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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36744[1]

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
—CONTROL—
IOWA NORTHERN RAILWAY COMPANY

Decision No. 3

Digest:[2] The Board authorizes Canadian National Railway Company and Grand Trunk Corporation to acquire control of the Iowa Northern Railway Company (Iowa Northern), subject to conditions. The Board also authorizes, subject to employee protective conditions, two related transactions providing operating rights to Chicago, Central & Pacific Railroad Company (CCP) over an Iowa Northern line and operating rights to Iowa Northern over a CCP line.

Decided: January 13, 2025

On January 30, 2024, in Docket No. FD 36744, Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), together with the Iowa Northern Railway Company (Iowa Northern or IANR) (collectively, Applicants) filed an application seeking approval for CNR and GTC to acquire control of Iowa Northern and to operate IANR's 218-mile rail system, which is located entirely within Iowa.[3] This proposal is referred to as the "Proposed Transaction." On the same date, in Docket No. FD 36744 (Sub-No. 1), Chicago, Central & Pacific Railroad Company (CCP), an indirect rail carrier subsidiary of CNR, filed a verified

[1] This decision embraces Chicago, Central & Pacific Railroad—Trackage Rights Exemption—Iowa Northern Railway, Docket No. FD 36744 (Sub-No. 1), and Iowa Northern Railway—Trackage Rights Exemption—Chicago, Central & Pacific Railroad, Docket No. FD 36744 (Sub-No. 2).

[2] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

[3] While attempting to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. See Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 1 n.2 (STB served Jan. 11, 2018). In this case, the Board determined that it could not adequately present its findings with respect to the issues without disclosing certain information designated as confidential.

notice of exemption seeking authority to acquire overhead and limited local trackage rights from Iowa Northern for an approximately 68.3-mile rail line between Cedar Falls Junction in Cedar Falls, Iowa, and Manly Yard in Manly, Iowa.[4] Also on January 30, 2024, in Docket No. 36744 (Sub-No. 2), Iowa Northern filed a verified notice of exemption seeking authority to acquire overhead and limited local trackage rights from CCP for rail lines totaling approximately 200.9 miles (1) between Waterloo, Iowa, and Dubuque, Iowa, (2) between Waterloo and Tara, Iowa, and (3) over the CN Waterloo Connection from West Waterloo, Iowa, to the IANR Northern Oelwein Subdivision at Linden (Waterloo), Iowa.[5]

The Board now approves CNR and GTC's application, subject to conditions, and allows the embraced notices of exemption to take effect.

BACKGROUND

CNR and GTC seek the Board's prior review and authorization pursuant to 49 U.S.C. §§ 11323-25 to acquire control of Iowa Northern, a Class III rail carrier that operates a total of approximately 218 route miles in the state of Iowa. Applicant GTC is a noncarrier holding company through which CNR controls its U.S. rail carrier subsidiaries.[6] (Appl. 1 n.1.) Applicant Iowa Northern is a Class III rail carrier wholly owned by Cable & Ives, LLC (Cable & Ives). (Id. at 1-2, 11.) On December 6, 2023, GTC signed and closed an agreement to acquire 100% of the equity interest of Cable & Ives. (Id. at 1-2, 12.) According to Applicants, the shares of Cable & Ives were deposited into an independent voting trust pursuant to 49 C.F.R. part 1013, and Iowa Northern's existing management has continued to control IANR pending Board review of the Proposed Transaction. (Appl. 1-2, 11-12; see also CN Letter Filing of Voting Trust Agreement, FD 36744, Dec. 6, 2023.) Upon Board approval of the Proposed Transaction, Iowa Northern will be indirectly controlled by CNR. (Appl. 2, 3.)

Iowa Northern owns or leases approximately 175 route miles of rail line and operates via trackage rights over an additional approximately 43 route miles of track. (Id. at 1 n.2.) The IANR system is organized into four subdivisions with its 116.7-mile main line extending northwest from Cedar Rapids through Waterloo (Cedar Rapids Subdivision) and Cedar Falls to Manly (Manly Subdivision). (Id. at 30; id., Ex. 15, Operating Plan 3, Fig. 2.) Applicants state that Iowa Northern owns the Cedar Rapids and Manly Subdivisions and connects those lines via overhead trackage rights on approximately 8.7 miles of track owned by CN. (Id., Ex. 15,

[4] The rail line at issue in Docket No. FD 36744 (Sub-No. 1) is located between IANR milepost 157.5 at Cedar Falls Junction and IANR milepost 225.8 at Manly Yard.

