumber can move at joint through rates via junctions with Great Northern, Northern Pacific or SP&S west of Twin Cities but those routes are limited to traffic destined to points served directly by the lines of Milwaukee and not by lines of either of the Northern Lines, or by any other connection. Traffic routed via those western junctions cannot be reconsigned to points off the lines of Milwaukee, which limits their use to shipments for which no other route is available.

Because Milwaukee is unable to participate in transcontinental routes over its long haul route west of Twin Cities to and from Oregon and California on volume movements, it must hold traffic originating or terminating at points local to its lines, to its own long haul and does not participate in transcontinental routes via Portland, Bieber or other California gateways. It fears that to do so would drain much of the traffic from its lines without any reciprocal long haul routes. Other transcontinental lines terminating on the Pacific Coast have reciprocal routes which permit participation east and west in both long and short haul routes via western junctions.

Traffic to or from Milwaukee's points in Montana, Idaho, and Washington requires a two or three-line haul when coming from or going beyond Longview Junction or to Oregon or California. Traffic to and from British Columbia via Sumas generally requires a three- or four-line haul. Due to frequent interchanges with railroads north of Portland, service is often inadequate to attract traffic for movement over Milwaukee, except for traffic from points local to Milwaukee. Moreover, Milwaukee must obtain the concurrence of Great Northern, Northern Pacific or Union Pacific as an intermediate carrier to establish joint rates to or from all points served by Milwaukee west of Twin Cities on the one hand,

and, on the other, Vancouver, Wash., Portland and points south, which handicaps Milwaukee in obtaining traffic to move over its lines.

The limitations on Milwaukee's routes west of Twin Cities and Sioux City, together with the fact that Milwaukee is short hauled at the Twin Cities gateway on a large volume of traffic, has severely limited Milwaukee's traffic potential, and has impaired its competitive position in relation to applicant railroads. Consequently, Milwaukee's participation in substantial movements of transcontiental traffic over its lines west of Twin Cities is limited to that which moves to or from a point served directly by the lines of Milwaukee and to those movements within Mountain-Pacific territory to points beyond its lines, which originate or terminate at local points on its lines not served by applicant railroads. On the other hand, the ability to participate in traffic to and from Oregon and California has been an important factor in the ability of the Northern Lines to improve their relative participation in traffic over their lines west of Twin Cities. Numerous shippers have indicated that the rate and service limitations on Milwaukee routes have prevented them from making full use of the latter's service potential, to their detriment as well as the Milwaukee's.

Another factor which discourages the movement of traffic over Milwaukee's lines and the location of industry on its lines is the dual basis of switch charges. One type of switch charges is the nonabsorbed switch charge which is added to the line haul rate of the delivering carrier. The other type is the absorbed switch charge. For competitive reasons, nonabsorbed switch charges usually apply when the movement originates or terminates at a noncompetitive point not reached in line-haul by the switching carrier or its line-haul connections. When the line-haul movement is from or to a competitive point served in line-haul by the switching carrier or its connections, the competing carrier must absorb the switching charge in order to be competitive. In the territory west of Twin Cities, the switching tariffs of all carriers provide that where the switch charge of the switching carrier is to be absorbed by another line-haul carrier, a substantially higher per hundredweight charge must be absorbed for exactly the same service as performed for the noncompetitive charge.

To minimize the adverse effect of the proposed merger on its operations, the Milwaukee proposed the following routing and traffic conditions in addition to the standard conditions offered by the applicants:[28]

1. That 11 gateways in the west,[29] presently closed to the Milwaukee, be opened;
2. That the New Company grant to Milwaukee, upon fair and reasonable terms, entry into Portland over their lines between Longview Junction, Wash. and Portland, with the right to serve all intermediate points;
3. That the New Company grant to the Milwaukee, upon fair and reasonable terms, trackage rights over certain of their lines to enable the Milwaukee to conduct efficient operations to and from the international gateway at Sumas, Wash.;
4. That Billings, Mont., be treated as a station on the Milwaukee;
5. That the New Company join with the Milwaukee in abolishing the dual system of switching charges at all terminals where now in effect; and
6. That the New Company join with the Milwaukee in re-establishing rate relationships via all routes with the Milwaukee, when by reason of the merger, the relationships of such rates with rates via other routes of the merged lines are disturbed.

The examiner recommended that conditions 2, 3, and 5 be imposed, but that the Milwaukee's request for conditions 4 and 6 be denied. We have considered the exceptions and replies of the applicants and of the Milwaukee relating to the examiner's recommendations on conditions 2 through 6. We find that exceptions in question are lacking in merit; that the findings and conclusions of the examiner are proper and correct in all material respects, except to the extent that traffic diversion and other losses of the Milwaukee attributable to the proposed merger were underestimated; and that said findings and conclusions should be, and they are hereby, affirmed and adopted as our own, assuming *arguendo*, that the proposed merger should be approved.

With respect to the Milwaukee's losses of traffic resulting from the proposed merger, the examiner found:

In summary, the evidence shows that of the four categories of presently enjoyed traffic, after adjustment for switching, claims, corrections, et cetera, based on 1960 movement of traffic, from which Milwaukee anticipates diversion and concomitant adverse effect as a result of the proposed unification, it would suffer loss of revenues in only three; interline traffic $1,487,482, lumber and plywood traffic $741,195, and a substantial portion of Montana grain traffic $1,549,176, or a total of $3,777,853.

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[28] Although not formally offered as a condition, we would agree with Milwaukee that, if the merger were approved, applicants should be required to improve and expedite interchange of freight with Milwaukee at the Twin Cities.

[29] Fargo and Linton, N. Dak.; Miles City, Judith Gap, Great Falls, Lombard, Butte, and Missoula, Mont.; and Spokane, Seattle, and Tacoma, Wash.

An additional loss that would be proximately caused by the merger was summarized by the examiner in these words:

In addition, to meet the faster proposed schedules of the merged company, Milwaukee asserts that it would be necessary for it to reduce the number of cars and tons handled in its present single daily scheduled transcontinental train to the extent that a second train daily in each direction would have to be operated between Twin Cities and Seattle, which, on 1961 data, after allowance for such extra trains as were operated, would have resulted in 857,678 additional train miles, and added cost of $3,010,450. That figure when combined with the figure representing loss of traffic to be competitive aggregates $6,788,303. Applicants do not challenge Milwaukee's estimate, but offered without supporting evidence a weak and unconvincing surmise that Milwaukee could meet the New Company's faster schedules without running a second train in each direction on each operating district daily.

Both the applicants and Milwaukee disagree with the examiner's conclusion. Applicants assert that the examiner overstated the traffic diversion losses of the Milwaukee, improperly included the anticipated extra expense to the Milwaukee of operating a second transcontinental train, and understated the increased revenues that would be derived by Milwaukee from special conditions recommended by the examiner.

We agree with applicants that the added costs, estimated to be $3,010,450, of the Milwaukee's second train to the Pacific Coast cannot be regarded as a loss attributable to the merger. Although the Milwaukee argued that the faster service offered by the merged company would require it to speed up its own schedules, there is some indication in the record that motor carrier competition over newly completed portions of the Interstate Highway System would have required faster schedules. In addition, as Justice states in its exceptions, the Milwaukee provided faster and additional transcontinental train service following the close of the hearings to match improvement in transcontinental service contemplated by the Great Northern and the Northern Pacific. The Milwaukee contends, however, that the merged company will further shorten its schedules by eliminating interchange delays, while the Milwaukee can make no further improvements. In our opinion, further improvements in transcontinental freight service are speculative, are not directly related to the proposed merger, and should not be considered in estimating the financial impact of the merger on the Milwaukee.

In addition, the examiner found that the Milwaukee would suffer traffic diversion losses of $3,777,853, a sum disputed by both the applicants and the Milwaukee. Applicants contend that most shippers, particularly "national accounts," tend to divide their traffic among competing railroads. Thus, they assert that a plant located on both the Northern Lines and the Milwaukee would give half of its available traffic, after merger, to the New Company and half to the Milwaukee, rather than the one-third to each of the Northern Lines and the Milwaukee. Applicants further contend that Milwaukee would benefit from the competition between the Northern Lines and certain of their connecting carriers which would be created by merging the Burlington into the New Company. Applicants estimate the net loss to the Milwaukee resulting from traffic diversion to be $363,482 annually. In excepting to the examiner's evaluation of these losses, applicants state that the losses claimed in each of three traffic categories discussed by the examiner—grain shipments from Montana, eastbound shipments of lumber and plywood, and long-haul shipments handled interline by both the Milwaukee and applicants—are overstated.

In estimating traffic diversion, we are dealing with so many imponderables that the amount of diversion can never be calculated with mathematical precision. We are required, of course, to evaluate the conflicting estimates of the applicants and the Milwaukee to the best of our ability.

In brief, it is applicant's position that the examiner failed to accord proper weight to the testimony of several grain shippers and other expert witnesses who stated that only minimum diversion of Montana grain shipments would take place; that he failed to recognize that nothing in the proposed merger would affect the routing or shipper preferences for transportation of plywood and lumber; and that too little weight was accorded to the Wyer study on diversion of interline traffic, which was not rebutted. Milwaukee, on the other hand, excepts to the examiner's failure to recognize as divertible, all of the Montana grain traffic and an anticipated $1,368,846 loss in forwarder traffic.

Upon reviewing these exceptions, we find that the examiner's findings, except as hereafter noted, are not unreasonable in light of the record, taking into account the essentially speculative nature of the subject matter. His estimates on the diversion of grain lumber, and plywood traffic are quite generous in view of the fact that the demand for transportation of these commodities frequently exceeds the supply of freight cars.

Nevertheless, we recognize that the New Company, operating on both sides of the Milwaukee, will be able to divert a substantial

amount of the latter's traffic due to the availability of alternate routes without rate or gateway restrictions, increased numbers of stop-off and transiting points, and elimination of combination Great Northern-Northern Pacific rates. Consideration must also be given to losses of traffic in areas other than those specifically identified in the record, for example, possible diversion of grain traffic from areas other than Montana.

In our opinion, the amount of forwarder traffic claimed as divertible by the Milwaukee should have been allowed by the examiner. Although noting that the unified company would benefit forwarders through wider routing privileges, combining of stops on less circuitous routes, and elimination of various delays, all of which "will no doubt drain a substantial volume of that traffic from the Milwaukee," the examiner rejected the estimated revenue loss of $1,368,846, stating that these improvements, while beneficial to forwarders, would not shift the Milwaukee's forwarder traffic to the merged lines. We do not agree. The business of a forwarder is to assemble carload shipments and move them expeditiously. The New Company would be able to provide a superior service over a wide area which the Milwaukee would be unable to match, particularly in the important matter of stop-off privileges. Contrary to the implication in the recommended report, forwarders are not tied to any particular railroad. They relocate if carrier delays or other operating problems hamper their operations. In conclusion, we find that the Milwaukee would lose as a direct result of the merger, $1,368,846 in forwarder traffic plus the $3,777,853 estimated by the examiner.

Applicants contend, however, that imposition of the three special conditions recommended by the examiner would unjustly enrich the Milwaukee since it would thereby gain $11,622,206 annually in revenue. Applicants also estimate that Milwaukee's condition 1 for the opening of eleven new gateways would enrich the Milwaukee at their expense in the amount of $8,342,390 a year. Although applicant's estimates are somewhat inflated, we recognize that imposition of the conditions requested by the examiner and Milwaukee condition 1 would make the Milwaukee a stronger carrier after merger than it is today. However, the Commission's powers under section 5(2) of the act are not limited to insulating competing carriers from the adverse consequences of a proposed merger. In the interest of creating more balanced competition, the Commission may improve the position of carriers affected by a proposed merger.

262-237 O - 69 - 33

The record in these proceedings is replete with concern for the maintenance of vigorous intramodal competition among rail carriers serving the Pacific Northwest and the Northern tier of States east of Washington. The Milwaukee's lines were built at a cost in excess of $240 million between 1905 and 1909, primarily to provide effective competition for the Northern Lines. The Milwaukee does not have sufficient traffic to justify this large investment. That condition was a strong factor in driving the Milwaukee into receivership in 1925. See *Chicago, M. & St. P. Ry. Co. Investigation,* 131 I.C.C. 615 and *Chicago, M. & St. P. Reorganization,* 131 I.C.C. 673. It is obvious that, with only one regular transcontinental train in service in addition to the extra train recently added, the Milwaukee has enormous excess capacity. If conditions to the merger were framed solely with a view toward making the Milwaukee whole, the area most vitally affected by the proposed merger would have no reasonable assurance of even a modest degree of rail competition.

Viewing Milwaukee's condition 1 in the light of the impact of the proposed merger on the Milwaukee, the value of intramodal competition, and the benefits that the condition would bestow upon the shipping community, we are unable to agree with the examiner's rejection of that condition. If the merger were consistent with the public interest, we believe that imposition of the condition would be necessary and proper.

As previously indicated, Milwaukee's condition 1 seeks the opening of gateways at 11 western junctions. At the present time, shipments originated by either of the Northern Lines at points on their respective lines west of Twin Cities, receive a long haul over their lines to the Twin Cities and are there interchanged with a connecting line designated by the shipper. Milwaukee seeks to require the New Company to join with it in establishing new gateways so that Milwaukee could move shipments originating on the New Company's lines west of the eleven gateways over Milwaukee's lines either as a bridge or terminating carrier. Similarly, the New Company would be able to short haul Milwaukee by taking a shipment, originating on Milwaukee west thereof, at the gateway, either as a bridge or terminating carrier. The short haul proposal would apply both eastbound and westbound. In other words, the condition contemplates that a shipper could route traffic at joint through rates with interchange between the Milwaukee and the New Company at Twin Cities or Sioux City, or at any one of the eleven North Dakota, Montana or Washington gateways.

Milwaukee does not propose that there be more than one alternate western junction on the same movement. Thus, it would permit Milwaukee to solicit for its longest practical haul over its lines west of Twin Cities or Sioux City traffic which must now be surrendered or received at those points. Correspondingly, New Company would have the same opportunity. The condition would also permit shippers to select alternate routes, according to their needs, over the lines of the Milwaukee and the New Company. In addition, shippers and receivers using Milwaukee would gain the advantage of diversion and recosignment, stop-off and transit privileges available to shippers and receivers using the New Company. The examiner found that at each of the points proposed as an open gateway, there are adequate facilities for the interchange of traffic.

Imposition of Milwaukee condition 1 was favored by 38 shippers or receivers of various types of freight and also by the Department of Agriculture. The Department stressed the importance of maximum fluidity and flexibility in the transportation of agricultural commodities. If unification is approved, Agriculture urges that additional gateways, including those requested by Milwaukee, be opened, and that through routes and joint rates be established between applicants and competing railroads to afford shippers access to all markets and sources of supply.

The examiner's rejection of the 11-gateway condition was based primarily on an unsound legal theory and to a lesser extent on his failure to give sufficient weight to supporting shipper testimony. His basic error was discussed in connection with the denial of the Oakes gateway condition requested by North Western.[30] The examiner's error is revealed in the following statements on page 273 of the recommended report:

> The Commission has defined, and uniformly followed certain principles in evaluating similar /shipper/ testimony in routing cases brought under sections 15(3) and 15(4) of the act, and since the various sections of the act must be applied in harmony with one another, these principles are relevant.
>
> The term "public interest" as used in section 15(3) requires more than a showing of the desire of shippers for additional routes; it requires instead a real, specified and substantial need. Proof justifying the establishment of a through route on one commodity may not justify the establishment of through routes on other commodities via the same gateway. Cf. *Denver & R.G.W. R. Co.* v. *Union Pacific R. Co.,* 287 I.C.C. 611. The opening of a route via a particular junction for movements to or from one area does not open the junction for movements between other areas. Cf. *Thompson* v. *United States,* 343 U.S.

[30] See page 38, *supra*.

549. General statements in support of routes sought do not afford a sufficient basis for a finding that the present routes are inadequate or that the public interest requires the establishment of the routes sought. Cf. *American National Livestock Association* v. *Atchison T. & S. F. Ry. Co.*, 298 I.C.C. 245, 249.

The standard of section 15(3) of the act—"a real, specified and substantial need"—is not applicable in determining whether routes should be opened as a condition to approval of a merger. The Supreme Court so held in *Atlantic Coast Line R. Co.* v. *United States, supra.* In a section 5 proceeding, the standard is whether suggested conditions are "just and reasonable." In such a proceeding, the protection of a carrier's long-haul must be far less important than the need to minimize traffic diversion and to insure vigorous competition with a merged company. Such needs are especially strong in the case of the Milwaukee and, as we have indicated, its 11-gateway condition has substantial shipper support.

Finally, we do not share the examiner's concern that the "gateways sought by Milwaukee would place the latter in a position to short-haul the New Company on substantial transcontinental traffic, [and] place New Company in the uneviable position of having to maintain adequate plant facilities and equipment not only to serve its traditional long-haul routes but to originate or terminate traffic via the many short-haul routes created if the gateways requested are established." In the first place, the gateways condition would be reciprocal. Thus, New Company could short-haul Milwaukee. And secondly, the solicitation efforts of the Milwaukee would be puny in comparison with those of the New Company.

We have appraised the conditions requested by the North Western and the Milwaukee merely to place a merger of the major applicants in its most favorable posture. Viewing the merger with the conditions that appear to us to be sound, we must determine whether the benefits to be derived by applicants and the shipping public from such a merger are outweighed by the disadvantages of such a merger to a portion of the shipping public and railroad employees, and in terms of lessened competition. Before making this ultimate evaluation, however, consideration must be given to the monetary savings that applicants would realize from consummation of the merger and to the competitive aspects of the merger, assuming that it would be conditioned as indicated above.

Estimate of Savings to be Derived By Applicants From the Proposed Merger, Appropriately Conditioned

On December 1, 1957, the original report of Wyer, Dick & Co., titled "Report on Economics of Proposed Consolidation," was completed and delivered to the Northern Lines. This report indicated that annual increased net income to be realized from consolidation might run as high as $46,479,246, less a 12 1/2 percent allowance for contingencies. After submission of the Wyer report, merger negotiations between Great Northern and Northern Pacific continued.

In 1960, following agreement of the two Northern lines that unification should be accomplished, but before final action was taken by the respective boards of directors, changes had occurred in cost levels, operating conditions and physical facilities which had existed during the 1955-56 period on which the original operating study was made by Wyer, Dick & Co. In July 1960, the firm was requested to review its studies and update its report to reflect not only changes in cost levels since the original report, but also changes in operating conditions and physical facilities which had occurred in the interim. The original studies were reviewed and revised to reflect current conditions to the extent necessary and rates and costs were adjusted to the levels of July 1, 1960. Additional studies were made concerning the potential savings from consolidation of certain passenger trains between Chicago and St. Paul, and potential savings in Federal income taxes on the Burlington dividends.

The supplemental report of the consultants was submitted to the presidents of the two Northern Lines on November 8, 1960. The combined original and supplemental reports of the consultants, including numerous maps, embraced twenty studies, which are analyzed and described at pages 97-144 of the examiner's report. The following table is the examiner's recapitulation of the twenty studies which, as hereinafter modified, we find to be a reasonable estimate of savings attributable to the proposed merger:

	Study	Estimated savings	Net cash realized (cash required)
I	Common points	$15,846,802	($26,206,751)
II	Duplicate lines	-------------	-------------
III	Lines retained-effect of consolidation expenses	1,940,899	(2,434,078)
IV	Duplicated freight train service	1,697,725	-------------
V	Duplicate passenger train service St. Paul-Chicago	490,856	-------------
VI	Car load freight-shortest or most economical point routes	3,630,910	-------------
VII	Car load freight-longer hauls	10,561,178	-------------
VIII	Less car load freight-loading patterns	432,836	-------------
IX	Equipment pools	3,208,130	7,106,176
X	General repair facilities	2,194,535	1,043,187
XI	Materials & supplies stocks and purchases & stores organization	1,336,319	4,667,173
XII	Foreign line freight charges on company material	167,321	-------------
XIII	Communication facilities	560,114	(423,720)
XIV	Train dispatchers	330,809	-------------
XV	Special agents	124,463	-------------
XVI	Dining car departments	80,136	94,492
XVII	System revenues	(1,958,705)	-------------
XVIII	System Expenses	10,586,135	-------------
XIX	Labor contracts	(885,360)	(2,768,808)
XX	Taxes	(4,639,766)	-------------
	Total savings	45.605 337	
	Less: 12 1/2 percent allowance for contingencies	5,700,667	-------------
	Estimated Savings before income taxes	39,904,670	-------------
	Total Net cash represented as realizable for consolidation-(cash required)	-------------	(18,922,329)

The Department of Justice contends that many economies claimed for the proposed merger are possible without merger. For obvious reasons, the Department was not able to identify specific projects which applicants could undertake without merger. We recognize that applicants cannot achieve by voluntary coordination savings that approach those which could be achieved by merger. However, even if the applicants continued to compete, it would be feasible for them to coordinate certain facilities and to realize therefrom substantial savings. Today, applicants operate joint passenger facilities at six common points. Both freight and passenger stations and forces are operated jointly at Portland-Vancouver and Sidney, Mont. In light of these successful operations and the potential savings involved, it seems likely that the program of voluntary coordination could be extended to such common points as the Twin Cities, Spokane and Seattle, where separate freight facilities are now operated.

We do not agree that coordination of yards would be impracticable merely because the Great Northern and Northern Pacific are directly competitive. Coordinations of this type could benefit both carriers by permitting faster handling of through traffic and reducing operating expenses. On the other hand, we realize that coordination of routes of competitors is ordinarily impracticable. As to other forms of cooperation, however, the close relationship of the applicants indicates that a portion of the savings estimated to be derived from merger can be achieved without merger.

The Wyer report discloses that the proposed operating changes in Study I, relating to common points now served by two or more of the applicants, would produce the largest savings, totaling $15,846,802. Of the 39 common points at which such savings are anticipated, 85 percent would be derived from consolidation of facilities at Twin Cities, Duluth-Superior, Portland-Vancouver, Seattle and Spokane.

