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December 29, 2003

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

Dear Secretary Williams:

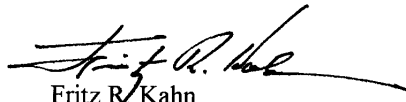
Enclosed for filing in STB Docket No. 863X, City of Venice-Abandonment Exemption-Between Branch Street Yard, MO, and McKinley Junction, IL are the original and ten copies of the Comments of Terminal Railroad Association of St. Louis.

Additional copies of this letter and of the Comments are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

Service of the Comments upon the City of Venice and Madison County Transit has been effected by sending copies of the Comments to their representatives via UPS NEXT DAY AIR..

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Charles H. Montange, Esq.
Mr. Jerry Kane

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. 863X

CITY OF VENICE
- ABANDONMENT EXEMPTION -
BETWEEN BRANCH STREET YARD, MO,
AND MCKINLEY JUNCTION, IL



COMMENTS
OF
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Dated: December 29, 2003.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. 863X

CITY OF VENICE
– ABANDONMENT EXEMPTION –
BETWEEN BRANCH STREET YARD, MO,
AND MCKINLEY JUNCTION, IL

COMMENTS
OF
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Terminal Railroad Association of St. Louis ("TRRA"), pursuant to 49 C.F.R. 1104.13(a), replies to the Notice of Exemption of the City of Venice ("Venice") and to the Statement of Willingness to Assume Financial Responsibility of Madison County Transit ("MCT"), contemporaneously filed on December 9, 2003, as follows:

A.

Introduction

By its Notice of Exemption, filed pursuant to the two-year-out-of-service exemption of 49 C.F.R. 1152.50, Venice seeks to abandon, and, by its Statement, MCT, to acquire under a trails condition entered pursuant to 49 C.F.R. 1152.29, what they represent to be a railroad line, extending between Milepost 0.55 near the Branch Street Yard in St. Louis, MO, and Milepost 1.45 at McKinley Junction, IL.

Venice is not, and never has been, a common carrier railroad, and what it portrays as its railroad line is not its to abandon. Venice's Notice of Exemption is a transparent contrivance to try to accommodate MCT in its effort to acquire the right-of-way between the Branch Street Yard and McKinley Junction under the National Trails System Act, 16 U.S.C. 1247(d)..

What Venice and MCT claim to be a railroad line to be abandoned by the former and acquired pursuant to a trails condition by the latter was authorized for abandonment by the Board's predecessor, the Interstate Commerce Commission ("ICC"), nearly ten years ago, and, in response to MCT's request at the time, the ICC issued a Decision and Notice of Interim Trail Use which permitted MCT to negotiate the acquisition of the property. Notwithstanding several extensions of the negotiating period, MCT failed to do so, and it is far too late for it now to attempt to acquire the abandoned line.

The wood and steel trestles traversing the Madison Yard and other TRRA lands on which the abandoned railroad line ran are in deplorable condition and must be dismantled lest someone suffer a serious injury. Moreover, the trestles need to be removed in connection with the relocation of Illinois Route 3, a project of the Illinois Department of Transportation.

B.

Interest of TRRA

TRRA is a common carrier railroad subject to the Board's regulatory jurisdiction. See, Terminal R.R. Assn. v. U.S., 266 U.S. 17, 31 (1924)("The Terminal Association and its subsidiaries are common carriers by railroad and, like the proprietary companies, are subject to regulation by the Commission.")

Its interest in the subject proceeding stems from the fact that an approximately three-

quarters-of-a-mile segment of the elevated structure between Venice and McKinley Junction was erected on land owned by TRRA. The map attached as Exhibit C to Venice's Notice of Exemption clearly shows the railroad line between the Branch Street Yard and McKinley Junction extending through TRRA's property, including its Madison Yard. The milepost designations for the segment of the elevated structure erected on TRRA's land are Milepost .79 on the east and Milepost 1.45 on the west.

The elevated structure on which much of the railroad line ran was built by the St. Louis, Troy & Eastern Railroad Company pursuant to the authorization of the ICC, by its decision in Construction by St. Louis, Troy & Eastern R.R., 111 I.C.C. 303 (1926). See, Attachment A. The ICC, 111 I.C.C. at 304, described the construction proposal, as follows;

The proposed extension will traverse the southern part of Venice, crossing yards, tracks, and facilities of the Terminal Railroad Association of St. Louis and a number of trunk-line railroads entering East St. Louis and vicinity. It is to be elevated above the properties of these carriers and is designed to serve as a connecting link between the applicant's existing main line and the McKinley Bridge, where connection would be made with the Illinois Traction System [i.e., St. Louis Electric Terminal Railway Company].

The St. Louis, Troy & Eastern Railroad Company and the St. Louis Electric Terminal Railway Company were acquired by the Illinois Terminal Company, predecessor of the Illinois Terminal Railroad Company, pursuant to the ICC's decision in Acquisition of Control by Illinois Terminal Company, 138 I.C.C. 487 (1928). See, Attachment B.

As Venice concedes, at page 11 (Exhibit B) of its Notice of Exemption, "[T]he rail approaches include extensive wood trestles which are in deteriorated condition and which would require extensive and expensive reconstruction in order to support rail traffic." In fact, the trestles, both wood and steel, crossing TRRA's property are in a deplorable state. They are an

attractive nuisance, posing a serious threat to trespassers, as well as to the TRRA's crews and other employees and, accordingly, expose TRRA to tremendous potential liability. They must be dismantled. Photographs of the trestles are appended as Attachment C.

Moreover, the trestles across TRRA's Madison Yard and other properties need to be removed to permit the relocation of Illinois Route 3, a project of the Illinois Department of Transportation.

C.

Venice's Status

Venice is not, and never has been, a common carrier railroad. It is not and, as far as we are aware, never has been listed as a rail carrier in the standard references, such as the Official Railway Station List, The Official Railway Equipment Register, Uniform Freight Classification and The Official Railway Guide. It at no time was listed in inventory of rail and motor carriers maintained by the ICC, published as recently as January 15, 1990.

The way Venice got into the picture is that, deeming itself in need of funds, Illinois Terminal Railroad Company in 1958 sold to, and leased back from, Venice the line between the Branch Street Yard and McKinley Junction. At page 10 (Exhibit B) of its Notice of Exemption, Venice claims to have been "unable to identify any filing with the Interstate Commerce Commission in connection with this acquisition transaction, and is unaware of any order granting the City an exemption from rail regulation in connection with the transaction." Its search cannot have been a thorough one.

In fact, the transaction was the subject of the ICC's decision in Illinois Term. R. Co. Abandonment, 327 I.C.C. 70 (1958). See, Attachment D. The transaction was described by the

ICC, id., as follows:

Under the proposed transaction the applicant will sell the bridge properties to the city of Venice, and that body concurrently will convey to the applicant the exclusive right to use and operate the railroad portions of the bridge for railroad operations. The applicant states its operations and service between, in, and through St. Louis and Venice will continue to be provided and maintained without any interruption whatsoever, and there is no intention on the part of the applicant to abandon, in any respect, its service or operations presently existing.

The I.C.C., 327 I.C.C. at 75, concluded:

The transactions proposed will permit applicant to retain the use of the rail facilities on the bridge at a reasonable rental and enable the applicant to go forward with its plan for permanent financing. There will be no interruption of service on the line.

Under the agreement between them, Venice was unable to interfere with the continued operations of the Illinois Terminal Railroad Company over its Broad Street Station-to-McKinley Junction railroad line in fulfillment of its common carrier obligation..

The ICC's decision was a precursor of Maine DOT--Acq. Exemption, Me. Central R. Co., 8 I.C.C. 835 (1991), and the many Board decisions which have followed it. See, STB Finance Docket No. 34258, North Carolina State Ports Authority--Acquisition Exemption--North Carolina Ports Railway Commission, served October 31, 2002; STB Finance Docket No. 34181, State of Wisconsin Department of Transportation--Petition for Declaratory Order, served August 1, 2002; State of Georgia, Department of Transportation--Acquisition Exemption--South Carolina Central Railroad, Inc., served April 30, 2002; STB Finance Docket No. 33830, State of Vermont--Acquisition Exemption--Certain Assets of Boston and Maine Corporation, served June 8, 2000.

Just as the public bodies which took title to the rights-of-way and their improvements in the cited cases did not thereby become rail carriers, so, too, Venice did not become a rail carrier as a result of the sale and lease back of the Illinois Terminal Railroad Company's line between the Branch

Street Yard and McKinley Junction.

The one decision cited by Venice, at page 11 (Exhibit B) of its Notice of Exemption, Southern Pacific Transportation Company--Abandonment Exemption--Los Angeles County, 8 I.C.C.2d 495 (1992), demonstrates that the ICC did assert jurisdiction if the transferee of the right-of-way and its improvements could interfere with the transferring railroad's operations. As the ICC, 8 I.C.C.2d at 508, declared, "The rights which SP retains are too circumscribed to permit it to carry out the obligations it purports to retain, and the corresponding rights which LACTC has acquired are so extensive that, under the Act, LACTC necessarily incurs an obligation to exercise these rights as a common carrier, unless it acquires abandonment or exemption authority." That was not the situation in the sale and lease back by Illinois Terminal Railroad Company of its line between the Branch Street Yard and McKinley Junction. The common carrier obligation remained with the railroad, and Venice was without the means to interfere with the railroad's rendition of service.

Venice did not file its Notice of Exemption as an adverse abandonment. See, Modern Handcraft, Inc.--Abandonment, 363 I.C.C. 969 (1981). Venice purports to be the railroad entitled to avail itself of the two-year-out-of-service exemption of 49 C.F.R. 1152.50. It, however, is not, and never has been, a common carrier railroad, and, therefore, its Notice of Exemption should be rejected, pursuant to 49 C.F.R. 1104.10(a).

D.

MCT's Lapse

Illinois Terminal Railroad Company was acquired by Norfolk & Western Railway Company ("N&W"), pursuant to the ICC's decision in Norfolk & Western Ry. Co.--Pur.--Illinois

Term R. Co., 363 I.C.C. 882 (1981). See, Attachment E. N&W's assumption of the obligation to pay Venice the annual McKinley Bridge rent specifically was referred to in the ICC's decision. 363 I.C.C. at 885.

Railroad use of the McKinley Bridge and its elevated approaches subsequently declined, and, in 1994, N&W filed its Notice of Exemption, pursuant to the two-year-out-of-service exemption of 49 C.F.R. 1152.50, to abandon the line between the Branch Street Yard and McKinley Junction, together with the line between Bridge Junction, IL, and Wanda, IL. See, Attachment F.

On April 6, 1994, MCT filed a request for a trail condition, and by letter, dated April 15, 1994, N&W indicated its willingness to negotiate a trail use agreement with MCT for the lines which were the subject of its Notice of Exemption. See, Attachment G. Four extensions of the negotiating period were granted by the ICC and the Board. A fifth extension was granted by the Board by its Decision served October 11, 1996. See, Attachment H. It gave MCT and N&W until January 10, 1997, to reach a trail use agreement. On January 10, 1997, MCT notified the Board that a trail use/rail banking agreement had been reached. See, Attachment I.

The trail use/rail banking agreement between MCT and the N&W was limited to the line between Bridge Junction and Wanda, as well as other lines, but did not include the line between the Branch Street Yard and McKinley Junction. A copy of the Quitclaim Deed by which the N&W conveyed the properties to MCT, dated June 17, 1997, is attached, as Attachment J. Thus, N&W's abandonment authorization for the line between the Branch Street Yard and McKinley Junction became effective January 10, 1997, and subsequently was consummated by the N&W.

The railroad line between the Branch Street Yard and McKinley Junction having been

abandoned by the N&W six years ago, MCT is a little late in attempting to acquire the right-of-way under the National Trails System Act. As the Board explained in Docket No. AB-433X, Idaho Northern & Pacific Railroad Company—Abandonment Exemption—In Wallowa and Union Counties, OR, served March 9, 1998:

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved railroad right-of-way. Here, however, the railroad's actions have terminated our jurisdiction. Because the railroad had previously refused to negotiate for interim trail use, the line must be considered abandoned when the public-use condition expired. Thus, the Board lost jurisdiction over the line at that point, and the railroad's subsequent expression of willingness to negotiate with Oregon does not resurrect that jurisdiction. See Becker v. Surface Transp. Bd., 132 F.3d 60 (DC Cir. 1997) [footnotes omitted].

Accord, STB Docket No. AB-493 (Sub-No. 7X), Track Tech, Inc.—Abandonment Exemption—In Adair and Union Counties, IA, served November 1, 1999.

Having failed to avail itself of the opportunity to acquire the right-of-way of the railroad line between the Branch Street Yard and McKinley Junction before it was abandoned by the N&W, MCT cannot now try to secure it through Venice's trumped-up abandonment proposal. MCT's Statement of Willingness to Assume Financial Responsibility, accordingly, should be rejected, pursuant to 49 C.F.R. 1104.10(a).

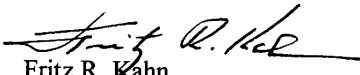
WHEREFORE, Terminal Railroad Association of St. Louis asks that the Notice of Exemption of the City of Venice and the Statement of Willingness to Assume Financial Responsibility of Madison County Transit, contemporaneously filed on December 9, 2003, be rejected and that the railroad line between the Branch Street Yard, MO, and McKinley Junction, IL, be declared to have been abandoned by the Norfolk and Western Railway Company, leaving Terminal Railroad Association of St. Louis, as far as the Board is concerned, free to dismantle the wood and steel trestles traversing its Madison Yard and other properties.

Respectfully submitted,

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

By its attorneys,

Rebecca R. Jackson
Bryan Cave LLP
211 No. Broadway (36th fl.)
St. Louis, MO 63102
Tel.: (314) 259-2217

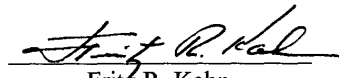

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: December 29, 2003.

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Comments of Terminal Railroad Association of St. Louis upon the City of Venice and Madison County Transit by sending copies thereof by UPS NEXT DAY AIR to their representatives.

Dated at Washington, DC, this 29th day of December 2003.


Fritz R. Kahn

ATTACHMENT A

It is further ordered, That this certificate shall take effect and be in force from and after 120 days from the date it is issued, and that within that period the applicant shall sell the said line, or any portion thereof, to any person or persons desiring to purchase the same for continued operation, at a price not to exceed its fair net junk value. Tariffs applicable to interstate and foreign commerce may be canceled upon notice to this commission and to the general public within not more than 30 days prior to the effective date of this certificate, by not less than 10 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

111 I. C. C.

FINANCE DOCKET No. 5314
CONSTRUCTION OF EXTENSION BY ST. LOUIS, TROY &
EASTERN R. R. CO.

Submitted May 8, 1926. Decided May 29, 1926

1. Certificate issued authorizing the St. Louis, Troy & Eastern Railroad Company to construct an extension of its line of railroad in Madison County, Ill.
2. Request for permission to retain excess earnings denied.

Henry I. Green for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

By DIVISION 4

The St. Louis, Troy & Eastern Railroad Company, a carrier by railroad subject to the interstate commerce act, on January 22, 1926, filed its application under paragraph (18) of section 1 of the act for a certificate that the present and future public convenience and necessity require the construction by it of an extension of its line of railroad from a point in the center line of its main track where it is crossed by the eastern line of the U. S. Survey No. 620, claim 485, township 3 north, range 10 west, westerly to and through the city of Venice, Ill., to a point in said city at the eastern end of the bridge, commonly known as the McKinley Bridge, of the Illinois Power & Light Corporation, hereinafter called the power corporation, a distance of approximately 1.53 miles, all in Madison County, Ill. Permission is also requested under paragraph (18) of section 15a of the act to retain the excess earnings from the proposed construction. No representations have been made by State authorities and no objection to the granting of the application has been presented to us.

The applicant owns a line of railroad extending from East St. Louis to Troy, Ill., and operates under lease the line of the St. Louis & Illinois Belt Railway extending from a point near Edwardsville to a point near Formosa, Ill. The two lines intersect and have connection at Troy Junction, Ill. Both companies are controlled by the power corporation, which owns all their capital stock except directors' qualifying shares. At Edwardsville connection is made with a line of the Illinois Traction, Incorporated, hereinafter called

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the Illinois Traction. This line in turn connects with the line of the St. Louis Electric Terminal Railway Company, which extends from Granite City, Ill., through Madison, Ill., and Venice and across the Mississippi River by way of the McKinley Bridge to St. Louis, Mo. The two corporations last mentioned operate lines of electric railroad, subject to the interstate commerce act, under the general designation of Illinois Traction System. Both are controlled by the power corporation, which owns all their common stock and large holdings of their underlying securities.

The proposed extension will traverse the southern part of Venice, crossing yards, tracks, and facilities of the Terminal Railroad Association of St. Louis and a number of trunk-line railroads entering East St. Louis and vicinity. It is to be elevated above the properties of these carriers and is designed to serve as a connecting link between the applicant's existing main line and the McKinley Bridge, where connection would be made with the Illinois Traction System. Indirectly, through the applicant's existing lines, it would afford connection between the bridge and the lines of the Illinois Traction north of Granite City. The applicant states that tentative arrangements have been made whereby the Illinois Traction is to be given operating rights over the proposed extension and the applicant is to receive operating or trackage rights over the tracks of the Illinois Traction System into the St. Louis territory. The proposed extension is not intended to afford any material service to its local territory or to serve any new industries to be established there. Its chief purposes and functions would be to facilitate the movement of traffic now handled by the applicant, to give the applicant direct entrance into the St. Louis industrial district, and to improve operating conditions for the transportation of freight by the applicant and of freight and passengers by the Illinois Traction to and from St. Louis by way of the McKinley Bridge.

The greater part of the applicant's traffic consists of coal, much of which originates on its own lines. The power corporation has a power plant at the east end of the McKinley Bridge. The proposed extension would enable the applicant to make direct deliveries of coal to this plant without the delays incident to interchange. It appears that the applicant handles large quantities of general freight destined to industries in the St. Louis territory. This traffic is interchanged with the Terminal Railroad Association of St. Louis on the east side of the Missouri River and moves over yards, tracks, and bridges said to be highly congested. Construction of the proposed extension and acquisition of operating rights over the McKinley Bridge would enable the applicant to make direct deliveries of this traffic. The movement of the traffic should be greatly expedited

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through the avoidance of interchange and the elimination of grade crossings by means of the elevated extension. Freight traffic handled by the Illinois Traction over and across the Mississippi River via the McKinley Bridge must now move through and upon the streets of Granite City, Madison, and Venice. Construction of the proposed extension and acquisition of operating rights over about 5 miles of the applicant's existing lines should result in measurably shortening the time required for handling this traffic and in considerable reduction in the cost of moving it to the east end of the bridge. Industries and carriers now served by and interchanging traffic with the applicant and the Illinois Traction are expected to benefit from the more expeditious and efficient service anticipated.