[5] The rail lines at issue in Docket No. FD 36744 (Sub-No. 2) are located between (1) CCP milepost 275.8 at Waterloo heading east to CCP milepost 183.0 at Dubuque, a distance of approximately 92.8 miles, (2) CCP milepost 275.8 at Waterloo heading west to CCP milepost 381.2 at Tara, a distance of approximately 105.4 miles, and (3) CCP milepost 277.5 at West Waterloo and at or near IANR milepost 326.1 at Linden, a distance of approximately 2.7 miles.

[6] CNR and its U.S. rail operating subsidiaries are referred to collectively as "CN." (Appl. 1 n.1.)

Operating Plan 3, 5, Fig. 4.) Iowa Northern also operates over a short portion of a Union Pacific Railroad Company (UP) line in Cedar Rapids, which Iowa Northern uses to access UP, CN, and the Cedar Rapids and Iowa City Railway (CRANDIC) in Cedar Rapids. (Id., Ex. 15, Operating Plan 5, Fig. 5.) Iowa Northern also owns a branch line extending from Dewar, Iowa, near Waterloo, to Oelwein, Iowa (Oelwein Subdivision), and Iowa Northern accesses that line via an approximately seven-mile track known as the "Waterloo Industrial Lead," extending from Waterloo to Dewar, which it leases from UP. (Id., Ex. 15, Operating Plan 3, Fig. 4.)[7] Lastly, Iowa Northern leases a 27.9-mile rail line between Forest City, Iowa and Belmond, Iowa (Garner Subdivision) from North Central Iowa Rail Corridor, L.L.C., and accesses that line via overhead trackage rights on an approximately 30.2-mile rail line owned by Canadian Pacific Kansas City Limited (CPKC) between Nora Springs, Iowa and Garner, Iowa. (Id., Ex. 15, Operating Plan 3, 5, Fig. 2.)[8]

CN's current network spans approximately 18,600 route miles in 13 U.S. states and eight Canadian provinces. (Id., Ex. 15, Operating Plan 8.) CCP is the CN subsidiary that primarily owns and operates CN's rail lines in Iowa. (Id.) Applicants note that CN currently has 226 craft employees in Iowa and operates 574 route miles in the state. (Id.) Specifically, CN operates main lines east from Sioux City, Iowa, and Council Bluffs, Iowa, that converge near Fort Dodge, Iowa, and run through Waterloo and Dubuque with several secondary lines in between. (Id.)

Applicants assert that the Proposed Transaction will result in the creation of more efficient, single-line service and will not result in a lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation for several reasons. (Appl. 18.) Among other things, Applicants also assert that there are no two-to-one rail customers that would be impacted by the Proposed Transaction and that CN commits to providing IANR customers with commercially reasonable rates and service for interline traffic with carriers other than CN. (Id. at 18-19.)[9] According to Applicants, this commitment encompasses interline traffic that is

[7] On July 31, 2024, Applicants notified the Board that the Waterloo Railroad, LLC (WTRL), a non-carrier, filed a verified notice of exemption in a separate docket seeking authority to change operators on the Waterloo Industrial Lead. (Applicants Letter 1, July 31, 2024.) According to Applicants, Iowa Northern's authority to operate under the existing lease would be replaced with WTRL; Iowa Northern, however, would retain its overhead trackage rights over the Waterloo Industrial Lead to connect to other segments of IANR's lines. (Id.; see also Waterloo R.R.—Change of Operator Exemption with Interchange Commitment—Union Pac. R.R., FD 36798 et al. (STB served Aug. 23, 2024).) The Board notes that this change in operator status over the Waterloo Industrial Lead is immaterial to the Board's examination of the Proposed Transaction.

[8] Under the trackage rights agreement, IANR must receive CPKC's consent before it may assign its rights under the agreement, which includes assignment due to a change in control. CPKC has indicated that it does not intend to unreasonably withhold its consent. (CPKC Comments 38 n.33, Apr. 29, 2024).

[9] Applicants included with their application statements of support for the Proposed Transaction from Iowa State Senator Waylon Brown; Iowa State Senator Tim Kraayenbrink; Mayor Tiffany D. O'Donnell on behalf of the City of Cedar Rapids, Iowa; Mayor Quentin Hart

currently interchanged with CPKC or UP at the northwestern end of Iowa Northern; traffic that is interchanged with UP or CRANDIC in Cedar Rapids; and traffic Iowa Northern moves between UP and the UP Industrial Lead at Waterloo. (Id.) Further, Applicants note that this commitment would apply equally to traffic that originates and traffic that terminates on Iowa Northern's lines. (Id.) Additionally, Applicants state that CN has committed to maintaining existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs. (Id.)