While the precise amount of savings that might be achieved from coordination of facilities cannot be determined from the record, we believe that not less than one-third, or approximately $5,282,267, of the estimated savings totaling $15,846,802 could be realized without merger. The one-third reduction is purely a judgment figure, but we are satisfied that it is conservative. With this adjustment, the savings to be derived from the proposed merger would be estimated as follows:

Total estimated savings (as estimated by the examiner and adjusted herein)	$34,410,741
Less: reduction attributable to common points	5,282,267
	$29,128,474
Less: 12 1/2 percent for contingencies	3,641,059
Estimated savings as further adjusted	$25,487,415

Applicants estimated that $43,224,540 total annual savings, after allowance of 12 1/2 percent for contingencies, would be realized by the 10th year after consolidation. On the same basis the examiner, after certain adjustments, concluded that $39,904,670 is a conservative estimate. However, the examiner failed to recognize in his recapitulation of estimated savings the effect of the Southern Pacific stipulation. In addition, his computation is based on a smaller amount of traffic diversion from the Milwaukee and the North Western. And finally, the examiner's computation does not reflect revenues that applicants would lose as a result of the imposition of conditions which we have found to be appropriate but which he did not recommend. We have made no other changes in the examiner's recapitulation of estimated savings set forth in the above table.

The table below sets forth in greater detail our adjustments in the examiner's computation of estimated savings:

	Examiner's report	Adjustment	Total
Estimated savings before allowance for contingencies	$45,605,337	------------	$45,605,337
Less: studies VII and XVIII (net)	8,602,473	------------	8,602,473
Estimated savings in expenses	37,002,864	------------	37,002,864
I. Revenue susceptible to diversion to applicants			
Estimated net gain in revenue (studies VII and XVII)	8,602,473	------------	8,602,473
Southern Pacific stipulation	504,260	------------	504,260
Revenue gain interline from CMSP&P	3,777,853	$1,368,846	5,146,699
Revenue gain from C&NW	2,841,523	1,534,077	4,375,600
Estimated revenue gains	15,726,109	2,902,923	18,629,032
II. Applicants' revenues susceptible to diversion to other carriers			
C&NW (gateway condition only)	900,000	356,559	1,256,559
CMSP&P (conditions 2, 3 and 5)	11,622,206	------------	11,622,206
Condition 1	------------	8,342,390	8,342,390
Estimated revenue losses	12,522,206	8,698,949	21,221,155
Net revenue gain or loss	3,203,903	(5,796,026)	(2,592,123)
Total savings	40,206,767	------------	34,410,741
Less: Reduction of one-third attributable to common points	------------	------------	5,282,267
Total savings as adjusted	------------	------------	29,128,474
Less: 12 1/2 percent for contingencies	5,025,846	------------	3,641,059
Estimated savings before income taxes	35,180,921	------------	25,487,415

() denotes loss.

Competitive Aspects of the Proposed Unification

The most significant issue in these proceedings is the effect of the proposed merger on the competitive balance of transportation service and facilities in the territory served by the Northern Lines. Nearly all of the parties opposing the merger stress the importance of retaining the vigorous competition that now exists between the Northern Lines. Opponents of the merger contend that it will create a rail transportation monoploy within the States of Minnesota, North Dakota, Montana, and Washington, and will result in serious harm to the shipping public. While the applicants do not deny that some loss of competition would occur, they assert that unification will not substantially lessen competition or tend to create a monopoly of transportation services. Applicants contend that the proposed merger will promote competition by enabling the New Company to compete more effectively with other forms of transportation. Applicants also state that, with few exceptions, all points now served by more than one railroad will continue to be served by more than one railroad after merger.

The question of competition and competitive relationships among the applicants themselves and with other carriers, and the changes in these relationships which would come about if the merger were consummated, have been extensively argued by all parties to these proceedings. We shall consider the question in the light of the applicable legal standards, intermodal competition, and intramodal competition.

Applicable Standards

Under section 5(2) of the act, the Commission is authorized to approve proposed mergers which are found to be consistent with the public interest. In empowering the Commission to authorize mergers Congress "did not import the general policies of the antitrust laws as a measure" of the permissibility of such an authorization, *McLean Trucking Co. v. United States*, 321 U.S. 67, 85. It was recognized, however, that because competition among carriers is a significant factor in the attainment of the objectives of the national transportation policy,

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

Since the *McLean* case requires an appraisal of adverse competitive effects following the merger, Justice and other opponents of the merger assert that it is appropriate, if not necessary, to determine the areas of effective competition through an analysis of the relevant geographic and product markets, as those terms are used in antitrust cases. *Cf. Brown Shoe Co.* v. *United States,* 370 U.S. 294 (1962). The Supreme Court in *Seaboard Air Line R. Co.* v. *United States,* 382 U.S. 154, in reversing *Florida East Coast Ry. Co.* v. *United States,* 242 F. Supp. 14 (M.D. Fla. 1965), clearly held that the Commission need not determine whether the proposed merger, absent Commission approval, would violate section 7 of the Clayton Act, and that in appraising the competitive effects of a proposed rail merger the Commission need not apply yardsticks developed for the purposes of the antitrust laws. The market criteria of *Brown Shoe* can be applied here, if at all, only with great caution and substantial qualification, Clearly, the Supreme Court's decision does not preclude us from measuring the competitive consequences of a proposed rail merger by transportation standards which may or may not overlap the market criteria employed in antitrust cases.

In our discussion of competition at various places in this report,[31] we wish to emphasize that we have not appraised the proposed merger by the standards of the antitrust laws. Whether the proposed merger, but for the provisions of section 5(11) of the Interstate Commerce Act, would violate the antitrust laws is a question upon which we make no finding and express no opinion.

In *Seaboard Air Line Railroad Co., supra,* the Commission evaluated the competitive effects of the merger, but did not find whether the merger, absent the immunity accorded by section 5(11), would violate the antitrust laws. As indicated, we make no such finding here. On appeal, a three-judge district court held that "the Commission is required to decide whether or not section 7 of the Clayton Act would be violated by the proposed merger." *Florida East Coast Ry. Co.* v. *United States,* 242 F. Supp. 14, 20 (M.D. Fla. (1965)). In vacating the judgment of the district court, the Supreme Court held that the Commission was not required to

[31] See pages 67-84, 90-92, and 96-98, infra.

determine whether the merger might otherwise violate the antitrust laws. *Seaboard Air Line R. Co.* v. *United States,* 382 U.S. 154 (1965). Specifically, the Court held that the three-judge district court erred in its interpretation of the directions of the Supreme Court in the *McLean* case and in *Minneapolis & St. Louis R. Co.* v. *United States,* 361 U.S. 173 (1959), and particularly in failing to interpret properly the following directive at page 186 of the *Minneapolis* case:

Although §5(11) does not authorize the Commission to 'ignore' the antitrust laws, *McLean Trucking Co.* v. *United States,* 321 U.S. 67, 80, there can be 'little doubt that the Commission is not to measure proposals for /acquisitions/ by the standards of the antitrust laws'. 321 U.S., at 85-86.

The Interstate Commerce Act and other legislation dealing specifically with transportation problems constitute the immediate frame of reference within which this Commission operates and the policies expressed therein must be the basic determinants of our action. *McLean* case, *supra,* at pages 79-80. Under those policies, carrier participants in appropriate mergers are relieved from the requirements of the antitrust laws. *ibid.,* page 85.

But in executing those policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. As the Supreme Court explained in the *McLean* case this "* * * poses a problem of accomodation of the Transportation Act and antitrust legislation* * *" In explaining what was meant by "accommodation" the court noted that the Transportation Act is later in time and constitutes not only a more recent but a more specific expression of policy. As to competition it has said in the *Minneapolis* case, *supra,* at page 187:

Against this background, no other inference is possible but that, as a factor in determining the propriety of /railroad acquisitions/ the preservation of competition among carriers, although still of value, is significant chiefly as it aids in the attainment of the objectives of the national transportation policy. 321 U.S. at 85-86.

In this proceeding we have made the prescribed accommodation, neither ignoring the antitrust laws nor using their standards to measure the proposed consolidation.

THE TOTAL TRANSPORTATION MARKET–INTERMODAL COMPETITION

Applicants emphasize that competition from other modes of transportation has made serious inroads on their traffic and earnings. They contend, in effect, that intermodal competition is so strong and pervasive that any lessening of rail competition cannot be regarded as a serious obstacle to merger. Although applicants are highly prosperous by railroad standards, they profess to be pessimistic regarding their ability, individually, to cope with the progressively stronger competition provided by other modes.

Of course, the rapid growth of highway, barge, and pipeline carriers has affected the traffic and revenues of the applicants. Through unification, applicants hope to recapture a large volume of traffic that has been lost to other modes of transportation, including private and exempt for-hire carriers. The rapid growth of motor, water, and pipeline carriers, and the intensification of intermodal competition are matters of common knowledge. As the rail monopoly on surface transportation was broken by newer forms of transportation, it would naturally follow that the rail carriers' share of total intercity freight traffic would decline. However, the intermodal competition faced by applicants is not as strong as that which exists in other parts of the country.[32]

Although the railroads' share of the transportation market fell from 45 percent in 1959 to 43.02 percent in 1963,[33] long-term trends are favorable. For rail carriers generally ton-miles have shown an absolute increase. During the period 1960-1964, the ton-miles transported by the major applicants in this proceeding increased substantially. The major applicants have made a successful transition from the role of a jack-of-all-trades to the performance of transportation services better reflecting their inherent advantages.

In general, the examiner agreed with applicants' thesis that their decline and fall can be arrested only by merger. For example, the examiner found at page 55 of his recommended report: "Within the last decade the financial condition of the applicant railroads has shown a steady deterioration." The examiner attributed this condition to intermodal competition[34] and concluded

[32] *Cf. Southern Pacific Co.–Control–Western Pac. R. Co.*, 327 I.C.C. 387 (1965).

[33] Data for 1963 are taken from the Commission's *78th Annual Report to the Congress* (1964), pages 34-35.

[34] Recommended Report, page 425.

at page 404 of his report that "unless they [applicants] are allowed to stabilize their position through unification, there is every reason to believe the declining trend will continue." A "continuing threat" to applicants' ability to survive was found by the examiner to be the impact of intermodal competition on manufactures and miscellaneous traffic.[35] As shown by the table set forth at page 470, *supra*, this gloomy prediction of the applicants and the examiner was soon contradicted by the actual movement of traffic in the manufactures and miscellaneous category.

Applicants also contend that intermodal competition has placed a ceiling on many rates and compelled reduction of many others, with the result that their net railway operating income has declined far more sharply than their volume of traffic. This contention, which was accepted by the examiner, is illustrated by the following table appearing on page 196 of the recommended report:

	Net railway operating income	Percent of change	Carloads	Percent of change
		Burlington		
1947	$31,780,908	----------	1,552,552	----------
1960	16,632,498	-47.67	1,313,382	-15.41
		Great Northern		
1947	23,815,730	----------	1,214,805	----------
1960	18,435,448	-22.59	1,043,269	-14.12
		Northern Pacific		
1947	18,005,493	----------	820,084	----------
1960	10,115,540	-43.82	651,429	-20.57

The table above is apparently intended to show some correlation between applicants' traffic volume and revenues, and the growth of intermodal competition. The attempted correlation is specious because changes due to long-term shifts in traffic from the railroads to other modes of transportation were not distinguished from those attributable to cyclical changes in the economy. It is well known that the railroad industry is highly susceptible to fluctuations in the general level of economic activity.

The table below is based on applicants' annual reports for the years 1960 through 1965. It shows a mixed trend rather than one of continuing decline.

[35] Recommended Report, pages 41-46.

	Net railway operating income	Percent of change	Carloads	Percent of change
		Burlington		
1960---------	$16,632,498	---------------	1,313,382	-----------------
1961---------	18,918,081	13.74	1,312,590	-0.06
1962---------	24,339,952	28.66	1,369,875	4.36
1963---------	25,080,623	3.04	1,369,589	-0.02
1964---------	24,000,218	-4.31	1,410,667	3.00
1965---------	20,423,802	-17.51	1,368,631	-3.07
		Great Northern		
1960---------	18,435,448	---------------	1,043,269	-----------------
1961---------	16,762,401	-29.62	971,107	-6.92
1962---------	23,173,124	38.24	961,225	-1.02
1963---------	26,998,371	16.51	962,507	0.13
1964---------	25,466,676	-9.38	988,477	2.70
1965---------	33,040,261	22.92	992,233	.38
		Northern Pacific		
1960---------	10,115,540	---------------	651,429	-----------------
1961---------	8,585,776	-15.12	622,414	-4.45
1962---------	13,820,180	60.97	626,290	0.62
1963---------	14,154,478	2.42	655,538	4.67
1964---------	12,879,463	-9.01	695,928	6.16
1965---------	18,153,299	29.05	698,330	.34

Although the data shown in the above table tends to follow national economic trends, the effect of intermodal competition and the extent of applicants' successful retaliation are not separable from general economic effects. Although such a correlation is possible, that made by the applicants is not reliable.

Although applicants have lost a significant amount of traffic in recent years to other modes of transportation, much of that traffic can never be recaptured. We believe that diversionary losses to intermodal competition have been more than offset by increases in traffic resulting from exploitation of the rails' inherent advantage in high-volume, long-haul movements. And, as previously stated, the intermodal competition faced by applicants is not as strong as that which exists in other parts of the country. The extremely long-hauls of the applicants greatly reduce effective motor carrier competition. The examiner recognized that the long-haul, lower-rated production of the west, principally agricultural, forest and mineral products, is "generally not attractive to motor carriers" and "is entirely dependent upon rail transportation."[36] However, he failed to consider that

[36] Recommended Report, page 43.

applicants also enjoy a similar advantage on interterritorial movements of manufactured articles. The only inland waterway of any consequence in the territory served by the Northern Lines is the Columbia River. Tonnage moving on the Columbia is extremely small in relation to that moved over the inland waterways in other parts of the country.

To counteract diversion of traffic by other modes, applicants have improved their services and have made many rate innovations and adjustments. It is abundantly clear that applicants have been successful in preventing avoidable diversion of traffic and in diverting from other modes traffic that is better adapted to transportation by rail.

The record, therefore, does not establish that intermodal competition poses such a threat to the future successful operations of applicants that the only means of preserving the advantages of rail transportation in the area is to permit the merger here proposed. However, for the reasons hereinafter indicated, we believe that the market for rail transportation and intramodal competition are also relevant in weighing the public interest aspects of this proceeding.

Intramodal Competition

Although the applicants have lost some traffic to other modes, a substantial amount of their present traffic is either substantially noncompetitive or falls in a competitive "twilight" zone and is thus available to that mode best able to exploit its inherent advantages of cost and service. In the former category are heavy loading, low-value bulk commodities and unfinished commodities in which traffic the applicants predominate. The most conspicuous example of the latter is traffic moving in increasing quantities under various piggyback (trailer-on-flatcar) plans. Regardless of the type of traffic involved, applicants have a decided competitive advantage in many long-haul movements. In this case, rail transportation must be considered a distinctive market in its own right. Cf. *Interstate Commerce Commission* v. *New York, N.H. & H. R. Co.*, 372 U.S. 744 (1963); *Schaffer Transp. Co.* v. *United States*, 355 U.S. 83, 91 (1957); *Eastern-Central Motor Carriers Ass'n.* v. *United States*, 321 U.S. 194 (1944); *Santa Fe Trail Stages, Inc., Common Carrier Application*, 21 M.C.C. 725 (1940). See also Meyer, Peck, Stenanson, and Zwick, *The*

Economics of Competition in the Transportation Industries, (1960) pages 240-41 and Conant, *Railroad Mergers and Abandonments*, (1964) pages 25-41.

As noted by the examiner, the physical lines of the major applicants limit to some extent the amount of competition between them. For example, although the lines of the Great Northern and the Northern Pacific meet at a number of common points, portions of their main lines are many miles apart. To support their contention that the competitive impact of the proposed merger would be negligible, applicants adduced evidence showing traffic flow patterns for 1960. Using a proposed unified system station inventory as a base, this evidence shows traffic data for the total system, for each railroad, each station classification by commodity group classification, States served, carloadings, revenues, and shipping classification. A total of 4,479 stations on applicants' lines were broken down into the following four classes:

Class 1	- stations commonly served by two of the applicant carriers and no other rail carrier	141
Class 2	- stations commonly served by two of the applicant lines and at least one nonapplicant carrier	236
Class 3	- stations served by one applicant line only	3,397
Class 4	- stations served by one applicant line and one or more other rail lines	705
Total	- All 4 classes	4,479

As indicated above, applicants' tabulation purports to show that only the 141 class 1 stations[37] would be materially affected by a lessening of rail competition since, after merger, the New Company would provide service in lieu of competitive service now provided by applicants. Competition would also be reduced at 236 class 2 stations, but these stations would continue to be served by at least one other railroad.

Applicants stressed the fact that at 4,102 stations, or 91.58 percent of the total, there would be no change in the number of railroads serving a particular point after unification. Rail service at those stations is now provided solely by one of the applicants (3,397 stations—class 3) or by two or more railroads including only one of the applicants (705—class 4) which in 1960 originated or terminated 74.91 percent of the total carloadings

[37]Included among these stations are Grand Forks, N. Dak., Billings, Laurel, and Helena, Mont., and St. Cloud, Moorhead, Fergus Falls, and Anoka, Minn.

and accounted for 68.59 percent of the total system revenues. The examiner agreed with applicants that the proposed consolidation would not result in any significant lessening of competition. In reaching that conclusion, the examiner declined to treat the Northern tier of States separately for the following reason:[38]

> Again, the fact of the matter is simply that Burlington is decidedly an integral and important part of the proposed unification, and there is no real justification for excluding Burlington from consideration as to the competitive effect.

The Department of Justice contends that the examiner erred in limiting his appraisal of competitive effects to the area in which all applicants operate, since the Burlington's lines are complementary to rather than competitive with those of the Northern lines.

We do not agree with the examiner's conclusion. Of course, the Burlington is an integral and vital part of the proposed transactions. However, inclusion of the Burlington in the merged company does not substantially lessen competition. The rail competition which would be destroyed is largely that which now exists between the Great Northern and the Northern Pacific. In other words, the most relevant and significant area of rail competition in this proceeding extends from the Twin Cities and the Great Lakes across the Northern tier of States to the Pacific coast because this is the area where vigorous intramodal competition exists and is threatened. In this area, the lines of the Great Northern and Northern Pacific run generally parallel and serve in common five major terminals: Head-of-the-Lakes, Twin Cities, Spokane, Seattle, and Portland. These five terminals include 35 stations on the Great Northern and 60 stations on the Northern Pacific. Including the SP&S, the breakdown of class 1 and class 2 stations by States is as follows:

	Class 1	Class 2
Minnesota	51	43
North Dakota	20	4
Montana	34	2
Washington	36	111
	141	160

[38]Recommended Report, page 394.

262-237 O - 69 - 34

Without some indication of the amount of traffic generated at stations within the Northern tier of States, the mere recitation of the number of common points at which competition will either be reduced (class 2) or eliminated entirely (class 1) by the unification, does not indicate whether the effect of the proposed merger on competition would be substantial or insignificant. Since both the applicants and those opposing the transactions have relied upon aggregate data in estimating the degree to which competition would be curtailed, the record contains only a limited amount of evidence as to the distribution of traffic among the four classes of stations. However, such evidence is the best available and, despite certain infirmities therein,[39] is adequate in making a realistic appraisal of the competitive effect of the proposed merger.

The following tabulation reflects the revenue contribution of classes 1 and 2 stations in the Northern tier States of Washington, Montana, North Dakota and Minnesota in relation to classes 3 and 4 stations:

Class 1	*Northern Lines (including SP&S)*
Stations	4.25
Cars	6.60
Tons	5.60
Revenues	6.16

Class 2	*Northern Lines (including SP&S)*
Stations	7.47
Cars	32.67
Tons	27.81
Revenues	37.71

Total classes 1 & 2	*Northern Lines (including SP&S)*
Stations	11.72
Cars	39.27
Tons	33.41
Revenue	43.87

[39] For example, tonnage moving between stations on one line is credited to each station. Also, bridge traffic is excluded since it does not terminate at any station on line. However, the percentages of tonnage and revenue totals at the various classes of stations are revealing even though the totals do not exactly correspond to actual tonnage and revenues.

Total classes 3 & 4	*Northern Lines (including SP&S)*
Stations	88.28
Cars	60.73
Tons	66.59
Revenue	56.13

Thus, the Northern lines are competitive at points accounting for approximately 43 percent of their gross revenues and 34 percent of their total tonnage. However, these common point statistics do not show competition for overhead traffic which accounts for at least 12 percent of the revenues of the Northern Lines. The competitive impact of this transaction may be measured also by market shares of traffic within the area involved and by the distinctive traffic flows which are competitive, given common points, routes and other competitive factors. See generally Massel, *Competition and Monopoly*, pages 194-244. The Northern Lines are each other's principal competitor for long-haul freight traffic between the Pacific Northwest and the Twin Cities, embracing the Northern tier States and the State of Oregon. Within this area, competitive rail service is also provided by the Union Pacific via Omaha, Nebraska and Salt Lake City, Utah to Portland and the Milwaukee via Twin Cities to Seattle. The record reveals that, as to east-west traffic to and from the Pacific Northwest moving through four representative gateways: Troy, Mont. (Great Northern); Paradise, Mont. (northern Pacific); Avery, Idaho (Milwaukee); and Huntington, Oreg. (Union Pacific) for the years 1957-60, the following market shares exist among the four carriers:

	1957	1958	1959	1964
Northern Pacific:				
Total cars[1]	188,646	184,394	197,792	193,883
Percent of total	28.2	28.9	29.7	30.9
Great Northern:				
Total cars[1]	206,348	197,156	199,528	188,325
Percent of total	30.9	30.9	30.0	30.1
Milwaukee:				
Total cars[1]	79,645	75,519	84,151	75,948
Percent of total	11.9	11.8	12.7	12.1
Union Pacific:				
Total cars[1]	194,242	181,414	183,569	168,453
Percent of total	29.0	28.4	27.6	26.9
All roads:				
Total cars	668,881	638,483	665,040	626,609
Percent	100.0	100.0	100.0	100.0

[1] Total cars, East and Westbound.

Since competition from Canadian transcontinental lines or the circuitous routes of the Southern Pacific would be generally ineffective, the above table clearly shows that tne New Company would reign supreme over this important transportation market.

Further evidence of such dominance is shown by the number of miles of line operated and the ton-miles produced within the Northern tier States by applicants, excluding Burlington, and the Milwaukee and Union Pacific.

	Miles of track operated [1]	Percent of total [1]
Minnesota:		
Applicants	3,201	38.96
Milwaukee	1,330	15.98
North Dakota:		
Applicants	3,508	67.45
Milwaukee	367	7.06
Montana:		
Applicants	3,415	67.63
Union Pacific	143	------------------
Milwaukee	1,251	24.77
Idaho:		
Applicants	491	12.70
Union Pacific	233	3.64
Milwaukee	233	8.20
Oregon:		
Applicants	735	15.83
Union Pacific	1,119	35.34
Milwaukee	0	0
Washington:		
Applicants	3,696	63.74
Union Pacific	1,022	17.62
Milwaukee	1,063	18.33

[1] Percentages do not add to 100 due to exclusion of other carriers.