Direct connection between the McKinley Bridge and the applicant's existing tracks and facilities is expected to materially increase the volume of traffic now handled by the applicant. It is estimated that the present volume of traffic will be increased at least 25 per cent as a direct result of the construction of the proposed extension. Arrangements for operation by the Illinois Traction over the applicant's existing lines and the proposed extension, it is stated, will enable that company to handle a large additional volume of traffic which it can not handle on its own rails expeditiously and economically through the streets of Granite City, Madison, and Venice. It is expected that the additional tonnage from this source will increase the applicant's present volume of traffic at least 25 per cent and will result in the applicant's receiving a division of the trans-Mississippi rate. Improved service to and from the St. Louis industrial district via the proposed extension and the McKinley Bridge is expected to bring additional traffic to the applicant's line from other carriers. It is estimated that the traffic from this source will, within two years, result in an additional increase of at least 25 per cent in the volume of applicant's traffic. Increase in the applicant's gross revenues to result from operation of the proposed extension the second year after its completion is estimated as follows: From increase in normal traffic, \$140,000; from divisions with the Illinois Traction on its trans-Mississippi shipments, \$75,000; from increase in trans-Mississippi traffic interchanged with other carriers, \$50,000; total, \$265,000. Additional operating expenses and taxes are estimated at \$112,000, and the net increase in railway operating income at \$153,000.

The estimated cost of the proposed extension is \$863,000. There will be one main-line track with provision for a second track in the event the traffic developed requires it. The track will be laid with 90-pound rail. There will be a maximum and limiting grade of 1.75 per cent against westbound traffic. The maximum rate of curvature is to be 5° and the average amount of curvature per mile 55°

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50'. There will be approximately 4,792 feet of wooden trestle or other temporary construction. Both steam and electric power are to be used in the operation of the proposed extension. Power will be furnished by the power corporation at rates to be approved by the Illinois Commerce Commission. The applicant represents that no additional equipment will be required, and that no material increase in charges to road and equipment account during the first five years after completion of the extension are contemplated. It was the applicant's intention to begin construction on or about April 1, 1926, and to complete it on or about October 1, 1927.

The applicant's plan for financing construction is first to issue its short-term notes, to be purchased or guaranteed by the power corporation, and later, on completion of the extension, to refund the indebtedness by issuing its stock and/or first-mortgage bonds. No application for authority to issue securities for the purposes stated has been filed with us. Nothing herein is to be construed as authorizing the issue of any securities, or as a commitment on our part in respect thereto; and nothing in this report, or in our certificate to be issued herein, is to be construed as authorizing the applicant or the Illinois Traction to extend their lines by operating or trackage-rights agreements.

Upon the facts presented we find that the present and future public convenience and necessity require the construction by the applicant of the extension of its line of railroad in Madison County, Ill., described in the application. In our opinion the matters of record do not justify the granting of permission to retain excess earnings, and such request will be denied. An appropriate certificate and order will be issued.

CERTIFICATE AND ORDER

Issued May 29, 1926

Investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require the construction by the St. Louis, Troy & Eastern Railroad Company of the extension of its line of railroad in Madison County, Ill., described in the application and report aforesaid: *Provided, however*, and this certificate is issued upon the express condition, that the construction of said extension

111 I. C. C.

shall be commenced on or before July 1, 1926, and be completed on or before December 31, 1927.

It is ordered, That the St. Louis, Troy & Eastern Railroad Company shall report to this commission in writing the commencement and completion of said construction within 15 days after such commencement or completion, respectively.

It is further ordered, That the St. Louis, Troy & Eastern Railroad Company, when filing schedules establishing rates and fares applicable on such extension, shall in such schedules refer to this certificate by title, date, and docket number.

And it is further ordered, That the request for permission to retain excess earnings be, and it is hereby, denied.

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ATTACHMENT B

The Northwestern Company and the Mountain Company are, and after acquiring the properties in question will be, subject to the interstate commerce act.

Upon the facts presented we find that the acquisition by the Northwestern Company of the properties of the Valley Company, in accordance with the terms of the contract described in the application, and the acquisition by the Mountain Company from the Northwestern Company of that part of the acquired properties located in Montana will be of advantage to the persons to whom service is to be rendered and in the public interest. A certificate to that effect will be issued.

CERTIFICATE OF ADVANTAGE AND PUBLIC INTEREST

Issued April 25, 1928

A hearing and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the acquisition by the Northwestern Bell Telephone Company of the properties of the Golden Valley Telephone Company, in accordance with the terms of the contract described in the application, and the acquisition by the Mountain States Telephone & Telegraph Company from the Northwestern Bell Telephone Company of that part of the properties of the Golden Valley Telephone Company located in Montana, will be of advantage to the persons to whom service is to be rendered and in the public interest.

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FINANCE DOCKET No. 6718 ACQUISITION OF CONTROL BY ILLINOIS TERMINAL COMPANY

Submitted April 20, 1928. Decided April 25, 1928

Acquisition by the Illinois Terminal Company of control, under lease, of the railroad properties of the St. Louis, Troy & Eastern Railroad Company, the St. Louis & Illinois Belt Railway, and the St. Louis Electric Terminal Railway Company, and of the lines of railroad comprising the main division of Illinois Traction, Incorporated, approved and authorized. Condition prescribed.

Henry I. Green for applicant.

L. H. Strasser for Wabash Railway Company; *James M. Chaney* for Missouri Pacific Railroad Company; *Paul J. Christian, T. M. Pierce,* and *W. A. Rodenberg* for Terminal Railroad Association of St. Louis and Missouri & Illinois Bridge & Belt Railroad Company; and *Guy A. Gladson* for receivers of Chicago & Alton Railroad Company.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

By Division 4:

On February 1, 1928, the Illinois Terminal Company, a carrier by railroad engaged in the transportation of property subject to the interstate commerce act, filed an application for authority under paragraph (2) of section 5 of the act to acquire control, under lease, of the railroad properties of the St. Louis, Troy & Eastern Railroad Company, the St. Louis & Illinois Belt Railway, and the St. Louis Electric Terminal Railway Company, hereinafter called the Troy, the Belt, and the Electric Terminal, respectively, and of the lines of railroad comprising the main division of Illinois Traction, Incorporated, hereinafter called the Traction. A hearing has been had. At various sessions of the hearing leave to intervene and be treated as parties was granted to the Wabash Railway Company, the Missouri Pacific Railroad Company, the Terminal Railroad Association of St. Louis, the Missouri & Illinois Bridge & Belt Railroad Company, and the receivers of the Chicago & Alton Railroad Company. The hearing was twice adjourned in order that full opportunity to be

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heard might be accorded to the interveners, but those parties have withdrawn without adducing any testimony or lodging any protest herein. The Governor of Illinois has signified his understanding that the applicant seeks to accomplish, in a different manner, an object that has already been approved by Illinois authorities, and that he sees no objection to the plan proposed. No representations have been made herein by authorities of the State of Missouri, and no objection to the granting of the application has been presented to us.

The applicant was organized in 1895, under the laws of Illinois, as the Illinois Terminal Railroad Company, the change of name being effected in 1922. It owns and operates a line of railroad extending southeastward from Alton, through Wood River, Roxana, Wanda, and Edwardsville, to Le Claire, a distance of 15.4 miles, all in Madison County, Ill. Late in 1921, the applicant obtained from us authority to construct an extension of its line southward from Le Claire to O'Fallon, St. Clair County, Ill., about 14 miles. *Public-Consentence Certificate to Illinois Term. R. R.*, 70 I. C. C. 820. A part of this extension would have paralleled the Belt's line from Le Claire, through Fox Junction and Troy Junction, to Formosa Junction, 7 miles, but duplication of these facilities was obviated by an agreement whereunder the applicant acquired a half interest in that part of the Belt's line from Le Claire to Troy Junction, 4.84 miles, and the sole interest in that part from Troy Junction to Formosa Junction. Construction from the latter point toward O'Fallon has proceeded as far as the Madison-St. Clair county line, approximately 3 miles, and it is expected that the work will be completed and the line placed in operation within the next six months. Between Wanda and Hartford, Ill., a point south of Wood River, the applicant operates under lease, as a switching lead, about 3 miles of track owned by the Wabash Railway Company.

The Belt was incorporated under the laws of Illinois in 1905. As previously indicated, this corporation now owns a half interest in about 5 miles of railroad from Le Claire to Troy Junction, but, since its interest in this line is leased to the Troy, the Belt conducts no operations thereover.

The Troy, also an Illinois corporation, owns and operates a line extending westward from Troy, through Troy Junction and McKinley Junction, to National City, near East St. Louis, Ill. In May, 1926, we authorized the Troy to construct a line from a point now called McKinley Junction, through Venice, Ill., to the eastern approach of the McKinley Bridge crossing the Mississippi River from Venice to St. Louis, Mo. *Construction by St. Louis, Troy & Eastern R. R.*, 111 I. C. C. 303. It is stated that this line has been completed

and is in operation. The Troy also operates under lease and under a joint operating agreement providing for the division of maintenance charges, etc., upon a wheelage basis, from Troy Junction to Le Claire over the line jointly owned by the applicant and the Belt, and has the right to join in the operation of the extension from Troy Junction to O'Fallon under one of two options.

The Electric Terminal is a Missouri corporation. It owns and operates an electric railway extending from Granite City, Ill., south and west through Madison, Ill., to Venice, and thence across the McKinley Bridge, to terminals in the block bounded by High, Twelfth, Linden, and Morgan Streets, in the down-town section of St. Louis.

The Traction was formed in 1923, under the laws of Illinois, by the consolidation of five constituent electric railway companies. The properties owned and operated by the consolidated company comprise two disconnected divisions, all in Illinois, as follows: The valley division, extending westward from Joliet, through Ottawa, to Princeton, with a branch from Ottawa to Streator; and the main division, which includes main stems extending northward from Madison, through Granite City, Edwardsville, and Le Claire, Staunton, Springfield, and Mackinaw Junction, to Peoria, eastward from Springfield, through Mechanicsburg Junction, Decatur, Champaign, Urbana, and Ogden, to Danville, and east and south from Mackinaw Junction, through Bloomington, to Decatur, together with branch lines from Staunton to Hillsboro, from Ogden to Homer, and from Danville to Catlin and to Ridge Farm. The main and branch lines of the main division aggregate about 420 miles of railway. At the points of nearest approach, the distance between the valley and the main divisions is from 40 to 50 miles.

Lines of the applicant, the Troy, and the Traction connect at Le Claire, where these carriers have a jointly owned yard. The applicant's line connects with lines of unaffiliated carriers, as follows: At Alton, with the Alton & Eastern Railroad, the Chicago, Burlington & Quincy Railroad, and the Missouri-Kansas-Texas Railroad; at Wood River, with the Chicago & Alton Railroad and the Cleveland, Cincinnati, Chicago & St. Louis Railway; at Edwardsville, with the Wabash Railway; at Le Claire, with the Litchfield & Madison Railway and the New York, Chicago & St. Louis Railroad; at Fox Junction, with the Illinois Central Railroad; and at Formosa Junction, with the Pennsylvania Railroad. Upon completion of the extension to O'Fallon, the applicant's line will connect at that point with the Baltimore & Ohio Railroad and a branch line of the Louisville & Nashville Railroad. The trunk lines reaching the Alton-Wood River-Hartford district connect with lines of the Terminal

Railroad Association of St. Louis, hereinafter called the Terminal Association. Connection between lines of the Electric Terminal and of the Traction main division is effected at Granite City and at Madison. It was testified that the lines of the main division connect with every steam carrier in the territory traversed in central Illinois.

The applicant is a freight carrier. The Traction transports both passengers and freight. The Electrical Terminal is engaged in the transportation of passengers and formerly, it would appear, operated the Traction trains, both passenger and freight, into the St. Louis terminal. The passenger trains continue to use the route formed by the lines of the Traction and the Electric Terminal, but on account of more favorable grades and ability to avoid restrictions on the movement of freight trains through the streets of Granite City, Madison, and Venice, the Traction freight traffic in and out of St. Louis now moves from and to Le Claire via the line of the Troy. Though under common control, the lessor companies operate as separate and distinct units. The interchange between the Traction and the Troy aggregates about 16,000 carloads annually.

All the capital stock, except directors' qualifying shares, of the Belt, the Troy, the Electric Terminal, and the Traction is owned by the Illinois Power & Light Corporation, hereinafter called the power company. The applicant's stock is held by other interests. Besides controlling the carrier companies above mentioned, the power company owns the McKinley Bridge and operates, apparently through numerous subsidiary companies, street railways in several cities and electric-power, gas, steam-heating, water, and ice plants serving a large area in Illinois.

In tracing the development of the proposals herein presented for our consideration, it is appropriate to notice some of the history of the electric railways involved in the proposals. About 25 years ago, numerous street railways and other utilities in Illinois were controlled by the Illinois Traction Company, a subsidiary of the Sun Life Assurance Company, of Montreal, Canada. For the purpose of stabilizing its investments in these enterprises, the parent company conceived the plan of connecting the street railways in various cities by interurban lines. Construction began in 1903. The work was prosecuted in sections, under the auspices of six subsidiary carrier companies, including the Electric Terminal, and was finally completed in 1909 or 1910. Eventually the Sun Life Assurance Company's interests in the Illinois Traction Company were acquired by the North American Light & Power Company, which is controlled by the North American Company and the Middle West Utilities Company, through ownership, in equal shares, of 88 per cent of its capital stock. In 1922, certain transactions were consummated, by way of

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exchange of securities, merger, etc., which led to the transfer of control of the Illinois Traction Company's subsidiaries to the power company, organized in 1923, and, in the same year, to the above-mentioned consolidation, in which the Electric Terminal was not included.

Originally conceived primarily for the transportation of passengers, the traffic of the lines comprising the Traction system has been materially affected by extensive construction of improved highways in the territory served. Practically all the lines are paralleled by one or more hard roads and the Traction is now facing motor-vehicle competition over practically every mile of its lines. The ratio of the passenger revenues to total earnings has declined steadily from 83 per cent in 1910 to 43 per cent in 1927. This change in the business of the system has been accompanied by substantial losses. Thus, although dividends aggregating \$455,005.78 were paid in the period 1904-1907 and in 1917, losses sustained by the various proprietary interests from 1908 to 1916 and from 1918 to 1926 aggregate \$7,092,934.24, after crediting dividends received.

The prime necessity of the electric system being additional tonnage, the matter of gaining access into the Alton industrial area, which is productive of large volumes of freight, has been under consideration for some time. An early step in furtherance of this object was the purchase by the power company, in 1924, of the capital stock of the Troy and of the Belt. Next, as the applicant's line occupies a strategic position with respect to the origination of freight, an officer of that company was approached with a request for track-age rights into the industrial district, but consideration of this proposal was then foreclosed by reason of pending negotiations with trunk-line carriers. The prospect of leasing the applicant's properties to one or another of such carriers having failed, negotiations were resumed between the power-company interests and the applicant, with the result that the parties ultimately agreed in principle and the details were worked out along various lines until the present plan was evolved.

Subject to our approval of the proposals herein, the power company has agreed to purchase all the stock of the applicant for \$7,500,000. Apparently this proposal is pending before the Illinois Commerce Commission. The power company then owning all the stock of all the carrier companies involved, it is proposed that all the properties, except the valley division, be unified for operation by means of leases to the applicant of the lines of the four other companies.

As one of the instruments is to be executed jointly by the Belt and the Troy, there are to be three lease agreements. Except as

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to parties and rentals payable to the lessors, the terms of the proposed leases are to be substantially identical. They are to be dated as of January 2, 1928, and are to be for 99 years, beginning January 1, 1928, but may be sooner terminated at the option of either party upon six months' prior notice in writing, or by default. The annual rentals payable to the respective lessor companies are as follows:

The Illinois Traction.....	\$350,000
The Electric Terminal.....	190,000
The Troy and the Belt.....	100,000
Total.....	1,000,000

The lessee is also to pay all taxes, assessments, etc., levied upon the demised premises, to maintain the properties, and to indemnify the lessors against claims for loss and damage from operation. Provision is made for preservation of the lessors' corporate existence.

Extensions, additions, and betterments deemed necessary or desirable by the lessee are to be provided by that party and are to become a part of the leased properties without liability on the part of the lessee for increased rental unless and until the lessee is reimbursed by the lessors for expenditures made for such purposes. The lessee is authorized under the lease to sell or otherwise dispose of any part of the properties which may be considered to be no longer necessary for proper operation of the railroads. Nothing herein is to be construed as authorizing the applicant to abandon operation of any of the lines involved, or any parts thereof, or as relieving the applicant or the lessors from compliance with applicable provisions of section 20a of the interstate commerce act.

After the leases become effective, the Traction will still have possession of and operate its valley division. This line is an independent operating unit, having separate operation, signal, traffic, and maintenance departments, and separate accounting.

In support of the applicant's proposals herein, it is urged that operation of the properties of the applicant and of the lessors under common control and management will result in large economies in the costs of operation, better service through more prompt and expeditious movement of traffic, preservation of the service performed by the Traction, and opportunities for the development of coal fields and for the location and expansion of industries along the routes traversed by the lines of the proposed unified system. Each of the operating carriers serves territory not served by any of the others, so that none of the proposed lessors compete with the applicant or with each other. The proposed rentals are just and reasonable, it is

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contended, because they bear an appropriate relation to investment, are sufficient to provide for fixed charges of the lessors, and are within the unified system's earning power as demonstrated by past experience.

It was testified that the applicant obtains about one-half of the tonnage originating in the Alton industrial zone. The applicant handles annually about 100,000 loaded cars, of which approximately 38 per cent moves in interchange with connecting trunk lines and other carriers. Its line is not used in intermediate movement nor does the applicant perform any switching service between the various connecting lines. The small local traffic consists primarily of oil moving from refineries to consuming industries, all located along the line.

Of the interchange traffic inbound about 38 per cent is made up of raw materials received for delivery to industrial plants. The outbound traffic is comprised largely of products of manufacture originating at such plants and destined to off-line points. About 36 per cent of this traffic is oil, the greater part of which moves to destinations east of the Mississippi River.

Complete control of the routing of the interchange traffic is exercised by the shippers. According to the recollection of the witness, the volume of outbound traffic delivered to connecting carriers is approximately as follows:

Carrier	Cars annually
Wabash.....	Between 15,000 and 16,000
Illinois Central.....	9,000
Troy.....	12,000
Pennsylvania.....	5,000
Illinois Traction.....	1,700
Illinois Electric Terminal.....	(1)
New York, Chicago & St. Louis.....	12,000 to 14,000
Total.....	60,700

¹ Relatively small

The eastbound traffic will not be affected by the proposed unification, because moved as routed by the shippers, but it appears that completion of the extension to O'Fallon will enable direct connection with the Baltimore & Ohio Railroad and thereby increase that carrier's share of the traffic through elimination of delays incident to the present back haul and switching at East St. Louis.

The westbound traffic formerly was delivered to the Terminal Association at its Madison yard, near the east approach of the McKinley Bridge. The cars were then handled by three separate movements to the Bremen Street classification yard in St. Louis,

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the Troy's route to the McKinley Bridge, the traffic avoids yards, with substantial savings in the time required for the movement. Whereas this traffic is unattractive to the trunk lines serving the Alton district, on account of the short haul, it is advantageous to the Troy because it yields one-half of the trans-Mississippi rate.