By decision issued on February 29, 2024, the Board accepted the application, established a procedural schedule, and determined that the Proposed Transaction is a minor transaction as defined by the Board's regulations. See Canadian Nat'l Ry.—Control—Iowa N. Ry. (Decision No. 1), FD 36744 et al., slip op. at 6-7 (STB served Feb. 29, 2024).[10] Based on the application and the record at that time, the Board found that the efficiency and other public interest benefits of the Proposed Transaction would clearly outweigh any potential anticompetitive effects. Id. at 6. The Board explained, however, that its findings regarding anticompetitive effects were preliminary and that it would conduct a careful review before making a final determination as to whether the Proposed Transaction would substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest. Id. at 7 (citing 49 U.S.C. § 11324(d)(1)-(2)). The Board noted that it may consider imposing conditions on the Proposed Transaction and reserved the right to require the filing of further supplemental information as necessary to complete the record. Decision No. 1, FD 36744 et al., slip op. at 6-7.

On March 1, 2024, CPKC filed a petition requesting that the Board reconsider its finding in Decision No. 1 and instead find that the Proposed Transaction is a "significant transaction."[11]

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on behalf of the City of Waterloo, Iowa; Mayor Danny Laudick on behalf of the City of Cedar Falls, Iowa; Butler County Board of Supervisors; Cedar Rapids Metro Economic Alliance; Iowa Area Development Group; Iowa Association of Business and Industry; Sukup Manufacturing Co.; Hawkeye Community College; Kirkwood Community College; North Iowa Area Community College; and the International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division (SMART-TD). (Appl. 4 & App. C, Supp. Statements, Jan. 30, 2024.) During the comment period, additional statements of support were submitted by U.S. Representative Ashley Hinson (Iowa) and the Forest City Economic Development, Inc., Manager of North Central Iowa Rail Corridor, L.L.C., together with the Farmers Cooperative Association, Forest City, Iowa. In addition, Applicants submitted letters of support from Mayor Brad Cavanagh on behalf of the City of Dubuque, Iowa; Mayor Pro-Tem Justin Lau on behalf of the City of Peosta, Iowa; D&I Railroad Company; NEW Cooperative, Inc.; Viterra; Borregaard USA, Inc.; Scoular; OCI Methanol; Zinpro Corporation; Shell Rock Soy Processing LLC; Valor Victoria; Mid-Iowa Cooperative; and Brotherhood of Locomotive Engineers and Trainmen (BLET).

[10] The Board also accepted for consideration the related filings in Docket Nos. FD 36744 (Sub-No. 1) and FD 36744 (Sub-No. 2). Decision No. 1, FD 36744 et al., slip op. at 6.

[11] That same day, Iowa Interstate Railroad, LLC (IAIS), filed a reply in support of CPKC's petition raising competition issues. On April 29, 2024, CNR, GTC, and IAIS jointly filed a letter notifying the Board that the CNR, GTC, and IAIS had entered into a settlement

Applicants replied in opposition to CPKC's petition on March 5, 2024. In a decision served on March 29, 2024 (Decision No. 2), the Board denied CPKC's petition but extended the procedural schedule and directed Applicants to provide additional evidence to aid the Board in closely scrutinizing whether the Proposed Transaction would substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest. Decision No. 2, FD 36744 et al., slip op. at 7-9 (citing 49 U.S.C. § 11324(d)(1)-(2)). On April 12, 2024, Applicants supplemented their application, as required by Decision No. 2. More specifically, Applicants provided, among other things, a list of all origin/destination areas, including gateways, for their projected diverted and new traffic and described how IANR traffic would be handled with IAIS via the IANR-CRANDIC-IAIS routing.

Comments and/or requests for conditions were filed during the comment period by the following: the U.S. Department of Agriculture (USDA); CPKC, on behalf of its U.S. rail carrier subsidiaries; UP; CRANDIC; SMART-TD and the American Train Dispatchers Association (ATDA); the National Grain and Feed Association (NGFA); the United Food and Commercial Workers (UFCW) Local 431; and the Brotherhood of Maintenance of Way Employes Division/IBT (BMWED) joined with BLET, the Brotherhood of Railroad Signalmen (BRS), the International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division (SMART-MD), the National Conference of Firemen and Oilers, 32BJ/SEIU (NCFO), the International Brotherhood of Boilermakers (IBB), and the International Association of Machinists and Aerospace Workers District #19 (IAM #19) (collectively the Allied Rail Unions or ARU).[12] On May 29, 2024, CN filed a rebuttal in support of its application and responded to

agreement regarding the Proposed Transaction and requesting that the Board impose the terms of the agreement as a condition to its approval of the Proposed Transaction. The parties note that, in exchange for the commitments set forth in their agreement, IAIS no longer opposes the Proposed Transaction and instead requests withdrawal of both its notice of intent to participate in this proceeding, filed on February 5, 2024, and its reply in support of CPKC's petition for reconsideration. (CN-GTC-IAIS Joint Notice of Settlement Agreement 2, Apr. 29, 2024.) The Board will grant the joint request to impose the settlement agreement as a condition and the terms of the parties' agreement (the Settlement Agreement) are incorporated into the Application.