Ton-mile figures for the same area in 1960 show that applicants moved 44.83, 81.15, 82.60, 77.41, 20.55, and 23.22 percent of the total ton-miles for the States of Minnesota, North Dakota, Montana, Washington, Idaho, and Oregon, respectively.

As to north-south traffic, there are two major competitive routes, the Shasta route controlled by the Southern Pacific and the Bieber or inland route controlled jointly by the Great Northern, Western Pacific and Santa Fe to provide competitive service with Southern Pacific-Northern Pacific and Union Pacific-Southern Pacific routes via Portland. Based on 1960 data, applicants together accounted for 73.5 percent of the traffic moving through these gateways.

After merger, the New Company would be the dominant transportation enterprise operating between the Northwest and Twin Cities. The Milwaukee would be relatively weaker than it is

today and the Union Pacific, although directly competitive, would be handicapped by its circuitous routes. The available data indicates that the New Company would handle roughly 61 percent of the carload traffic moving westbound and 83 percent moving eastbound from the Northwest. It would move about 67 percent of the total ton-miles in the four Northern tier States of Minnesota, North Dakota, Montana and Washington.

Numerous shippers and representatives of cities and States served by applicants appeared in these proceedings. Most of them supported the proposed merger, but a large number of the shippers testified that rail competition is important to them, particularly in the matter of rates and service.

Although regulation imposes certain constraints upon intramodal rail competition, competitive ratemaking is far from dormant. Subject to the requirements of the Act, there is a broad zone of reasonableness within which the discretion of carrier management and the interplay of competitive forces operate. A number of the shippers in the applicants' territory testified that active and vigorous competition among applicants and other railroads had brought about a lower level of rates. These witnesses included representative of such large firms as General Electric, Rayonier, Inc., A. O. Smith Co., and Zenith Radio Corporation. Other shippers emphasized the importance of rail competition in providing cars, particularly wide door boxcars, during periods of car shortages, improved service in the setting out and delivering of cars to sidings, and the settling of loss and damage claims.

In sum, it is clear that the shipping public derives substantial benefits from existing competition between applicants themselves and between applicants and other railroads. Some shippers supporting applicants expressed a preference for the preservation of rail competition if feasible, a finding we have made elsewhere in this report.[40]

In appraising the present scope of intramodal competition in the territory served by applicants, we have taken a number of variables into account. Since there are no exact yardsticks for measuring the competitive impact of a merger, it is necessary to rely to considerable extent on such imperfect indicators of competition as appear in the record and which appear reasonable in the light of our general knowledge of transportation conditions.

[40] See page 528 infra.

To the extent permitted by this record, we have attempted to measure the competitive impact of the proposed merger in terms of the most relevant area and the principal types of commodities transported. Although the proposed merger embraces points within 13 States, we have found the most relevant competitive area to be the area in which the Northern lines aggressively compete with each other. The Burlington has been included in our appraisal of competitive effects in the 13-State area, but excluded from our appraisal of competitive effects in the Northern tier of States, since its lines are, for the most part, complementary to those of the competing and parallel lines of the Great Northern and Northern Pacific. Taking these two lines alone, we have found the geographic area of effective competition to be the Northern tier States of Minnesota, North Dakota, Montana, and Washington. Where sufficient data is available, we have also included the States of Oregon and Idaho.

Based on information for the Northern tier of States, it is apparent that applicants, after merger, will overshadow all their rail competitors within this region and from this region to points beyond. Considering the effect on individual points first, the record indicates that competition will be eliminated or substantially reduced at 301 stations within the four-State area, 141 of which will have no other service except that provided by applicants. These 301 stations, in 1960, accounted for 43 percent of the Northern lines' gross revenues and 34 percent of their total tonnage, although the number of these stations is only 12 percent of the total number of stations. However, the anticompetitive consequences of the merger would not be confined to stations where applicants are directly competitive. Today, rate innovations and service improvements by one of the Northern lines create strong pressure from the shippers for for similar treatment by the other. These indirect benefits of competition between the Northern lines cannot be measured statistically but they are real.

Although applicants do not agree that the territory served principally by the Northern lines is the most relevant area of competition, they assert that, even in this area, the amount of competition that would be eliminated is not substantial. Applicants' argument, reduced to its essentials, is that since the noncompetitive points are already a large percentage of the total, a small increase in the number of such points will cause no measurable harm. We do not agree that the amount of competition that would be foreclosed is small.

DISCUSSION AND CONCLUSIONS

This is the fourth merger attempt of the Northern Lines within the past 7 decades. In each effort, elimination of rail competition has been the primary objective and the paramount issue. For 70 years the courts and the Commission have recognized that the Great Northern and Northern Pacific are each other's chief competitors, both in the area directly served by these carriers and for important transcontinental traffic.

The first attempt by the Great Northern to control the Northern Pacific ran afoul of a Minnesota statute prohibiting the consolidation of parallel and competing lines. In striking down that merger in *Pearsall* v. *Great Northern Ry. Co.*, 161 U.S. 646, 677 (1896), the Supreme Court said:

> The consolidation of these two great corporations will unavoidably result in giving to the defendant a monopoly of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection. The acts of the Minnesota legislature of 1874 and 1881 undoubtedly reflected the general sentiment of the public, that their best security is in competition.

To circumvent the decision in the *Pearsall* case, control of the Great Northern and Northern Pacific was then vested in a holding company. This arrangement was held by the Supreme Court to be a combination to restrain competition in violation of the Sherman Act. *Northern Securities Co.* v. *United States*, 193U.S. 197 (1904). Once again the Supreme Court noted that the Northern Lines were vigorous competitors and that their competitive arena was the northern tier of States between the Great Lakes and the Pacific, including Oregon. The court also observed at pages 327-8 of its opinion:

> If such combination be not destroyed, all the advantages that would naturally come to the public under the operation of the general laws of competition, as between the Great Northern and Northern Pacific Railway companies, will be lost, and the entire commerce of the immense territory in the northern part of the United States between the Great Lakes and the Pacific at Puget Sound will be at the mercy of a single holding corporation, organized in a State distant from the people of that territory.

In all their various efforts to consolidate, the Northern Lines have contended that continuation of competition between them would be calamitous. The response of the Supreme Court in the *Northern Securities* case to such gloomy predictions was as follows:

It is the history of monopolies in this country and in England that predictions of ruin are habitually made by them when it is attempted, by legislation, to restrain their operations and to protect the public against their exactions. (193 U.S. at 351).

The third attempt to unify the Northern Lines was initiated by applications filed with the Commission in 1927. Prior to its decision on these applications, the Commission, on December 9, 1929, adopted a plan for the consolidation of the Nation's railroads into a limited number of systems, as required by the Transportation Act of 1920. *Consolidation of Railroads*, 159 I.C.C. 522. The Northern Lines, together with the SP&S, were placed in System No. 12, while the Burlington, jointly owned by the Northern Lines, was placed in System No. 14. In conformity with the national consolidation plan, merger of the Northern Lines was approved February 11, 1930, subject to a condition that they divest themselves of control of the Burlington. *Great Northern Pac. Ry. Co. Acquisition*, 162 I.C.C. 37 (hereinafter called the *Acquisition* case). Primarily because of the condition requiring divorcement of the Burlington, the merger was not consummated.

The Commission's decision in the *Acquisition* case is not a precedent for finding that a consolidation of the Northern Lines would be consistent with the public interest. In 1930, the Commission was required by the Transportation Act of 1920 to develop, and to act in accordance with, a master plan for the consolidation of railroads into a limited number of systems. Today, however, we are not authorized to review merger proposals in accordance with any preconceived plan to encourage consolidation of the Nation's railroads. The practical difference between the Transportation Acts of 1920 and 1940 is illustrated in the concurring opinion of Commissioner Lewis in the *Acquisition* case, *supra*, page 71. He voted to approve the merger of the Northern Lines in accordance with the Commission's master plan, although he preferred to maintain them as competitors in joint control of the Burlington.

Although approving the merger of the Northern Lines subject to divestiture of the Burlington, the Commission recognized at page 56 of its report in the *Acquisition* case that "each of the northern roads is the most active competitor of the other, a condition which will be totally removed by the unification * * *" Chairman McManamy stated in his dissent in *Acquisition* case, *supra*, page 76, a statement in which Commissioner Eastman concurred, that:

It is clearly shown that these two railroads serve the same Pacific ports and the same lake ports and other eastern terminals and together serve all of the intervening territory. If active and substantial competition does not exist between these two lines, nowhere in the country can such competition be found. Officials of these two lines testified that not only are they in active and vigorous competition with each other but that each is the most aggressive and important competitor of the other.

In the Transportation Act of 1940, the Congress relieved the Commission of its responsibility to shape railroad mergers in accordance with a preconceived Commission plan of consolidation. Section 5(2)(b) of the act authorizes the Commission to approve unifications which it finds to be "consistent with the public interest" and also to attach such terms and conditions as it finds to be "just and reasonable." In determining whether proposed transactions are consistent with the public interest, the Commission is required by section 5(2)(c) of the act to consider the following four factors, 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.

In this proceeding, we are not concerned with the second and third criteria. No railroad in the territory involved has asked to be included in the proposed merger. If the merger were approved with appropriate conditions, it would not imperil the survival of any railroad operating in the involved territory. Total fixed charges resulting from approval of the merger would pose no problem for the New Company.

Although the merger would result in a net loss of 5,200 jobs on applicant railroads alone, the adverse effect on individuals would not be limited to those who lost their jobs as a result of the proposed merger. As pointed out by the examiner at page 406 of the recommended report, "the number of employees affected would exceed the number of jobs abolished, because of the so-called 'bumping' process under which, through exercise of senority rights established by collective bargaining agreements, an employee whose position is abolished may displace another, who in turn, displaces an employee junior on the seniority roster, and so forth

* * *" We also agree with the examiner's further observation that "those affected through the 'bumping' process would not reach the astronomical proportions envisioned by RLEA representatives."

We are required by section 5(2)(c) of the act to weigh the interests of affected employees on the scale of the public interest. It is difficult, of course, to devise a common scale for weighing human suffering and monetary benefits to corporations. Here, the hardship that would be inflicted upon carrier employees is substantial but not so great, in our opinion, that, standing alone, this factor would require denial of the applications if the advantages of the proposed merger outweigh its attendant disadvantages beyond any reasonable doubt.

Accordingly, our primary concern is the probable effect of the proposed transaction upon adequate transportation service to the public. More specifically, we must decide whether the disadvantages of a substantial lessening of competition, coupled with the adverse effect on carrier employees, outweigh the advantages that would be derived by applicants and by the shipping public. Before analyzing and balancing these decisive factors, some preliminary observations must be made.

First, the Commission is required to approach every transaction proposed under section 5(2) with an attitude of strict neutrality. Applicants are not required to prove that the unifications they propose would promote or advance the public interest. A showing of compatibility with the public interest is sufficient. *Chesapeake & O. Ry. Co.—Control—Baltimore & O. R. Co.*, 317 I.C.C. 261, 285 (1962). However, pursuant to section 7(c) of the Administrative Procedure Act,[41] applicants have the overall burden of establishing that their proposal meets this statutory standard. On the other hand, the filing of an application under section 5 creates no presumption that the proposed transaction is consistent with the public interest. The examiner reached a contrary conclusion, as indicated by the following statement on page 422 of his report:

> The legislative history of section 5(2) and its enactment in its present form indicates clearly that its purpose is to foster and encourage voluntary proposals of carriers in the nature of mergers, consolidations and unifications in the national transportation system.

The legislative history of section 5 clearly shows that the Congress did not adopt a policy fostering or encouraging railroad

[41] 5 U.S.C. sec. 1006(c).

unifications. It was the Transportation Act of 1920, not the Transportation Act of 1940, that embodied a policy favoring railroad consolidations. That policy was expressed in the following language amending section 5 of the Interstate Commerce Act:

> (4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems.[42]

The policy adopted by the Congress in 1920 failed because of the means employed to effectuate it. The examiner's belief that the Transportation Act of 1940 continued the policy of favoring railroad mergers is an error which permeates the recommended report and which may have prompted charges that he was predisposed to grant the applications.

No such policy is expressed in section 5. To interpret section 5 as implying such a policy is a perversion of legislative history and intent. The public interest scale is balanced. It is not to be tipped by the slightest presumption for or against merger.

The second general observation we wish to make is that the financial strength of the applicants is not a bar to merger. Cf. *Norfolk & Western Ry. Co. and New York, C. & St. L. Ry. Co.—Merger*, 324 I.C.C. 1 (1964). Section 5(2) of the act is not limited to transactions involving a union of the weak and the weak, the strong and the weak or the large and the small. On the other hand, the properous condition of the major applicants is a highly material fact. Where carriers are so impoverished that they are unable, individually, to constantly improve their transportation services and facilities, the public interest involved in a pooling of their resources is obviously stronger than in a case where, as here, the applicants are financially able to improve their plants and facilities in step with advances in rail technology.

Our third general observation concerns the interaction of section 5 of the Interstate Commerce Act and the antitrust laws and policies of the United States. Even though a proposed rail merger would result in a substantial lessening of competition throughout a large territory, the Commission can approve such a

[42] 41 Stat. 456, 481. In *St. Joe Paper Co. v. Atlantic Coast Line R. Co.*, 347 U.S. 298, 315 (1954), the Supreme Court observed: "Hence, for the first time [in 1919, preliminary to passage of the Transportation Act of 1920], government encouragement of railroad consolidation was discussed."

merger on the basis of countervailing public interest considerations. Mergers consummated under the Commission's authority are expressly immunized by section 5(11) from the operation of the antitrust laws. The Commission, however, is obliged to consider the anti-competitive consequences of a proposed merger with a view toward accommodating the public policy expressed in section 5 and the public policy embodied in the antitrust laws. The nature of the required accommodation is explained in *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 79-80 (1944), where the court said:

> To secure the continuous, close and informed supervision which enforcement of legislative mandates frequently requires, Congress has vested expert administrative bodies such as the Interstate Commerce Commission with broad discretion and has charged them with the duty to execute stated and specific statutory policies. That delegation does not necessarily include either the duty or the authority to execute numerous other laws. Thus, there, the Commission has no power to enforce the Sherman Act as such. It cannot decide definitively whether the transaction contemplated constitutes a restraint of trade or an attempt to monopolize which is forbidden by that Act. The Commission's task is to enforce the Interstate Commerce Act and other legislation which deals specifically with transportation facilities and problems. That legislation constitutes the immediate frame of reference within which the Commission operates; and the policies expressed in it must be the basic determinants of its action.
>
> But in executing those policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. When this is true, it cannot, without more, ignore the latter. The precise adjustments which it must make, however, will vary from instance to instance depending on the extent to which Congress indicates a desire to have those policies leavened or implemented in the enforcement of the various specific provisions of the legislation with which the Commission is primarily and directly concerned.

In making the necessary accommodation, the Commission is not required to employ market analysis techniques such as those described in *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962); nor is the Commission required to determine whether, but for the presence of section 5(11), the proposed merger would violate the antitrust laws of the United States. These questions were recently settled in *Seaboard Airline R. Co.* v. *United States*, 382 U.S. 154 (1965), affirming the *McLean* case and extending its rationale to mergers alleged to be inconsistent with the policy of section 7 of the Clayton Act.

In short, the Commission is obliged to consider whether and to what extent a proposed merger may lessen competition and, if it finds that a substantial lessening of competition would result, to weigh that unfavorable aspect of merger along with all other indicia of the public interest, pro as well as con. However, the Commission is not permitted to depreciate the values of competition which are reflected in the financial health of the merger applicants and in adequate transportation service to the public. And finally, although the Commission is concerned with the quantum of competition that would exist following approval of a merger, a more significant question is the amount of competition that would be destroyed by the merger. As Chairman McManamy said in his dissenting opinion in the *Acquisition* case, *supra*, pages 76-7:

> The fact that a substantial part of the traffic of each line is noncompetitive is immaterial. It is not with such traffic that the provisions of the statute deal. Nor may we limit our consideration of the traffic to that which in the language of the majority as 'exclusively competitive.' No such limitation is contained in the law. We must consider all traffic for which these lines compete and as to which their competition will be eliminated.

In the light of the general propositions stated above, we will now proceed to compare the benefits that would result from the proposed merger with its attendant disadvantages.

With regard to the nonmonetary benefits, it is clear that many shippers would receive better transportation service. Practically all of the significant improvements, however, would result from expanded routing with more advantageous transit and diversion privileges. The increased number of routes would result from unified operation of applicants' lines and from imposition of the gateway conditions sought by the North Western and Milwaukee.

In our opinion, the proposed merger would not materially improve tracing of cars in view of the computer centers now being developed by progressive carriers. Although merger might improve freight car utilization and to that extent alleviate the car shortage problem, that benefit is counteracted by the loss of competition which now spurs applicants to meet the demands of the shippers at common points. Faster service is theoretically possible under the proposed plan of unification but, as previously pointed out,[43] competition has already produced faster transcontinental freight train schedules than the schedules originally

[43] See page 20-1, *supra*.

proposed by applicants. Certain other alleged shipper benefits, such as processing of claims and reduction of damage due to less handling, are too insignificant to tip the scales for or against merger.

We recognize, however, that the shippers would derive some indirect benefit from savings realized by applicants as a result of merger. For example, to the extent that consolidation and modernization of terminal facilities can be accomplished only through merger, the shippers would benefit from the reduction in interchange delays. Thus, in the following discussion of monetary benefits reasonably attributable to the proposed merger, it should be understood that applicants are not the sole beneficiaries.

As adjusted by us,[44] applicants would realize the following savings from the proposed merger which could not otherwise be achieved:

Estimated savings as adjusted by the examiner --		$45,605,337
Add: estimated revenue gains excluding studies VII and XVII (net) ----------------------	$10,026,559	
Less: cost of North Western and Milwaukee protective conditions ------------------	21,221,155	(11,194,596)
Total savings ---------------------		34,410,741
Less: one-third of alleged savings at common points --------------------------	5,282,267	
Contingency factor of 12-1/2 percent ---------	3,641,059	8,923,326
Total --------------------------		25,487,415

( )denotes loss

We made two major adjustments in applicants' figures but accepted applicants' estimates in all other respects. First, we adjusted applicants' estimates to reflect the cost to them of conditions that are required for the protection of the Milwaukee and the North Western. Our estimates as to the cost of these conditions are somewhat lower than those of the applicants.

Our other major adjustment was to reduce by one-third savings attributable to coordination and consolidation of facilities at common points. In our opinion, this reduction was conservative and proper. We recognize that vigorous competition between the Northern Lines makes it impossible, as a practical matter, to incur the expense involved in effecting coordinations that are physically feasible but from which they would derive grossly

[44]For a breakdown of these projected savings, see page 504, *supra*.

unequal benefits. Since merger would produce optimum savings from coordination of operations at common points, such improvements will not be made so long as applicants harbor hopes of merger. Once it is made clear that their unification is not consistent with the public interest, it is reasonable to assume that a number of voluntary coordinations will be effected. For example, it is inconceivable that applicants would not seek to realize, even without merger, savings of $1,871,026 a year from consolidation of yard facilities at the Twin Cities. In denying the applications of Southern Pacific and Santa Fe to control Western Pacific, we pointed out that certain savings alleged to result from control, could be achieved through voluntary coordination. *Southern Pacific Co.–Control–Western Pacific Co.*, 327 I.C.C. 387, (1965).

Thus, the proposed merger, conditioned to protect the North Western and the Milwaukee, may result in annual savings in the amount of $25,487,415, which could not otherwise be achieved. Although Milwaukee would be a stronger carrier in the area extending from the Twin Cities and Head-of-the-Lakes to the Pacific Northwest, there would be one very large and strong railroad and one relatively weak carrier, whereas there are today two strong rail carriers and one relatively weak carrier.

A substantial amount of competition would be destroyed by the proposed merger. The examiner's contrary conclusion was based on his failure to treat the territory served by the Northern Lines as the most relevant competitive area.[45] The examiner limited his appraisal to the much broader territory served by the Northern Lines and the Burlington, although the lines of the latter are complementary to and not directly competitive with those of its parents. In addition, the examiner failed to recognize that in the long-haul movement of agricultural, mineral, and forest products, motor and water carriers are not substantial competitors. Essentially, we must decide whether competition between the Northern Lines is worth between $12.7 and $25.5 million a year to them and to their shippers.

Obviously, no dollar figure can be placed upon the value of competition. We do know that the Northern Lines, including the SP&S, interchange over 70 percent of the north-south traffic at Portland and Bieber; that the Northern Lines, in 1960, carried 77, 82, 81, and 44 percent of the total rail ton-miles in the States of Washington, Montana, North Dakota, and Minnesota, respec-

[45]See pages 512-13, *supra*.

tively;[46] that the proposed merger would eliminate competition between the Northern Lines at approximately 300 common points which provide traffic accounting for 43 percent of their revenues; and that rail competition with the New Company would be minimal in the vast territory extending from the Great Lakes and the Twin Cities across 1,700 miles of intervening territory to the Pacific Coast.

Furthermore, the record clearly shows that shippers have benefited from vigorous competition between the Northern Lines. This competition has been reflected in rate reductions, in steady improvement in service, and in the location of industries at common points. The extent to which the Northern Lines themselves have benefited from competition cannot be measured statistically. Their continued growth and prosperity certainly prove that they have not been injured by each other's competition.

To find that competition between the Northern Lines is not worth between $12.7 and $25.5 million a year, less expenditures to achieve those savings, would be tantamount to a conclusion that the value of intramodal rail competition is negligible. This range of estimated savings is less than 2.6 to 5.3 percent of the combined operating revenues of the Northern Lines (including SP&S) for the year 1964. Moreover, applicants are not short of capital. In fact, in recent years they have paid increasingly large dividends.

The probable savings and benefits that would result from merger are more tangible than those derived from competition between the Northern Lines, but we are convinced that they are not as great. We conclude, therefore, that the disadvantages of an appropriately conditioned merger—a drastic lessening of competition and adverse effects on carrier employees—outweigh the benefits that might be derived by applicants and the shipping public. Applicants have failed to show that their proposed merger would result in transportation service to the public that is superior to that which can be provided without merger, or that the benefits reasonably attributable to the proposed merger outweigh the adverse effects of the merger on carrier employees and the benefits that shippers derive from the competition to be eliminated. Accordingly, we find that approval of the proposed transactions would not be consistent with the public interest.