The business of the applicant is handled entirely upon the basis of divisions of through rates. With an average operating ratio of 43.4 per cent since 1922, and other favorable conditions, the applicant has enjoyed a high degree of prosperity. During the period from January 1, 1922, to November 30, 1927, inclusive, net income ranged from \$423,783.92 in 1922 to \$846,886.78 in 1926, and \$886,483.37 in 11 months of 1927. As of November 30, 1927, the applicant's balance sheet shows investment in road and equipment \$2,916,832.80, general \$9,751.95, investment in leased line \$9,223.98, additions and betterments in course of construction \$302,786.65, other investments \$2,353,490.85, current assets \$1,102,186.13, deferred assets \$46,861.59, capital stock \$500,000, current liabilities \$388,503.43, unadjusted credits \$489,465.56, and corporate surplus \$5,363,164.84.

There is testimony to the effect that the lines of the Traction's main division serve as a link between St. Louis, where the Electric Terminal has a modern passenger station and freight-handling facilities, and productive industrial, mining, and agricultural territory of central Illinois. The lines serve 48 coal mines, and pass through 88 cities, towns, and villages. An exhibit received in evidence lists 6 mines, 36 grain elevators, and 24 other enterprises, served exclusively by the main division, some of which, it is said, would be forced out of business, with large losses in investment, if the Traction ceased operation. In addition, a large number of industries are served jointly with other carriers. The chief markets for coal produced in the territory are Chicago, St. Louis, and Kansas City. There are along the line important deposits of gravel and shale, from the latter of which the Traction obtains traffic in the movement of the raw material to brick plants and of the finished product outbound. The main division is especially adapted to serve the farmers in the territory by reason of convenient sidings and elevator facilities, and service which enables advantageous marketing of grain.

During 1927 the carload and less-than-carload freight handled through the Traction stations aggregated 3,342,126 tons. This amount, however, is subject to adjustment for necessary duplication incident to local movements, which comprise about one-half of the total traffic. Of the remaining half, one-third is intermediate or

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whereas, according to the testimony, the Traction's business with the Terminal Association and with the Alton & Southern, amounting annually to about 30,000 and 9,000 loaded cars, respectively. The proposed unification for operation of the main division with other affiliated lines does not change the physical situation, and aside from contemplated improvement in service, involves nothing new in the matter of diverting traffic from competing lines. It is hoped so to improve the service as to attract additional tonnage to the main division through good will of the shippers, and to encourage the location of new industries along the lines.

From January 1, 1923, to December 31, 1926, the Traction sustained deficits aggregating \$1,982,089.80. Had the power company interests not advanced sums equal to those losses, it is stated, the Traction would be in receivership, but a substantial amount, if not all, of the Traction bonds are owned by the power company. Since January 1, 1923, the power company has also advanced nearly \$5,000,000 for improvement of the subsidiary company's properties.

While there is no direct testimony by patrons of the main division, it appears these people have been apprehensive that the decrease in the Traction's passenger traffic might result in loss of the service performed by the carrier and have offered to cooperate, and have cooperated in various ways, in the effort to preserve the lines.

Results of operation by the Troy and the Electric Terminal during recent years have been as follows:

	Net Income, Troy	Net Income, Electric Terminal
Year 1922.....	\$174,400.70	\$2,705.38
Year 1923.....	188,918.31	5,540.86
Year 1924.....	188,918.31	7,540.86
Year 1925.....	178,040.22	66,187.08
Year 1926.....	77,436.11	605,875.72
Year 1927 (11 months).....	80,128.41	101,177.53

1 Deficits in italic.

The decrease in earnings of the Troy is attributed to a decline in coal traffic. The Electric Terminal's earnings are said to have been affected by increased transportation costs.

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The following tabulation reproduces, in condensed form, balance sheets as of November 30, 1927, of the lessor companies:

	Traction	Troy	Belt	Electric Terminal
Assets				
Investment in road and equipment.....	\$46,013,398.78	\$2,119,164.05	\$89,772.02	\$4,967,600.24
Sinking funds.....	268,997.00	155,156.84	207,060.08	122,031.82
Current assets.....	1,070,260.72	91,370.15	122,031.82	82,883.43
Deferred assets.....	392,640.00	6,826.87		
Unadjusted debits.....				
Total.....	47,600,910.82	2,403,178.88	296,828.30	4,872,516.07
Liabilities				
Capital stock:				
Common.....	22,921,300.00	860,000.00	260,000.00	1,000,000.00
Long-term debt.....	22,227,695.05	562,375.66		2,198,263.24
Current liabilities.....	678,740.71	108,150.69		485,833.11
Deferred liabilities.....	1,698,847.31	479,187.43	62.48	83,018.92
Unadjusted credits.....	4,418.24	463,465.80	44,706.82	18,934.89
Miscellaneous fund reserves.....				24.85
Corporate surplus.....				
Total.....	47,600,910.82	2,403,178.88	296,828.30	4,872,516.07

¹ Main division, \$28,247,570.44.

It is contended that the rentals under the proposed leases are in each instance less than 6 per cent of minimum value, as to which the applicant has furnished information for each property. For the Troy and the Belt the method employed in obtaining the data was to begin with amounts contained in our tentative valuations served upon those companies and to add subsequent expenditures for additions and betterments. In the cases of the Traction and the Electric Terminal, the services of experts were engaged to prepare inventories, apply prices, etc. The results produced are as follows:

	Amount
<i>The Troy and the Belt</i>	
Tentative valuation as of June 30, 1919:	
Total owned and used.....	1,283,333.00
Leased from Belt.....	170,000.00
Leased from private party.....	6,950.00
Total used.....	1,459,783.00
Additions and betterments to Dec. 31, 1927.....	1,391,628.07
Total.....	2,852,411.07
<i>The Traction (main division)¹</i>	
Inventory as of Jan. 1, 1928 (1928 prices)	31,408,072.00
Inventory as of Jan. 1, 1928 (1914 prices)	18,512,825.00
Inventory and prices as of June 30, 1914, plus subsequent additions and betterments.....	21,424,007.00
<i>The Electric Terminal¹</i>	
Inventory as of Jan. 1, 1928 (1928 prices)	4,024,340.00
Inventory as of Jan. 1, 1928 (1914 prices)	3,902,651.00
Inventory and prices as of June 30, 1914, plus subsequent additions and betterments.....	1,120,264.00

¹ Cost of reproduction, less depreciation.

Our valuation of the above-mentioned properties has not been completed and nothing herein is to be construed as anywise affecting the determinations hereafter to be made by us in those matters, nor as affecting any valuation of the applicant's property.

For the purpose of comparing the rentals with earnings, and requirements to meet fixed charges, of the proposed unified system, the applicant has furnished information for 1926, the last calendar year for which full data were available and a period described in the testimony as typical of earning conditions. The comparison follows:

Net income from operation:	
Troy.....	\$132,237.98
Electric Terminal.....	26,827.57
Traction (main division).....	391,873.56
Applicant.....	898,604.98
Fixed charges:	
Troy.....	30,491.41
Electric Terminal.....	192,587.37
Traction.....	558,307.19
Applicant.....	3,782.07
Rentals under leases:	
Excess of aggregate income over aggregate rentals.....	1,000,000.00
Excess of aggregate rentals over aggregate fixed charges.....	444,544.09
Excess of aggregate rentals over aggregate fixed charges.....	214,831.96

Concerning economies which would follow unified operation as proposed, it appears that it will be possible to eliminate present duplication in supervisory, inspection, traffic, and transportation forces, thereby effecting savings estimated to exceed \$150,000 per annum. The proposed unification would also result in better service through coordination of schedules and one-line movement of traffic.

Summarizing the advantages of the proposed leases, from the standpoint of public interest, an executive of the power company testified that it is a matter of great importance to the people of central Illinois that the service of the Traction be preserved and that this would not be possible without the kind of relief now proposed; that contemplated economies will be of benefit to the shippers because the savings will ultimately be reflected in tariff reductions; and that the unified and improved system will promote development of the territory served. Finally, it is urged, the applicant's proposals will conform to public policy in effecting a union of weak and strong lines. Witnesses insist that the proposals are not intended to work injury to any other carriers. It is hoped, through expedited service, to obtain a normal amount of the business, but it is not intended to develop a switching road.

It appears desirable that there be no restriction of the choice of routes now available to shippers on the applicant's line. The pro-

posed acquisitions of control will be approved upon condition that, so far as lies within its power, and unless and until otherwise ordered by us, the applicant shall preserve existing routes and channels of trade and commerce established by other carriers in connection with the applicant or by the applicant in connection with other carriers, maintain existing gateways for the interchange of traffic with such carriers, and continue the present neutrality of handling traffic by the applicant, so as to permit equal opportunity for service and routing, or movement of traffic which may be competitive with traffic of the unified system to and from all lines connecting with the applicant's line, so long as the carriers operating those lines desire the maintenance of such existing routes, without discrimination in service against such competitive traffic.

Upon the facts presented, and upon the condition herein prescribed, we find that the acquisition by the applicant of control of the railroad properties of the Troy, the Belt, and the Electric Terminal, and the lines of railroad comprising the Traction main division, in accordance with the proposed leases set forth in the application, will be in the public interest; and that the considerations and terms and conditions of the proposed leases are just and reasonable.

An appropriate order will be entered.

ORDER

Entered April 25, 1928

A hearing and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the acquisition by the Illinois Terminal Company of control of the railroad properties of the St. Louis, Troy & Eastern Railroad Company, the St. Louis & Illinois Belt Railway, and the St. Louis Electric Terminal Railway Company, and of the lines of railroad comprising the main division of Illinois Traction, Incorporated, in accordance with the terms of the leases set forth in the application, and upon the condition prescribed in said report, be, and the same is hereby, approved and authorized.

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FINANCE DOCKET No. 4623

DEFICIT STATUS OF BIRMINGHAM, SELMA & MOBILE RAILROAD

Submitted April 17, 1928. Decided May 2, 1928

Provisions of section 204 of the transportation act, 1920, found not to be applicable to the Birmingham, Selma & Mobile Railroad Company. Claim dismissed.

W. B. Coats for the company.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

The Birmingham, Selma & Mobile Railroad Company, a corporation of the State of Alabama, hereinafter termed the company, is a steam-railroad company which, during the Federal control period, engaged as a common carrier in general transportation and operated a line of railroad between Brent and Stewart, Ala., approximately 14 miles in length, which connected with the Mobile & Ohio Railroad, a railroad under Federal control.

The company filed with us a claim under section 204 of the transportation act, 1920, covering the period from January 1, 1918, to February 29, 1920, inclusive, in the amount of \$9,114.26. The company was under Federal control from January 1, 1918, to June 30, 1918, inclusive, and for the remaining portion of the period of Federal control, during which it operated its own railroad, its accounts as adjusted by us, show it earned a railway operating income of \$1,512.30.

For the reasons fully stated in our report in *Deficit Status of Birmingham & Garfield Ry. Co.*, 99 I. C. C. 724, decided October 17, 1925, we have held that the words "deficit in its railway operating income" as used in section 204 of the transportation act, 1920, mean an excess of railway operating expenses over railway operating revenues, computed as therein provided.

Following our conclusions in that case we find that the provisions of section 204 of the transportation act, 1920, are not applicable to

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ATTACHMENT C

FINANCE DOCKET NO. 20388

ILLINOIS TERMINAL RAILROAD COMPANY ABANDONMENT,
ETC., MCKINLEY BRIDGE PROPERTIES*Decided November 17, 1958*

Certificate issued permitting (a) abandonment by the Illinois Terminal Railroad Company of that portion of its line of railroad over the McKinley Bridge between St. Louis, Mo., and Venice, Ill., and approaches thereto, by sale thereof to the city of Venice, and (b) authorizing acquisition and operation by the Illinois Terminal Railroad Company of the aforesaid line of railroad. Conditions prescribed.

George E. Lee for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND MCPHERSON

BY DIVISION 4:

The Illinois Terminal Railroad Company, a common carrier by railroad subject to the provisions of part I of the Interstate Commerce Act, as amended, on October 28, 1958, applied for permission under section 1(18) of that act (a) to abandon that portion of its line of railroad over the so-called McKinley Bridge including the vehicular and elevated rail approaches thereto, extending from St. Louis, Mo., across the Mississippi River, to Venice, Ill., approximately 1.979 miles, all in St. Louis, Mo., and Madison County, Ill., and (b) to acquire from the city of Venice the right to use and operate over the railroad tracks and facilities on the bridge and elevated railroad approaches, for a period of 50 years and successive 50-year periods in perpetuity at the Illinois Terminal Railroad Company's option. No objection to the application has been presented.

Under the proposed transaction the applicant will sell the bridge properties to the city of Venice, and that body concurrently will convey to the applicant the exclusive right to use and operate

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the railroad portions of the bridge for railroad operations. The applicant states its operations and service between, in, and through St. Louis and Venice will continue to be provided and maintained without any interruption whatsoever, and there is no intention on the part of the applicant to abandon, in any respect, its service or operations presently existing. Accordingly, the applicant suggests that the proposed sale does not constitute an abandonment of the applicant's line of railroad upon the bridge and the rail approaches thereto within the meaning of section 1(18), that, there being no abandonment, there is no acquisition of a line of railroad within the meaning of that section, and that the application should be dismissed.

History and details of transaction.—In Finance Docket No. 18752, *Illinois-Missouri Term. Ry. Co. Purchase*, 295 I.C.C. 805 (not printed in full), by report and order dated April 2, 1956, this Commission authorized, among other things, the Illinois-Missouri Terminal Railroad Company, subsequently renamed Illinois Terminal Railroad Company, to purchase the properties and assets of the then existing Illinois Terminal Railroad Company, and authorized a number of class I railroads to acquire control of the purchaser. In connection therewith the Commission also authorized the issuance by the applicant of its note in the principal amount of \$20,015,635 for the acquisition of such properties. Included in the properties was the McKinley Bridge and the Commission, in its report stated:

It is intended that, contemporaneously with the conveyance to Illinois-Missouri of the properties and assets of Illinois Terminal, the former will sell to Bi-State, or such other purchaser as may be acceptable to it, for the sum of \$13,500,000, the McKinley bridge property, excluding the rail approaches thereto, and that Bi-State will lease to Illinois-Missouri for a period of 40 years or for such other term as agreed to, the railroad tracks and other rail facilities located on the bridge with the exclusive right in Illinois-Missouri to the use of such tracks and railroad facilities during the term of the lease.

The evidence in that proceeding, as well as the evidence supporting the applicant's petition for extending the date of maturity of the note, which petition was granted by supplemental order dated June 9, 1958, was to the effect that the note was to provide interim financing of the purchase price of the properties of the Illinois Terminal Railroad Company pending the sale of the bridge properties. If the bridge properties were sold the pro-

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ceeds received from such sale would be applied to reduce the principal due on the note and the remainder financed on a permanent basis through the issuance of stock, bonds, or otherwise, after this Commission's approval.

While the sale of the bridge properties was discussed in the report of April 2, 1956, neither that decision nor the order purported to grant any authority which might be necessary under the act to carry out such plan nor did the applicant in that proceeding seek such authority. The applicant states that the matter of such sale was presented as a matter of information in order to fully disclose all aspects of the purchase transaction and to show the financial effect of the sale of the bridge properties.

Although it was originally intended that the bridge properties be sold to the Bi-State Development Agency, the transaction with that agency was not consummated. Thereafter, under date of June 11, 1958, the applicant entered into an agreement with The Sarjem Corporation, acting as agent for the city of Venice, providing for the sale of the McKinley Bridge properties by the applicant to the city. This agreement was supplemented under date of September 11, 1958.

The line of railroad involved herein extends from a point on the elevated railroad approach in Illinois at the east city limits of the city of Venice across the McKinley Bridge to a point on the elevated railroad approach in Missouri, which is 239.7 feet north of and parallel with the north line of Dock Street extended eastwardly in the city of St. Louis. The length of the first main track on the line is 1.979 miles and the length of the second main track is 1.299 miles. The bridge itself, as described in the purchase proceeding, Finance Docket No. 18752, is a toll bridge consisting of a single deck over which both rail and vehicular traffic pass, with the vehicular approaches diverging at each end of the bridge from the long elevated rail approaches.

The city of Venice proposes to finance the purchase by the issuance of series "A" revenue bonds from the proceeds of which \$9 million in cash will be paid to applicant, and, in addition, the applicant will receive \$11 million principal amount of city of Venice 40-year 2-percent series "B" subordinate revenue bonds.

Under a proposed "Railroad Agreement," a copy of which is attached to the application, the city will grant unto the applicant the right to operate its trains over the bridge and considered line of railroad, which right will be exclusive except that appli-

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cant may grant trackage rights to other railroads. Applicant will be obligated at its own expense to maintain, and make such additions and betterments as it may require, upon the line of railroad (but not including the bridge deck and roadway adjacent to and between each of the rails and the double tracks) and the elevated railroad approaches. Other provisions are included in the agreement defining the rights and obligations of the parties in respect of general maintenance, carrying of insurance, liability for damages, et cetera. The agreement provides for the continued use of the bridge, railroad approaches, and railroad facilities by the applicant without interruption for an initial period of 50 years and successive periods of 50 years in perpetuity at the option of the applicant. The basic rental payable by the applicant will be an amount not exceeding \$250,000 annually, if the coupon rate of the series "A" bonds is 5 percent, plus \$25,000 in the first year, \$20,000 in the second year, \$15,000 in the third year, \$10,000 in the fourth year, and \$5,000 in the fifth year. If the series "A" bonds can be marketed at a coupon rate less than 4.95 percent, then the applicable annual rental will be revised downward on a graduated scale for each 0.05 of a point, and if the interest rate is under 4.50 percent the rental would be \$200,000 annually. Upon retirement or refunding of all the series "A" and "B" bonds the basic rental will be reduced to \$25,000 per annum. In addition to the basic rental the applicant will be required to pay \$1 for each loaded or empty freight car, caboose, and locomotive in excess of 200,000 units of such equipment which cross the bridge in any one year.

Eleven railroad companies, proprietary owners of the applicant, will agree by joint and several covenant to pay any installments of basic rent required by the terms if applicant should default in payment of same.

The line is maintained sufficiently to enable the applicant to continue its existing operations as is contemplated by the transactions described. Based upon 1956 cost indices used by this Commission, the cost of reproduction new, less depreciation, of all properties to be conveyed by the applicant to the city of Venice is estimated at \$14,582,630. For income tax purposes the Internal Revenue Service has placed a value thereon of approximately \$8,950,000. The valuation based upon capitalization at 6 percent of net income from the highway and rail deck of the bridge, after deduction of allocated fixed charges (4 percent of \$9 million) and allowance for income taxes on the remainder, is estimated at \$8,135,300. For the years 1956 and 1957 a segre-

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gated income statement of the applicant for the McKinley Bridge property shows net income before income taxes of \$734,375 and \$654,841, respectively, from railroad operations, \$594,503 and \$591,291, respectively, from vehicular roadway and miscellaneous operations, and total net income before income taxes, of \$1,328,879 and \$1,246,132. In those years 74,972 and 64,874 carloads of freight moved over the bridge.

Jurisdiction.—As heretofore mentioned, the applicant challenges our jurisdiction in the premises. The application has been filed in order to obtain such approval as may be necessary to remove all legal hindrances or impediments which may exist and permit the consummation of the transactions without further delay. The exact question here involved has never been presented for our consideration.

Under section 1(18) of the act it is made unlawful for any carrier by railroad to abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained a certificate from this Commission that the present or future public convenience and necessity permit of such abandonment. The provision is twofold, applying not only to abandonment of operation but also to abandonment of "all or any portion of a line of railroad." That the track over the approaches and the bridge constitute a portion of the main line of the applicant is indisputable. The fact that the applicant, after it conveys the title to the city, will be granted rights to operate over the railroad portions of the bridge and approaches does not alter the nature of the antecedent sale, under which it will dispose of all its rights in the line.