[12] A few individuals expressed opposition toward mergers or consolidations in general, asserting, among other things, that consolidations cause irremediable competitive harm. (See Syroka Comments, Jan. 8, 2024; Connolly Comments, Jan. 11, 2024, Apr. 5, 2024, Apr. 15, 2024, Apr. 17, 2024, May 23, 2024, Aug. 12, 2024, Nov. 7, 2024, Nov. 21, 2024, Dec. 27, 2024; and Russel Comments, Dec. 28, 2023.) Additionally, UFCW, representing workers across Iowa and Illinois, including members at the Tyson Foods plant in Waterloo, Iowa, does not request any specific conditions but expresses skepticism regarding CN's claims that the Proposed Transaction will keep shipping costs down. (UFCW Comments 1, Apr. 30, 2024.) According to UFCW, history has shown that, as industry consolidation occurs, rail rates go up, and at a level that outpaces the increased costs incurred by rail carriers. Id. It further notes its general opposition to excessive industry concentration and its effects on workers. Id.

comments and requests for conditions, as discussed more fully below.[13]

DISCUSSION AND CONCLUSIONS

A. Statutory Criteria. Under 49 U.S.C. § 11323(a)(3), the acquisition of control of a rail carrier by another rail carrier requires prior Board approval. See also 49 U.S.C. § 11324. Here, CNR and GTC seek the Board's prior review and authorization to acquire control of Iowa Northern. Because the Proposed Transaction does not involve the merger or control of two or more Class I railroads, it is governed by § 11324(d), which directs the Board to approve the application unless it finds that (1) 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; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

The Board must approve the application unless there would be adverse competitive impacts that are both "likely" and "substantial." 49 U.S.C. § 11324(d)(1). And, even if the Board were to find that there would be likely and substantial lessening of competition (or a likely creation of monopoly or restraint of trade), the Board shall approve the transaction unless the anticompetitive impacts outweigh the public interest in meeting significant transportation needs, see 49 U.S.C. § 11324(d)(2), and cannot be mitigated through conditions. See Soo Line Corp.—Control—Cent. Me. & Que. Ry. US (Soo Line/CMQR), FD 36368, slip op. at 4 (STB served May 4, 2020); Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry. (NS/D&H), FD 35873 et al., slip op. at 14 (STB served May 15, 2015); Paducah & Louisville Ry.—Acquis.—CSX Transp., Inc., FD 34738 et al., slip op. at 4 (STB served Nov. 18, 2005).

Under 49 U.S.C. § 11324(c), the Board has broad authority to impose conditions on a transaction subject to § 11324(d). See, e.g., Soo Line/CMQR, FD 36368, slip op. at 4. Typically, the Board uses its conditioning authority under 49 U.S.C. § 11324(c) to ameliorate competitive harm that would result from the transaction. See id. at 4, 7; see also Norfolk & W. Ry.—Purchase—Ill. Terminal R.R., 363 I.C.C. 882, 891 (1981). In doing so, the harm "must be distinguished from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing . . . i.e., pre-existing disadvantages that will neither be caused nor exacerbated" by the transaction. Canadian Nat'l Ry.—Control—Duluth, Missabe & Iron Range Ry., FD 34424 et al., slip op. at 14 (STB served Apr. 9, 2004); see also NS/D&H, FD 35873 et al., slip op. at 14. The Board's conditioning power is thus "used to preserve competitive options

[13] On August 12, 2024, after the close of the comment period, Applicants filed additional support statements from SMART-TD and BLET in which each party, among other things, reiterated its support for Board approval of the proposed transaction. (CN Support Statements at third and fourth unnumbered pages, Aug. 12, 2024.) Thereafter, on November 5, 2024, Mayor Quentin Hart on behalf of the City of Waterloo submitted a letter reiterating support for the parties' proposed transaction. (City of Waterloo Comments 1, Nov. 5, 2024.) In the interest of a more complete record, the Board will accept into the record all filings submitted to date. See, e.g., City of Alexandria, Va.—Pet. for Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

(not to expand them)." Burlington N. Inc.—Control & Merger—Santa Fe Pac. Corp., 10 I.C.C.2d 661, 745 (1995).