An appropriate order will be entered.

[46] By contrast, the Milwaukee carried only 12 percent of the ton-miles in Washington, 16 percent in Montana, 4 percent in North Dakota, and 12 percent in Minnestoa.

COMMISSIONER FREAS, whom COMMISSIONERS TUGGLE, MURPHY, WALRATH and GOFF join, dissenting:

The national transportation policy embraces the promotion of "sound economic conditions in transportation and among the several carriers." That great economies would flow from applicants' proposal is, in my opinion, clearly established. Surely the economies to be effected are not only consistent with the public interest as required by section 5(2)(b) of the act—they are in the public interest.

A suitably conditioned grant would not lessen rail competition materially and would substantially enhance competition among modes. As is conceded by the majority, the users of the service overwhelmingly support the proposal. These are the people for whom transportation is provided and whose needs it must serve. Their position is in no way counterbalanced by the testimony and arguments of affected governmental agencies—Federal, State or local. Measured by the earning standard of rail lines generally, applicants are not now in dire circumstances. But I do not subscribe to the view that they should sit idly by, complacently watching the eroding of their position, until opportunity for self-help has passed them by.

It is not necessary here to detail the many shortcomings in the report of the majority. A number of them are discussed in the accompanying separate expressions. Repetition would serve no useful purpose.

I am strongly of the view that, with appropriate conditions, the merger should be approved.

COMMISSIONER TUGGLE, whom COMMISSIONERS FREAS, MURPHY, WALRATH, and GOFF join, dissenting:

The majority has caused the Commission in this case to abdicate its duty under the national transportation policy and the carrier-consolidation provisions of the Interstate Commerce Act. On that, I give this separate expression, not for any lack of harmony with the dissents of Commissioners Freas, Walrath and Goff, but rather to emphasize the Commission's excursion here into a transportation netherland.

The majority's points of departure are two: (1) it misapplied the law, and (2) it fumbled the facts. The law (section 5(2)) declares that a rail merger shall be lawful, if consistent with the public interest. This is no ordinary statement of law; by reference to

262-237 O - 69 - 35

what preceded it in the law, it constitutes a drastic and dramatic change in public policy. From the first days of carrier regulation, the law favored, fostered and facilitated competition. Competition was to be the device for promoting the development of a transportation system honed to peak efficiency by economic combat, providing ever-available, high-quality service at the lowest cost consistent with efficiency. The heat of competition was fired up by public policy, but the heat merely brought prostration to the transportation industry.

At that point, Congress reversed its field. By the Transportation Act of 1920, with subsequent modifications from time to time, it prescribed as a remedy what had theretofore been proscribed as a poison, viz., carrier consolidation. Competition, enthroned on irrefragable presumption, was deposed. Though not anathematized (as consolidation had been), it retains significance chiefly as an aid in attaining the objectives of the national transportation policy. *McLean Trucking Co.* v. *United States*, 324 U.S. 67, 85-86 (1944). In other words, regulation was to be based on facts, causes and effects, and not merely on a preconceived notion that the presence of competition alone will make all things right.

After concluding that competition had failed and would not suffice for bringing into being and maintaining the kind of transportation system it considered necessary, Congress introduced its new policy in the transportation legislation of 1920, and has continuously pursued it since, without retreat. Under that policy, the Commission is admonished to place no reliance upon a presumption that merely because competition exists, transportation will be proficient and consistent with the public interest. Indulging in such a presumption would be, in effect, a reversion to the pre-1920 policy which Congress abandoned as seriously inadequate.

Yet the determinative element in the majority's decision today is the preservation of competition for the sake of competition, without inquiry into actual effects upon transportation. With the chaff blown away, that decision apparently turns on the finding that the present competition between the two Northern Lines is worth more than the $12.7 to $25.5 million per year in savings said to be attainable from the merger. Thus the Nation's antitrust policy is given full force and effect, notwithstanding that it is, in some respects, the antithesis of the transportation policy. Apparently of little weight are the numerous factors with

which the transportation policy is concerned: economical and efficient operation; better, faster service at lower cost; greater and more variegated car and equipment supplies; more dependable schedules; expanded transit and diversion privileges; easier; faster tracing and location of shipments and equipment; effective centralized control and management; less damage and faster claim service; reduced delay in switching, yarding and interchanges; and attractive enterprise for continued investment and reinvestment.

The majority acknowledge that the Transportation Act of 1920 embodied a policy favoring carrier consolidations; but they view the act of 1940 as changing that policy. They suggest that consolidations are less favored under the latter legislation. The fact is, as noted by the Supreme Court in *County of Marin* v. *United States*, 356 U.S. 412, 417-418 (1957), that—

> ***the result of the [1940] Act was a change in the *means*, while the *end* remained the same. The very language of the amended "unification section" expresses clearly the desire of the Congress that the industry proceed toward an integrated national system***

Plainly and simply, the act of 1940 was intended to eliminate certain obstacles to carrier consolidations, i.e., "to facilitate merger and consolidation in the national transportation system." *County of Marin, supra,* at page 416. The Supreme Court has gone to great lengths to make this clear. See, e.g., *Schwabacher* v. *United States*, 334 U.S. 182, 191-193 (1947), and *Maintenance Employees* v. *United States*, 366 U.S. 169, 173 (1961). It is an exercise in futility for this administrative agency to attribute new meaning to a law when the highest court has repeatedly and consistently construed it otherwise.

Prior to 1940, a proposed consolidation had to comply with a government-masterplan and promote the public interest. As a result of the act of 1940, a proposal need not conform to any preconceived plan, nor must it *promote* the public interest. It is sufficient, if the proposal is consistent with the public interest. Once a transaction is shown to be consistent with the public interest, this Commission has no choice but to approve it. Section 5(2)(b) prescribes that the Commission "*shall* enter an order approving and authorizing such transaction, upon the terms and conditions and with the modifications***" it finds to be just and reasonable.

It is important, therefore, to clearly understand this standard—consistency with the public interest. As defined in *Pacific Power & Light Co.* v. *Federal Power Commission,* 111 F. (2d) 1014, 1016, it—

> ***does not connote a public benefit to be derived or suggest the idea of a promotion of public interest *** the thought conveyed is merely one of compatibility.

This is the meaning the Commission has given the term repeatedly in a long line of cases begun as early as *Scott Bros., Inc., Collection and Delivery Service,* 2 M.C.C. 155, 164 (1937).

Moreover, the term is further limited in the sense that our concern with the public interest is not in reference to the general public welfare, but rather in "direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency and to appropriate provision and best use of transportation facilities." See *United States* v. *Lowden,* 308 U.S. 225, 230 (1939).

Ignoring these standards, the majority clearly has erred in imposing the standard that the advantages of the merger must outweigh its disadvantages "*beyond a reasonable doubt.*" It thus imports the extreme evidentiary burden heretofore imposed only in criminal cases, and, nowhere in our system of jurisprudence, applied to civil proceeding—either in court or before administrative agencies. Still far afield, the majority, with demagogic overtones, suggests a standard that would attempt to weigh human suffering against monetary benefits to corporations. While championing the cause of humanity as against corporate profits may on proper occasion be lauded, its emphasis in this decision is misplaced. As a legal-technical matter, it has little relevance here; and as a factual matter, the likelihood of human suffering is nowhere in evidence.

The majority is further at odds with the law in its refusal to weigh the transaction in a fact frame likely to ensue after the application of just and reasonable modifications and conditions. The law, particularly sections 5(2)(b) and 5(11), confers the power to approve a merger either as applied for or as qualified by such terms and conditions as the Commission deems just and reasonable. *McLean Trucking Co.* v. *United States,* 321 U.S. 67, 74-75 (1944). Thus the Commission can participate in the attainment of an adequate transportation system, by imposing such conditions

as might be appropriate to make the transaction consistent with the public interest. The record here is pregnant with feasible and worthwhile suggestions by which this transaction could bring a much improved transportation system to the territory involved. But the majority is content to rely on data relevant merely to the present competitive situation. And in doing so, it permits opportunity to pass us by. As aptly stated by the poet:

> For all sad words of tongue or pen, The saddest are these: "It might have been."

Finally, I cannot accept the substitution of the judgment of States appearing as advocates for the judgment which the law requires this Commission to exercise. The majority labor to create the impression that "vitally affected agencies of government," are better informed, more sophisticated in these technical matters and more prudent than the shipping public and the general public.

The simple answer is given by the Department of Agriculture when it called upon the Commission to recognize that, except for itself and another Federal agency, all parties have approached this proceeding from the point of view of self-interest, and that "Even the State commissions and the States look at it from a local point of view."

But even accepting the majority's premise, it should be noted that only 3 of the 11 intervener States were in outright opposition to the merger. All the others would approve the transaction as presented or with appropriate conditions. In addition, about 400 municipalities, civic groups, firms and individuals supported the merger in one form or another, all interested in but one thing—better, cheaper transportation. This objective, I submit, should also be the Commission's.

On the facts, we are told that the existing competition between the two Northern Lines produces greater benefits to the public than the merger would. But there is a notable lack of specificity as to evidence supporting such a conclusion. The recent speed-up in Northern Lines schedules is cited as an example of what competition can do. I cannot overlook the fact that the speed-up was only possible through increasing motive power while decreasing pay load. Defensive measures like that require expenditures disproportionate to the gains; and they must be deemed inefficient in view of the fact that the merger could produce even faster schedules without shortening trains and adding locomotives.

The evidence is clear and overwhelming on the harm perpetrated by the competitive situation as it is today in applicants' territory and will continue to be as a result of the majority's decision. Gateways are barred; routes are restricted; transit, stop-off and diversion privileges are severely curtailed; shippers are held captive to the Northern Lines over great distances; shipper access to markets and sources of supply is limited; the Milwaukee, notwithstanding its superior grades and shorter route, is hamstrung and short-hauled, and is continuously losing effectiveness as a competitor in this territory, primarily as a result of insuperable interchange restrictions imposed by the Northern Lines; C&NW is subjected by the Northern Lines to similar handicaps. All this could be changed—and all the railroads involved, the shippers, the economy of the territory and the general public would be the beneficiaries—if this merger, properly conditioned and modified, were to take place.

The curtailment of competition between the two Northern Lines, feared so much by the majority, bears closer scrutiny. What would be its real, practical effect? West of Montana, the UP provides effective competition to Portland, and the Milwaukee, to Seattle. East of North Dakota, the Soo Line, Milwaukee, C&NW and other railroads are effective competitors. Across Montana and North Dakota, where the majority insist NP and GN must be retained as competitors, inter se, those two railroads are as much as 200 miles apart—hardly in a position to compete for the same shippers. On the other hand, the Milwaukee intertwines or parallels at close distance the NP route for almost the entire distance. An improved, ratemaking Milwaukee could provide competition of an intensity not heretofore seen in the territory.

On transcontinental traffic, which has little relevance to the 4-State tier placed under the majority's misroscope, there are numerous effective routes both north and south of the Northern Lines. Western Pacific with its connections, UP, D&RGW, Soo Line, the Milwaukee, and even SP and Santa Fe vie for the same transcontinental traffic as the Northern Lines.

Intermodal competition, present and prospective cannot be summarily dismissed. More than 240 motor carriers serve practically all points on the Northern Lines. The average length of haul for classes I and II motor carriers in the territory is over 400 miles—about the same as the Northern Lines average length of haul. Add to these, private and exempt motor carriage—all fully capable of handling grain, fruits, meats as well as forest

and mine products—and it becomes apparent that motor carriers are a competitive force to be reckoned with.

The Columbia and Snake Rivers from Lewiston, Idaho to the sea, and the Missouri River from Fort Benton to the Mississippi River, in themselves and in combination with motor carriage, will bring effective intermodal competition into the heart of the vast grain, forest and fruitlands of the northwest.

With a Milwaukee railroad, freed of its present shackles and capable of increasing its traffic in the amount of $10 million or more per year (using the more conservative estimates provided by the record); and with the ever-increasing intermodal competition; there can be little doubt that after the merger (with appropriate conditions), the competition in the territory would be more effective than it is today.

The merger's effect on rail employees requires attention. This Commission has the power, if it would but exercise it, to insure no loss of employment as a result of this merger. While it is true that over a 5-year period, 5,200 positions would be eliminated, no jobs would be lost. Even under the applicants' proposal unmodified, almost immediate re-employment by the applicants would be available for 4,260 employees through normal attrition. These jobs would not require substantial change of location. Almost 1,000 jobs would be opened in new locations. If the Milwaukee were to grow, as would be likely, other jobs would be created. In addition, improved transportation in the area would redound to the benefit of the entire economy there, thus opening up other employment opportunities.

Regardless of what the Commission does in this case, automation and technical advancement are going to eliminate jobs. Our task is not to freeze men in unneeded jobs, but to encourage the creation of an atmosphere of mobility in which employees can conveniently move into new, essential and remunerative employment. The opportunity to undertake this task is at hand in this case. A denial of this application spurns that opportunity.

COMMISSIONER WALRATH, whom COMMISSIONERS TUGGLE, MURPHY and GOFF join, dissenting:

The majority has chosen to disregard the real meaning and legislative intent of the plain wording of section 5(2)(b):

***If the Commission finds that, *subject to such terms and conditions and such modifications as it shall find to be just and reasonable,* the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it *shall* enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable; *** /Emphasis added./

Though not as binding as the statutory mandate in legal authority, the well known line from a time-honored hymn suggests itself as the basic theme or text for this dissenting expression - that the moment of decision comes "Once to every man and nation." While that may understate this Commission's chances, assuredly the opportunity for the bold and imaginative, not to say dynamic, statement of regulatory policy and exercise of transportation statesmanship offered by this case comes with rare frequency. Indeed, it is the nature of the basic transportation law and industry that such opportunity is almost confined to cases such as this, arising under section 5(2) and involving far-reaching proposals submitted by significant segments of that industry, but (and most importantly) subject to such reasonable conditions as this Commission may impose.[1]

The majority's out-of-hand rejection of that opportunity here smacks of an affinity for the *status quo* indicating a casual lack of appreciation of its realities as spelled out on this record (both by witnesses in support of and in opposition to the applications), as well as an apparent leaning toward regulation by slogan (in the west and northwest) and represents an inconsistency difficult to explain away. Such characteristics are emphasized by the report's repeated tendency vigorously to march up to many of the fundamental issues only to fall away in apparent confusion and, ultimately, to seek refuge in the obsolete application of the generally valid concept of competition. Such treatment, if it were not so injurious to the potential of the national transportation system, would, all things considered, not be without a certain

[1] It should be noted that even those who compose the majority here, in since voting to approve the Pennsylvania R. Co.—Merger—New York Central R. Co., the report in which is also released today, emphasize the New Haven as part of a viable system in the Northeast. In similar vein, the majority in the *Norfolk and Western* case preserved the opportunity, in a broad sense, of including at an appropriate time, several of the East's smaller railroads. So, too, in the *Seaboard—Coast Line* case were we careful to assure the opening of the Jacksonville gateway and of possible ultimate inclusion of the F.E.C. All of these cases are illustrative of a forthright recognition of our responsibilities under the Interstate Commerce Act. It is difficult to understand an "area" approach to our responsibilities when there is little or nothing in principle or in *relevant* fact to distinguish the opportunities presented by the respective cases.

humor; but the administrative process, the transportation community, and the Nation are entitled to more.

Probably the most notable thing about applicants' proposal is the degree of its public acceptance and support in an area noted for antipathy and even hostility toward large railroads. Recognizing the right, indeed, the duty, of State and local government officials to express their viewpoint of the public interest, and to emphasize possible adverse local effects, the fact remains that the proposal in its principal aspects has the *overwhelming support* of those most directly affected by the amount and quality of railroad service. It is noteworthy, too, that much of the considerable public support evidenced is for *far more than the plan as proposed* by applicants. That support would impose on applicants' plan such suitable conditions as could cause it to affect beneficially the entire balance of transportation in the Western and Northwestern United States, with ramifications reaching into Canada and the remainder of this country.

Under the *status quo*, the Milwaukee is destined to a marginal and steadily deteriorating existence, with its shippers and service areas, as well as those of applicants, surely paying the price of its inability to reach Portland (except through a left-handed interchange with Union Pacific at Marenga), its inability to obtain a long haul on transcontinental traffic that does not both originate and terminate on its own lines, its inability to offer stop-off service except at points on its own lines, and its various other natural and artificial handicaps fully developed of record. What Portland traffic it now has is shown to come from loyalty for its past efforts and hope for its improved future as a result of these proceedings, but, in ultimate self-interest, its Portland supporters cannot stay with it unless relief is forthcoming here.

So, too, under the *status quo*, will the Western Pacific and C&NW and their shippers and service areas continue as at present, with the Western Pacific forced to litigate at every turn for an equality of competitive opportunity on traffic to and from the area served by Northern Pacific, and the C&NW having to forego its long hauls on transcontinental traffic in favor of the Northern Lines and to suffer from outmoded arrangements at its interchange points with them. And for what? In order, according to the report, that the affiliated Northern Lines (in fat and happy, but hardly naive or accidental, joint control of the SP&S on the west and the Burlington on the east, to say nothing of the

Midland in the middle) will continue to split the lion's share of the northern transcontinental traffic and revenues between them and so preserve a facade of competition; surely this record makes it clear that what the area really needs is the solemnization of their common-law marriage and the use of their healthy desire therefor to benefit and uplift the surrounding countryside, replacing the present "family" competition with the genuine and authentic competition possible under a combination of this Commission's section-5 conditioning power and the ability of the other railroads in the territory to make such conditions work for the public good.[2]

Confined to railroads the proposals, as modified by appropriate conditions warranted from the record evidence in these proceedings, bespeaks an entire new prospect for *intramodal* competition in the efficient and economical movement of transcontinental, western, and Pacific Coast traffic. It has long been recognized, and this record leaves no doubt, that the transcontinental routes of the Northern Lines under present conditions have a virtual lock on traffic routed through Spokane and the Twin Cities.[3] Even though Milwaukee has the shorter route (between Twin Cities and Seattle), its handicaps make its transcontinental traffic and service almost nominal as against those of applicants, between whose principal lines it lies (and is pressed), and of the other strong transcontinental railroads to the south.[4] On the West Coast, the Western Pacific occupies a comparable, though not as hopeless, position; obtaining 20 percent of its total freight revenues from Bieber gateway traffic, however, its stipulation with applicants would not only retain for

[2] The report is technically correct in noting that there is no question here of inclusion of other railroads in the territory, but it should be noted that the conditions sought by other railroads, particularly Milwaukee and C&NW, are not far removed in spirit from inclusion petitions under section 5(2)(d), and in view of their importance to the case, are entitled to a broader consideration than they receive.

[3] The impressive and startling, and discouraging, factor in the gateway statistics set forth in the report is not that, "After merger, New Company would be the dominant transportation enterprise operating between the Northwest and Twin Cities" *(the affiliated Northern Line applicants are now)*, but rather, the paucity of the Milwaukee's share of that market. Wringing hands over the Northern Lines' shares, separately or in combination, will not help the Milwaukee or its shippers or the areas it serves; using the leverage afforded by the applications, however, the Milwaukee could have the opportunity of increasing its share to the great benefit of the entire transportation system and the users thereof, even to reversing the trend of agricultural-commodity diversion to unregulated carrier services which threaten applicants and other regulated carriers alike.

[4] This is not an imagined situation. The representative of the largest group of shippers in the case (fundamentally in support of applicants) merely reflected the record when he said at oral argument before us:

footnote 4 continued on next page)

it the opportunity of keeping its Bieber traffic, but would gain for it and its patrons and connections an equality of competitive circumstances now denied them.[5]

Nor would the benefits of a suitably conditioned transaction be confined to an increased tempo in intramodal rail competition. The record is statistically replete on the subject of the growth and vitality of other forms of transport, principally motor (common, contract, private, and exempt), and establishes beyond doubt that the renewed vigor the proposal, as conditioned, would bring to rail transportation and rail competition would enhance the ability of the area's railroads, individually and as a group, effectively to compete with those other transport modes to the ultimate public benefit.

It is true, as argued by Justice and others, that much of the Northwest's traffic is such that neither the motor nor the water carriers could under present conditions completely replace the railroads in its efficient transportation. Given intelligent rail consolidation in an atmosphere of competitive equality, however, they should not have to. But if they did, history would seem to indicate that they could give a good account of themselves.[6]

(footnote 4 continued)

If those two conditions (Portland entry and elimination of dual basis of switch charges) are put in, then we will have a strong and vibrant effective Milwaukee competitive situation that is superior—yes, I repeat, superior to the situation that exists today. Not one person has been able to tell us that the Milwaukee would not be a more effective competitor and do a better job if they could in fact tap the California market through the Portland gateway and have access to the lumber and other products that would be available through that area. *Without it, we see nothing but disaster for the Milwaukee.* With the Portland gateway and the elimination of the non-competitive switch—which again is temporary /sic, contrary/ to the applicant's position, but we believe that would do a world of good for the shippers and the railroads—*we will not diminish competition, but will improve it materially for all concerned.* /Emphasis added./

It seems clear that if additional conditions were added, the position of the U. S. Department of Agriculture would not be dissimilar.

[5] WP is even now handicapped in competing with SP by the refusal of NP to join it in through routes and joint rates on the same level as those between the SP and NP, resulting in several formal complaints by the WP over the past 2 decades, capped by *Western Pacific R. Co. v. United States*, U. S. , in which the Supreme Court only recently remanded to the lower court, for decision on the emrits, our order in *Western Pacific R. Co. v. Camas Prairie R. Co.*, 316 I.C.C. 795 (the Portland Gateway case), on the proposition of law that WP is a connecting carrier within the meaning of section 3(4) even though having no physical connection at Portland or even entering that city, but merely by being an "interior segment" of a through route to and through that point (via Bieber) whose other participants (GN and Santa Fe) are willing to participate in the necessary arrangements.

[6] See *Pacific Inland Tariff Bureau v. United States*, 129 F. Supp. 472 (1955), in which the court reversed this Commission's finding that certain rail rates on petroleum products eastbound from North Coast points were just and reasonable for the reason, inter alia, of their undetermined effect on highway and barge

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Justice raises the point, of course, not as an indication that rail service as such would go out of existence if the proposal is consummated, but to emphasize the importance of rail service, and, therefore, the importance of *competitive* rail service, an importance which, in this territory, should not be depreciated. That importance, however, through this Commission's conditioning power under section 5, could be recognized to such an extent that *rail* competition would actually be *enhanced*, as would the opportunities of shippers and areas to realize the benefits of that competition in the form of rates and service with all the tangible and intangible factors those terms embrace.