A somewhat similar situation to that presented here is where a line of railroad is to be abandoned and in lieu thereof the carrier acquires trackage rights over, or joint use of, the paralleling lines of another. In such cases we have held that approval of this Commission is necessary under section 1(18) for the abandonment and for construction of connecting tracks that may be required, and that appropriate authority also must be obtained for use of the parallel tracks. *Sacramento N. Ry. Trackage Rights*, 290 I.C.C. 145, and 290 I.C.C. 229. In Finance Docket No. 18992, *Great Northern Ry. Co. Acquisition*, 295 I.C.C. 809 (not printed in full), decided December 6, 1955, we took jurisdiction over a transaction involving abandonment by the Great Northern and the Minneapolis, St. Paul and Sault Ste. Marie Railway Company of certain segments of their respective

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lines and the acquisition by them of an undivided one-half interest in, and joint use of, the paralleling line of the other.

Even if the two conveyances, or grants, here involved, i.e., the sale and the leaseback, are considered as a single transaction, it is clear that the result thereof will be a substantial diminution in the applicant's title, and to the extent of such diminution there will be a relinquishment, or abandonment, by the applicant of the line of railroad involved. The fact that the lease is for a long term, with options to renew in perpetuity, is not material in determining our jurisdiction. Under the theory advanced by applicant, since there is no immediate intention to abandon operation, section 1(18) would not apply even if the term of the leaseback were limited to 1 year and regardless of the terms, onerous or otherwise, which might be imposed upon the carrier as a condition to exercise of its right to operate over its line. If a railroad in such manner and without our approval may dispose of its interest in all or a part of its line, and in substitution thereof acquire a sharply limited leasehold or similar interest under terms over which we may exercise no control, it could thereby disable itself from fulfilling its common carrier obligations. Thus, the purpose and intent of section 1(18), which we are required to administer and enforce with a view to carrying out the expressed national transportation policy of the Congress, would be defeated.

We conclude and find that the proposed transactions constitute an abandonment and an acquisition of a portion of a line of railroad by the applicant herein subject to our jurisdiction under the provisions of section 1(18).

Conclusions and findings.—The transactions proposed will permit the applicant to retain the use of the rail facilities on the bridge at a reasonable rental and enable the applicant to go forward with its plan for permanent financing. There will be no interruption of service on the line. It is clear that the proposals in this proceeding are part of a plan to promote economy in operation and assist the broader plan involved in Finance Docket No. 18752, supra. Such plan has been found to be consistent with the public interest, and the same conclusion is warranted here.

In Finance Docket No. 18752, supra, the Commission was aware that in the event the bridge properties were sold there were some employees of the then Illinois Terminal used in various capacities in the operation of the McKinley Bridge who might be adversely affected. It was concluded, such employees should be protected

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and the approval in that proceeding was conditioned on the protective conditions as set forth in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177. In the present proceeding the applicant has no objection to the imposition of the conditions set forth in *Chicago, B. & Q. R. Co. Abandonment*, 257 I.C.C. 700, which are those usually prescribed in abandonment cases and in substance the same as those first mentioned. Such conditions will be prescribed. Representatives of certain of the employees have entered into an agreement with the applicant with respect to the protection which will be afforded employees affected by the transaction. Prescription of the aforementioned conditions shall not be construed to preclude the carrying out of any agreement which the applicant has entered into or may enter into with its employees covering the subject matter.

Subject to the conditions for protection of employees referred to above, we find that the present and future public convenience and necessity (a) permit abandonment by the Illinois Terminal Railroad Company by sale to the city of Venice, Ill., of that portion of its line of railroad over the McKinley Bridge between St. Louis, Mo., and Venice, Ill., and approaches thereto, and (b) require the acquisition and operation by the Illinois Terminal Railroad Company under the terms and conditions described and referred to above of the said line of railroad.

An appropriate certificate will be issued in which provision will be made for the submission of journal entries.

COMMISSIONER ARPALA did not participate.

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FINANCE DOCKET NO. 23195

NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.
TRUSTEES DISCONTINUANCE OF PASSENGER SERVICE
BETWEEN BOSTON AND NEEDHAM HEIGHTS, WEST MED-
WAY, BLACKSTONE AND DEDHAM, MASS.

Decided November 3, 1965

1. Found that the present and future public convenience and necessity will permit the discontinuance of operation by The New York, New Haven & Hartford Railroad Co. Trustees of all the passenger trains presently operated by said carrier between Boston, Mass., and respectively, Needham Heights, West Medway, Blackstone, and Dedham, Mass., and that the continued operation of said trains would constitute an unjust and undue burden upon said carrier's interstate operations and upon interstate commerce.
2. Motion for omission of examiner's recommended order and report, granted.
3. Motion for deferral of a report in this proceeding, denied.

Joseph Auerbach, Robert G. Bleakney, Jr., and Edmund M. Sweeney for petitioners.

Robert M. Edgar for New England Council, intervener in support of petition.

Edward G. Seferian and *Herbert Baer* for Massachusetts Department of Public Utilities as its interest may appear.

Edward F. McLaughlin, Jr., Sidney Weinberg, and James D. Harrington for Massachusetts Bay Transportation Authority as its interest may appear.

Nelson I. Crowther, Jr., for Massachusetts Consumers' Council, protestant.

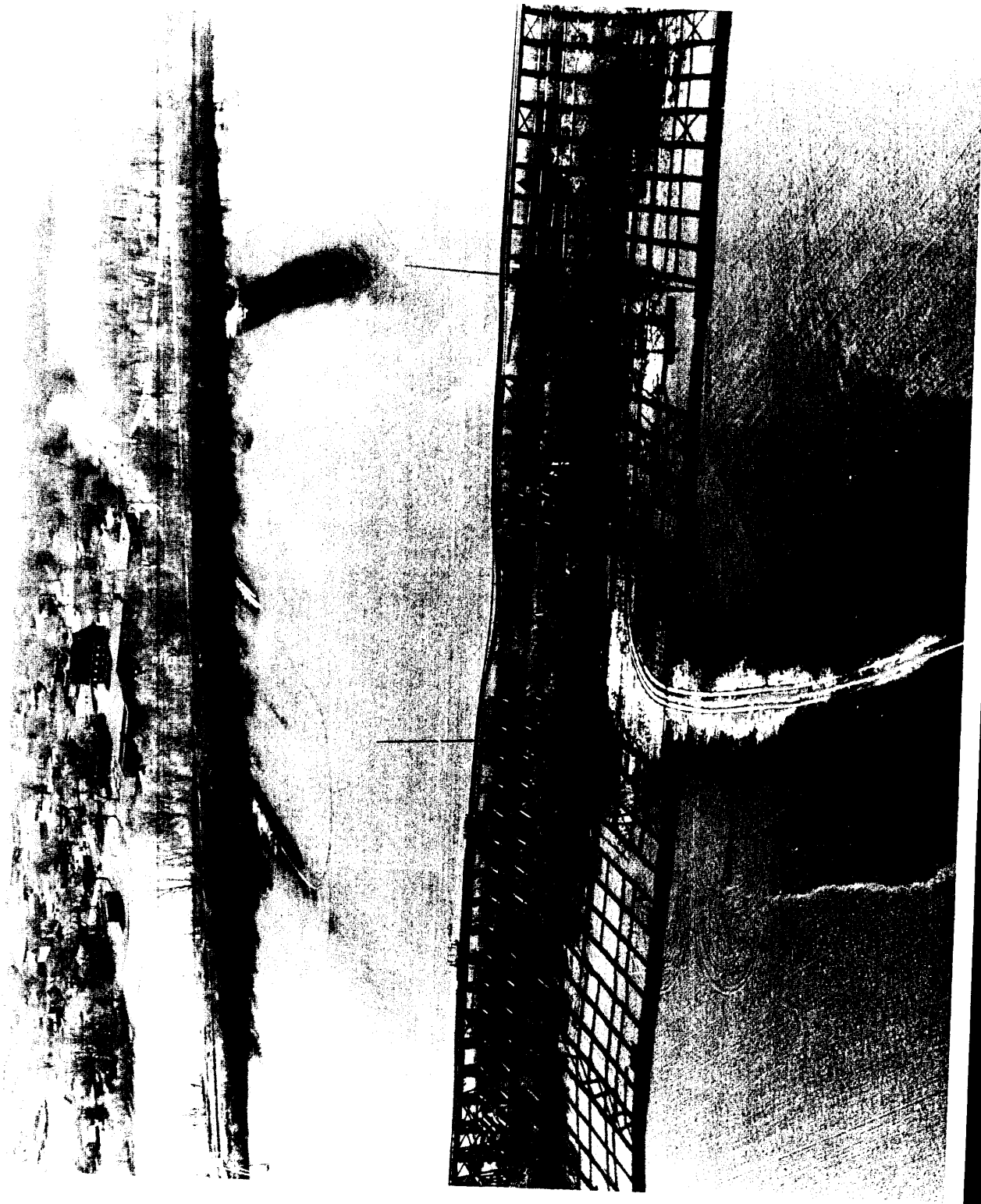
A. F. Senopoulos, Robert B. Boyd, Jr., William A. Cross, Wilfred C. Chesebrough, John J. McAuliffe, Henry D. Hersey, Walter J. Gotovich, and Paul J. Kennedy, for the city of Boston, Mass., various towns in the area involved, and the Midland Division Transportation Committee, protestants.

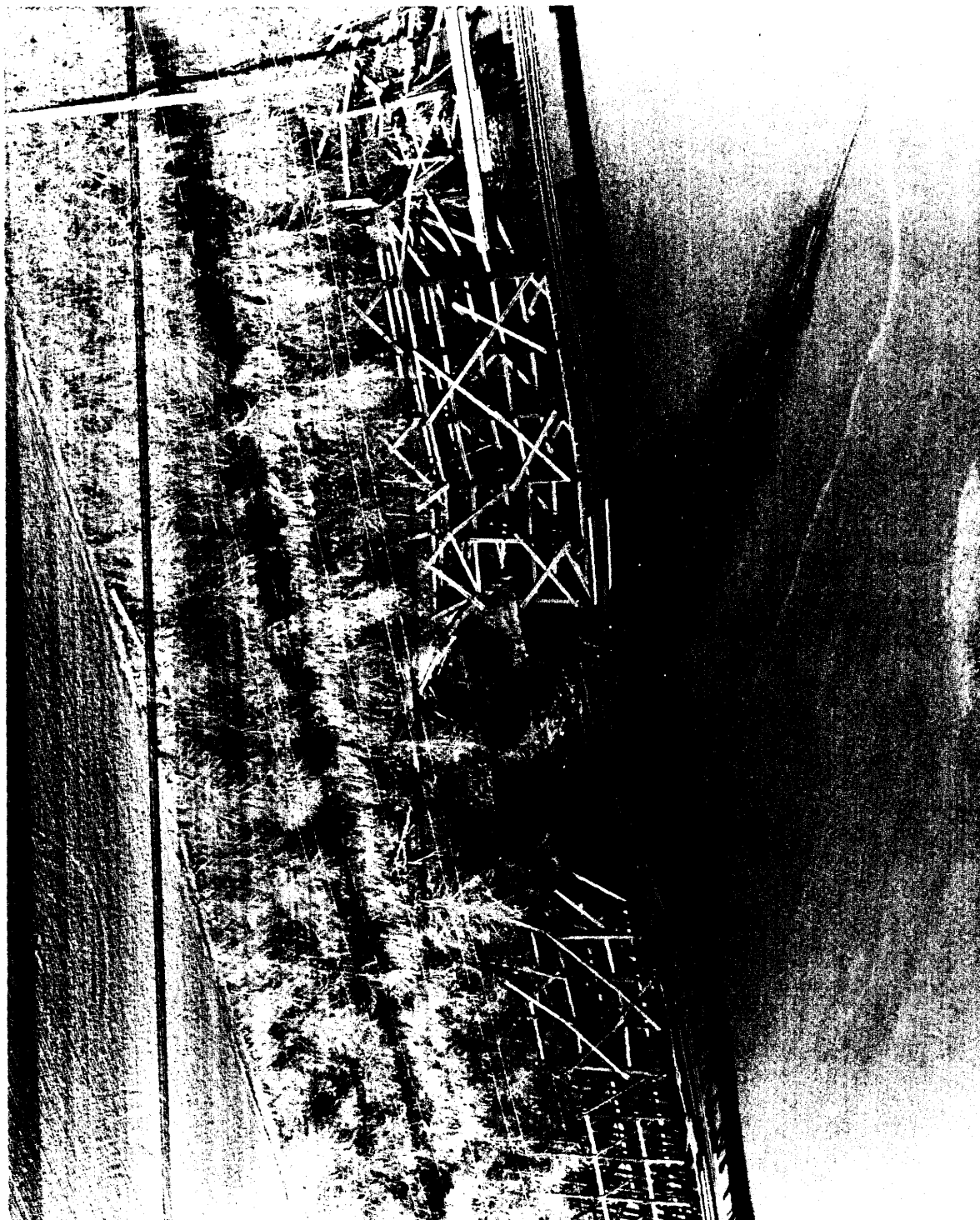
Joseph F. Feeney, Daniel J. Mahoney, H. J. Galligan, W. E. Skutt, Harold M. Miller, William H. McGee, and George J. Cahill for railway labor organizations, protestants.

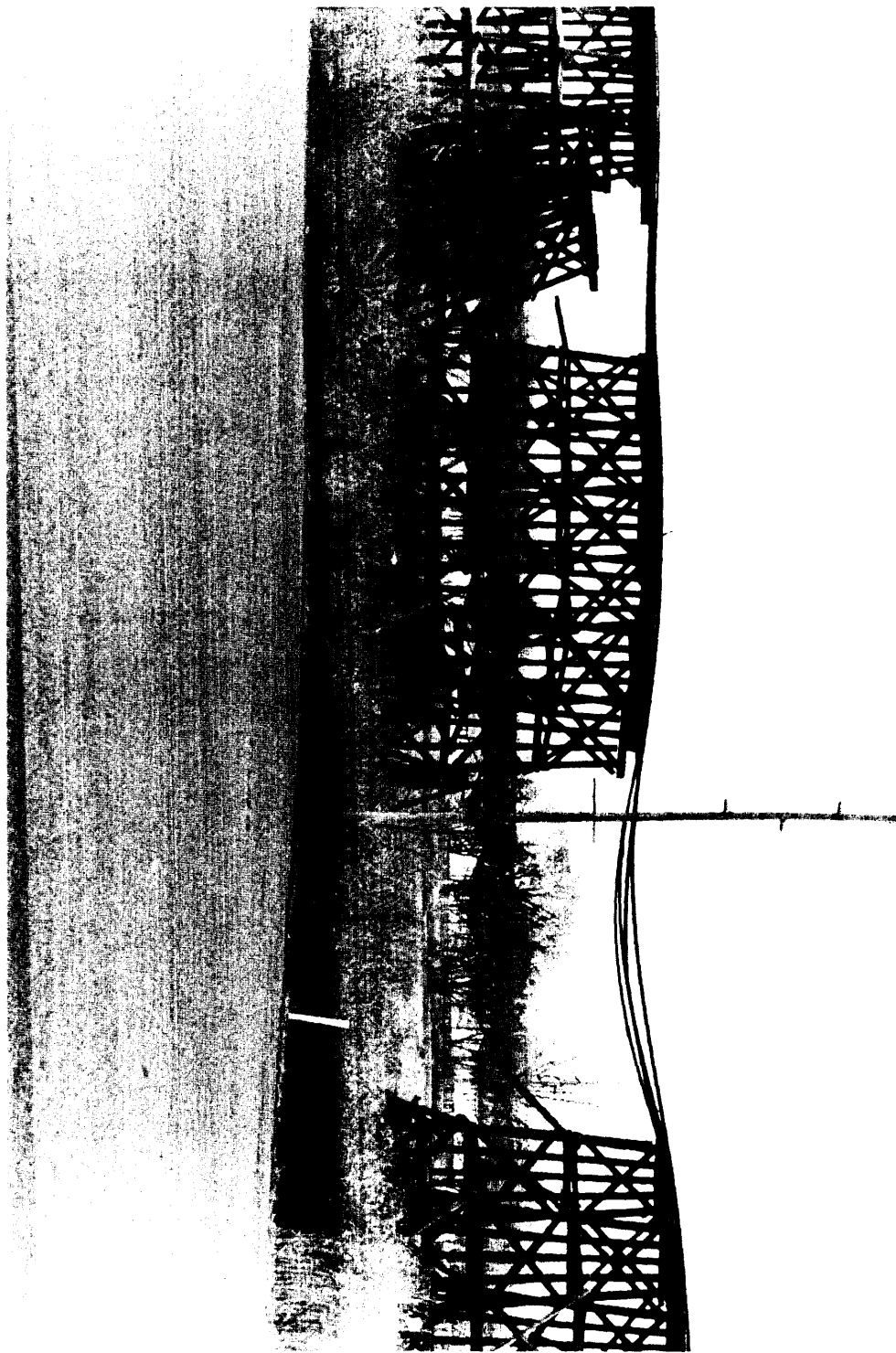
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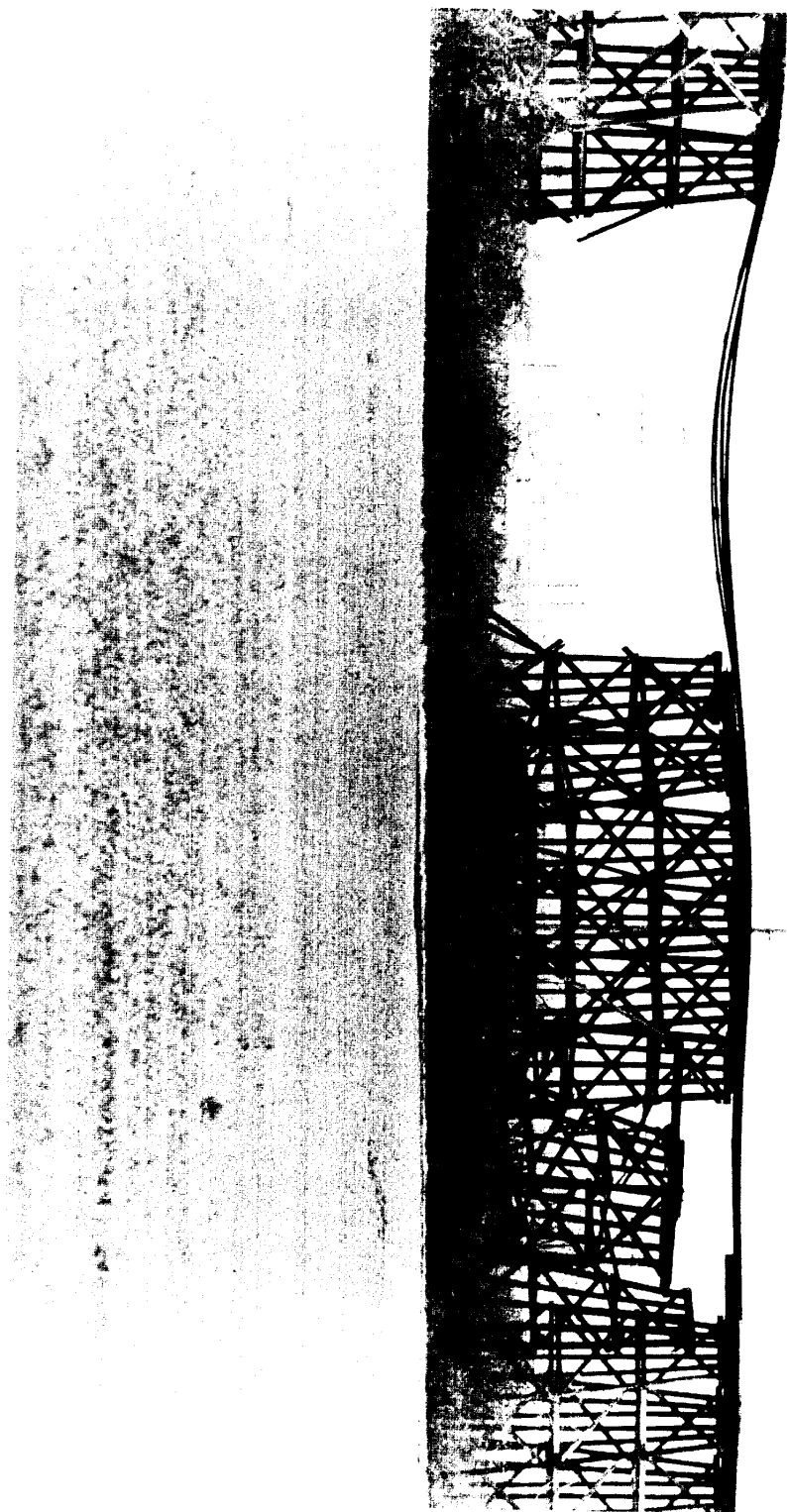
ATTACHMENT D