As described further below, after examining the full record developed after the Board's classification of the Proposed Transaction as "minor," the Board concludes that the Proposed Transaction, as contemplated by Applicants, would have some anticompetitive effects. But the conditions imposed in this decision will sufficiently mitigate the Proposed Transaction's anticompetitive effects such that those effects will not outweigh the Proposed Transaction's contribution to the public interest in meeting significant transportation needs, even though such public interest contributions are not substantial. Accordingly, the Board will approve the Proposed Transaction, with conditions.

B. Competitive Analysis. After considering the application and the full record in this proceeding, the Board finds that, without conditions, CNR and GTC's acquisition of Iowa Northern's rail lines would likely cause a substantial lessening of competition.[14] The Proposed Transaction involves CN acquiring control of approximately 218 miles of rail line in the State of Iowa, the majority of which runs parallel and in close proximity to a line controlled by CN. Unlike many of the minor and significant transactions involving the purchase of a Class III railroad by a Class I railroad, the Proposed Transaction presents both horizontal and vertical competition issues. Moreover, this transaction would combine a well-functioning short line that currently connects to three Class I railroads (as well as a short line) with one of those Class I railroads, thereby dampening the vertical and horizontal competitive pressure created by IANR's current neutrality with its interchange partners.

Although Applicants argue that the rail networks of a Class III railroad like IANR and a Class I railroad like CN are not "similar" or "analogous" and are not horizontal competitors in any meaningful sense, (see Rebuttal 43), the Board disagrees. The record indicates that CN/GTC and IANR have overlapping routes that serve some of the same geographic markets in which the carriers appear to compete with one another.[15] CN and IANR also serve the same and competing product markets, handling the same basic mix of commodities to and from east-central Iowa, and they do so to or from stations that are either served by both railroads or are close to the lines of the other. (CPKC Comments 16-17, Apr. 29, 2024; see also id., V.S. Zebrowski, paras. 6-17.) Applicants acknowledge that CN and IANR compete head-to-head at four customer stations. (Rebuttal 42, May 30, 2024 (discussing the "four customer stations that will go from 3-to-2 railroad competitors").) But the competitive impact of the Proposed Transaction is not limited to stations that both railroads serve. IANR itself, through its expert, has previously articulated that "[r]ailroads compete with each other in many cases not only when they serve the same point, or station, but also when both provide service in the same geographic area." IANR Comments, V.S.

[14] To ameliorate the potential anticompetitive effects of the Proposed Transaction, the Board will impose certain conditions, as discussed below.

[15] IANR serves 19 counties across northeast Iowa that collectively make up about 10,600 square miles. (USDA Comments 3, Apr. 29, 2024; see also Appl., Ex. B-2.) The Iowa counties include Benton, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Fayette, Floyd, Franklin, Grundy, Hancock, Howard, Linn, Mitchell, Tama, Winnebago, Worth, and Wright. (Appl., Ex. B-2.)

Grimm 43, Oct. 26, 2007, Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081. As IANR goes on to explain, "customers can gain from such competitive rail options in their location and relocation decisions. Also, with the possibility of truck transloading, railroads may be effective competitors even where they do not both serve the same station." Id. at 12 n.9 (citing V.S. Grimm at 43); see also Canadian Nat'l Ry.—Control—Kan. City S. (Decision ID No. 50764), FD 36514, slip op. at 4 (STB served May 17, 2021) (identifying elimination of shippers' build/out, transloading, plant siting, and production shifting choices as potential competitive impact of the merger of two railroads serving overlapping areas). Such is true here. Iowa Northern uses its transloading facilities, particularly those at Manly and Butler, as well as the approximately 20 grain elevators located on its lines, to compete with other railroads, including CN. (See CPKC Comments, V.S. Harman, paras. 23 & 29, Apr. 29, 2024; USDA Comments 7-8, Apr. 29, 2024.)

In addition to examining the geographic area in which merging carriers are located, when relevant, the Board also considers the impact on overlapping and competing corridors that both railroads serve. See Union Pac. Corp.—Control—Mo. Pac. Corp., 366 I.C.C. 462, 510-12 (1982); see also Union Pac. Corp.—Control—Mo.-Kan.-Tex. R.R., 4 I.C.C.2d 409, 455-56 (1988) (examining the impact of the proposed transaction on competition within certain corridors). As an expert retained by CPKC explains, railroads can compete both within a rail corridor, i.e., traffic moving between a specific origin and destination, and between corridors, i.e., traffic that can move to multiple destinations along different corridors. (See CPKC Comments, V.S. Majure, para. 26, Apr. 29, 2024.) While IANR on its own does not have the reach of CN, IANR participates in movements with other carriers in many of the same corridors in which CN operates. For example, IANR interchanges traffic with CPKC for movements to and from markets in Canada, with IAIS via CRANDIC for movements to and from the Chicago area, and with UP for movements to and from Chicago. The record indicates that CN and IANR compete in at least {{132}} routes/origin-destination pairs. (CPKC Comments, V.S. Zebrowski, paras. 24-25, Apr. 29, 2024.) For example, customers have the option to ship oats from Saskatchewan and Manitoba, Canada, to Cedar Rapids via CP-IANR or via CN single-line move. The presence of these competitive options provides incentive to both CN and CP-IANR to provide customers with lower prices and better service. The Proposed Transaction will eliminate that competition.