Thus, consideration of these applications does not begin and end with the proposal itself, complex as that is, but is interwoven with the entire transportation system in the affected territories, which, with connections, includes much of the Nation and not merely the considered operating areas, although the interests of the latter are extremely important in any ultimate disposition. Such general concepts as equality of competitive opportunity, through routes and joint rates, coordinated transportation, reduction of paperwork, elimination of duplication, and efficient use of rolling stock[7] and other transportation facilities are latter-day transport cliches, all looking toward better transportation at lower costs passed on to the consuming public, but their generally recognized desirability does not carry the day for them or their proponents in legal confrontation with specific terms of the law and interests vested thereunder. They are all elements, implicit or explicit, of the national transportation policy, in whose light all provisions of the act are to be administered, but neither jointly nor severally do they automatically negate or overcome the more limited specific provisions of the act in the context of the usual case.

Thus, in ordinary circumstances this Commission's authority to direct through routes and joint rates is limited by the qualifications written into sections 15(3) and (4) conditionally prohibiting the shorthauling of originating carriers and outrightly prohibiting route-and-rate establishment for the purpose of assisting a

(footnote 6 continued)
carriers, the court citing testimony of World War II shortages of rail equipment which left the outbound grain and inbound petroleum-products traffic of the Inland Empire to apparently exclusive barge and truck movement, and of service advantages of those modes. Evidence herein pertaining to intermodal competition for such traffic confirms that the motor and barge success was not just a wartime phenomenon; cf., *Schaffer Transp. Co.* v. *United States*, 355 (1957).

[7] It is passing strange that only days after issuing the most far-reaching car-service order ever put out by this body, designed primarily to get cars back to the Northern Lines (by name), the majority should here belittle the plans of those very roads to obtain better car supply and usage.

participating carrier in meeting its financial needs. Under most of the specific statutory provisions there is, and properly so, a vast difference between what is generally, or even specifically, desirable as a measure of the general public good and what is lawful or unlawful. Under section 5, however, this Commission's latitude for the intelligent and reasonable conditioning of its approval of any transaction submitted by voluntary applicants encompasses the *whole spectrum* of the public interest in transportation.[8]

In any such situation, the applicants may or may not consummate an approved transaction, the voluntary nature of the process being maintained throughout; if they do consummate, however, they are bound to observe "such terms and such modifications as (we) shall find to be just and reasonable."

The majority's report here, in seeming to assume that an appropriately conditioned approval would not be acted on by applicants, is not only overly paternalistic in making applicants' decision for them, but, indeed, seems to exhibit an underlying and unhealthy fear of what that decision would be. It would be refreshing to see more confidence in the judgment decisions of the new management now heading our Nation's railroad industry.

The restrictive wording and the generally strict construction of the statutory through-route and joint-rate provisions make for few real breakthroughs in situations such as those in which the WP and the Milwaukee find themselves; see the *Portland Gateway* case, *supra*, in which Justice sided with the WP.[9]

Thus, there is here the opportunity to refashion in the public interest considerable railroad structure and practice which, in one sense, has "just growed" and, in another, has been constructed primarily in response to private-interest demands, sometimes coinciding in serendipic fashion with the public interest but sometimes in derogation thereof, and to do it, not by fiat, for which there is no authority, but merely by giving the applicants a choice (or, as in the case of the stipulations, by approving what consessions applicants have already voluntarily made).

This is not to say that this Commission should look on itself as "the new empire builder," as Minnesota regards the examiner

[8] And, as evidenced by the *Penn-Central* decision *supra*, there is unanimous Commission agreement that this is proper in the east. See also our *Norfolk and Western* and *Seaboard-Coast Line* reports.

[9] Causing the WP some wonderment here when, in its exceptions, Justice attacked the WP stipulation.

as having done, but only to indicate the strong belief that the record herein requires acknowledgment and exercise of its far-reaching authority and responsibility under the law, rather than a backing-and-filling approach which leaves the innocent reader confused (and the knowledgeable one annoyed) before plunging into the ultimate decision on the basis of a single aspect of the case.

It is true, as it has always been true, that the Northern Lines are competing railroads and that approval here would eliminate what competition there is between them. And, although it is now settled with some finality that section 7 of the Clayton Act is not controlling of our action on proposals submitted under section 5(2) of the Interstate Commerce Act (*Seaboard Air Line R. Co.* v. *United States*, 382 U.S. 154 (1965)), we remain under the duty to "estimate the scope and appraise the effects of the curtailment of competition which will result * * * and consider them along with the advantages of improved service, safer operation, lower costs, et cetera, to determine whether the consolidation will assist in effectuating the overall transportation policy," *McLean*, and to treat the problem as "one of accommodation of section 5(2) and the antitrust legislation," *Minneapolis & St. Louis*.

Proceeding in that vein, it is apparent that the elimination of competition between the Northern Lines as spelled out on this record would not so much adversely affect any result arising from that relationship as it would the competitive effects as between them, on the one hand, and, on the other, other rail carriers, particularly Milwaukee and C&NW. Granted that there is some market and cross-country competition between the Northern Lines in the great geographically intermediate area they serve, such competition is insignificant compared with their terminal-to-terminal competition, particularly as indicated by applicants' station and traffic figures as restated by opposing forces, and here made the sole determinant of the case in the majority's report.[10]

[10] *Those figures, however, as used in the majority's report, bear further examination.* It will be seen that the important stations are those in class 2, which, although accounting for only 7.47 percent of all stations in the four States, produce about 38 percent of gross revenues and 28 percent of total tonnage and, when coupled with class 1 stations therein, account for respective approximate percentages of 11.72, 44, and 33. The class 1 stations, at which all rail competition would be eliminated, produce percentages of revenues (6.61 percent) and tons (5.60 percent) only slightly in excess of their number (4.25 percent); the important differences come from class 2 stations, where there would con-
(footnote 10 continued on next page)

Without condemning that competition as wasteful, it would ignore reality not to note that what transport competition there is between the Northern Lines prevents such desirable things as through routes and joint rates, with attendant shipper privileges and public benefits, between them, apparently to their immediate advantage as individual railroads, but hardly to the benefit of railroad traffic or the direct and indirect users of railroad service among the public; there is indication on this record that such manifestations of the "competitive" spirit actually result in the diversion of traffic to motor movement, including *private and exempt* carriage. The real adverse effect of the Northern Lines' consolidation would seem to fall not so much on those shippers immediately deprived of competitive rail service thereby as on those shippers and areas dependent for rail service on the smaller and weaker railroads which would suffer the brunt of New Company's consolidated strength in the overweighted routing battle which would inevitably follow. As even applicants must recognize (the report shows signs of doing so, but ultimately washes its hands of the matter), it is those shippers and those areas which have the most to gain or lose as the result of applicants' proposal. And it is those interests most of the conditions sought herein are primarily designed to benefit, although they would not be without similar effect on others as well, particularly those shippers and areas which have, or would have, the direct advantages of applicant-Milwaukee competition.

It is true that applicants might feel as they did following the *Acquisition* case, that the price put on their proposal by *appro-*

(footnote 10 continued)

tinue to be available, after merger, the service of at least one railroad other than New Company. Yet the report, almost shouting "Eureka," seizes on the percentages alone as the basis of the reason for disapproval, overlooking the fact that those percentages can't help being disproportionate because of the nature of the principal class 2 stations as terminals and the duopoly of the Northern Lines on rail transcontinental traffic moving across the northern portion of the nation, and assuming that the whole of the revenue and tonnage percentages reflect competitive traffic as between the Northern Lines, when this record makes it clear that much of such traffic is not really competitive at all but depends for its routing on shipper location and preference, with the originating or terminating carrier having a strong advantage in obtaining its long haul, especially as the game is played in the considered area.

The report notes, too, that "Applicants also state that, with few exceptions, all points now served by more than one railroad (would) continue to be served by more than one railroad after merger." Applicants do more than state that; they show it. If the report's point is that there is more to the competitive picture, well and good; but applicants' showing should not be watered down and vitiated by the implication that it is no more than a contention.

priate conditions would be too great; if so, they would be free to disregard any approval given or to contest the reasonableness of any conditions. Having gone through the study, discussion, and agreement necessary to formulate the proposal with a showing of considerable transportation statesmanship (begun, in its modern phase, over a decade ago), however, their appreciation of the overall situation and the fast approaching future might well convince them of the desirability, indeed, possibly the inevitability, of the conditions which we might have decided were in the public interest to impose. (Here again, it is not amiss to suggest that it would be refreshing to see some evidence in the report of a belief that modern management is completely capable of rational decisions consistent with the public interest as well as its own.)

Nor should we be unmindful of the problems consummation of the proposal, even as conditioned, would bring to individual employees and their families and State and local governments throughout the affected area. Although our primary concern is for the public interest as directly related to "adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and the best use of transportation facilities," *N. Y. Central Securities Co.* v. *U. S.*, 287 U.S. 12 (1932), we are directed by the governing statute to include as a specific factor in the overriding public-interest test "the interest of the carrier employees affected."

As argued by Minnesota, factors other than employee interest and the three additional specified considerations (adequate service, effect of inclusion or exclusion of other railroads, and total fixed charges) are encompassed in the language "the Commission shall give weight to the (indicated) considerations, *among others*" [emphasis added], and certainly we are not restrained from considering thereunder a transaction's effect on the political entities through which our governmental system functions. It is clear, however, that our primary concern is and should be with transportation; indeed, with no intent to exclude the human values involved, it is significant that the Supreme Court has seen the ultimate benefit of labor-protective conditions to the overall transportation system as one of the bases upon which the statutorily expressed Congressional policy thereon is bottomed. *United States* v. *Lowden*, 308 U.S. 225 (1939), *Interstate Commerce Commission* v. *Railway Labor Assn.*, 315 U. S. 373 (1942).[11]

From the foregoing, it is apparent that even with a broad view of our jurisdiction and duty under the governing statute, it is difficult to get appreciably distant from the fact that our primary charge is as to transportation, "its essential economy and efficiency," and that, although nothing transportationally touching the overall public interest is irrelevant to our consideration, our paramount concern must be as propounded by the Congress and interpreted by the Supreme Court.

Returning to the majority's report here, it is its own worst enemy, both in its nonfeasant treatment of the overall issues, and in that certain of its specific affirmative statements draw questioning attention to themselves. The report couldn't be more correct in (and this separate expression hereby adopts its statement at the beginning of its discussion on the competitive aspects of the proposal that, "*The most significant issue in these proceedings is the effect on the competitive balance of transportation service and facilities in the territory served by the Northern Lines.*" [Emphasis added.] From that point on, however, agreement is hard to come by except as to the report's sprinkling of surface obeisances to conformity with the law of the land in these matters.[12]

Not content with a general unbalanced presentation of record data, the report compares the (arbitrarily) reduced savings possible here with applicants' *gross* revenues, when it is clear that those savings would show up in *net* revenues.

The report also seems to proceed on the theory that the rationale behind the merger provisions of the Transportation Acts of 1920 and 1940 was different because the provisions them-

[11] It is appropriate to point out here that impressive circumstances of record indicate that attrition conditions, long sought by labor interests, would, with appropriate modification in their terms and flexibility in their application, be desirable and without undue harm to the interests of either management or labor. Indeed, negotiated agreements of a tentative nature, reported in the press since closing of the formal record, indicate that the parties themselves have been voluntarily resolving those issues as contemplated by section 5 although the Brotherhoods concerned have not changed their position of opposition to the proposal.

[12] The Supreme Court may be surprised to read that it "extended" *McLean's* rationale in *Seaboard*, 382 U.S. 154 (1965) "to mergers alleged to be inconsistent with the policy of section 7 of the Clayton Act." Its *per curiam* order therein does not read as if it were of the opinion that it was going beyond *McLean* and *Minneapolis*, but, rather, seems to indicate some wonder that, with those guideposts in place and lighted, there should have been so much question about the specific issue of law involved there.

262-237 O - 69 - 36

selves were different, and even attempts an illustration of the "practical difference" therein. The true "practical difference," however, would appear to be that the later provision is practicable and workable whereas the earlier one was not.

In this connection, the report apparently adopts at face value a contention by Justice that the examiner interpreted section 5 as "favoring" rail mergers. Actually, as both the report and Justice make clear in their small print, the examiner's words were (at page 422) that the form and history of section 5(2) indicate that its purpose is to "foster and encourage" voluntary proposals by carriers, and (at page 419) to "foster and provide for the voluntary union of carriers into a sound and adequate national transportation system." The examiner did not make those statements in a vacuum. The one made at page 419, three pages before the one at page 422 quoted in this report, went on to cite "*County of Marin* v. *United States, supra,*" followed by: "Transactions such as involved herein must be considered in the light of the national transportation policy, as declared in the act. Cf. *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455 (1950); *Spokane International R. Co. Control*, 295 I.C.C. 425 (1956); *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U.S. 298, 315 (1954), and *Seaboard-Coast Line case, supra.*"

In *Marin*, the Supreme Court said:

> The congressional purpose in the sweeping revision of § 5 of the ICA in 1940, enacting § 5(2)(a) in its present form, was to *facilitate* merger and consolidation in the national transportation system. [Emphasis added.]

In *Detroit*, this Commission said (cited and substantially repeated in *Spokane International*):

> The provisions of section 5(2) of the act do not contemplate the unification of only those railroads that no longer can continue under separate ownership. The purpose of the law is to *foster* and *promote* the voluntary union of carriers into a sound and adequate transportation system for the future, and such union is permissible if it is otherwise consistent with the public interest. [Emphasis added.]

In *St. Joe*, the Supreme Court said:

> Hence, for the first time (in 1919, preliminary to the Transportation Act of 1920), government *encouragement* of railroad consolidation was discussed. [Emphasis added.]

The majority and Justice are clearly right in believing that in any specific case the act is neutral and is weighted neither for nor against a proposal, but they misread both the examiner's

report and Supreme Court and Commission cases if they believe the examiner's language said more than it purported to say; the point is that proposals may be made and, *if* consistent with the public interest, approved.

Thus, it is clear that there is no basis for the report's implication that there was a change in 1940 of Congress' 1920 policy with respect to rail unifications.[13] Whether that policy can fairly be stated as "favoring," it surely contemplates unique acceptance of appropriate unifications as a means of insuring a sound transport system, as this Commission and the courts, especially the Supreme Court, have always recognized.

The report's reaching back to the *Pearsall* and *Northern Securities* cases is forgivable, and even helpful and informative, as a matter of historical background, but to place any reliance on those cases for the result here, as this report does, is to do violence to history. Not only were there no motor carriers at the time (nor competitively effective barge operations) but, in truth, there was no Milwaukee as even a nominal transcontinental carrier. The dissents in the *Acquisition* case, also relied on by the report, are more in point in that Milwaukee was a factor at the time (but motor carriage as an intercity activity was still in its infancy and the interstate highway complex as we know it today undreamed of; our rivers were not improved, and modern, superhorsepower, barge transportation was not even on the drawing boards).

The railroads will undoubtedly be happy to hear that although their "share of the transportation market fell from 45 percent in 1959 to 43.02 percent in 1963, long-term trends are favorable." This is the face of a fall from 66 percent in 1946!

The report states that the "applicants are highly prosperous by railroad standards." Thus, on the one hand, and overall, the

[13] Although the report here would apparently like to overlook it, the Court, in *Marin*, included a very significant statement which is still the settled law of the land, leading up to it by noting that "after 20 years of trial, the [1920] approach appeared inadequate.":

> * * *the result of the act [of 1940] was a change in the *means* while the *end* remained the same. The very language * * * expresses clearly the desire of Congress that the industry proceed toward an integrated national transportation system.* * *

In the *Penn-Central* case, the Commission correctly uses that pronouncement to bolster its approval of the Eastern merger, as it in principle did in the south in the *Seaboard-Coast Line* case. Anyone confused by obviously inconsistent emphasis on "established" legal principles, depending on geography, has good reason.

applicant carriers are pictured as prosperous; the qualification, on the surface, seems a natural one. On the other hand, the qualification, when understood, runs deep. The record shows that applicants' rates of return are low by any standard: Great Northern's highest and lowest in the 11 years between 1951-61 were 4.74 (1956) and *2.47* (1961), Northern Pacific's 3.99 (1957) and *1.26* (1961), Burlington's 4.65 (1952) and *2.14* (1960), and SP&S' 5.40 (1953) and *1.72* (1961). Another indication of what "by railroad standards" really means is apparent from the listing of 352 domestic corporations in order of rate of return on equity in the January 1, 1966, issue of *Forbes*, where the first ranked railroad, Norfolk and Western Railway, is listed as No. 272 with a return of 8.9 percent and the two largest applicants here are listed as Nos. 335 (Great Northern) and 339 (Northern Pacific), with returns of 4.3 percent and 3.6 percent, respectively. The first *324* companies listed had returns ranging from *6 to 50* percent and the first *232* were at *10 percent or better.*[14]

After stating that "The market criteria of *Brown Shoe* can be applied here, if at all, only with great caution and substantial qualification," the report throws caution and qualification to the winds and, trying in euphemistic desperation to avoid use of the technical terms connected therewith, proceeds to treat railroads as if they were banks or even shoe companies. Unless used in the nature of a defense mechanism, such ambivalence is difficult to reconcile with the apparent single-minded determination to deny the applications. Indeed, the strident insistence apparent in the statement that "we wish to emphasize that we have not appraised the proposed merger by the standards of the antitrust laws," would seem to qualify as a classic example of protesting too much, especially since it is followed a few pages later, after the most superficial survey, with the statement that, "In this case, rail transportation must be considered a distinctive market in its own right," with citations which appear to fall far short of lending that conclusion any real support. Among the achievements of the order in *Seaboard* was the Supreme Court's recognition of the reality of intermodal transport competition.

[14] It should be noted that the Commission uses substantially similar data for the Pennsylvania and New York Central railroads to buttress its approval of the merger of those roads; this separate expression accepts the relevance of such data in *both* cases, as they would be relevant in any case.

Simplification of overly garbled issues can be helpful in the treatment and disposition of a case such as this, but oversimplification is dangerous both for this case and for the future. The report admits, in another ambivalent display, that, as a result of a conditioned merger, Milwaukee "would be a stronger carrier in the area extending from the Twin Cities and Head-of-the-Lakes to the Pacific Northwest," but proceeds to play down that result with the statement that then "there would be one very large and strong railroad and one relatively weak carrier, whereas there are today two strong rail carriers and one relatively weak carrier." "Very large and strong," "strong," and "relatively weak" with respect to what? Each other? In context, that would seem to be the meaning, but what relevancy does it have to the actual situation? Even assuming that the Northern Pacific (aside from its tremendous land holdings) can be called a "strong" railroad,[15] its present common interests with the Great Northern are overlooked in the comparison. More importantly, so are the interests of shippers and consumers in having the Milwaukee made stronger in its own right in order adequately to serve them, to give them an alternative and genuinely competitive rail service (thus having for the first time, some influence as a rate-making carrier), and to enlarge and broaden their sources and markets, results which, as a practical matter, can derive *only* from the instant proposal.

While it is easy to agree with the report that the important competition lost by the merger would be that between the Northern Lines,[16] it is difficult to follow it beyond. In depreciating the value of motor and water competition "in the long-haul movement of agricultural, mineral, and forest products," the report not only ignores the record here, but is reminiscent of the attitude of too large a segment of rail management for too many years of rising rates based on the apparent belief that there actually was such a thing as captive or noncompetitive traffic. It is more than mildly ironic that, having learned the truth the hard way, and with what should have been some assistance from this Commission's increasing admonitions to the contrary, railroad

[15] Were it not for its natural-resources earnings, the Northern Pacific would sometimes be close to the line.

[16] Applicants, in their insistence on inclusion of Burlington statistics in the competitive picture on the ground that Burlington is an integral part of the proposal, seem to overlook their own testimony and argument in other respects leading to the correct conclusion that Burlington is essentially complementary to, rather than competitive with, the Northern Lines.

management should *now* be told by a majority of this body that there really *is* such traffic after all.

Of course, the report is not wholly wrong; to the extent there is *some* such traffic, there is more of it in this area than in most of the rest of the country. But even here it must be looked at in the undisputed record-based perspective which establishes the following formidable competitive forces:

Mississippi River between Twin Cities and St. Louis;

Illinois Waterway between Chicago and the Mississippi just north of St. Louis;

Missouri River between Sioux City, Iowa, and the Mississippi just north of St. Louis;

Columbia River between the sea and a point above Pasco, Wash.;

(All the above being presently navigable and *busy* with barge traffic.)

Programs under way to improve existing waterways, and to extend barge navigation

(1) up the Snake River from the Columbia to a point above Lewiston, Idaho, and

(2) up the Missouri beyond Sioux City as far as Fort Benton, Mont., scarcely *35 miles east of Great Falls* (the very heart of the key State of Montana);

Airline domination of long-haul, common carrier passenger traffic and increasing airline success in obtaining highly rated freight traffic;

Coastwise movement of petroleum products by tanker and inland movement thereof by extensive and expanding pipeline, barge, and truck;

Busline inroads in mail and express formerly handled by rail;

248 class I motor common carriers serving points on applicants' rail lines, 212 of which, since 1947, and 36 in the intervening years 1948-58, had by 1959 increased their operating revenues by almost 330 percent ($1,489,214,000) and their ton miles by almost 247 percent (23,085,155,000), and which by the latter year had an *average* length of haul of 402.4 miles, against *average* hauls by applicants in 1960 of 461 miles (NP), 330 miles (GN), 323 miles (Burlington), and, for Milwaukee, 355 miles;

Showing of the Tolan Group (composed primarily of hundreds of supporting shippers) that Washington intrastate rail revenues dropped from $13,658,861 in 1946 to $10,275,000 in 1960, whereas intrastate truck revenues more than doubled (from $30,861,525 to $65,949,000) in the same period, illustrating the *reality* of truck competition far better than theoretical arguments can be made to emphasize its limitations (see last indented item below re Interstate Highway 90-94 for a glimpse of the immediate future);

Showing that exempt truck competition on *grain* into the Twin Cities and Head-of-the-Lakes now extends to 400 miles, with no limit where otherwise empty "backhauls" are involved;

Showing that a processor of animal and poultry feed at Omaha, Sioux City, and Des Moines, receiving annually the equivalent of thousands of cars of raw materials, has resorted to truck rather than rail movements in many instances because of the difficulty of shipping to points on other railroads from Milwaukee transit;

Showing of one of the nation's largest shippers (mail order house) that trucks benefit from failure of railroads in this territory to liberalize routing, et cetera (evidence also that there is a close limit to the real shipper benefit generated by the type of competition now existing between the Northern Lines);

(Finally, and of utmost importance to the entire area here directly involved)

Construction of Interstate Highway 90-94 between Chicago and Seattle via Twin Cities, being, between the latter points, 241 miles shorter than the route of the Northern Pacific (which it roughly parallels) and 119 miles shorter than the route of Great Northern, and which will allow a reduction in truck transit time *from 60 to 36 hours* between those points.