ATTACHMENT E

FINANCE DOCKET NO. 29455 (SUB-NO. 1)¹

NORFOLK AND WESTERN RAILWAY COMPANY—PURCHASE—ILLINOIS TERMINAL RAILROAD COMPANY

Decided June 19, 1981

- (1) In Finance Docket No. 29455 (Sub-No. 1), Norfolk and Western Railway Company is authorized to purchase the assets of Illinois Terminal Railroad Company, subject to conditions.
- (2) In Finance Docket No. 29455 (Sub-No. 2), Norfolk and Western Railway Company is authorized to assume the obligation on certain bonds of Illinois Terminal Railroad Company.
- (3) In Finance Docket No. 29455 (Sub-No. 3), Norfolk and Western Railway Company trackage rights over the Illinois Central Gulf Railroad Company between Maroa and Decatur, IL are authorized.
- (4) In Finance Docket No. 29455 (Sub-No. 4), Norfolk and Western Railway Company trackage rights over certain Illinois Central Gulf Railroad Company trackage located at Springfield, IL are authorized.
- (5) In Finance Docket No. 29455 (Sub-No. 5), Norfolk and Western Railway Company trackage rights over the Chicago and North Western Transportation Company between De Camp and Edwardsville, IL are authorized.
- (6) In Finance Docket No. 29455 (Sub-No. 6), Illinois Terminal Railroad Company is granted exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903 *et seq.* as to abandonment of certain bridge trackage rights.
- (7) In Finance Docket No. 29455 (Sub-No. 7), Chicago and North Western Transportation Company is granted exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343 *et seq.* in connection with its proposed trackage rights agreement over the Norfolk and Western Railway Company between Le Claire and Federal, IL, and its proposed acquisition of 12,000 feet of trackage from Illinois Terminal Railroad Company between Wilson and Monterey, IL.

¹This decision also embraces Finance Docket No. 29455 (Sub-No. 2), Norfolk and Western Railway Company—Assumption and Obligation of Bonds of Illinois Terminal Railroad Company, Finance Docket No. 29455 (Sub-No. 3), Norfolk and Western Railway Company—Trackage Rights—Illinois Central Gulf Railroad Company, Finance Docket No. 29455 (Sub-No. 4), Norfolk and Western Railway Company—Trackage Rights—Illinois Central Gulf Railroad Company, Finance Docket No. 29455 (Sub-No. 5), Norfolk and Western Railway Company—Trackage Rights—Chicago and North Western Transportation Company, Finance Docket No. 29455 (Sub-No. 6), Illinois Terminal Railroad Company—Abandonment of Certain Bridge Trackage Rights—Petition for Exemption, and Finance Docket No. 29455 (Sub-No. 7), Chicago and North Western Transportation Company—Acquisition of Line of Illinois Terminal Railroad Company and of Trackage Rights Over Norfolk and Western Railway—Petition for Exemption.

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Steven J. Anthony, Robert J. Cooney, J. Gary Lane, and John S. Shannon for applicants Illinois Terminal Railroad Company and Norfolk and Western Railway Company.

Hercules F. Bolos and Tyrone C. Fahner for People of the State of Illinois and Illinois Commerce Commission.

John T. Van Gessel for Chicago and North Western Transportation Company.

Nicholas G. Manos and Don McDevitt for William M. Gibbons, Trustee of the Properties of Chicago, Rock Island and Pacific Railroad Company.

John Clark, Jr., and Charles Spitulnik for Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalman, Brotherhood of Railway Carmen of the United States and Canada Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, International Association of Machinists and Aerospace Workers, and United Transportation Union.

Gordon P. MacDougall for Patrick W. Simmons, Illinois Legislative Director for United Transportation Union.

DECISION

BY THE COMMISSION:

INTRODUCTION

On June 1, 1980, the Illinois Terminal Railroad Company (IT), the Norfolk & Western Railway Company (NW), and certain other railroads owning stock in IT entered into a "Coordination Agreement and Plan for Liquidation of Assets" under which the "principal assets" of IT would be purchased by NW, the remaining "peripheral assets" of IT would be transferred to other carriers or abandoned, and IT would be liquidated. This agreement has engendered a number of related applications and petitions seeking our approval of, or exemption from our review of, various aspects of the transaction. This consolidated decision approves all of these applications and petitions.

The backbone of the coordination agreement and liquidation plan is the joint application of NW and IT, filed December 22, 1980, seeking authority under 49 U.S.C. 11343 for NW to purchase the equipment and principal assets of IT (excluding certain bridge trackage rights and isolated track segments along those rights). Four related applications were also filed on December 22, 1980: an application for approval of NW's proposed assumption of the obligation and liability of bonds issued by IT, and three trackage rights applications—two involving the Illinois Central Gulf Railroad Company (ICG) and one involving the Chicago and North Western Transportation Company (CNW).

All of these applications were accepted for consideration and consolidated for handling by our decision and notice of January 21, 1981. See 46 F.R. 6081.

Subsequently, IT and CNW filed separate petitions seeking exemption from regulation of several additional transactions arising out of the coordination agreement and liquidation plan. IT's petition, filed February 6, 1981, sought an exemption from 49 U.S.C. 10903-05 to permit its abandonment of 202 miles of bridge trackage rights that would no longer have utility after IT's other properties had been transferred to NW and other carriers. CNW's petition, filed March 6, 1981, sought an exemption from 49 U.S.C. 11343-44 to permit its acquisition of (1) a 2.3 mile-isolated IT track segment serving Monterey Mine near Wilson, IL, (2) trackage rights over 16.7 miles of NW track (IT track prior to consummation of the NW-IT purchase). These acquisitions would permit unit trains to operate exclusively over CNW from Monterey Mine to the interchange with Burlington Northern, Inc. (BN) at Federal, IL. On April 20, 1981, we published notice of the IT and CNW petitions in the Federal Register for comment. 46 F.R. 22699.

We received approximately 100 initial comments to the primary application, the majority from railroad employees and employee representatives. Other comments were received from shippers, individuals, and Federal, State and local government bodies. The Departments of Justice and Transportation did not comment. The trustees of the Chicago, Rock Island and Pacific Railroad Company (Rock Island), now in liquidation, was the only rail carrier to submit comments.

DESCRIPTION OF THE TRANSACTION

IT is a class II railroad operating in Illinois and Missouri, with a system comprising 420.45 miles of main track of which 149.18 miles are owned and the remainder operated under trackage rights agreements. Its principal lines extend from St. Louis, MO to Springfield, Decatur, and Champaign, IL. IT also has a line extending from Decatur to Peoria, IL. NW holds 18 percent of the stock of IT; the remaining shares are held by BN (18 percent), ICG (18 percent), CNW (9 percent). Consolidated Rail Corporation (Conrail) (9 percent), the Baltimore and Ohio Railroad Company (9 percent), the Missouri Pacific Railroad Company (9 percent), and the Rock Island (9 percent). IT's bonded indebtedness is guaranteed by its shareholders. IT has been considered in weak financial condition for several years. Although IT earned \$2 million on railway operating revenues of \$33.7 million in 1980, it suffered losses totaling more than \$4.5 million in the previous 2 years.

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NW operates a 7,454-mile system in Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia. NW lines extend from the eastern points of Norfolk, VA, Hagerstown, MD, and Buffalo, NY, westward to Kansas City, KS, and Omaha, NE. It serves Detroit, MI, Cleveland, Toledo, Akron, Columbus, and Cincinnati, OH, Fort Wayne, Muncie, and Indianapolis, IN, Chicago and Decatur, IL, St. Louis, MO, and Pittsburgh, PA. NW also provides north-south service between Chicago and St. Louis, between the upper Midwest and western Virginia, and through the Shenandoah Valley of Virginia.² NW generated net income of \$232.4 million on revenues of \$1.56 billion in 1980.

As consideration for the principal assets of IT, NW will pay \$25,000 to each of the seven other IT shareholders, and NW will assume sole liability for IT's first-mortgage bonds (in the approximate amount of \$5.3 million) and for the McKinley Toll Bridge rent (\$250,000 per year). This agreement was approved by 91 percent of IT's shareholders; Rock Island did not consent to the agreement and opposes the transaction on the basis that the purchase price is too low.³

NW will operate over former IT lines as a single carrier. IT will be dissolved as a corporate entity.

NW already serves IT's principal market, St. Louis, MO. All IT terminal points (except Delany, IL) connect with NW. IT and NW essentially operate parallel lines and NW will gain access to only a few additional points.

The purpose of the transaction is to consolidate applicants' several redundant facilities and operations into one system. No shipper will lose service. Indeed, applicants state the public will benefit from access to the operations of a larger and financially healthier railroad (NW).⁴ Many shippers will have single-line rather than joint-line service; applicants allege that this will result in faster more dependable service and will facilitate the handling of loss and damage claims.

The transaction will also enable NW to increase traffic on what it considers underutilized main lines in the area. Certain peripheral benefits include reduced train miles through consolidation of applicants' services with resulting energy savings. It will also mean reduction or relocation of train movements in heavily populated downtown areas, such as Springfield, IL.

²Pending before the Commission is an application of NWS Enterprises Inc., a holding company, to control both NW and Southern Railway Company, in Finance Docket No. 29430 (Sub-No. 1). Should this application be approved and consummated, Southern Railway System operations will be coordinated with those of NW.

³As noted *infra*, three of IT's carrier owners, ICG, CNW and Conrail, will receive short segments of IT track in addition to the \$25,000 cash payment.

DISCUSSION AND CONCLUSIONS

NW's Purchase of IT

Statutory criteria.—The Staggers Rail Act of 1980, Public Law 96-448, 94 Stat. 1932 ("Staggers Act"), has substantially limited the scope of our review of rail consolidation transactions, such as the one before us, that do not involve the merger or control of two or more class I railroads and hence are unlikely to have major impacts on the national transportation system. Formerly, we were required to consider the same broad public interest standard in minor transactions as applied to the largest and most significant rail restructuring proposals. See former 49 U.S.C. 11344(b) and (c). Now, we are expressly directed to approve any transaction "which does not involve the merger or control of two or more class I railroads" unless "as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States * * *." 49 U.S.C. 11344(d). Only if we find significant anticompetitive effects is it necessary to review the traditional public interest factors to determine whether "the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs." *Id.* Our primary focus in determining whether NW's proposed purchase should be approved, therefore, must be an analysis of the transactions' probable competitive effects.⁵

Competitive effects.—Our order accepting the NW-IT application for consideration specifically directed the parties to address the competitive impacts of the proposed transaction. Although 20 shippers filed initial comments opposing the transaction, none filed any evidence to support that position. No rail, motor, or water carrier submitted comments or statements on this issue. The only opposition evidence concerning potential anticompetitive effects was filed by Patrick W. Simmons, Illinois Legislative Director of the United Transportation Union (UTU). Applicants rebutted this evidence and submitted two additional verified statements analyzing the competitive effects of the transaction.

NW's statement by Timothy R. Murphy, an economics and transportation consultant, analyzed available rail, motor carrier and barge transportation in the IT service area. This analysis demonstrates that NW will not be given a significant degree of market power in any former IT territory. At the south end of the IT system, in the East St. Louis "Triangle" area

⁵Where a transaction involves an assumption of payment of fixed charges, such as NW's assumption of obligation of IT bonds, it appears that we may also be required to determine if the assumption is "consistent with the public interest." 49 U.S.C. 11344(c). We make this finding in connection with NW's securities application under 49 U.S.C. 11301; we do not find it necessary to discuss the issue here.

(which accounts for half of IT's traffic), 16 railroads currently interchange with IT; numerous interchange alternatives will remain after NW's acquisition. In central Illinois, each of IT's major gateways are served by two or more major carriers other than NW, and ICG and CNW both compete with NW for traffic from central Illinois to the gulf. Similarly, competitive rail alternatives are available in the north central Illinois service area. The competitive alternatives available to IT traffic also include the barge and truck service available using Illinois' extensive waterway and highway network.

Mr. Simmons identified five specific corridors in which he claims NW's purchase of IT will be anticompetitive.⁶ First, Mr. Simmons alleges that IT service from Decatur, IL to the Mississippi River ports of Alton and Granite City, IL are competitive only with NW service from Decatur to Naples, IL and with ICG service from Decatur to Mound City, IL. Because NW's purchase of IT will reduce the number of competitors for Decatur traffic from three to two, Mr. Simmons argues that it will have significant anticompetitive effects. In rebuttal, applicants show that at least 19 other ports on the Mississippi, Ohio, and Illinois Rivers compete with Alton, Granite City and Naples for traffic. Applicants also show that of the two IT shippers in Decatur, one supports the transaction and the other takes no position. The reduction in the number of rail competitors in Decatur will not lead to a significant reduction in freight surface transportation alternatives.

Second, Mr. Simmons states that shippers on the Kenney and Farmdale Jct., IL (Peoria secondary) line would receive poor service if the transaction is approved because present IT through movements between Decatur and Peoria would be rerouted over the NW line between the same points. Applicants correctly state in response that local shippers will not experience a reduction in competition but merely a substitution of one competitor for another.

Third, Mr. Simmons states there would be a significant lessening of competition between NW and Conrail on shipments between Decatur, IL and the East. This will allegedly result because the present IT-Conrail interchange in Urbana, IL will become an NW-Conrail interchange at Danville, IL, and because NW will attempt to take the "long-haul" on eastbound traffic. However, neither Conrail nor any Decatur shippers appears concerned about this prospect. Decatur shippers will continue to have the option of direct rail service to the East via CSX Corporation. Furthermore, NW indicates that the Danville interchange is superior in

⁶The weight to be given Mr. Simmons' evidence is unclear. His only stated qualifications to analyze the effect of the NW-IT purchase on rail, motor and barge competition are his 25 years' service as an ICG employee and representative of rail employees.

location and service to the Urbana interchange. Mr. Simmons' claim of an anticompetitive effect on this traffic is unsupported.

Fourth, Mr. Simmons states that Monterey Mine, now served by both IT and CNW, will suffer a substantial lessening of competition because CNW will serve the mine exclusively after consummation of the transaction. The significance of this reduction in competition to a single shipper is, however, substantially undercut in that the single shipper, Exxon Coal U.S.A., Inc. (Exxon), endorses CNW's assumption of service.

Finally, Mr. Simmons claims that Alton, IL shippers will lose access to the competition between long-haul carriers which is presently available to them through IT. Mr. Simmons mentions four specific shippers. As pointed out in rebuttal, all four shippers will continue to have competing long-haul service. Moreover, none of the shippers oppose the transaction and two support it.

In summary, after extensive review of the entire record and careful consideration of the only opposing evidence on competitive issues, we conclude that the transaction will not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade-in freight surface transportation. The loss of a single rail competitor in a few limited markets cannot be considered the substantial lessening of competition required for us to withhold approval of this transaction. NW's proposed purchase of IT will be approved.

Employee protection.—Our approval of NW's acquisition of IT must, nonetheless, be conditioned on NW's agreement to provide "a fair arrangement at least as protective of the interests of employees who are affected by the transaction" as the labor protective provisions imposed in control proceedings prior to February 5, 1976. 49 U.S.C. 11347. In *New York Dock Ry. v. Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (*New York Dock*), affirmed *sub. nom. New York Dock Ry. v. United States*, 609 F. 2d 83 (2d Cir. 1979), we described the minimum protection to be afforded employees under the statute in the absence of a voluntarily negotiated agreement.⁷ We may, if we choose, fashion employee protective conditions, tailored to the special circumstances present in an individual case, which may provide greater protection than the *New York Dock* conditions.

NW estimates that approximately one-half of the 640 IT positions will be abolished as a result of the purchase, all within about 6 months after consummation of the transaction. However, NW believes that only 20 IT employees will be without railroad employment at the end of 6 years (the usual protective period) because of continuing attrition on its system.

⁷ Despite substantial negotiations after the close of hearing, applicants have not entered into any agreements with employee organizations.

Eight witnesses, most of them union officials representing IT employees, testified as to the inadequacy of the *New York Dock* conditions and the personal hardships that would arise from the transaction. Other employees, through questioning on their own behalf of both union and management witnesses, raised the same concerns.

Certain employee groups⁸ seek three changes to the *New York Dock* conditions in order to provide more adequate protection for adversely affected IT employees. First, they request that relocation protection be added by revising the definition of a "dismissed employee" to include an employee "who, as a result of a transaction, is deprived of employment with the employing railroad at his point of employment * * *." (Added language emphasized.) Second, they seek dismissal and displacement allowances for employees who have less than the *New York Dock* minimum of 1 year of active service. Third, they desire an explicit requirement that the carrier owners of IT accord priority in future hiring to dismissed or displaced IT employees.

The requested change in the definition of a "dismissed employee" stems from substantial concern about the economic and social costs of reassignment to a new location. It is argued that relocation means either severance of community and family roots or commuting many hours a day. Labor witnesses specifically cited the difficulty of selling a house in a depressed economy and of buying a new house with financing at inflated interest rates. Moreover, employees may have spouses with careers of their own who not only would have to give up pensions and other benefits but would encounter difficulty in finding a new job in the depressed labor market.