It is well recognized that a "merger[] that eliminate[s] head-to-head competition between close competitors often result[s] in a lessening of competition." FTC v. Staples, Inc., 190 F. Supp. 3d 100, 131 (D.D.C. 2016); see also FTC v. Sysco Corp., 113 F. Supp. 3d 1, 61 (D.D.C. 2015) (same); United States v. First Nat'l Bank & Trust Co. of Lexington, 376 U.S. 665, 669-70 (1964) (per curiam) ("[I]t [is] clear that the elimination of significant competition between [merging parties] constitutes an unreasonable restraint of trade . . . . It [can be] enough that the two . . . compete[], that their competition [is] not insubstantial and that the combination [would] put an end to it."). And, despite Applicants' assertion that CN's horizontal competitors in Iowa are other Class I railroads that can compete with CN to provide single-line service for key Iowa industries like grain and biofuels, the Board notes the unique, competitive role that IANR plays in east-central Iowa, as an independent short line with direct connections to multiple railroads that link rail customers to the broader rail network. There can still be a significant lessening of competition even where the merging parties are not the only, or even the two largest,

competitors in the market. See Sysco, 113 F. Supp. 3d at 62 (citing FTC v. H.J. Heinz Co., 246 F.3d 708, 717-19 (D.C. Cir. 2001)).

Applicants argue that there will be no substantial lessening of competition because the Proposed Transaction will not result in any 2-to-1 points, (Rebuttal 34), and because "IANR and CN are surrounded by competing railroads that offer elevator and transload facility options to farmers and other shippers that use IANR facilities," (id., V.S. Hunt 2). Here, though, the Board is concerned about the competitive impact that will result from the loss of IANR as an independent short line. As discussed above, IANR directly connects to CPKC, CN, CRANDIC, and UP. Currently, customers can use all of those connections to their advantage, seeking to send their products to the best market for the best price, on any of the railroads that connect with IANR. And IANR has no incentive to try to direct its customers to one railroad over another. But that will not be true once IANR is part of the CN family of railroads when IANR and CN will be incentivized to extend the haul of traffic originating or terminating on IANR. Therefore, in certain circumstances, the merger of CN and IANR will not result in just the loss of one competitor, but essentially three. Therefore, there is the potential for a reduction in competition even though other carriers are in the general area.

This concern is underscored by comments made by USDA in this proceeding. USDA emphasizes IANR's "dedicated service" to "small and medium"-sized grain elevators, and explains that over the last 20 years, off-farm grain storage has risen while the number of storage facilities has fallen. (USDA Comments 5-6, Apr. 29, 2024.) This consolidation in grain storage capacity has been driven in part by the growth in shuttle trains: i.e., trains made up of a large group of grain cars (typically 75 or more), which cycle faster than manifest grain car movements because they have fewer handling events. (Id. at 6.) While USDA explains that shuttle train programs present efficiencies that may benefit railroads and shippers, they disadvantage small- and medium-sized elevators, which lack sufficient volumes and capacity to support a shuttle train station. (Id.) As USDA explains, the closure of small- and medium-sized grain elevators leaves farmers in remote areas with "diminishing options when marketing their grain," and may require these "farmers to haul their grain farther to reach the next closest elevator—increasing the number of trucks and wear-and-tear on local roads." (Id.)

The difference in Applicants' current tariff rates highlights CN's preference for larger movements, and the potential harm posed by this transaction. (See USDA Comments 7-8, Apr. 29, 2024; Rebuttal 75-77.) Indeed, for smaller grain shipments of less than 25 cars, CN's rates to move corn to Cedar Rapids are nearly double those offered by IANR for movements of a comparable distance. (Rebuttal 76.) CN's response to this concern is not persuasive. First, it emphasizes that its tariff rates to move those same commodities in larger blocks of 25 cars or more are closer to the tariff rates charged by IANR. (Id.) But that misses the crux of USDA's comment—that IANR is dedicated to small and medium-sized grain elevators and that the option to use those elevators may be lost post-transaction should prices on smaller movements increase. CN's observation that "grain elevators in the vicinity of Osage and Manly" are large enough to "load in 25-car blocks and [thus] be able to take advantage of the lower tariff rate," (id.), also suggests that CN's higher rate structure for small grain movements on the IANR is likely to be applied to such movements post-transaction. Indeed, CN does not rebut USDA's basic assertion

that customers shipping less than 25 cars will be worse off as a result of the Proposed Transaction, given the combined carrier's pricing abilities and incentives.