Even applicants have no real plans for meeting the expedited motor service, described last above, except by increased operating efficiency and improved service through the proposal here rejected. It cannot be overemphasized that their present faster schedules are the result of light trains and extra power.[17] How *can* the Commission, on this record, treat *intermodal* competition in low key?

The report's effect is not helped by its failure to bridge the gap between premise and conclusion with reasoned explanation. As they have had occasion to say, reviewing courts must be able to tell what an administrative decision means before they can be expected to perform their own function. And neither childish fear of a bogeyman nor a determination to reach a particular conclusion despite the overwhelming strength of the record in other directions is easy to garb in the cloak of reason. The different receptions given opportunities relating to the transportation systems of the east and south, theoretically subject to the same principles of law applicable here, will not make the judicial responsibility any easier to discharge.

Ironically, the report's saving grace may thus lie in its very deficiency, since a judicial remand could result in this Commis-

[17] A fact the report points out in its first mention thereof but disregards with passing remote reference in its conclusion that faster service is a result of competition.

sion's facing the real issues presented by the record and, in time, a more mature judgment.[18]

The report's comment on applicants' "attempted correlation" between their traffic volumes and revenues (the latter dropping far in excess of the former) between 1947-60 and the obvious growth of intermodal competition in that period, terming it "specious because changes due to long-term shifts in traffic * * * were not distinguished from those attributable to cyclical changes in the economy,"[19] not only seems to miss the point of the comparison, but brings to mind the fighter who, being assured in his corner after each round that his opponent wasn't laying a glove on him, finally pleaded with his manager to: "Watch that referee then, because someone out there is really clobbering me!"

The report's irresistible impulse toward ambivalence asserts itself again, however, and it concedes that "applicants have lost a significant amount of traffic in recent years to other modes of transportation," but it then indicates a *belief* that such "diversionary losses * * * have been more than offset by increases in traffic resulting from exploitation of the rails' inherent advantage in high-volume, long-haul movements." Such a belief, innocent enough in itself (although probably ill-founded) causes complications when applied uncritically to things that matter. Indeed, two sentences later, the statement is made that, "The extremely long hauls of applicants tend to greatly reduce effective motor carrier competition." This in the face of the aforementioned traffic-revenue showing and the additional showing, detailed above, that as a group the three largest applicants in 1960 had average hauls less than those in 1959 of the class I motor carriers in the area! And what will happen to those statistics when the remaining unfinished segments of Interstate Highway 90-94 are completed?

Switching from the "long-haul, lower-rated production of the west," to manufactured articles, the report has applicants enjoying "a similar advantage on interterritorial movements" thereof. It is not clear what advantage that advantage is similar

[18] Here it should be added that even those political entities who sincerely oppose the instant proposal, without fully considering what "appropriate" conditions would do to improve transportation in their areas, may well have second thoughts as the next decade unfolds, especially if the underlying thesis of this separate expression is correct and the interests of the shippers and consumers are of overriding concern when measured against short-term local taxation and other political considerations in the context of this case.

[19] During a period of unparalleled growth and prosperity in applicants' operating area!

to, but if it is, as it seems to be, that such traffic is "generally not attractive to motor carriers," this Commission, as the source of motor-carrier operating and merger authority, should know better. But strained conclusions make for strange supporting arguments.

The report's contention regarding water carriage in the area served by the Northern Lines overlooks recent plans for the development of the Snake and Missouri Rivers, listed above, but its statement that Columbia River tonnage "is extremely small in relation to that moved over the inland waterways in other parts of the country," is probably correct if it be in contemplation of the Great Lakes-Mississippi River-St. Lawrence Seaway complex, but what does it mean in the context of this case? So is population in this area "extremely small" when related to the Eastern area of our nation, but are its productive capacity and transportation requirements any less important to our national economy and security?[20]

The report's conclusion that the record "does not establish that intermodal competition poses such a threat to the future successful operations of applicants that the only means of preserving the advantages of rail transportation in the area is to permit the merger here proposed," seems to imply a considerably heavier burden than the statutory one of establishing *consistency with the public interest,* but it is not inconsistent with the report's generally confused rationale.

The report attempts to salvage what it can from the "large number of shippers" who "testified that rail competition is important to them, particularly in the matter of rates and service." The fact that such shippers were in support of applicants or the conditions sought by the other railroads is not without bearing on the matter; nor is the fact that *appropriately conditioned approval* here could open the whole area to genuine rail competition and give the shippers an actual voice in the optimum routing of their traffic, with some substantial pressures to preservation of competitive service to meet their transport requirements.[21]

[20] The report apparently overlooks, too, the fact that, as recently as February 23, 1966, a majority of the Commission approved as lawful reduced rail rates below fully distributed costs because of "competitive necessity." The competition referred to was *barge and truck-barge movements of grain on the Columbia and Snake rivers* and tributary areas which rail carriers, including the Northern Lines, sought to meet. See *Grain–Idaho, Oreg., Wash., to ports in Oreg., Wash.,* 326 I.C.C. 358.

[21] The record makes it clear that the shippers and receivers dependent upon even the Northern Lines have not been able to accomplish rate and service adjustments to meet their needs.

Confessing that in measuring the competitive impact of the proposal, "it is necessary to rely to a considerable extent on such imperfect indicators of competition as appear in the record and which appear reasonable in the light of our general knowledge of transportation conditions," the report appears to rely too much on what can only be taken to be theoretical assumption in failure to appreciate the full meaning of the record or a misreading of specifics thereof. Having attempted to view that record objectively and without evangelical enthusiasm to reach a particular result, it is the conclusion of this separate expression that it leads inevitably to approval, but approval subject to appropriate conditions which would actually enhance intramodal competition, realizing at the same time that nothing can or should stiffle (nor discount) intermodal competition. The nation needs a viable transportation system composed of all modes, and conditioned approval here would help considerably in its achievement.

It is not the purpose of this expression to imply that the Commission is bound to approve the proposal, with or without conditions; obviously, each of us must decide that question after an examination of the law and the record and the interaction of each on the other. It *is* its purpose, however, to say that the record and the applicable law are not to be disregarded (nor regarded lightly because the area of concern is sparsely populated) in the ultimate disposition of any case, let alone one whose modern history stretches over a decade and in which much dedicated effort has been devoted to erecting what now turns out to be a facade of preliminary due process. The constitutional requirement applies to the ultimate decision as well as to the steps leading to it.

Finally, it seems fair to say that from the report's tenor, one would never guess that 70 years have elapsed since the *Pearsall* case, 62 since the *Northern Securities* case, and 36 since the *Acquisition* case, nor that more than the law (case and statutory) has changed since. And since the report relies so much on the *Acquisition* dissents, it may not be amiss to point out here that Mr. Justice Holmes, speaking for the four dissenting justices in *Northern Securities*, said, inter alia:

> A single railroad down a narrow valley or through a mountain gorge monopolizes all the railroad transportation through that valley or gorge. Indeed every railroad monopolizes, in a popular sense, the trade of some area.

Even he had no conception at that time of late 20th Century reality. It is difficult to understand, however, the majority's reluctance today to recognize that the same economic factors exist in the west as demonstrate their influence in the east and south, especially when the shippers in this case establish beyond argument that the forces diverting traffic from railroads to trucks and from the common carriers to private and exempt operations will prevail under the status quo to the steady detriment of the applicants, un-united, and to the inexorable deterioration of their competitor rail lines less fortunately situated. Can we do less that grant each of them an opportunity to compete on terms under which the shippers will have more than a Hobson's choice? Devoted to the free enterprise system as a way of life, can we shrug off our responsibility in one area while aggressively exercising it in others? Clearly, as a national body, our proper role must be to concern ourselves with the *national* transportation policy, it being, as it is, our specific charge.

The hymnist whose words were invoked at the start hereof had sound advice for those who would dispose of this case on the basis of surface appearance and carefully chosen platitudes:

> New occasions teach new duties, Time makes ancient good uncouth; They must upward still and onward, Who would keep abreast of truth.

This challenge we have met in all recent similar cases. Must we falter now?

Commissioner Goff, dissenting:

I agree with the other dissenting expressions and would approve the merger subject to conditions. These would include access to Portland and to northern traffic through Sumas for the Milwaukee; gateway openings to the North Western at Oakes and Crawford in the east; together with conditions throughout perhaps even more extensive than those recommended by the examiner. Thus, we could ensure not less, but more meaningful competition, coupled with better service to the public. Conditions, including those concerning attrition, could be imposed adequately protecting employees in the event that they and management were unable to attain a voluntary settlement.

The majority shows a disappointing unwillingness to grasp opportunity and misapplies the law. It seems swayed by a strange inner reaction to anything but an unqualified application of the anti-trust law. This attraction is so strong that even the Supreme Court's clear direction in three prior cases has not been able to dispel it. The court directs accommodation of the anti-trust law to transportation policy. The majority reverses this. The national transportation policy declared by the Congress tells us "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers."

The narrow, negative approach taken by the majority nullifies Commission responsibility.

APPENDIX A

Great Northern Railway Company comparative income statements

	1958	1959	1960	1964
Railway operating income				
Railway operating revenues	$251,671,504	$254,559,530	$246,024,650	$250,847,871
Railway operating expenses	190,854,844	197,108,501	194,051,856	194,955,985
Net revenue from railway operations	60,816,660	57,451,029	51,972,794	55,431,886
Railway tax accruals	32,386,938	29,861,886	28,701,516	25,815,417
Railway operating income	28,429,722	27,589,143	23,271,278	29,616,469
Rent income				
Rent from locomotives	276,997	223,276	191,135	148,510
Rent from passenger-train cars	1,151,525	1,155,677	1,073,814	1,062,014
Rent from work equipment	14,922	33,275	24,044	45,794
Joint facility rent income	1,694,034	1,579,726	1,612,979	1,543,352
Total rent income	3,137,478	2,991,954	2,901,972	2,799,670
Rents payable				
Hire of freight cars-debt balance	2,249,511	3,111,672	4,473,541	3,704,318
Rent for locomotives	150,698	91,520	89,012	100,351
Rent for passenger-train cars	1,008,478	959,966	920,445	833,421
Rent for work equipment	25,381	3,318	1,513	1,401
Joint facility rents	2,309,822	2,204,193	2,253,291	2,310,072
Total rent payable	5,743,890	6,370,669	7,737,802	6,949,463
Net rents	(2,606,412)	(3,378,715)	(4,835,830)	(4,149,793)
Net railway operating income	25,823,310	24,210,428	18,435,448	25,466,676

Great Northern Railway Company comparative income statements—Continued

	1958	1959	1960	1964
Other income				
Income from lease of road and equipment	$5,588	$6,390	$4,674	$4,346
Miscellaneous rent income	631,581	679,734	705,401	785,857
Income from nonoperating property	680,997	641,101	545,553	462,461
Separately operated properties-profit	----------	----------	56,447	----------
Dividend income	6,405,789	6,338,014	6,313,714	7,078,529
Interest income	2,183,588	2,633,966	2,915,729	3,103,177
Income from sinking and other reserve funds	188,062	312,548	262,081	81,783
Miscellaneous income	925,543	721,208	645,151	795,117
Total other income	11,021,148	11,332,961	11,448,750	12,311,270
Total income	36,844,458	35,543,389	29,884,198	37,777,946
Miscellaneous deduction from income				
Miscellaneous rents	51,479	58,837	59,592	51,546
Miscellaneous tax accruals	201,930	209,375	230,670	228,740
Separately operated properties-loss	37,829	161,218	----------	63,802
Miscellaneous income charges	634,399	139,547	383,815	425,676
Total miscellaneous deduction	925,637	568,977	674,077	796,674
Income available for fixed charges	35,918,821	34,974,412	29,210,121	37,608,272
Fixed charges				
Rent for leased road and equipment	1,695	2,071	3,854	1,188
Interest on funded debt	8,195,887	8,261,042	8,337,072	8,009,074
Interest on unfunded debt	3,576	----------	472	----------
Amortization of discount	139,865	153,026	145,509	131,681
Total fixed charges	8,341,023	8,416,139	8,486,907	8,141,943
Income after fixed charges	27,577,798	26,558,273	20,723,214	28,866,329
Operating ratio	75.04%	77.45%	78.87%	77.86%

( ) Denotes contra

Northern Pacific Railway Company comparative income statement

	1958	1959	1960	1964
Railway operating income				
Railway operating revenue	$179,107,731	$183,608,782	$174,915,492	$184,300,791
Railway operating expenses	143,066,032	146,426,171	147,871,058	157,241,785
Net revenue from railway operations	36,041,699	37,182,611	27,044,434	27,059,006
Railway tax accruals	21,139,202	25,492,066	20,212,004	18,950,157
Railway operating income	14,902,497	11,690,545	6,832,430	8,108,849
Rent income [1]				
Rent from locomotives	253,114	254,430	227,471	246,989
Rent from passenger-train cars	957,507	913,552	1,084,861	920,124
Rent from work equipment	74,700	102,313	183,797	82,766
Joint facility rent income	4,365,869	4,546,122	4,645,780	4,604,960
Total rent income	5,651,190	5,816,417	6,181,909	6,629,479
Rents payable				
Hire of freight cars-debt balance	591,654	1,186,321	855,438	----------
Rent for locomotives	53,548	62,514	66,759	59,713
Rent for passenger-train cars	585,449	508,878	647,751	475,005
Rent for work equipment	1,432	3,015	5,718	6,219
Joint facility rents	1,096,285	1,177,716	1,283,133	1,317,928
Total rents payable	2,328,368	2,938,444	2,858,799	1,858,865
Net rents	3,322,822	2,877,973	3,283,110	4,770,614
Net railway operating income	18,225,319	14,568,518	10,115,540	12,879,463

See footnote at end of chart

Northern Pacific Railway Company comparative income statement—Continued

	1958	1959	1960	1964
Other income				
Income from lease of road and equipment	$45,964	$47,081	$46,693	$38,006
Miscellaneous rent income	1,371,432	1,489,083	1,386,611	1,688,651
Income from nonoperating property	5,722,257	9,115,847	8,404,803	8,668,651
Dividend income	6,603,231	6,356,530	6,986,559	6,400,843
Interest income	2,667,261	3,211,459	3,547,428	3,755,306
Income from sinking and other reserve funds	69,917	113,156	208,428	343,534
Miscellaneous income	1,192,201	1,380,301	932,096	2,237,273
Total other income	17,672,263	21,713,457	21,512,618	23,132,348
Total income	35,897,582	36,281,975	31,628,158	36,011,811
Miscellaneous deductions from income				
Miscellaneous rents	30,391	29,579	30,627	29,803
Miscellaneous tax accruals	661,702	711,481	683,912	885,873
Miscellaneous income charges	2,085,874	593,609	932,674	526,411
Total miscellaneous deductions	2,777,967	1,334,669	1,647,213	1,442,087
Income available for fixed charges	33,119,615	34,942,306	29,980,945	34,569,724
Fixed charges				
Rent for leased road and equipment	49,618	49,768	49,618	49,618
Interest on funded debt	10,924,586	11,009,193	11,256,439	10,877,100
Interest on unfunded debt	1,966	1,878	10,927	618
Amortization of discount on funded debt	131,469	105,302	116,767	141,731
Total fixed charges	11,107,639	11,166,141	11,433,751	11,069,067
Income after fixed charges	22,011,976	23,781,165	18,547,194	23,500,657
Operating ratio	79.87%	79.74%	84.54%	85.32%

[1]Income for 1964 also includes $774,640 for hire of freight cars.

Chicago, Burlington & Quincy Railroad Company comparative income statements

	1958	1959	1960	1964
Railway operating income				
Railway operating revenues	$258,027,700	$263,072,883	$251,135,890	$267,379,529
Railway operating expenses	200,263,598	209,875,069	203,951,532	217,258,619
Net revenue from railway operations	57,764,102	53,197,814	47,184,358	50,120,910
Railway tax accruals	27,403,280	27,339,438	25,178,072	21,204,576
Railway operating income	30,360,822	25,858,376	22,006,286	28,916,334
Rent income				
Rent from locomotives	177,810	139,111	93,316	27,187
Rent from passenger-train cars	1,451,453	1,368,610	1,423,519	1,592,412
Rent from work equipment	41,104	145,917	59,240	75,665
Joint facility rent income	779,659	828,502	867,468	889,040
Total rent income	2,450,026	2,482,140	2,443,543	2,584,304
Rents payable				
Hire of freight cars-debt balance	4,817,495	4,654,351	3,252,317	3,069,767
Rent for locomotives	84,980	(617)	4,640	80,245
Rent for passenger-train cars	1,039,396	1,061,073	1,118,395	1,098,093
Rent for work equipment	272	48	57	88
Joint facility rents	3,195,902	3,183,635	3,441,922	3,252,227
Total rents payable	9,138,045	8,898,490	7,817,331	7,500,420
Net rents	(6,688,019)	(6,416,350)	(5,373,788)	(4,916,116)
Net railway operating income	23,672,803	19,442,026	16,632,498	24,000,218

262-237 O - 69 - 37

Chicago, Burlington & Quincy Railroad Company comparative income statements—Continued

	1958	1959	1960	1964
Other income				
Income from lease of road and equipment	$7,724	$6,787	$6,910	$7,710
Miscellaneous rent income	732,649	783,071	875,862	932,094
Income from nonoperating property	364,467	409,087	334,672	501,283
Separately operated properties	12,073	12,205	13,545	8,787
Dividend income	992,127	723,198	753,370	398,909
Interest income	793,078	1,290,237	1,238,197	1,886,357
Release of premiums on funded debt	21	21	20	23
Miscellaneous income	634,363	2,764,870	573,244	1,177,367
Total other income	3,536,502	5,989,476	3,795,820	4,919,359
Total income	27,209,305	25,431,502	20,428,318	28,919,577
Miscellaneous deduction from income				
Miscellaneous rents	31,072	29,446	33,210	30,377
Miscellaneous tax accruals	137,226	153,492	181,523	236,915
Separately operated properties-loss				
Miscellaneous income charges	180,049	203,564	108,072	417,937
Total miscellaneous deductions	348,347	386,502	322,805	685,229
Income available for fixed charges	26,860,958	25,045,000	20,105,513	28,234,348
Fixed charges				
Rent for leased road and equipment	57,632	56,623	57,293	65,389
Interest on funded debt	7,247,259	7,228,783	7,484,585	7,492,327
Interest on unfunded debt	1,704	1,441	1,245	809
Amortization of discount on funded debt	62,631	62,010	69,252	87,345
Total fixed charges	7,369,226	7,348,857	7,612,375	7,646,545
Net income after fixed charges	19,491,732	17,696,143	12,493,138	21,367,648
Operating ratio	77.61%	78.99%	81.21%	81.25%

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines Inc.