While we are sympathetic to the personal problems that inevitably arise from relocation, we decline to expand the *New York Dock* conditions. As we recently stated in denying a similar request, "the *New York Dock Conditions* are significantly more protective than any previously imposed set of employee protective conditions." *CSX Corp.—Control—Chessie and Seaboard C. L. I.*, 363 I.C.C. 518 (1980) (see slip opinion served September 25, 1980 at 67) (*CSX*). Because of the potential effect on a carrier's ability to conduct efficient operations, we do not believe it appropriate to expand this protection absent unusual and compelling circumstances. Yet NW plans only seven transfers of "agreement employees"—all clerks in St. Louis who will be transferred to Roanoke, VA. Other employees, depending upon seniority and craft, may bid for jobs on a location basis or system basis that may result in displacement of

⁸ Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalmen; Brotherhood of Railway Carmen, Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; United Transportation Union; and International Association of Machinists and Aerospace Workers.

less tenured employees. These impacts are typical in consolidation transactions, however, and do not warrant an expansion of the *New York Dock* conditions.

The employee representatives did not submit any evidence to support their request for modification of the 1-year minimum qualification period for *New York Dock* protection. Although several comments state that the IT work force is a younger group, with 50 percent having less than 10 years seniority, there is nothing in the record to indicate how many employees would benefit from this change and why a variance from *New York Dock* is required. We reject this proposed change.

Finally, we are asked to require IT's shareholders to agree to give priority to former IT employees in their future hiring. Our jurisdiction to impose this condition is uncertain, however, since IT's shareholders are not necessary parties to the transaction. Compare, *Boston & Maine Corp. Trackage Rights Over Conrail*, 360 I.C.C. 239, 241 (1979). In addition, we have rejected recent attempts to impose labor protective conditions on nonapplicant carriers. E.g., *Burlington Northern, Inc. — Control & Merger — St. L.*, 360 I.C.C. 784, 948 (1980). Finally, it appears that the requested condition is unnecessary because of the small number of employees who are projected to be without employment after 6 years (only 3 percent of the 1979 IT work force). We suggest, however, that NW assist all employees who are displaced, including those now on furlough, in finding railroad employment elsewhere.

In sum, we will condition our approval of the NW purchase transaction on imposition of the standard *New York Dock* conditions. Employee protection conditions applicable to the related abandonment, exemption and trackage rights applications are discussed *infra*. We are imposing employee protective conditions on those transactions even though any employee affected by the related proposals (including IT's abandonment proposals) is also covered under the *New York Dock* conditions imposed in connection with our approval of the primary application. See *CSX, supra*, slip op. at 69.

Adequacy of the purchase price — In approving the NW-IT purchase transaction, we are governed by 49 U.S.C. 11344(d), requiring approval of any minor rail consolidations which have no significant anticompetitive effects. The Rock Island, however, opposes the transaction for an unrelated reason: Rock Island believes it should receive \$1 million, rather than \$25,000, for its share of IT. Rock Island acknowledges that the Staggers Act removed our jurisdiction to review the adequacy of the purchase price in minor rail consolidations. Nonetheless, Rock Island submitted statements supporting its proposed price in case we should

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“develop a construction [of the Staggers Act] to resolve such purchase price controversies.”

Applicants argue that we retain the power, and indeed the obligation, to decide whether the purchase price is proper. They observe that the Staggers Act did not amend or limit 49 U.S.C. 11344(c), which provides that we approve only transactions found to be “consistent with the public interest” and that we “may impose conditions governing the transaction.” Applicants claim that the Supreme Court, in construing these same statutory provisions, held that the Commission could not refuse to decide the fairness of a proposed consolidation to minority shareholders. *Schwabacher v. United States*, 334 U.S. 182 (1948).

We disagree with applicants’ interpretation of the impact of the Staggers Act on minor rail consolidations. *Schwabacher* does not support applicants’ position. It was decided some 33 years before the Staggers Act, when the statute required us to consider the rights of shareholders in reviewing all rail consolidation transactions. New subsection 11344(d) clearly and plainly provides that, when faced with a specific type of consolidation — one “not involving a merger or control of two or more class I railroads,” we “shall” approve the transaction unless we find it to be anticompetitive. This specific and recent statutory command must take precedence over the general “public interest” standard of section 11344(c).⁹ *Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932). Section 11344(d) represents a conclusive legislative judgment that minor rail consolidations are “in the public interest” if they do not restrain competition in freight surface transportation.

Moreover, we believe we should not attempt to impose a condition on our approval of a transaction related to a matter which we could not lawfully consider as a basis for withholding our approval of that transaction. In enacting new subsection 11344(d), Congress unambiguously stated its intent that “the number of factors the Commission must consider in ruling on transactions other than merger would be reduced.” H. Rept. 96-1430, 96th Cong. 2d sess. 120 (1980). Any effort to review the purchase price (or any other issue unrelated to competition) would remove all limits on the “number of issues” we must consider in approving a transaction; it would frustrate Congress’ intent in enacting subsection 11344(d). To give effect to the congressional intent, we will exercise our conditioning power only where a condition bears on issues we may con-

⁹ As noted *supra* at footnote 4, the third sentence of 49 U.S.C. 11344(c) may provide an additional specific standard for review of transactions resulting in an assumption of securities or increase in total fixed charges: whether the increase or assumption is “consistent with the public interest.” Rock Island does not and could not rely on this sentence, however, for Rock Island seeks to increase further the fixed charges NW would incur upon consummation of the transaction.

sider in deciding whether to approve a transaction.¹⁰ Accordingly, we will not consider Rock Island's claim that it will receive inadequate consideration for its interest in IT, since we could take no action on it.

One final observation is appropriate. 49 U.S.C. 11341(a), which was not amended by the Staggers Act, provides that a carrier, corporation, or person participating in a consolidation transaction approved by the Commission "is exempt from the antitrust law and from all other law, including state and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction." Under the *Schwabacher* doctrine, this broad preemption provision precluded any State court challenges by minority shareholders to a Commission approved transaction. Nonetheless, we believe that the degree to which our approval of a transaction preempts State law necessarily depends on the scope of the issues we are charged to consider in providing our approval. *Atchison, T. & S. F. Ry. Co. v. Railroad Commission*, 283 U.S. 380, 392-93 (1931). See also *Schwabacher v. United States*, 334 U.S. 182 (1955-98). Since we cannot review the adequacy of the purchase price, Rock Island is not preempted from pursuing whatever rights a dissident shareholder may have to contest the adequacy of the purchase price in unregulated transaction.¹¹

NW'S ASSUMPTION OF IT SECURITIES

NW seeks authority under 49 U.S.C. 11301 to assume obligation and liability, as primary guarantor, in respect to bonds of IT. This obligation is required under the coordination agreement and plan for liquidation among NW, IT and IT's carrier owners.

The bonds were issued in 1962, mature in 1987, and carry a balance of approximately \$5.3 million (as of December 1, 1981) at an interest rate of 4 5/8 percent. NW, as part of its primary guaranty and obligation, will also relieve IT owners from any joint and several liability they now have as to principal, premium, interest and sinking fund payments on the bonds.

We may approve the application if we find the assumption of liability (1) is for a lawful object within the corporate purpose of the carrier and reasonably appropriate for that purpose, (2) is compatible with the public interest, (3) is appropriate for or consistent with the proper performance

¹⁰Our imposition of labor protective conditions is not affected by this discussion since labor protective conditions have an independent statutory base. 49 U.S.C. 11347.

¹¹We reject applicants' assertion that our failure to pass on the purchase price makes our decision ineffective because of the possibility that a dissident shareholder might establish that the terms of the transaction are unfair. Congress' decision to remove the interest of minority shareholders from our purview reflects its view that, as to this and other issues unrelated to competition, carriers should be subject

by the carrier of service to the public as a common carrier, and (4) will not impair the financial ability of the carrier to provide the service.

NW's application demonstrates that its assumption of IT bonds meets all the statutory criteria. No party has submitted evidence to the contrary. The application will be approved.

NW'S DIRECTLY RELATED TRACKAGE RIGHTS APPLICATIONS

NW has filed three directly related trackage rights applications, two over tracks of ICG and one over tracks of CNW. Each of these transactions is a minor rail transaction and, 49 U.S.C. 11344(d), must be approved unless we find anticompetitive effects.

Decatur to Moroa, IL.—IT presently has trackage rights over the 11-mile segment of ICG track between Decatur and Moroa. The ICG trackage is a necessary part of the IT Decatur-Peoria line, known as the "Peoria secondary line." IT's trackage rights agreement will be assigned to NW.

NW now serves both Peoria and Decatur on separate east-west main lines. By these trackage rights, the present IT connection between these cities will remain intact. Although NW feels the current level of traffic does not warrant operations over the ICG trackage, in the event business increases the trackage rights will provide a shorter, more efficient route to Peoria and points on the Peoria secondary line. NW's trackage rights will be "bridge rights" only.

We find that the proposed trackage rights would not likely lessen competition, create a monopoly, or restrain trade in any region of the United States. No rail competitor will be excluded from any market as a result of the agreement. To the extent there is any effect on competition, it is positive, in that NW retains an alternative routing between Decatur and Peoria that would permit more efficient NW service should traffic volumes increase. The application will be granted, subject to imposition of employee protective conditions described in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978) (*NW-BN*), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653, 664 (1980) (*Mendocino*). These are the standard labor protective conditions applicable to trackage rights transactions.

Springfield, IL.—NW proposes to acquire 1.3 miles of trackage rights from ICG at Springfield, IL. This trackage is a small portion of IT's current trackage rights over ICG between Springfield and Wood River, IL. The proposed trackage rights will provide NW with access to the Fiat-Allis plant in Springfield, thus ensuring that the liquidation of IT (and its proposed abandonment of its trackage rights between Springfield and Wood River) will not reduce the competitive service available to that

shipper. We find the proposed agreement will not lessen competition, create a monopoly, or restrain trade in any region of the United States. Subject to the imposition of the employee protective conditions defined in *NW-BN* and *Mendocino*, the agreement will be approved.

DeCamp-Edwardsville, IL.—NW proposes to acquire trackage rights over 15.4 miles of CNW track connecting NW's Decatur division main line at DeCamp with NW's Muncie division main line at Le Claire (Edwardsville), IL. These NW lines presently connect only at East St. Louis. NW plans to shift trains over the proposed trackage rights from one main line to another outside the congested East St. Louis terminal area. The trackage rights appear to have no competitive impact other than to permit NW to provide more efficient and less expensive service by avoiding terminal area congestion. We find the agreement will not lessen competition, create a monopoly or restrain trade-in freight surface transportation in any region of the United States. Subject to the imposition of the employee protective conditions defined in *NW-BN* and *Mendocino*, the agreement will be approved.

EXEMPTION PETITIONS

Under the IT coordination and liquidation plan, NW will not acquire certain peripheral assets of IT. These assets are:

- (1) IT "bridge" trackage rights over ICG between Springfield and Wood River, IL, a distance of 77 miles, and 4,885 feet of IT track connecting with this line at Carlinville, IL;
- (2) IT "bridge" trackage rights over ICG between Springfield and Kenney, IL, a distance of 34 miles;
- (3) IT "bridge" trackage rights over ICG between Decatur and Slay's, IL, a distance of 41 miles, and three segments of IT track connecting with this line as follows: 846 feet in Bondville, 7,320 feet in Champaign, and 527 feet in Slay's;
- (4) IT "bridge" trackage rights over CNW between Edwardsville and Wilson, IL, a distance of 32 miles, and 2.3 miles of IT track connecting with this line at Wilson, IL (serving Monterey Mine); and
- (5) IT "bridge" trackage rights over Conrail between Champaign and DeLong, IL, a distance of 18 miles, along with three segments of IT track connecting with this line as follows: 3,991 feet in Glover, 898 feet in Fulls, and 3,109 feet in DeLong, IL.

As to these peripheral assets, the coordination agreement and liquidation plan calls for IT to abandon the "bridge" trackage rights and to transfer the isolated track segments to the "host" carrier with access to those segments.

IT has petitioned for an exemption to permit it to effect abandonment of these trackage rights operations without obtaining a certificate under 49 U.S.C. 10903-05. CNW has petitioned for exemptions from 49 U.S.C. 11343-44 to permit transfer of the 2.3-mile IT track segment near 363 I.C.C.

Wilson, IL, and to permit implementation of its trackage rights agreement with NW over the former IT track between Le Claire and Federal, IL.¹² Comments on IT's petition were filed by the Brotherhood of Locomotive Engineers, the Railway Labor Executives' Association and the United Transportation Union; comments on both IT's petition and CNW's petition were filed by Exxon, Patrick W. Simmons, and the State of Illinois.

Statutory criteria.—Under 49 U.S.C. 10505, as recently amended by section 213 of the Staggers Act, we are authorized to exempt a rail transaction when we find that (1) regulation is not necessary to carry out the rail transportation policy set forth in 49 U.S.C. 10101a, and (2) the transaction is either of limited scope or regulation of the transaction is not necessary to protect shippers from an abuse of market power.

IT's exemption petition.—We believe IT's abandonment proposal satisfies the criteria of section 10505, particularly when considered in the context of the coordination and liquidation plan. First, the transaction is of limited scope: it applies to the abandonment of bridge trackage rights only, over five specific lines totaling 202 miles with only eight authorized service points. Indeed, after transfer of IT's track segments to the host carrier, there will be no shippers that could be served from the trackage rights.

Second, viewing the transfer and abandonment transactions as a whole, our regulation of the abandonments is not necessary to carry out the rail transportation policy. Abandonment of IT operations over these rights would not have any effect on competition among rail carriers or other modes, and continued operation of the trackage rights would have no utility to the transportation system, 49 U.S.C. 10101a(3), (4). Except at Wilson, IL, there will be no reduction in the number of carriers available; shippers will face merely the substitution of one carrier (ICG, CNW or Conrail) for another (IT). The shipper at Wilson does not oppose the transaction. Our exemption of these transactions will also help reduce the burden of our regulation and promote expeditious decisionmaking. 49 U.S.C. 10101a(2) and (7).

CNW's exemption petition.—We also find CNW's exemption proposal satisfies the section 10505 criteria. First, transfer of IT's 2.3 mile line serving Monterey mine from Wilson, and the acquisition of trackage rights over 16.7 miles of track between Le Claire and Federal, IL, are both transactions of limited scope.

¹² IT has not filed an application for authority to transfer its track segments, nor has it sought an exemption from any requirement that it do so. Our notice of April 17, 1981 noted that IT, ICG and Conrail take the position that these track segments are "spur, industrial, team, switching and side track" and hence are outside our jurisdiction. See 49 U.S.C. 10907. No comments were received disputing this contention.

The transactions can only promote the rail transportation policy, particularly when considered in light of the entire coordination and liquidation plan. With approval of these transactions, CNW will be able to provide efficient unit-train service from Monterey mine direct to the interchange with BN at Alton (Federal). The trackage rights will preserve the existing unit-train route for Exxon, despite the removal of IT as an origin carrier. The transactions are supported by Exxon, provided the Commission retains jurisdiction over any future abandonment of these trackage rights.¹³ Finally, as with the IT petition, our exemption of these transactions will help expedite our decisionmaking and reduce the burden of our regulation.

Labor protection.—In granting an exemption, we may not relieve a carrier of its obligation to protect the interests of employees. 49 U.S.C. 10505(g)(2). As noted earlier, the *New York Dock* conditions provide the appropriate level of protection in connection with the transfer of a line of railroad, while the *NW-BN/Mendocino* conditions are appropriate for trackage rights transactions. Therefore, as a condition to the exercise of CNW's two exemption requests, we will require that CNW provide the level of protection set forth in *New York Dock* (for the transfer) and in *NW-BN/Mendocino* (for the trackage rights).

Similarly, the Commission has determined that the proper level of employee protective conditions in abandonment transactions are those described in *Oregon Short Line R. Co. — Abandonment—Goshen*, 360 I.C.C. 91 (1979). These conditions are here imposed as a condition to IT's exercise of the abandonment exemption.

ENERGY AND ENVIRONMENT

We find that these actions will not significantly affect the quality of the human environment or the consumption of energy.

It is ordered:

(1) In Finance Docket No. 29455 (Sub-No. 1), the application is approved, subject to the conditions for the protection of employees stated in *New York Dock Ry. — Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

(2) In Finance Docket No. 29455 (Sub-No. 2) the assumption by Norfolk and Western Railway Company of obligations and liability of bonds of Illinois Terminal Railroad Company is approved.

(3) Except as authorized and set forth in the decision, the bonds shall not be sold, pledged, replighted or otherwise disposed of by Norfolk and Western Railway Company unless and until approved by the Commission.

¹³ Retention of Commission jurisdiction in these circumstances is automatic. See *Burlington Northern, Inc. — Exemption—49 U.S.C. 10505*, 363 I.C.C. 816, 818, footnote 1 (1981).

(4) The applicants shall report concerning the matters involved in Finance Docket No. 29455 (Sub-No. 2) in conformity with the regulations prescribed in 49 CFR 1115.6(5). In Finance Docket No. 29455 (Sub-No. 2), the Commission reserves the right to make any supplemental decision it may deem necessary pursuant to 49 U.S.C. 11301.

(5) Nothing in this decision shall be construed to imply any guaranty or obligation as to the described bonds, or interest thereon on the part of the United States.

(6) In Finance Docket No. 29455 (Sub-Nos. 3, 4 and 5), the applications are approved, subject to the conditions for the protection of employees stated in *Norfolk & Western Ry. Co. — Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry. Co. — Lease and Operate*, 360 I.C.C. 653, 664 (1980).

(7) In Finance Docket No. 29455 (Sub-No. 6), the exemption from 49 U.S.C. 10903 *et. seq.* requested by the Illinois Terminal Railroad Company is granted, subject to the employee protective conditions imposed in *Oregon Short Line R. Co. — Abandonment—Goshen*, 360 I.C.C. 91 (1979).

(8) In Finance Docket No. 29455 (Sub-No. 7) the exemption from 49 U.S.C. 11343 *et. seq.* requested by the Chicago and North Western Transportation Company is granted, subject to the employee protective conditions imposed in *Norfolk and Western Ry. Co. — Trackage Rights—BN*, 354 I.C.C. 605 (1978) as modified by *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653, 664 (1980), as to the trackage rights and in *New York Dock Ry. — Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as to the acquisition.

(9) If an authority or exemption granted by this decision is not exercised within 1 year of the effective date of this decision, or within such further time as may be fixed by the Commission, then that portion of this decision pertaining to the unexercised authority or exemption shall be of no further force and effect.

(10) If the applicants consummate the approved or exempted transactions, they shall so inform the Commission in writing within 15 days after consummation. Where appropriate, applicants shall submit to the Commission three copies of the journal entries recording the consummation of the transactions.

(11) All notices to the Commission as a result of any authorization shall refer to this decision by date of decision and docket number.

(12) No change or modification shall be made in the terms and conditions approved in the authorized applications without the prior approval of the Commission.

(13) This decision shall be effective 30 days from the date of service. The authority granted in this decision shall not be exercised prior to the effective date of the decision.

(14) The requirement of an initial decision is waived pursuant to 49 U.S.C. 11345(e). The decisions embraced here are final decisions within the meaning of 49 U.S.C. 10327. Any administrative appeal may be entertained only under 49 U.S.C. 10327(g), which permits appeal only on the basis of material error, new evidence, or substantially changed circumstances.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

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FINANCE DOCKET No. 29430 (Sub-No. 17)¹

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY —
TRACKAGE RIGHTS OVER NORFOLK AND WESTERN
RAILWAY COMPANY—KANSAS CITY TO ST. LOUIS**

Decided July 9, 1981

1. In Finance Docket No. 29430 (Sub-No. 17), application accepted upon showing that the Commission has authority to grant the relief requested.
2. In Finance Docket No. 29430 (Sub-Nos. 18 and 19), applications rejected for failure to comply with Commission rules, and, in the Sub-No. 18 application, because the relief requested is beyond the jurisdiction of this Commission.