To be sure, CN contends that because "grain initially moves from farms by truck, Iowa farmers have multiple destination options," including elevators on competing railroads. (Rebuttal, V.S. Hunt 1.) But those farmers will likely have fewer options if CN implements its current pricing structure on IANR. IANR's current pricing structure allows the smaller grain elevators to be able to compete with the bigger grain elevators because their transportation costs are similar. And given the 20 grain elevators situated on the IANR, and the significant volumes moved on IANR relative to CN, (see CPKC Comment, V.S. Zebrowksi 6 tbl.1, Apr. 29, 2024), trucking grain to a smaller elevator is a choice those farmers are clearly making today. It is also one that may be imperiled should CN's rates for movements of less than 25 cars make the use of those elevators cost prohibitive. If these smaller grain elevators cannot remain competitive due to increased transportation costs, it means less competition for grain, resulting in lower prices paid to farmers and higher costs for the farmers because they will have to truck their grain to elevators that are farther away. That other elevators may be "larger and have better rail capabilities," (Rebuttal, V.S. Hunt 1), is of little consolation to a farmer who currently has the option to truck grain to a closer, but smaller, grain elevator, (USDA Comments 6, Apr. 29, 2024), and who may lose that option post-Transaction.

The Board is concerned that, post-merger, Applicants would not have the incentive to offer rates and service that are as competitive as those that IANR currently offers to its customers, particularly for smaller agricultural shipments or shipments that have shorter haul movements. As noted above, Applicants have committed to keep gateways open on "commercially reasonable terms." (Appl. 7.) While the Board has embraced the use of open gateway conditions to mitigate vertical impacts, when the issues raised are related to horizontal competition, "commercially reasonable" rates and service do not necessarily equate to the competitive rates and service that would be yielded through such head-to-head competition. In addition to the example given above, USDA also expresses concern over CN's rate structure for longer hauls, citing the difference in rates for soybean meal and soybean oil between CN's single-line rate and the IANR-CIC-IAIS interline rate to Chicago. (USDA Comments 7, Apr. 29, 2024.) Despite multiple interchanges, the IANR-CIC-IAIS tariff rate is less than the rate charged by CN for its single-line movement.[16] (Id.) Again, despite multiple opportunities to do so, Applicants have made no assurances that CN lacks the ability and incentive to impose its higher rates post-merger.

Further, IANR has provided exceptional service to its rail customers due to its "boutique" services, which include, among other things, frequent switching, breaking apart trains from Class I carriers, and moving smaller blocks in and out of customer facilities. (See CPKC Comments, V.S. Harman, para. 16, Apr. 29, 2024.) Post-merger, Applicants may not have an incentive to continue to provide the same level of service, thereby decreasing competition in the region. The Board has previously observed that "competition drives firms to offer lower prices and better service to customers in an attempt to win business." See Canadian Nat'l Ry.—

[16] This is so even with CN's rate "absorb[ing] a $300 Union Pacific 'reciprocal switch at origin.'" (Rebuttal 77.)

Control—Kan. City S., FD 36514, slip op. at 29 (STB served Aug. 31, 2021); see also U.S. Dep't of Just. & Fed. Trade Comm'n, Merger Guidelines § 2.5 (2023). Indeed, mergers between close competitors might have anticompetitive effects if "the acquiring firm w[ould] have the incentive to raise prices or reduce quality after the acquisition, independent of competitive responses from other firms." United States v. H & R Block, Inc., 833 F. Supp. 2d 36, 81 (D.D.C. 2011). Further, anticompetitive effects are more likely, when "the merger would result in the elimination of a particularly aggressive competitor in a highly concentrated market," as is the case here. See FTC v. Staples, Inc., 970 F. Supp. 1066, 1083 (D.D.C. 1997).

In sum, the Board finds that, as a result of the Proposed Transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in the region where the carriers operate. However, as discussed more fully below, the Board finds that much of the potential anticompetitive impacts of the Proposed Transaction may be sufficiently mitigated through certain targeted conditions. As the Board articulated in Bessemer & Lake Erie Railroad—Acquisition & Operation—Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, & Franklin Counties, N.Y., FD 36347, slip op. at 9 (STB served Feb. 25, 2021), when the Board determines that an aspect of a non-major transaction is likely to result in anticompetitive effects of the sort described in § 11324(d)(1) (e.g., substantial lessening of competition), it will consider imposing conditions to alleviate or eliminate those anticompetitive effects rather than denying the transaction. And the Board will impose such conditions here.