		G.N.P. & B. Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations		After adjustments and eliminations
							Notes	Amount	
	Assets								
	Current assets								
701	Cash	$1,000	$7,758,666	$10,464,965	$79,640	$18,304,473			$18,304,473
702	Temporary cash investments		51,348,274	19,960,552		71,308,826			71,308,826
703	Special deposits		258,783	6,004,006		6,262,789			6,262,789
704	Loans and notes receivable								
705	Traffic and car service balance—debit		2,678,928	645,290		3,324,218	A	$(79,358)	3,244,860
706	Net balance receivable from agents and conductors		2,759,344	3,972,365	18,340	6,750,049			6,750,049
707	Miscellaneous accounts receivable		6,478,121	5,221,612	97,527	11,797,260			11,797,260
708	Interest and dividends receivable		1,985,817	2,309,532		4,295,349			4,295,349
709	Accrued accounts receivable		11,300,706	5,039,280	160,177	16,500,163			16,500,163
710	Working fund advances		416,468	216,857	5	633,330			633,330
711	Prepayments		847	161,775		162,622			162,622
712	Material and supplies		21,980,624	22,749,734	24,869	44,755,227			44,755,227
713	Other current assets		297,859	164,409	133	462,401			462,401
	Total current assets	1,000	107,264,439	76,910,377	380,891	184,556,707		(79,358)	184,477,349
	Special funds								
715	Sinking funds								
716	Capital and other reserve funds		7,971,791	1,104,815		9,076,606			9,076,606
717	Insurance and other funds		1,185,925	1,969,645		3,155,570			3,155,570
	Total special funds		9,157,716	3,074,460		12,232,176			12,232,176
	Investments								
721	Investments in affiliated companies		169,421,020	175,866,121		345,287,141	B	(1,931,000)	343,356,141
722	Other investments		4,082,146	967,728		5,049,874			5,049,874
723	Reserve for adjustment of investment in securities-credit			6,318,353		6,318,353			6,318,353
	Total investments		173,503,166	170,515,496		344,018,662		(1,931,000)	342,087,662
	Properties								
731	Road and equipment property		875,838,924	887,220,458	2,832,614	1,765,891,996			1,765,891,996
732	Improvements on leased property		2,054,077	321,938		2,376,015			2,376,015

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P. & B. Lines, Inc.,	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations		After adjustments and eliminations
							Notes	Amount	
	Assets								
	Properties—Con.								
733	Acquisition adjustment	------	$(3,649,485)	$(5,613,203)	------	$(9,262,688)	------	------	$(9,262,888)
734	Donations and grants - credit	------	8,863,493	5,675,257	78,676	14,617,426	------	------	14,617,426
	Total transportation property	------	865,380,023	876,253,936	2,753,938	1,744,387,897	------	------	1,744,387,897
735	Accrued depreciation—road and equipment	------	(136,583,989)	(173,043,737)	(173,943)	(309,801,669)	------	------	(309,801,669)
736	Amortization of defense projects—road and equipment	------	(36,029,799)	(46,327,267)	------	(82,357,066)	------	------	(82,357,066)
	Recorded depreciation and amortization	------	(172,613,788)	(219,371,004)	(173,943)	(392,158,735)	------	------	(392,158,735)
	Total transportation property less recorded depreciation and amortization	------	692,766,235	656,882,932	2,579,995	1,352,229,162	------	------	1,352,229,162
737	Miscellaneous physical property	------	23,701,978	13,077,245	881,566	37,660,789	------	------	37,660,789
738	Accrued depreciation—miscellaneous physical property	------	(3,214,018)	(129,759)	------	(3,343,777)	------	------	(3,343,777)
	Miscellaneous physical property less recorded depreciation	------	20,487,960	12,947,486	881,566	34,317,012	------	------	34,317,012
	Total properties less recorded depreciation and mortization	------	713,254,195	669,830,418	3,461,561	1,386,546,174	------	------	1,386,546,174
	Other assets and deferred charges								
741	Other assets	------	914,400	3,450,989	------	4,365,389	------	------	4,365,389
742	Unamortized discount on long-term debt	------	1,267,345	2,235,713	------	3,503,058	------	------	3,503,058
743	Other deferred charges	------	2,072,418	3,244,170	8,346	5,324,934	------	------	5,324,934
	Total other assets and deferred charges	------	4,254,163	8,930,872	8,346	13,193,381	------	------	13,193,381
	TOTAL ASSETS	1,000	1,007,433,879	929,261,623	3,850,798	1,940,547,100		(2,010,358)	1,938,536,742
	Liabilities and shareholders' equity								
	Current liabilities								
752	Traffic and car services balance credit	------	------	------	79,358	79,358	C	(79,358)	------
753	Audited accounts and wages payable	------	7,218,476	6,567,578	31,541	13,817,595	------	------	13,817,595
754	Miscellaneous accounts payable	------	1,808,909	6,090,932	4,622	7,904,463	------	------	7,904,463
755	Interest matured unpaid	------	316,578	413,892	------	730,470	------	------	730,470
756	Dividends matured unpaid	------	37,278	4,602,070	------	4,639,348	------	------	4,639,348
757	Unmatured interest accrued	------	2,291,563	1,312,434	------	3,603,997	------	------	3,603,997
758	Unmatured dividends declared	------	------	------	------	------	------	------	------
759	Accrued accounts payable	------	9,695,329	10,927,864	28,536	20,651,729	------	------	20,651,729
760	Federal income taxes accrued	------	3,838,489	2,957,698	4,325	6,800,512	------	------	6,800,512
761	Other taxes accrued	------	6,795,315	6,353,900	59,716	15,208,931	------	------	15,208,931
763	Other current liabilities	------	1,822,766	3,116,898	8,793	4,948,457	------	------	4,948,457
	Total current liabilities	------	33,824,703	44,343,266	216,891	78,384,860	------	(79,358)	78,305,502

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P. & B. Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations		After adjustments and eliminations
							Notes	Amount	
	Liabilities and shareholders' equity—Con.								
	Long-term debt due within one year								
764	Equipment obligations and other debt	------	$11,557,960	$7,926,594	------	$19,484,554	------	------	$19,484,554
	Held by or for company	------	------	------	------	------	------	------	------
	Actually outstanding	------	11,557,960	7,926,594	------	19,484,554	------	------	19,484,554
	Long-term debt due after one year								
765	Funded debt unmatured	------	288,882,857	178,673,176	------	467,556,033	------	------	467,556,033
	Held by or for company	------	(80,608,000)	------	------	(80,608,000)	------	------	(80,608,000)
	Actually outstanding	------	208,274,857	178,673,176	------	386,948,033	------	------	386,948,033
766	Equipment obligations	------	79,961,750	58,143,636	------	138,105,386	------	------	138,105,386
	Held by or for company	------	------	------	------	------	------	------	------
	Actually outstanding	------	79,961,750	58,143,636	------	138,105,386	------	------	138,105,386
	Total funded debt and equipment obligations outstanding	------	288,236,607	236,816,812	------	525,053,419	------	------	525,053,419
769	Amounts payable to affiliated companies	------	------	------	230,000	230,000	D	(230,000)	------
	Total long-term debt due after one year	------	288,236,607	236,816,812	230,000	525,283,419	------	(230,000)	525,053,419
	Reserves								
771	Pension and welfare reserves	------	10,014,200	------	------	10,014,200	------	------	10,014,200
772	Insurance reserves	------	925,114	1,915,634	------	2,840,748	------	------	2,840,748
773	Equalization reserves	------	------	(912,000)	------	(912,000)	------	------	(912,000)
774	Casualty and other reserves	------	267,500	2,518,166	------	2,785,666	------	------	2,785,666
	Total reserves	------	11,206,814	3,521,800	------	14,728,614	------	------	14,728,614
	Other liabilities and deferred credits								
782	Other liabilities	------	270,996	505,338	28,426	804,760	------	------	804,760
783	Unamortized premium on long-term debt	------	------	------	------	------	------	------	------
784	Other deferred credits	------	1,089,901	1,251,808	351,224	2,692,933	------	------	2,692,933
785	Accrued depreciation—leased property	------	296,775	104,585	------	401,360	------	------	401,360
	Total other liabilities and deferred credits	------	1,657,672	1,861,731	379,650	3,899,053	------	------	3,899,053
	Shareholder's equity								
	Capital stock:								
791	Capital stock issued								
	Proposed new issue								
	Common stock (12,066,819 shares-without par value)	------	------	------	------	------	E	491,530,014	491,530,014
	Preferred stock (3,036,568 shares-$10 par value)	------	------	------	------	------	E	30,365,680	30,365,680
	Total	------	------	------	------	------	------	521,895,694	521,895,694

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Northern Pacific Railway Company, Great Northern Railway Company and Pacific Coast R. R. Co., into the Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P. & B. Lines, Inc.	Northern Pacific	Great Northern	Pacific Coast	Combined	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	After adjustments and eliminations
	Shareholders' equity—Con.								
791	Merging companies Common stock	$1,000	$29,978,000	$274,028,150	1,000,000	$305,007,150	------	(305,007,150)	----------
	Held by or for company	----------	(9,505)	(6,131,436)	----------	(6,140,941)	------	6,140,941	----------
	Total	1,000	29,968,495	267,896,714	1,000,000	298,866,209	F	(298,866,209)	----------
	Total capital stock	1,000	29,968,495	267,896,714	1,000,000	298,866,209	------	223,029,485	$521,895,694
	Capital surplus:								
794	Premiums and assessments on capital stock	----------	224,031,121	----------	----------	224,031,121	F	(224,031,121)	----------
795	Paid-in surplus	----------	2,471	1,237,130	----------	1,239,601	------	----------	1,239,601
796	Other capital surplus	----------	38,371,506	639,996	18,794	39,030,296	G	(699,364)	38,330,932
	Total capital surplus	----------	262,405,098	1,877,126	18,794	264,301,018	------	(224,730,485)	39,570,533
	Retained income:								
797	Retained income—appropriated	----------	----------	----------	----------	----------	------	----------	----------
798	Retained income—unappropriated	----------	368,576,330	365,017,580	2,005,463	735,599,373	------	----------	735,599,373
	Total retained income	----------	368,576,330	365,017,580	2,005,463	735,599,373	------	----------	735,599,373
	Total shareholders' equity	1,000	660,949,923	634,791,420	3,024,257	1,298,766,600	H	(1,701,000)	1,297,065,600
	Total liabilities and shareholders' equity	1,000	1,007,433,679	929,261,623	3,850,798	1,940,547,100	------	(2,010,358)	1,938,536,742

( ) Denotes contra

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of August 31, 1961 after giving effect to Northern Lines merger

Note

I. The combined general balance sheet as of the date of merger is subject to approval of the Bureau of Accounts, Interstate Commerce Commission.

II. This pro forma general balance sheet reflects the sum of the amounts carried and the balance sheets of the four companies as of August 31, 1961, adjusted to give effect to the merger as shown by notes below:

A. To effect net debit balance in traffic and car service balances—debit upon transfer of credit balance reflected in accounts of Pacific Coast (See Note C). $79,358

B. To eliminate book investment in affiliates as follows:

Name of affiliate common stock	*Amount*	*Held by*
Pacific Coast	$1,700,000	Great Northern
G.N.P. & B. Lines, Inc.	500	Great Northern
G.N.P. & B. Lines, Inc.	500	Northern Pacific
Investment advances		
Pacific Coast	230,000	Great Northern
	$1,931,000	

C. To transfer to current assets credit balance in traffic and car service balances—credit (See Note A). 79,358

D. To eliminate investment advance payable to Great Northern by Pacific Coast 230,000

E. To set up capitalization of New Company at time of merger equal to the sum of the stated value of the capital stock of the Great Northern ($267,861,424) and the par value ($29,967,705) plus premium ($224,027,213) of the Northern Pacific outstanding in the hands of the public:

Common stock—without par value:	*Number of shares*	*Amount*
Northern Pacific		
$5 par value $29,968,420	5,993,684	253,998,980
Great Northern		
without par value	6,073,135	267,896,714
	12,066,819	521,895,694
Less preferred stock—$10 par value:		
Great Northern		
6,073,135 shares @ 1/2 share	3,036,568	30,365,680
Total common stock capitalization	12,066,819	491,530,014

F. To eliminate capitalization of merged companies:

Common stock actually outstanding	298,866,209
Premium on capital stock	224,031,121

Note		*Amount*
G.	The $699,364 reflects adjustment giving effect to the merger of the respective roads as follows:	
	(1) Difference between book investment by Great Northern and par value of Pacific Coast Stock liability	par value 700,000
	(2) Retirement and cancellation of fifteen (15) Northern Pacific shares of common stock held by directors as qualifying shares:	
	15 shares @ $5 par value $75	
	15 shares @ $37.38 premium $561	
	Charged to other capital surplus	699,364
H.	The debit adjustment or reduction in shareholders' equity of $1,701,000 is made up as follows:	
	(1) Pacific Coast par value stock held by Great Northern	1,000,000
	(2) Difference between book investment by Great Northern and par value of Pacific Coast stock liability	700,000
	(3) Cancellation and retirement of 200 shares of New Company common stock upon effectuation of merger	1,000
		$1,701,000

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company

		G.N.P. & B. Lines, Inc.			Burlington						
		General balance sheet	Adjustments and eliminations		General balance sheet	Adjustments and eliminations		Net combined	Adjustments and eliminations		After adjustments and eliminations
			Notes	Amount		Notes	Amount		Notes	Amount	
	Assets										
	Current assets										
701	Cash	$18,304,473	A	$(89,394,100)	$21,191,781	F	$70,000,000	$30,102,154			$20,102,154
702	Temporary cash investments	71,308,826			11,248,859			82,557,685			82,557,685
703	Special deposits	6,262,789			311,948			6,574,737			6,574,737
704	Loans and notes receivable				1,670			1,670			1,670
705	Traffic and car service balances–debit	3,244,860						3,244,880	H	$(2,347,826)	897,034
706	Net balances receivable from agents and conductors	6,750,049			4,793,177			11,543,226			11,543,226
707	Miscellaneous accounts receivable	11,797,260			7,213,440			19,010,700			19,010,700
708	Interest and dividends receivable	4,295,349			125,275			4,420,624			4,420,624
709	Accrued accounts receivable	16,500,163			7,743,402			24,243,565			24,243,565
710	Working fund advances	633,330			133,850			767,180			767,180
711	Prepayments	162,622			255,392			418,014			416,014
712	Material and supplies	44,755,227			18,565,480			63,320,707			63,320,707
713	Other current assets	462,401			322,741			785,142			785,142
	Total current assets	184,477,349		(89,394,100)	71,907,015		70,000,000	236,990,264		(2,347,826)	234,642,438
	Special funds										
715	Sinking funds				1,732			1,732			1,733
716	Capital and other reserve funds	9,076,606			5,129,697			14,206,303			14,206,303
717	Insurance and other funds	3,155,570			1,705,613			4,861,183			4,861,183
	Total special funds	12,232,176			6,837,042			19,069,218			19,069,218
	Investments										
721	Investments in affiliated companies	343,356,141	B	70,000,000	42,228,365			455,584,506	I	(288,890,031)	166,694,475
722	Other investments	5,049,874			14,003,459			19,053,333			19,053,333
723	Reserve for adjustment of investment in securities–credit	6,318,353						6,318,353			6,318,353
	Total investments	342,087,662		70,000,000	56,231,824			468,319,486		(288,890,031)	179,429,455

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington						
		General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	Net combined	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	After adjustments and eliminations
	Assets—Continued										
	Properties										
731	Road and equipment property	$1,765,891,996	-----	-----	$974,108,243	-----	-----	$2,740,000,239	-----	-----	$2,740,000,239
732	Improvements on leased property	2,376,015	-----	-----	1,119,412	-----	-----	3,495,427	-----	-----	3,495,427
733	Acquisition adjustment	(9,262,688)	-----	-----	(101,904)	-----	-----	(9,364,592)	-----	-----	(9,364,592)
734	Donations and grants—credit	14,617,426	-----	-----	29,632,617	-----	-----	44,250,043	-----	-----	44,250,043
	Total transportation property	1,744,387,897	-----	-----	945,493,134	-----	-----	2,689,881,031	-----	-----	2,689,881,031
735	Accrued depreciation—road and equipment	(309,801,669)	-----	-----	(223,616,273)	-----	-----	(533,417,942)	-----	-----	(533,417,942)
736	Amortization of defense projects—road and equipment	(82,357,066)	-----	-----	(35,745,899)	-----	-----	(118,102,965)	-----	-----	(118,102,965)
	Recorded depreciation and amortization	(392,158,735)	-----	-----	(259,362,172)	-----	-----	(651,520,907)	-----	-----	(651,520,907)
	Total transportation property less recorded depreciation and amortization	1,352,299,162	-----	-----	686,130,962	-----	-----	2,038,360,134	-----	-----	2,038,360,124
737	Miscellaneous physical property	37,660,789	-----	-----	10,128,451	-----	-----	47,789,240	-----	-----	47,789,240
738	Accrued depreciation—miscellaneous physical property	(3,343,777)	-----	-----	-----	-----	-----	(3,343,777)	-----	-----	(3,343,777)
	Miscellaneous physical property less recorded depreciation	34,317,012	-----	-----	10,128,451	-----	-----	44,445,463	-----	-----	44,445,463
	Total properties less recorded depreciation and amortization	1,386,546,174	-----	-----	696,259,413	-----	-----	2,082,805,587	-----	-----	2,082,805,587
	Other assets and deferred charges										
741	Other assets	4,365,389	-----	-----	860,508	-----	-----	5,225,897	-----	-----	5,225,897
742	Unamortized discount on long-term debt	3,503,056	-----	-----	602,490	-----	-----	4,105,548	-----	-----	4,105,548
743	Other deferred charges	5,324,934	-----	-----	4,368,848	-----	-----	9,693,782	-----	-----	9,693,782
	Total other assets and deferred charges	13,193,381	-----	-----	5,831,846	-----	-----	19,025,227	-----	-----	19,025,227
	Total assets	1,938,536,742	-----	$(19,394,100)	837,067,140	-----	$70,000,000	2,826,209,782	-----	$(291,237,857)	2,534,971,925

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington						
		General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	Net combined	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	After adjustments and eliminations
	Liabilities and shareholders' equity										
	Current liabilities										
752	Traffic and car service balances—credit	-----	-----	-----	$2,347,826	-----	-----	$2,347,826	J	$(2,347,826)	-----
753	Audited accounts and wages payable	$13,817,595	-----	-----	6,540,264	-----	-----	20,357,859	-----	-----	$20,357,859
754	Miscellaneous accounts payable	7,904,463	-----	-----	3,303,724	-----	-----	11,208,187	-----	-----	11,208,187
755	Interest matured unpaid	730,470	-----	-----	319,461	-----	-----	1,049,931	-----	-----	1,049,931
756	Dividends matured unpaid	4,639,348	-----	-----	-----	-----	-----	4,639,348	-----	-----	4,639,348
757	Unmatured interest accrued	3,603,997	-----	-----	802,873	-----	-----	4,406,870	-----	-----	4,406,870
758	Unmatured dividends declared	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
759	Accrued accounts payable	20,651,729	-----	-----	11,981,328	-----	-----	32,633,057	-----	-----	32,633,057
760	Federal income taxes accrued	6,800,512	C	$(916,812)	2,809,279	-----	-----	8,692,979	-----	-----	8,692,979
761	Other taxes accrued	15,208,931	-----	-----	9,901,288	-----	-----	25,110,219	-----	-----	25,110,219
763	Other current liabilities	4,948,457	-----	-----	5,044,392	-----	-----	9,992,849	-----	-----	9,992,849
	Total current liabilities	78,305,502	-----	(916,812)	43,050,435	-----	-----	120,439,125	-----	(2,347,826)	118,091,299
	Long-term debt due within 1 year										
764	Equipment obligations and other debt	19,484,554	-----	-----	14,582,487	-----	-----	34,067,041	-----	-----	34,067,041
	Held by or for company	-----	-----	-----	(1,333,825)	-----	-----	(1,333,825)	-----	-----	(1,333,825)
	Actually outstanding	19,484,554	-----	-----	13,248,662	-----	-----	32,733,216	-----	-----	32,733,216
	Long-term debt due after 1 year										
765	Funded debt unmatured	467,556,033	D	(17,631,000)	158,177,885	G	$40,131,000	648,233,918	-----	-----	648,233,918
	Held by or for company	(80,608,000)	-----	-----	(30,726,175)	G	29,869,000	(81,465,175)	K	(70,000,000)	(151,465,175)
	Actually outstanding	386,948,033	-----	(17,631,000)	127,451,710	-----	70,000,000	566,768,743	-----	(70,000,000)	496,768,743

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington				Adjustments and eliminations		After adjustments and eliminations
		General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	Net combined	Notes	Amount	
	Long-term debt due after 1 year—Continued										
766	Equipment obligations	$138,105,386	-----	-----	$81,657,232	-----	-----	$219,762,618	-----	-----	$219,762,618
	Held by or for company	-----	-----	-----	(30,000)	-----	-----	(30,000)	-----	-----	(30,000)
	Actually outstanding	138,105,386	-----	-----	81,627,232	-----	-----	219,732,618	-----	-----	219,732,618
	Total funded debt and equipment obligations outstanding	525,053,419	-----	(17,631,000)	209,078,942	-----	70,000,000	786,501,361	-----	(70,000,000)	716,501,361
769	Amounts payable to affiliated companies	-----	-----	-----	575,602	-----	-----	575,602	L	(398,602)	177,000
	Total long-term debt due after 1 year	525,053,419	-----	(17,631,000)	209,654,544	-----	70,000,000	787,076,963	-----	(70,398,602)	716,678,361
	Reserves										
771	Pension and welfare reserves	10,014,200	-----	-----	-----	-----	-----	10,014,200	-----	-----	10,014,200
772	Insurance reserves	2,840,748	-----	-----	2,931,949	-----	-----	5,772,697	-----	-----	5,772,697
773	Equalization reserves	(912,000)	-----	-----	1,156,000	-----	-----	246,000	-----	-----	246,000
774	Casualty and other reserves	2,785,666	-----	-----	757,441	-----	-----	3,543,107	-----	-----	3,543,107
	Total reserves	14,728,614	-----	-----	4,847,390	-----	-----	19,576,004	-----	-----	19,576,004
	Other liabilities and deffered credits										
782	Other liabilities	804,760	-----	-----	639,527	-----	-----	1,444,287	-----	-----	1,444,287
783	Unamortized premium on long-term debt	-----	-----	-----	180	-----	-----	180	-----	-----	180
784	Other deferred credits	2,692,933	-----	-----	518,994	-----	-----	3,211,927	-----	-----	3,211,927
785	Accrued depreciation—leased property	401,360	-----	-----	220,440	-----	-----	621,800	-----	-----	621,800
	Total other liabilities and deferred credits	3,899,053	-----	-----	1,379,143	-----	-----	5,278,194	-----	-----	5,278,194

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Pacific & Burlington Lines, Inc. and the Chicago, Burlington & Quincy Railroad Company—Continued

		G.N.P. & B. Lines, Inc.			Burlington				Adjustments and eliminations		After adjustments and eliminations
		General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	General balance sheet	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	Net combined	Notes	Amount	
	Shareholders' equity										
	Capital stock:										
791	Capital stock issued										
	Proposed new issue										
	Common stock (12,222,936 shares—without par value)	$491,530,014	-----	-----	-----	-----	-----	$491,530,014	M	$4,803,300	$496,333,314
	Preferred stock (3,036,568 shares—$10 par value)	30,365,680	-----	-----	-----	-----	-----	30,365,680	-----	-----	30,365,680
	Total	521,895,694	-----	-----	-----	-----	-----	521,895,694	-----	4,803,300	526,698,994
	Merging companies										
	Common stock	-----	-----	-----	$170,839,100	-----	-----	170,839,100	-----	(170,839,100)	-----
	Held by or for company	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
	Total	-----	-----	-----	170,839,100	-----	-----	170,839,100	-----	(170,839,100)	-----
	Total capital stock	521,895,694	-----	-----	170,839,100	-----	-----	692,734,794	-----	(166,035,800)	526,698,994
	Capital surplus:										
794	Premiums and assessments on capital stock	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
795	Paid-in surplus	1,239,601	-----	-----	-----	-----	-----	1,239,601	-----	-----	1,239,601
796	Other capital surplus	38,330,932	-----	-----	588,871	-----	-----	38,919,803	N	(38,919,803)	-----
	Total capital surplus	39,570,533	-----	-----	588,871	-----	-----	40,159,404	-----	(38,919,803)	1,239,601
	Retained income:										
797	Retained income—appropriated	-----	-----	-----	48,025,460	-----	-----	48,025,460	-----	-----	48,025,460
798	Retained income—unappropriated	735,599,373	E	(846,288)	345,433,537	-----	-----	1,080,186,622	N	(13,535,826)	1,066,650,796
	Total retained income	735,599,373	-----	(846,288)	393,458,997	-----	-----	1,128,212,082	-----	(13,535,826)	1,114,676,256
	Total shareholders' equity	1,297,065,600	-----	(846,288)	564,886,968	-----	-----	1,861,106,280	O	(218,491,429)	1,642,614,851
	Total liabilities and shareholders' equity	1,938,536,742	-----	(19,394,100)	837,067,140	-----	$70,000,000	2,826,209,782	-----	(291,237,857)	2,534,971,925

( ) Denotes contra

Notes to pro forma general balance sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of August 31, 1961 after giving effect to the Northern Lines merger and the Burlington merger

Note

I. The final combined general balance sheet as of the date of merger is subject to approval of the Bureau of Accounts, Interstate Commerce Commission.