Carol A. Harris, Steven J. Kalish, Charles J. McCarthy, John MacDonald Smith, Stuart E. Vaughn and Herbert A. Waterman for responsive applicant St. Louis Southwestern Railway Company.

Sidney Weinberg for Boston and Maine Corporation, Debtor, Robert W. Meserve and Benjamin H. Lacy, Trustees.

Peter S. Craig, Nancy S. Flesischman, Richard J. Flynn, Terence M. Hynes, David J. Kaufman, Henry D. Light, Angelica D. Lloyd, Thomas M. McMahon, G. Paul Moates, Michael A. Nemeroff, Mark D. Peneault, John S. Shannon, James L. Tapley, Caren D. Thomas, Donald M. Tolmie, Thomas W. Weaver, R. Allan Wimbish, and William C. Wooldridge for primary applicants NWS Enterprises, Inc., Norfolk and Western Railway Company, Southern Railway Company and subsidiaries.

Charles N. Marshall, Barbara W. Mather, Charles E. Mechem, Ellen C. Mechlenborg, and Erik N. Videlock for Consolidated Rail Corporation.

DECISION

BY THE COMMISSION:

The above-captioned proceedings are responsive to the proposed consolidation of Norfolk and Western Railway Company (NW) and Southern Railway Company (SR) in Finance Docket No. 29430 (Sub-

¹This decision embraces Finance Docket No. 29430 (Sub-No. 18), Boston and Maine Corporation, Debtor (Robert W. Meserve and Benjamin H. Lacy, Trustees)—Rights over Delaware and Hudson Railway Company between Mechanicville, NY and Buffalo, NY and between Mechanicville, NY and Philadelphia (Park Junction), PA and Finance Docket No. 29430 (Sub-No. 19) Boston and Maine Corporation, Debtor (Robert W. Meserve and Benjamin H. Lacy, Trustees) Trackage Rights over Delaware and Hudson Railway Company in the vicinity of...

ATTACHMENT F

Surface Transportation Board (S.T.B.)

*1 NORFOLK AND WESTERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--IN MADISON
AND ST. CLAIR COUNTIES, IL, AND THE CITY OF ST. LOUIS, MO

Decided: March 22, 1994

Service Date: March 29, 1994

INTERSTATE COMMERCE COMMISSION
NOTICE OF EXEMPTION
Docket No. AB-290 (Sub-No. 139X)

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Norfolk and Western Railway Company (N&W) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 23.38 miles of rail line in Madison and St. Clair Counties, IL, and the city of St. Louis, Mo. The lines to be abandoned are segments which extend: (1) between milepost A-9.13 at Wanda, IL, and milepost A-13.0 at Bluffs Junction, IL; [FN1] (2) between milepost A-20.5 at Troy, IL, and milepost A-37.04 at Bridge Junction, IL; (3) between milepost 2.20 at Branch Street Yard, MO, and milepost 3.35 at Venice, IL; and (4) between milepost 0.0 at Venice, IL, and milepost 1.82 at McKinley, Junction, IL.

N&W has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period; and (4) it has met the notice requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies).

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.-- Abandonment-- Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on April 28, 1994, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues, [FN2] formal expressions of intent to file an OFA under 49 CFR 1152.27 (c)(2) [FN3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 1994. [FN4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to Conrail's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exempti

is void ab initio.

*2 N&W has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 1, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Sidney L. Strickland, Jr.

Secretary

FN1 The notice of exemption erroneously stated that this line segment was 4.0 miles long. The correct distance is 3.87 miles. N&W has acknowledged the error and concurs in this correction.

FN2 A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of the exemption.

FN3 Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

FN4 The Commission will accept late-filed trail use requests as long as it retains jurisdiction to do so.

1994 WL 101253 (I.C.C.)

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ATTACHMENT G

Surface Transportation Board (S.T.B.)

*1 NORFOLK AND WESTERN RAILWAY COMPANY--ABANDONMENT EXEMPTION- -IN MADISON
AND ST. CLAIR COUNTIES, IL, AND THE CITY OF ST. LOUIS, MO

Decided: April 20, 1994

Service Date: April 25, 1994

INTERSTATE COMMERCE COMMISSION

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-290 (Sub-No. 139X)

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Norfolk and Western Railway Company (N&W), filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 23.38 miles of rail line in Madison and St. Clair Counties, IL, and the city of St. Louis, MO. The lines being abandoned are segments which extend: (1) between milepost A-9.13 at Wanda, IL, and milepost A-13.0 at Bluffs Junction, IL; (2) between milepost A-20.5 at Troy, IL, and milepost A-37.04 at Bridge Junction, IL; (3) between milepost 2.20 at Branch Street Yard, MO, and milepost 3.35 at Venice, IL; and (4) between milepost 0.0 at Venice, IL, and milepost 1.82 at McKinley Junction, IL. A notice of exemption was served and published in the Federal Register on March 29, 1994 (59 FR 14669). The exemption is scheduled to become effective on April 28, 1994.

The Commission's Section of Environmental Analysis (SEA) has issued an environmental assessment (EA) in this proceeding. In the EA, SEA indicates that the Missouri and Illinois State Historic Preservation Offices have not completed the section 106 historic review process, and that the U.S. Environmental Protection Agency (EPA) has expressed concerns regarding the potential contamination of railroad ties. Therefore, SEA recommends: (1) that N&W retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line, including the line itself, that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) that prior to engaging in any salvage activities, N&W should consult with EPA's Office of the Administrator, Region 5, in Chicago, IL. The recommended conditions will be imposed.

On April 6, 1994, Madison County Transit (MCT) filed a request for a trail use/rail banking condition and a statement of willingness to assume financial responsibility. By letter dated April 15, 1994, N&W indicated its willingness to negotiate a trail use agreement with MCT for the subject line. Accordingly, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, N&W may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for rail purposes.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment is subject to the conditions that N&W: (1) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line, including the line itself, that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) consult with EPA's Office of the Administrator, Region 5, in Chicago, IL, prior to engaging in any salvage activities.
- *2 3. The notice of exemption published in the Federal Register on March 29, 1994, exempting the abandonment by N&W of the line described above is modified to provide for the directives for implementing interim trail use/rail banking as set forth below.
4. Subject to the conditions set forth above, N&W may discontinue service, cancel tariffs for the line on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this decision and notice. Tariff cancellations must refer to this decision and notice by date and docket number.
5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and the payment of any and all taxes that may be levied or assessed against, the right-of-way.
6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
7. If the user intends to terminate trail use, it must send the Commission a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by the 180th day, N&W may fully abandon the line.
9. This decision is effective on its service date.

Sidney L. Strickland, Jr.

Secretary

1994 WL 145780 (I.C.C.)

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Westlaw Attached Printing Summary Report
for
TIRPAK, DOUGLAS 2973455 Monday, December 15, 2003 10:26:20 Central

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Query Text:	DOCKET NO AB-290 Restrictions: DA(AFT 03/01/1996 & BEF 09/01/1996)
Lines:	73
Documents:	1
Images:	0

ATTACHMENT H

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-290 (Sub-No. 139X)

NORFOLK AND WESTERN RAILWAY COMPANY--ABANDONMENT EXEMPTION--
IN MADISON AND ST. CLAIR COUNTIES, IL, AND
THE CITY OF ST. LOUIS, MO

Decided: October 9, 1996

Norfolk and Western Railway Company (NW) filed a verified notice under 49 CFR 1152, Subpart F--Exempt Abandonments, to abandon a 23.38-mile rail line: (1) between milepost A-9.13, at Wanda, IL, and milepost A-13.0, at Bluffs Junction, IL; (2) between milepost A-20.5, at Troy, IL, and milepost A-37.04, at Bridge Junction, IL; (3) between milepost 2.20, at Branch Street Yard, MO, and milepost 3.35, at Venice, IL; and (4) between milepost 0.0, at Venice, and milepost 1.82, at McKinley Junction, IL. A notice of exemption was served and published in the Federal Register (59 FR 14669) on March 29, 1994. The exemption became effective on April 28, 1994.

On April 25, 1994, a decision and notice of interim trail use (NITU) was served, authorizing among other things, a 180-day period for Madison County Transit (MCT) to negotiate an interim trail use/rail banking agreement with NW for the right-of-way underlying the involved line. By decision served July 7, 1994, the NITU was modified to exclude those segments of line (totaling about 0.47 mile) between mileposts A-9.13 and A-9.21, between mileposts A-9.25 and A-9.26, and between mileposts A-9.32 and A-9.71, and to permit full abandonment of those segments so that the Illinois Department of Transportation (IllDOT) might acquire them for highway use.

Four 180-day requests for extension of the negotiation period have been granted by decisions served October 31, 1994, April 25, 1995, October 25, 1995, and April 12, 1996. The current period is scheduled to expire on October 12, 1996.

On October 4, 1996, MCT filed a motion to extend the negotiation period for a fifth time, for a 90-day period through January 10, 1997. MCT states that, although the parties have reached an agreement in principle, they are developing a final written agreement for the acquisition, of which this rail banked property will be a part. Because more property than the line in issue is being transferred, it has taken longer than expected to work out property descriptions. MCT also states that the parties had to work out an engineering design for a protective fence for a railroad bridge being acquired by MCT as part of the

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this decision applies the law in effect prior to the ICCTA.

transaction over an active rail line. MCT states that the parties expect to resolve all remaining technical issues in connection with their written agreement and to obtain final board approvals for the formal document within the extended negotiation period.

By letter (fax) received October 9, 1996, NW states that it consents to and concurs in the extension request. NW states that title investigations and negotiations over the inclusion of additional property have slowed the process of reaching a final agreement.

An extension will promote the establishment of trail use and rail banking consistent with the Trails Act, 16 U.S.C. 1247(d). Accordingly, the 90-day extension request will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiation period is granted.
2. The NITU negotiation period is extended through January 10, 1997.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

ATTACHMENT I

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

10 January 1997

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Ave., N.W.
Washington, D.C. 20423

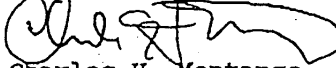
Re: Norfolk and Western Railway Co. -- Exemption
-- Wanda to Bluffs Jnct, etc., in Madison
County, Ill., AB-290 (Sub-no. 139X)

Sirs:

Enclosed for filing please find the original and ten copies of a notice of completion of a railbanking agreement, extending the extant Notice of Interim Trail Use indefinitely. Please file stamp and return in the enclosed self-addressed, stamped envelope the extra copy for my records.

Thank you for your assistance in this matter.

Respectfully,



Charles H. Montange
for Madison Transit

cc. James R. Paschall, Esq. (Norfolk Southern -- Law)

BEFORE THE SURFACE TRANSPORTATION BOARD

Norfolk and Western Railway Co. --)
Exemption -- Wanda to Bluffs Jtn,)
Troy and Bridge Jnt., Branch St.) AB-290
Yd., and Venica and Venice &) (Sub-no. 139X)
McKinley Jct, in Madison County,)
Illinois)

Notice of Completion of Interim Trail Use/Railbanking
Agreement

Madison County Transit ("MCT") hereby gives notice that it has completed and executed an interim trail use/railbanking agreement with Norfolk and Western Railway Company for the rail line in the above-captioned proceeding. The agreement was completed within the time provided in the applicable Notice of Interim Trail Use ("NITU"). It is the understanding of the parties that the NITU therefore extends indefinitely as provided in this Board's regulations. Please advise immediately if this understanding is incorrect or if more information is required.

The address of MCT for future correspondence purposes is Madison County Transit, P.O. 7500, Granite City, Illinois 62040-7500, Att: Executive Director.

Please place a copy of this notice in the permanent record of this proceeding.

Respectfully submitted,


Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Counsel for Madison County Transit

ATTACHMENT J

DEC 19 2003

2453 0912
STATE OF ILLINOIS
MADISON COUNTY
FILED FOR RECORD IN
THE RECORDERS OFFICE

2293 219

99 JUL -6 AM 11:48

JUL 24 AM 11:41

A01510430

Mail to:

Madison County Metro-East Transit District
No. 1 Transit Way
P. O. Box 7500
Granite City, Illinois 62040

RECORDER

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Name and Address of Taxpayer:

Madison County Metro-East Transit District
No. 1 Transit Way
P. O. Box 7500
Granite City, Illinois 62040

*39.00

26.00 mrc

This deed is being re-recorded to include
previously omitted PINs.

QUITCLAIM DEED OF
BARGAIN SALE AND DONATION

THIS INDENTURE WITNESSETH, that the Grantor/Donor, NORFOLK AND WESTERN RAILWAY COMPANY, a corporation organized and existing under the laws of the Commonwealth of Virginia, having its principal office in Norfolk, Virginia, for and in consideration of the public good and to promote the welfare of the citizens of the State of Illinois and other valuable considerations, and pursuant to authority given by the Board of Directors of said corporation,

- (1) DONATES CONVEYS and QUITCLAIMS, without warranty of title, and pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and orders of the Interstate Commerce Commission and the Surface Transportation Board pursuant thereto in the proceeding whose docket number is AB-290 (Sub-no 139X) unto MADISON COUNTY METRO-EAST TRANSIT DISTRICT, Grantee/Donee, the property described in Exhibit A, attached hereto and made a part hereof; and
- (2) DONATES, CONVEY and QUITCLAIMS, without warranty of title, unto the said Grantee/Donee, the property described in Exhibit B, attached hereto and made a part hereof

"Exempt under provisions of Paragraph 0,
Section 31-45 of the Real Estate Transfer Tax Law
(35 ILCS 200/31-45)"

7/6/99
Date

James J. Cusick
Buyer, Seller or Representative

Exempt Under Section 4, Paragraph B
Illinois Real Estate Transfer Tax Act

6/26/99
Date Buyer, Seller, or Representative

WRITTEN OFFER & PLAN
SUBJECT TO APPROVAL
BY THE BOARD OF DIRECTORS

26

BOOK 3387 PAGE 1850

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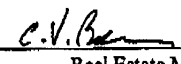
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SUBJECT, however, to the provisions of that contract dated January 10, 1997 between Grantor/Donor and Grantee/Donee and to all such restrictions, reservations, conditions, licenses and easements, whether or not of record.

IN WITNESS WHEREOF, the Grantor/Donor has caused this indenture to be signed and its corporate seal affixed by its proper duly authorized officers as the 19th day of JUNE, 1997.

ATTEST:

NORFOLK AND WESTERN RAILWAY COMPANY
By

  Assistant Secretary  Real Estate Manager

STATE OF
ST. CLAIR99 AUG -3 PM 12:16
BOOK 3387 PAGE 1849

Michael T. Beatty

RECORDED

This instrument prepared by:

Jerry L. Causey
Attorney at Law
Norfolk Southern Corporation
Suite 1702, 600 W. Peachtree St., NW
Atlanta, GA 30308-3603

JLC:awc
12/2/96
lqpd.v-61
100-925.qcd

BOOK 3367 PAGE 1851

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STATE OF GEORGIA)

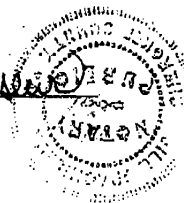
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COUNTY OF FULTON)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO
HEREBY CERTIFY that C.V. Baker personally known to me to be the
Real Estate Manager of Norfolk and Western Railway Company, a corporation, and
Mary Ann Braggale personally known to me to be the Assistant Secretary of said
corporation, and personally known to me to be the same persons whose names are subscribed to
the foregoing instrument, appeared before me this day in person and severally acknowledged that
as such Real Estate Manager and Assistant Secretary, they signed and delivered the said
instrument as Real Estate Manager and Assistant Secretary of said corporation, and caused the
corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board
of Directors of said corporation as their free and voluntary act, and as the free and voluntary act
and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and seal this 19th day of June, 1997

Bill Brackins
Notary Public



My Commission expires
Notary Public, Cherokee County, Georgia
My Commission Expires Dec. 22, 2000

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EXHIBIT A

All right, title and interest in and to all land, tenements, hereditments, easements, rights of way and other real property and interest in real property in the following lines:

Line I: Wanda to Bluff Junction

Beginning at Milepost A-9.00, more particularly described as a point located in the Southeast Quarter of Section 36, Township 5 North, Range 9 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:

Commencing at the Southeast corner of Section 36; thence, South $00^{\circ}30'59''$ West along the East line of the Northeast Quarter of Section 1, Township 4 North, Range 9 West of the Third Principal Meridian, a distance of 24.42 feet to a point on the centerline of the Norfolk and Western Railway Company (abandoned); thence, North $75^{\circ}02'35''$ West along said centerline, a distance of 1607.00 feet to the POINT OF BEGINNING being at a Milepost A-9.13 (Norfolk and Western Railway Company, Station 481+86); thence, Southeasterly to a point of ending described as: Commencing at the Southwest corner of the Southwest Quarter of Section 3, Township 4 North, Range 8 West of the Third Principal Meridian; thence, South $89^{\circ}52'10''$ East along the South line of said Southwest Quarter, a distance of 245.41 feet to a point on the centerline extended of the Norfolk and Western Railway Company; thence, North $05^{\circ}42'10''$ West along said centerline a distance of 196.80 feet to a Point of Ending at Milepost A-13 (Norfolk and Western Railway Company Station 686+40) Bluff Junction;

PROVIDED, Grantor/Donor also hereby conveys, donates and quitclaims to Grantee/Donee an exclusive and permanent easement (no less than 100 feet in width, except where Grantor/Donor owns land of less width) for a trail and consistent uses from Milepost A-13.00 near Bluffs Junction over the railroad bridge, such easement more particularly described as follows: An easement located in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 4 North, Range 8 West of the Third Principal Meridian, Madison County, Illinois, the centerline of said 100 foot wide easement being more particularly described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 3; thence, South $89^{\circ}52'10''$ East along the South line of said Southwest Quarter, a distance of 245.41 feet to a point on the centerline extended of the Norfolk and Western Railway Company; thence, South $05^{\circ}42'10''$ East along said centerline, a distance of 100.52 feet to a point on the North right-of-way line of the Norfolk and Western Railway Company (Station 689+37.32) said point being the POINT

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OF BEGINNING of the centerline of a 100 foot wide easement hereinafter described; thence, North 05°42'10" West, a distance of 297.32 feet to a point of ending at Milepost A-13 (Station 686+40) of the Norfolk and Western Railway Company.

It is intended that the side line of said 100 foot wide easement be lengthened or shortened to intersect with the adjacent right-of-way lines.

AND ALSO PROVIDED that this easement is subject to the following conditions:

(I) In the event Grantor/Donor re-institutes service on the "discontinued" trackage between Milepost A-13.0 at Bluffs Junction and Milepost A-20.50 at Troy (or some reasonable portion of said trackage), Grantor/Donor shall have the right to terminate said easement upon one hundred eighty (180) days written notice, provided that Grantor/Donor also reimburse Grantee/Donee in the amount not to exceed \$10,000 in actual paid expenditures for trail related improvements installed on or to the bridge, and

(II) In the event Grantor/Donor abandons the portion of the line over which this trail easement is granted, Grantor/Donor will quitclaim and/or donate the property to Grantee/Donee under Section 8(d) of the National Trails Act, 16 U.S.C. § 1247(d), if Grantee/Donee so requests, without any additional compensation. Grantee/Donee shall indemnify Grantor/Donor for the use of the bridge and the use of the easement over the bridge.