II. This pro forma general balance sheet reflects the amounts shown in pro forma general balance sheet, giving effect to the merger of the Nothern Pacific, Great Northern and Pacific Coast into New Company, and the Burlington, as of August 31, 1961, adjusted to give effect to the merger as shown by notes below:

A. (1) To purchase new Burlington first and refunding mortgage series of 2010 4 percent bonds to be pledged under the New Company's consolidated mortgage	$70,000,000
(2) To deposit with trustee of Northern Pacific refunding and improvement mortgage sufficient funds to redeem at a redemption price of 110 the $17,631,000 par value outstanding refunding and improvement mortgage series "A" 4 1/2 percent	19,394,100
	89,394,100
B. To reflect investment in $70 million Burlington first and refunding mortgage bonds.	
C. To reflect reduction in Federal income tax liability applicable to premium paid upon the redemption of Northern Pacific refunding and improvement mortgage series "A" 4 1/2 percent bonds. (See Note E).	916,812
D. To eliminate Northern Pacific refunding and improvement mortgage series "A" bonds called and redeemed	17,631,000
E. To reflect charge to retained income—unappropriated as a result of net premium costs ($1,763,100 less Federal income tax reduction of $916,812) incurred in redemption of Northern Pacific refunding and improvement mortgage series "A" 4 1/2 percent bonds. (See Note C).	846,288
F. To reflect receipt of cash by Burlington from sale of $70 million Burlington first and refunding mortgage bonds to the New Company.	
G. To reflect issuance by Burlington of $70 million new first and refunding mortgage 4 percent bonds and cancellation of $29,869,000 Burlington first and refunding mortgage bonds ($19,729,000 4 percent series 1998 and $10,140,000 4 1/2 percent series 1970) held in treasury.	

Note II—Continued

H. To effect new debit balance in traffic and car service balances—debit upon transfer of credit balance reflected in accounts of Burlington. (See Note J).	$2,347,826
I. To eliminate book investment of new company, in Burlington as follows:	

	Amount
Common stock	$218,491,429
Other secured obligations	398,602
Burlington first and refunding mortgage bonds	70,000,000
Total	288,890,031

J. To transfer to current assets credit balance in traffic and car service balances—credit. (See Note H).	2,347,826
K. To reflect the elimination of the New Company's liability with respect to Burlington first and refunding mortgage bonds upon concurrent pledging of same under the new consolidated mortgage.	70,000,000
L. To eliminate amount payable to Burlington to New Company (See Note I).	398,602
M. To set up capital stock liability equal to par value of Burlington common stock outstanding in the hands of minority stockholders:	

Common stock—without par value	*Shares*	*Amount*
48,033 shares @ 3.25	156,107	$4,803,300

N. Giving effect to the merger of the respective roads, results in adjustments representing:

(1) Differences between book investment of New Company and par value of Burlington common stock liability ($218,491,429 less $166,035,800)	52,455,629
The $52,455,629 has been debited to other capital surplus, to the extent available	38,919,803
And the balance has been charged to retained income—unappropriated	13,535,826
	52,455,629

O. The net debit adjustment or reduction in stockholders' equity of $218,491,429 is made up as follows:

(1) Elimination of Burlington common stock held by New Company.	166,035,800
(2) Difference between book investment of New Company and par value of Burlington common stock liability	52,455,629
	219,491,429

Note III

III A total of 112,150 shares of common stock and 56,075 shares of preferred stock has been reserved for issuance against warrants outstanding under Great Northern's Restricted Stock Option Plan, and a total of 100,077 shares of common stock has been reserved for issuance against options outstanding under Northern Pacific's Restricted Stock Option Plan.

IV See notes to financial statements of individual companies.

V Long-term debt is as follows: (Note 1).

(a) Northern Pacific (Note 2).		
Due within one year:		
Collateral Trust Bonds 4 percent	$1,300,000	
Miscellaneous obligations	50,853	
Equipment obligations	10,207,107	
Total		$11,557,960
Due after one year:		
Prior lien mortgage	96,195,300	
General lien mortgage	53,585,900	
St. Paul-Duluth Division mortgage	253,000	
St. P. & Dul. RR. First Cons. Mortgage	1,000,000	
Collateral Trust Bonds 4 percent	39,376,000	
Miscellaneous obligations	233,657	
Equipment obligations	79,961,750	
Total		270,605,607
Total Northern Pacific debt		282,163,567
(b) Great Northern:		
Due within 1 year:		
Miscellaneous obligations	10,276	
Equipment obligations	7,916,318	
Total		7,926,594
Due after 1 year:		
G.N.Ry. Co. Genl. Mtge. 5 percent Gold Bonds Ser. C.	14,154,900	
G.N.Ry. Co. Genl. Mtge. 4 1/2 percent Gold Bonds Ser. D.	14,508,000	
G.N.Ry. Co. Genl. Mtge. 3 1/8 percent Gold Bonds Ser. N.	37,500,000	
G.N.Ry. Co. Genl. Mtge. 3 1/8 percent Gold Bonds Ser. O.	37,500,000	
G.N.Ry. Co. Genl. Mtge. 2 3/4 percent Gold Bonds Ser. P.	40,000,000	
G.N.Ry. Co. Genl. Mtge. 2 5/8 percent Gold Bonds Ser. Q.	35,000,000	
Miscellaneous obligations	10,276	
Equipment obligations	58,143,636	
Total		236,816,812
Total Great Northern debt		244,743,406

Note V—Continued

(c) Burlington (Note 3.)		
Due within 1 year:		
First and refunding mortgage 3 1/8 percent Series 1985	$1,271,290	
Equipment obligations	11,977,372	
Total		$13,248,662
Due after 1 year:		
First and refunding mortgage 2 7/8 percent 1970	45,230,000	
First and refunding mortgage 3 1/8 percent Series 1985	38,681,710	
First and refunding mortgage 3 percent Series 1990	21,565,000	
First and refunding mortgage 4 3/8 percent Series 1978	21,975,000	
Equipment obligations	81,627,232	
Total		209,078,942
Total Burlington debt		222,327,604
Total Great Northern Pacific & Burlington Lines, Inc. (New Company) Long-term debt (Note 4)		749,234,577

Note 1. Does not include New Company consolidated mortgage bonds referred to in Note 2 (***)

Note 2. Does not include the following:

$17,631,000	principal amount to N.P.Ry.Co.'s Refunding & Improvement Bonds Series "A". (*)
1,000	principal amount of N.P.Ry.Co.'s Refunding & Improvement Bonds Series "A". (**)
28,000	principal amount of N.P.Ry.Co.'s Prior Lien Mortgage Bonds. (**)
5,555,000	principal amount of N.P.Ry.Co.'s General Lien Mortgage Bonds. (**)
3,524,000	principal amount of N.P.Ry.Co.'s Collateral Trust Bonds. (**)
71,500,000	principal amount of N.P.Ry.Co.'s Refunding & Improvement Bonds Series "E". (***)

Note 3. Does not include the following mortgage bonds and equipment trust certificates heretofore reacquired and held in treasury:

*Actually outstanding at date but which under plan of merger will be redeemed (see Note D of notes to pro forma general balance sheet).

**Heretofore reacquired and held in treasury.

***Nominally issued and pledged under N.P.Ry. Co.'s collateral trust indenture; after merger under the plan of merger these bonds will be released from pledge and cancelled and $71,500,000 principal amount of New Company new consolidated mortgage bonds will be deposited and pledged in substitution therefor. (See Note 1).

262-237 O - 69 - 38

Note V—Continued

$19,729,000 principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 4 percent Series 1998.

279,000 principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 3 1/8 percent Series 1970.

335,000 principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 3 1/8 percent Series 1985.

10,140,000 principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 4 1/2 percent Series 1970.

552,000 principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 3 percent Series 1990.

1,025,000 principal amount of C.B. & Q. R.R. Co.'s First and Refunding Mortgage Bonds 4 3/8 percent 1978.

30,000 principal amount of C.B. & Q. R.R. Co.'s Equipment Trust Certificates 2 5/8 percent Trusts of 1954.

70,000 principal amount of C.B. & Q. R.R. Co. First and Refunding Mortgage Bonds 4 percent Series 2010 to be concurrently pledged under the G.N.P.&B. Lines, Inc. Consolidated Mortgage (See Note K, page 12)

Note 4. Does not include amounts payable to affiliated companies of $177,000 payable by the Burlington to St. Louis and Kansas City Land Company.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	amount	
	Assets						
	Current assets						
701	Cash	$20,102,154	$1,664,156	$21,766,310			$21,766,310
702	Temporary cash investments	82,557,685		82,557,685			82,557,685
703	Special deposits	6,574,737	19,389	6,594,126			6,594,126
704	Loans and notes receivable	1,670		1,670			1,670
705	Traffic and car service balance - debit	897,034		897,034	A	$(897,034)	
706	Net balances receivable from agents and conductors	11,543,226	350,165	11,893,391			11,893,391
707	Miscellaneous accounts receivable	19,010,700	2,408,170	21,418,870			21,418,870
708	Interest and dividends receivable	4,420,624	3,565	4,424,189			4,424,189
709	Accrued accounts receivable	24,243,565	2,021,134	26,264,699			26,264,699
710	Working fund advances	767,180	823	768,003			768,003
711	Prepayments	418,014	8,928	426,942			426,942
712	Material and supplies	63,320,707	2,696,931	66,017,638			66,017,638
713	Other current assets	785,142	130,606	915,748			915,748
	Total current assets	234,642,438	9,303,867	243,946,305		(897,034)	243,049,271
	Special funds						
715	Sinking funds	1,732		1,732			1,732
716	Capital and other reserve funds	14,206,303	121,116	14,327,419			14,327,419
717	Insurance and other funds	4,861,183		4,861,183			4,861,183
	Total special funds	19,069,218	121,116	19,190,334			19,190,334

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Investments						
721	Investments in affiliated companies	$166,694,475	$39,695,423	$206,389,898	-----	-----	$206,389,898
722	Other investments	19,053,333	540,917	19,594,250	-----	-----	19,594,250
723	Reserve for adjustment of investment in securities - credit	6,318,353	8,929,360	15,247,713	-----	-----	15,247,713
	Total investments	179,429,455	31,306,980	210,736,435	-----	-----	210,736,435
	Properties						
731	Road and equipment property	2,740,000,239	128,918,610	2,868,918,849	B	(128,918,610)	2,740,000,239
732	Improvements on leased property	3,495,427	467,903	3,963,330	B	(467,903)	3,495,427
733	Acquisition adjustment	(9,364,592)	-----	(9,364,592)	-----	-----	(9,364,592)
734	Donations and grants - credit	44,250,043	(11,897,318)	56,129,361	B	(11,879,318)	44,250,043
	Total transportation property	2,689,881,031	(117,507,195)	2,807,388,226		(117,507,195)	2,689,881,031
735	Accrued depreciation - Road and equipment	(533,417,942)	(21,338,532)	(554,756,474)	B	21,338,532	(533,417,942)
736	Amortization of defense projects - Road and equipment	(118,102,965)	(2,386,795)	(120,489,760)	B	2,386,795	(118,102,965)
	Recorded depreciation and amortization	(651,520,907)	(23,725,327)	(675,246,234)	-----	23,725,327	(651,520,907)
	Total transportation property less recorded depreciation and amortization	2,038,360,124	93,781,868	2,132,141,992	-----	(93,781,868)	2,038,360,124
737	Miscellaneous physical property	47,789,240	6,119,887	53,909,127	B	(6,119,887)	47,789,240
738	Accrued depreciation - miscellaneous physical property	(3,343,777)	(952,831)	(4,296,608)	B	952,831	(3,343,777)
	Miscellaneous physical property less recorded depreciation	44,445,463	(5,167,056)	49,612,519	-----	(5,167,056)	44,445,463
	Total properties less recorded depreciation and amortization	2,082,805,587	(98,948,924)	2,181,754,511	-----	(98,948,924)	2,082,805,587

( ) Denotes contra

328 I.C.C.

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations		After adjustments and eliminations
					Notes	Amount	
	Other assets and deferred charges						
741	Other assets	$5,225,897	$187,137	$5,413,034	-----	-----	$5,413,034
742	Unamortized discount on long-term debt	4,105,548	-----	4,105,548	-----	-----	4,105,548
743	Other deferred charges	9,693,782	370,326	10,064,108	-----	-----	10,064,108
	Total other assets and deferred charges	19,025,227	557,463	19,582,690	-----	-----	19,582,690
	Total assets	2,534,971,925	140,238,350	2,675,210,275	-----	(99,845,958)	2,575,364,317
	Liabilities and shareholders' equity						
	Current liabilities						
752	Traffic and car service balance - credit	-----	1,606,897	1,606,897	A	(897,034)	709,863
753	Audited accounts and wages payable	20,357,859)	1,099,552	21,457,411	-----	-----	21,457,411
754	Miscellaneous accounts payable	11,208,187	380,687	11,588,874	-----	-----	11,588,874
755	Interest matured unpaid	1,049,931	1,095,239	2,145,170	-----	-----	2,145,170
756	Dividends matured unpaid	4,639,348	-----	4,639,348	-----	-----	4,639,348
757	Unmatured interest accrued	4,406,870	54,570	4,461,440	-----	-----	4,461,440
758	Unmatured dividends declared	-----	-----	-----	-----	-----	-----
759	Accrued accounts payable	32,633,057	2,859,780	35,492,837	-----	-----	35,492,837
760	Federal income taxes accrued	8,692,979	-----	8,692,979	-----	-----	8,692,979
761	Other taxes accrued	25,110,219	1,133,645	26,243,864	-----	-----	26,243,864
763	Other current liabilities	9,992,849	1,379,737	11,372,586	-----	-----	11,372,586
	Total current liabilities	118,091,299	9,610,107	127,701,406	-----	(897,034)	126,804,372
	Long-term debt due after 1 year						
764	Equipment obligations and other debt	34,067,041	1,055,967	35,123,008	B	(1,055,967)	34,067,041
	Held by or for company	(1,333,825)	-----	(1,333,825)	-----	-----	(1,333,825)
	Actually outstanding	32,733,216	1,055,967	33,789,183	D	(1,055,967)	32,733,216

( ) Denotes contra

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	After adjustments and eliminations
	Long-term debt due after 1 year						
765	Funded debt unmatured	$648,233,918	$54,710,000	$702,943,918	B	($54,710,000)	$648,233,918
	Held by or for company	(151,465,175)		(151,465,175)			(151,465,175)
	Actually outstanding	496,768,743	54,710,000	551,478,743		(54,710,000)	496,768,743
766	Equipment obligations	219,762,618	4,011,493	223,774,111	B	(4,011,493)	219,762,618
	Held by or for company	(30,000)		(30,000)			(30,000)
	Actually outstanding	219,732,618	4,011,493	223,744,111		(4,011,493)	219,732,618
	Total funded debt and equipment obligations outstanding	716,501,361	58,721,493	775,222,854		(58,721,493)	716,501,361
769	Amounts payable to affiliated companies	177,000		177,000	C	31,126,774	31,303,774
	Total long-term debt due after 1 year	716,678,361	58,721,493	775,399,854	D	(27,594,719)	747,805,135
	Reserves						
771	Pension and welfare reserves	10,014,200		10,014,200			10,014,200
772	Insurance reserves	5,772,697		5,772,697			5,772,697
773	Equalization reserves	246,000		246,000			246,000
774	Casualty and other reserves	3,543,107	144,446	3,687,553			3,687,553
	Total reserves	19,576,004	144,446	19,720,450			19,720,450
	Other liabilities and deferred credits						
782	Other liabilities	1,444,287	169,504	1,613,791			1,613,791
783	Unamortized premium on long-term debt	180		180			180
784	Other deferred credits	3,211,927	238,595	3,450,522			3,450,522
785	Accrued depreciation - leased property	621,800	23,939	645,739	B	(23,939)	621,800
	Total other liabilities and deferred credit	5,278,194	432,038	5,710,232		(23,939)	5,686,293

Pro forma general balance sheet as of August 31, 1961 after giving effect to merger of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company and the Pacific Coast R. R. Co. and the lease of the Spokane, Portland and Seattle Railway Company by Great Northern Pacific & Burlington Lines, Inc.—Continued

		G.N.P.&B. Lines, Inc.	S.P.&S.	Combined	Adjustments and eliminations: Notes	Adjustments and eliminations: Amount	After adjustments and eliminations
	Shareholders equity						
	Capital stock:						
791	Capital stock issued						
	Proposed new issue						
	Common stock (12,222,926 shares - without par-value)	$496,333,314		$496,333,314			$496,333,314
	Preferred stock (3,036,568 shares - $10 par value)	30,365,680		30,365,680			30,365,680
	Total	526,698,994		526,698,994			526,698,994
	Merging companies:						
	Common stock		$40,000,000	40,000,000	B	($40,000,000)	
	Held by or for company						
	Total		40,000,000	40,000,000		(40,000,000)	
	Total capital stock	526,698,994	40,000,000	40,000,000		(40,000,000)	526,698,994
	Capital surplus:						
794	Premiums and assessments on capital stock						
795	Paid-in surplus	1,239,601	5,700,000	6,939,601	B	(5,700,000)	1,239,601
796	Other capital surplus		124,967	124,967	B	(124,967)	
	Total capital surplus	1,239,601	5,824,967	7,064,568		(5,824,967)	1,239,601
	Retained income:						
797	Retained income - appropriated	48,025,460		48,025,460			48,025,460
798	Retained income - unappropriated	1,066,650,796	24,449,332	1,091,100,128	B	(24,449,332)	1,066,650,796
	Total retained income	1,114,676,256	24,449,332	1,139,125,588		(24,449,332)	1,114,676,256
	Total shareholders' equity	1,642,614,851	70,274,299	1,712,889,299		(170,274,299)	1,642,614,851
	Total liabilities and shareholders' equity	2,534,971,925	140,238,350	2,675,210,275		(99,845,958)	2,575,364,317

Notes to Pro Forma General Balance Sheet of the Great Northern Pacific & Burlington Lines, Inc. (New Company) as of August 31, 1961 after giving effect to lease of Spokane, Portland and Seattle Railway Company

A. Transfer debit balance in Traffic and car service balances—Dr. to Traffic and car service balances— Cr. as the net balance becomes a credit after recording SP&S accounts on books of the New Company.

B. Represents property investment accounts, depreciation reserves, funded debt, equipment obligations and shareholders' equity to remain in the SP&S accounts.

C. Represents net liability of the New Company to the SP&S for excess of assets over liabilities of the SP&S to be recorded in the accounts to the New Company, as follows:

	Debit	*Credit*
Current assets	$9,303,867	
Capital and other reserve funds	121,116	
Investments	31,306,890	
Other assets	187,137	
Other deferred charges	370,326	
Current liabilities		$9,610,107
Casualty and other reserves		144,446
Other liabilities		169,504
Other deferred credits		238,595
Net Liability of New Company to SP&S (note D) Account No. 769, amounts payable to affiliated companies		31,126,774
Total	$41,289,426	$41,289,426

D. The pro forma balance sheet as of August 31, 1961, after giving effect to the merger of the Great Northern, Northern Pacific, Burlington and Pacific Coast shows total long-term debt of $749,411,577. After giving effect to the lease of the SP&S the new figure is $780,538,351. The difference of $31,126,774 represents an intercompany indebtedness of the New Company to the SP&S as indicated under Note C above.

See Note V of the notes to the pro forma general balance sheet of the New Company as of August 31, 1961, covering long-term debt of that company in the hands of the public. The SP&S long-term debt outstanding in the hands of the public consists of equipment obligations amounting to $4,874,371. This amount does not include $54,710,000 SP&S first mortgage bonds owned by the New Company and $193,089 of SP&S equipment obligations owned to the New Company.

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.

Pro forma retained income - unappropriated as of August 31, 1961 after giving effect to merger

	N.P. Ry. Co.	G.N. Ry. Co.	C.B.&Q. R.R. Co.	S.P.&S. Ry. Co.	Pacific Coast R.R. Co.	Combined	Adjustments and eliminations	After adjustment and elimination
Credit balance at beginning of year	$376,316,062	$368,867,061	$343,285,113	$24,509,062	$1,981,126	$1,114,958,424		$1,114,958,424
Credit (current year)								
Credit balance carried from income	8,866,876	8,728,982	8,379,729	(57,332)	15,234	25,933,489	($9,131,969) (a) 712,294 (b)	17,513,814
Other credits to retained income					9,103	9,103		9,103
Federal income taxes assigned to retained income (Net)		25,045	219,575			244,620		244,620
Total credits	385,182,938	377,621,088	351,884,417	24,451,730	2,005,463	1,141,145,636	(8,419,675)	1,132,725,961
Debits (current year)								
Loss on sale or retirement of property		25,950	4,162			30,112		30,112
Other debits to retained income	10,014,200	22,668	467,363	2,398		10,506,629	38,831,446 (c)	49,338,075
Appropriations released		(1,125,000)				(1,125,000)		(1,125,000)
Dividends	6,592,408	13,679,890	5,979,355			26,251,653	(5,811,253) (d)	20,440,400
Total debits	16,606,608	12,603,508	6,450,880	2,398		35,663,394	33,020,193	68,683,587
Credit balance as of August 31, 1961	368,576,330	365,017,580	345,433,537	24,449,332	2,005,463	1,105,482,242	(41,439,868)	1,064,042,374 (e)

(a) Burlington dividends accrued by Northern Pacific Railway Company and Great Northern Railway Company.

(b) Anticipated Federal income tax saving of $712,294 on Burlington dividends (Note (a)).

(c) Net premium on redemption of Northern Pacific Refunding and Improvement Mortgage Series "A" 4½ percent bonds 846,288
Cost of Burlington common stock in excess of its par value after application of other capital surplus to the extent available 13,535,826
Elimination of credit balance of retained income—unappropriated of the S.P.&S. Ry. Co. as of August 31, 1961 not recorded by the G.N.P.&B. Lines, Inc. under terms of lease of the S.P.&S. Ry. Co 24,449,332
38,831,446

(d) Burlington dividends accrued by Northern Pacific Railway Company and Great Northern Railway Company (Note (a)) 9,131,969
Deduct: Burlington dividend (3rd) not charged to retained income in that company's accounts at August 31, 1961 but accrued by Northern Pacific Railway Company and Great Northern Railway Company 3,320,716
5,811,253

(e) Credit balance as of August 31, 1961 as shown above 1,064,042,374
Deduct: Anticipated Federal income tax saving on Burlington dividends (Note (b)) 712,294
Add: Burlington's (3rd) dividend not charged in that company's accounts (Note (d)) 3,320,716
Credit balance as of August 31, 1961 as shown by Pro Forma General Balance Sheets, Pages 4 and 6 1,066,650,796
( ) Denotes contra