AND PROVIDED that this conveyance by Grantor/Donor to Grantee/Donee shall include the railroad bridge over the currently active tracks at approximately Milepost A-13.00 subject to the following conditions:

- (i) In the event Grantor/Donor re-institutes service on the "discontinued" trackage between Milepost A-13.0 at Bluffs Junction and Milepost A-20.50 at Troy (or some reasonable portion of said trackage), Grantor/Donor may reacquire the bridge from Grantee/Donee;
- (ii) Grantee/Donee shall install and, for so long as Grantor/Donor operates a rail line under the bridge, maintain safety fencing acceptable to Grantor/Donor on said bridge;
- (iii) Grantor/Donor hereby retains the right to raise or otherwise to alter the bridge to accommodate rail traffic on the line underneath, provided that Grantor/Donor reimburses Grantee/Donee for any

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damages to trail-related improvements on the bridge;

- (iv) For so long as Grantor/Donor has not abandoned service on the aforementioned "discontinued" trackage, Grantee/Donor shall not remove or alter the bridge without the written permission of Grantor/Donor; and
- (v) Grantor/Donor shall be solely responsible for all maintenance of the bridge during the period of Grantee's/Donor's ownership of same; provided, however, that if Grantor/Donor abandons service on the aforementioned "discontinued" trackage, Grantee/Donor shall assume all maintenance responsibility for the bridge.

Line II: Troy Junction to Bridge Junction

BEGINNING at the Southeast corner of Section 1 in Township 3 North, Range 8 West in Madison County; thence, North along the East line of Section 1 a distance of 518.3 feet to the centerline of the abandoned St. Louis, Troy and Eastern Railroad, (Milepost A-20.50) said point of beginning at Troy Junction; thence, proceed Westerly and Southwesterly through Collinsville Township; proceeding westerly through Nameoki Township; proceeding Southwesterly through Venice Township into St. Clair County to Bridge Junction described as:

Beginning at the intersection of the Southwest line of U.S. Survey 627 in St. Clair County and the centerline of the abandoned St. Louis, Troy and Eastern Railroad; thence, South along said centerline 857.3 feet to a point on said centerline at the South end of the St. Louis, Troy and Eastern Railroad right-of-way, said point being the ending of conveyance at Bridge Junction (Milepost A-37.04).

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EXHIBIT B**Esic to Market Basket**

Parcel 1 That part of the following described tract in the Southeast Quarter of Section 15, Township 4 North, Range 8 West of the Third Principal Meridian lying Easterly of the centerline of "Hillside Road" (no longer open) which crossed the former centerline of the tracks of the Illinois Traction, Inc., at Railway Valuation Station 985+95, said centerline intersection of "Hillside Road" being 775 feet West of the Third Principal Meridian in Madison County, Illinois, said parcel of land being more particularly described as follows to wit:

A strip of land 66 feet in width extending 33 feet on each side of the centerline of the said St. Louis and Northeastern Railway as located said centerline being described as follows:

Beginning at a point on the East line of the Southeast Quarter of Section 15, Township 4 North, Range 8 West of the Third Principal Meridian, 144 feet South of the Northeast corner of said Southeast Quarter of said Section 15; thence, Southwesterly along a curved line concave to the Northwesterly and having a radius of 3820 feet, an arc distance of 600 feet; thence, South 62°20' West, a distance of 887 feet to the South line of the land belonging to William Floyd, containing 2.25 acres, being also the land taken by condemnation in County Court of Madison County, Illinois. Final Order Judgement being entered April 29, 1905, as set out in said County Court Record 4 at Page 390, in Madison County, Illinois.

Parcel 2 That part of the following described tract in the Southeast Quarter of Section 15, Township 4 North, Range 8 West of the Third Principal Meridian lying Easterly of the centerline of "Hillside Road" (no longer open) which crossed the former centerline of the tracks of the Illinois Traction, Inc. at Railway Valuation Station 985+95, said centerline intersection of "Hillside Road" being 775 feet West of the East line of Section 15, Township 4 North, Range 8 West of the Third Principal Meridian in Madison County, Illinois, said parcel of land being more particularly described as follows, to wit:

A tract of land in the Southeast Quarter of Section 15, Township 4 North, Range 8 West of the Third Principal Meridian described as follows:

Beginning at a point in the East line of the Southwest Quarter of said Section 15, said point being 243.6 feet South of a stone set at the Northeast corner of the Southeast Quarter of said Section 15; thence, South 71.7 feet to a point; thence, West at right angles to said Section line 103.4 feet to a point that is 20 feet

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Southeasterly from, as being measured at right angles thereto, the Southerly right-of-way line of the Illinois Traction, Inc., conveyed by deed from William Floyd, et al. recorded in Book 354, page 146; thence, Southwesterly 20 feet South of and parallel with the right-of-way line of the Illinois Traction, Inc., as conveyed by said deed also as described in the final order in condemnation proceedings of the St. Louis and Northeastern Railway against William Floyd, et al. recorded in Book 4, Page 390 for a distance of 1206.90 feet, more or less, to the South line of the property of Alvin F. Clark, et ux in said Southeast Quarter of Section 15; thence, along the South property line of the Clark Tract, a distance of 37.7 feet, more or less, to the Southerly line of said Illinois Traction, Inc., formerly the St. Louis and Northeastern Railway; thence, Northeasterly along the Southerly right-of-way line for a distance of 1364.7 feet, more or less, to the POINT OF BEGINNING, in Madison County, Illinois.

Parcel 3. A tract of land in the Southeast Quarter of Section 15, Township 4 North, Range 8 West of the Third Principal Meridian more particularly described as follows:

BEGINNING at a point on the East line of the Southeast Quarter of Section 15, a distance of 243.6 feet, more or less, South of a stone at the Northeast corner of said Southeast Quarter of Section 15; thence, Southwesterly 380.00 feet, more or less, to a point on the Easterly right-of-way line of the St. Louis and Northeastern Railway Company; thence, Northeasterly along said right-of-way line on a curved line bearing to the West and having a radius of 3852.83 feet, an arc distance of 401.00 feet, more or less; thence, South 51.0 feet, more or less, to a POINT OF BEGINNING, the above described triangular piece of land containing 0.174 of an acre, more or less, in Madison County, Illinois.

Parcel 4. That part of the following described tract lying in the Southwest Quarter of the Northwest Quarter of Section 14, Township 4 North, Range 8 West of the Third Principal Meridian, to wit:

Commencing at a stone at the Southwest corner of the Northwest Quarter of Section 14, Township 4 North, Range 8 West of the Third Principal Meridian; thence, East along the South line of the Northwest Quarter of Section 14, a distance of 1001.0 feet; thence, Northeasterly a distance of 605.3 feet, more or less, to a point 40 feet North of said South line of the Northwest Quarter of Section 14; thence, East parallel with and 40 feet North from the South line of the Northwest Quarter of Section 14, a distance of 1,010.0 feet; thence, continuing East and parallel with and 40 feet therefrom the South line of the Northeast Quarter of Section 14, a distance of 410.00 feet, more or less, to a point on the West line of Bryant Street in Mahler Heights Addition, a subdivision of part of

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Section 14, Township 4 North, Range 8 West, which point is 230 feet, more or less, South from the North line of said Mahler Heights Addition; thence, South 175 feet along said West line of said Bryant Street; thence, West parallel with and 135.00 feet South from the North line of the Southeast Quarter of said Section 14, a distance of 401.00 feet, more or less, to the West line of said Southeast Quarter of Section 14; thence, continuing West parallel with the North line of the Southwest Quarter of Section 14 and 135 feet South therefrom 1,010.0 feet; thence, Northwesterly a distance of 606.0 feet, more or less, to a point 66 feet South of said North line of the Southwest Quarter of Section 14; thence, West parallel with and 66 feet South therefrom the said North line of the Southwest Quarter of Section 14, a distance of 332.8 feet, more or less; thence, Southwesterly on a curve having a radius of 1400 feet and bearing to the left an arc distance of 711.6 feet to a point on the West line of said Southwest Quarter of Section 14; thence, North 241.3 feet, more or less, to a stone at the POINT OF BEGINNING, excepting therefrom the rights of way of the Tri-City Traction Co., the Litchfield and Madison Railroad and the Toledo, St. Louis and Western Railway. The above described strip containing 8.92 acres, more or less, in Madison County, Illinois.

Parcel 5 A parcel of ground located in the Northwest Quarter of Section 14, Township 4 North, Range 8 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:

BEGINNING at the point of intersection of the North line of the right-of-way of the St. Louis, Springfield and Peoria Railroad, commonly known at this point as the Edwardsville Belt Line and the Western line Litchfield and Madison Railroad Company; thence, Westerly along said North right-of-way line of said St. Louis, Springfield, and Peoria Railroad a distance of 33 feet; thence, Northeasterly a distance of 138 feet to the West said line of the railroad right-of-way occupied by Illinois Terminal Railroad; thence, South and Southwesterly along last mentioned West line a distance of 151 feet, more or less, to the POINT OF BEGINNING. Said parcel containing an area of 0.069 of an acre, more or less, in Madison County, Illinois.

Parcel 6 A tract of land in the East Half of Section 14, Township 4 North, Range 8 West of the Third Principal Meridian, and more particularly described as follows, to wit:

BEGINNING at the intersection of the North and South centerline of said Section with a line running parallel with and at a uniform distance of 50 feet west of the center line of the main track of Litchfield and Madison Railroad Company; thence, from said beginning point North along the North and South center line of said

BOOK 3307 PAGE 1858

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Section for a distance of 240 feet to a point; thence, Northeasterly along a line parallel with and at a uniform distance of 150 feet from the centerline of the main track of said Railroad for a distance of 440 feet to a point; thence, Southerly along a curved line to the right for a distance of 410 feet to the intersection of a line 50 feet from and parallel to the centerline of the main track of said Railroad; thence, Southwesterly for a distance of 260 feet, to the POINT OF BEGINNING, said parcel containing 0.94 of an acre, more or less, in Madison County, Illinois.

Parcel 7 Beginning at a point on the North and South Half Section line of Section 14, Township 4 North, Range 8 West, of the Third Principal Meridian, which point is 1,297 feet, more or less, South of a stone at the intersection of the North boundary line of said Section 14 and the North and South Half Section line; thence, Southerly along said Half Section line a distance of 1,115 feet, more or less, to a point which is on a line parallel to the centerline of the main track of the Litchfield and Madison Railroad and a distance of 150 feet therefrom; thence, Northeasterly along a line parallel to the distant 150 feet from the centerline of the Litchfield and Madison Railroad track measured at right angles thereto a distance of 1,240 feet, more or less, to a point; thence, Northeasterly at an angle of $8^{\circ}10'$ with said centerline of the Litchfield and Madison Railroad track a distance of 588 feet, more or less; thence, Northeasterly on a line parallel to said centerline of the Litchfield and Madison Railroad track a distance of 99 feet, more or less, to a point, said point being the Southeast corner of the property belonging to the National Mastic Roofing Company; thence, Westerly at an angle of $69^{\circ}20'$ with said centerline of the Litchfield and Madison Railroad track along the South boundary line of the property of said National Mastic Roofing Company, a distance of 201 feet, more or less, to a point; thence, Southwesterly on a line parallel to said center line of the Litchfield and Madison Railroad Track, a distance of 199 feet, more or less, to a point; thence, Southwesterly along a curved line having a radius of 716.34 feet, an arc distance of 810 feet, more or less, to a point of beginning, said parcel containing in all 10 acres, more or less, being that portion enclosed by a red line of the plat hereto attached, marked Exhibit A and made a part hereof. (See Plat Book 7, page 17, in Madison County, Illinois).

Parcel 8 Outlot 2 as shown on the plat of Wolf's Subdivision of part of Section 11 and 14 in Township 4 North, Range 8 West of the Third Principal Meridian, according to the plat thereof recorded in Plat Book 6, Page 58, (except coal and other minerals underlying said premises with the right to mine and remove same), in Madison County, Illinois.

PROVIDED, HOWEVER, that Grantor/Donor shall retain an easement for railroad purposes across the aforementioned eight parcels encompassing fifty feet on each side of the existing railroad centerline;

BOOK 3367 PAGE 1859

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AND PROVIDED FURTHER that across said easement retained by Grantor/Donor, Grantee/Donee shall have an easement to cross the "discontinued" trackage at a point near LeClaire Junction, more particularly described as follows and subject to the following conditions:

An easement 50 foot wide all within the right-of-way of Norfolk and Western Railway Company located in the Northwest Quarter of Section 14, and in the Northeast Quarter of Section 14, Township 4 North, Range 8 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:

Commencing at the point of intersection of the North line of the right-of-way of the St. Louis, Springfield, and Peoria Railroad Company, commonly known at this point as the Edwardsville Beltline (now known as Norfolk and Western Railway Company), and the Westerly line of the Norfolk and Western Railway Company; thence, South 89°33'49" East along said North line, 16.50 feet to the POINT OF BEGINNING of the centerline of said 50 foot wide easement hereinafter described; thence, North 25°30'18" East, parallel with the Westerly line of said Norfolk and Western Railway Company, a distance of 150.97 feet; thence, North 00°00'00" East along a line 25 feet East of and parallel with the West line of said Northeast Quarter of Section 14, a distance of 198.25 feet; thence, North 90°00'00" East, 83.39 feet to a point being 25 feet West of as measured normally, to the East line of said Norfolk and Western Railway Company right-of-way, to the beginning of a 648.80 feet radius curve to the left whose centers bear North 65°11'12" West; thence, Northerly along said curve through a central angle of 31°32'35", an arc distance of 357.18 feet; thence, North 25°30'19" East along a line 25 feet west of and parallel with said Norfolk and Western Railway Company right-of-way, a distance of 808.93 feet; thence, North 33°40'19" East along a line 25 feet West of and parallel with said Norfolk and Western Railway Company, a distance of 588.00 feet; thence, North 25°30'18" East along a line 25 feet West of and parallel with said Norfolk and Western Railway Company right-of-way, a distance of 73.80 feet to a POINT OF ENDING on the North line of said Norfolk and Western Railway Company.

PROVIDED, HOWEVER, THAT SUCH EASEMENT IS GRANTED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- (i) The easement shall be no less than fifty feet in width (unless the size or configuration of the underlying parcels does not permit such width), but not closer than 12 feet from centerline of the railroad except at the crosspoint;

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- (ii) In the event Grantor/Donor does not remove its track at the location of the crosspoint for the easement, Grantee/Donnee may remove said track where the trail crosses the track under conditions to be specified in writing by Grantor/Donor or may place a structure (sufficient to prevent damage to the track for all uses intended) over the track;
- (iii) In the event Grantor/Donor abandons the trackage underlying the easement, Grantor/Donor agrees to quitclaim and/or donate all its remaining right, title and interest to Grantee/Donnee in the parcels traversed by the easement under Section 8 (d) of the National Trails System Act, 16 U.S.C. § 1247 (d) if Grantee/Donnee so requests, without any additional compensation; and
- (iv) In the event Grantor/Donor re-institutes rail service over this portion of the discontinued trackage, Grantor/Donor on one hundred eighty (180) days written notice may require Grantee/Donnee to discontinue use of said easement until and unless Grantee/Donnee constructs a structure providing grade separation from rail operations, or upon other alternative conditions to which the parties mutually agree in writing.

ALSO

All right, title and interest in and to all land, tenements, hereditments, easements, rights-of-way, and other real property and interest in real property in the following lines:

Line A: Bluff Junction to Vandalia Street (Courthouse)

Beginning at a point located in the Southwest Quarter of Section 3, Township 4 North, Range 8 West of the Third Principal Meridian, Madison County, Illinois, being more particularly described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Section 3; thence, South 89°52'10" East along the South line of said Southwest Quarter, a distance of 245.41 feet to a point on the centerline extended of the Norfolk and Western Railway Company; thence, North 05°42'10" West along said centerline, a distance of 196.80 feet to a Point of Beginning at Milepost A-13 (Norfolk and Western Railway Company Station 686+40) (Bluff Junction), to a Point of Ending located in the Southeast Quarter of the Third Principal Meridian, Madison County, Illinois, and being more particularly described as follows:

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Plat Book 2 Page 11

Commencing at the Southeast corner of Lot 1/ and in Plat Book 20, page 10 of the Madison County, Illinois Recorder's Office; thence, West along the North line of Vandalia Street (60 feet wide), a distance of 11.77 feet and being the Point of Ending.

This line specifically includes Tax Parcel No. 14-1-15-10-05-101-903.001 and Tax Parcel No. 14-1-15-10-05-101-903 (1995 Tax Maps).

PROVIDED, HOWEVER, that Grantor/Donor shall retain a 100 foot wide railroad easement, being 50 feet on each side of the existing centerline of the discontinued rail line currently in place on the parcels in question, subject to the following additional conditions:

- (i) Grantor/Donor hereby retains a floating railroad easement to construct and to operate rail facilities on any portions of the property referenced in the above paragraph in the event rail service is re-instituted on the "discontinued" trackage between Milepost A-13.0 at Bluffs Junction and Milepost A-20.50 at Troy (or some reasonable portion of said trackage), provided that if Grantor/Donor constructs a connection upon the authority of this floating easement, Grantor/Donor shall consult with Grantee/Donor with respect to reasonable measures to minimize disruption to Grantee's/Donor's trail facilities on the property, and shall reimburse Grantee/Donor in an amount not to exceed \$10,000 for the actual documented costs incurred by Grantee/Donor for trail facilities displaced or damaged as a result of use of the floating easement;
- (ii) In the event Grantor/Donor abandons the trackage encompassed in the aforementioned tax parcels, Grantor/Donor agrees to quitclaim and/or donate all its remaining right, title and interest to Grantee/Donor in those parcels, under Section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) if Grantee/Donor so requests, without any additional compensation; and
- (iii) At its discretion, Grantor/Donor may remove track, ties and other track material within the tax parcels in question here to the extent necessary to permit Grantee/Donor to install a trail using the roadbed, including the unused roadbed connecting the Edwardsville Spur to the line in question.

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Line B. The Edwardsville through Hamel to Staunton line

Beginning at the Southwest corner of Block 24 of the Resubdivision of Block 8 of Le Claire of Edwardsville, Madison County; thence, North along the West line of Block 24 and the East right-of-way line of Emerson Street 397.71 feet to the centerline of the railroad, said point being the beginning of conveyance of Line 1 in Edwardsville; proceeding through Hamel; to a point of ending on Union Street, Staunton, Macoupin County, Illinois. The point of ending being located in the Southwest Quarter of Section 32, Township 7 North, Range 6 West of the Third Principal Meridian, Macoupin County, Illinois, being more particularly described as follows:

Commencing at the intersection of the South line of Sixth Street (40 foot wide) and the East line of Union Street (48 foot wide); thence, South $00^{\circ}21'15''$ East along the East line of said Union Street (extended), a distance of 440.56 feet to a said Point of Ending, said Point of Ending being on the centerline of the right-of-way of Old Traction System (50 foot wide) now Norfolk and Western Railway Company.

PROVIDED, HOWEVER, that Grantor/Donor shall retain a floating easement for railroad purposes within one (1) mile of the DeCamp Station.

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