C. Public Interest Analysis. Applicants argue that, as a result of the Proposed Transaction, various public benefits would be achieved. According to Applicants, with CNR and GTC acquiring Iowa Northern's 218 route miles, the Proposed Transaction would ensure that a combined CN-Iowa Northern would provide more efficient and economical service, providing customers with access to new market opportunities, while supporting reliable local service on Iowa Northern's lines. (Appl. 20.) According to Applicants, customers in a wide range of markets—including ethanol, fertilizer, and grain—would benefit from operational efficiencies and access to markets through new, more efficient single-line service on the combined CN-Iowa Northern system. (Id. at 8.) Applicants also state that the Proposed Transaction would provide a firm financial foundation to enable a combined CN-Iowa Northern to continue providing safe, reliable local service to customers in Iowa. (Id.) Moreover, Applicants assert that the Proposed Transaction would benefit the Iowa economy and local Iowa customers and communities by supporting the growth of local businesses via new, single-line service between points on Iowa Northern and locations throughout North America over CN's 18,600-mile rail network. (Id.)

The Board agrees that the Proposed Transaction will provide IANR with a more certain source of financing. (See Appl., V.S. Sabin 5, Jan. 30, 2024.) Indeed, the application indicates that, due to divestiture of a major outside stakeholder, IANR took steps to identify a long-term operational and financial partner, ultimately concluding that CN would be the "optimal choice." (Id.) The Proposed Transaction also will provide IANR customers with access to CN's fleet of railroad-owned cars; access to CN's larger, more diverse car supply could have benefits for the bulk shippers on IANR. (See Appl., V.S. Ellis 4, Jan. 30, 2024.) However, outside of these relatively small benefits, the Board finds most of the other claimed benefits to be either unsupported or those that do not advance the public interest in meeting significant transportation

needs. For example, Applicants assert that the Proposed Transaction will "improve efficiency" by, in part, moving the existing IANR interchange with CRANDIC. (Appl. 17, 19; see also id., Ex. 15, Operating Plan-Minor 16-17, 30.) However, CRANDIC objects to this change, and Applicants have not indicated that they can unilaterally change the interchange point. (See, e.g., CRANDIC Letter, Jun. 17, 2024.) Therefore, it is not clear that any efficiencies attributed to the change in operations would occur.

Applicants also assert that 14,619 truck shipments annually will be diverted to a combined CN-Iowa Northern. However, the significant cost savings and operational changes CN claims will support the projected diversions are not substantiated. (CPKC Comments 38, Apr. 29, 2024; id., V.S. Zebrowski, paras. 28, 31-48.) Likewise, while Applicants contend that a combined CN-IANR will result in efficiencies that will open up new markets to IANR customers, it offers little to support that claim. There is no evidence in the record that CN and IANR's current interchange is so burdensome or costly that it forecloses markets to IANR customers. Further, while Applicants assert several times that the Proposed Transaction will lower costs, at no time do Applicants ensure that those cost savings will be passed to its customers. See Can. Pac. Ry.—Control—Kan. City S. (CP-KCS Approval), FD 36500 et al., slip op. at 27 (STB served Mar. 15, 2023) (stating that "private profits realized by the Transaction are not public benefits"); CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. at 334 (stating that cost savings and revenue gains are not public interest benefits); Union Pac. Corp.—Control—Mo.-Kan.-Tex. R.R., 4 I.C.C.2d at 416. Rather, as noted above, there is good reason to believe that prices for smaller shipments will increase post-Transaction and that shippers will be deprived of IANR's specialized service, which has been enabled by IANR's unique position in the market, including its horizontal competition with CN.

Accordingly, with such modest or unsubstantiated potential benefits, the Proposed Transaction does not appear to substantially further the public interest in meeting transportation needs.

D. Conditions Sought. Several parties have asked the Board to impose certain conditions upon its approval of the Proposed Transaction. The Board will address the parties' requested conditions below.

UP's Requested Conditions. UP, a Class I rail carrier that operates over 32,000 routes in the United States, including in the state of Iowa, takes no position on whether the Board should approve the Proposed Transaction. It argues, however, that, in the event the transaction is approved, certain conditions should be imposed. (UP Comments 2, Apr. 29, 2024.)

According to UP, it has reciprocal switching agreements to access shippers located on Iowa Northern at Manly and Waterloo. (Id.) UP also states that it has access via reciprocal switching to shippers located on CN at Waterloo and Cedar Rapids, among other locations. (Id. at 3.) UP notes that CN commits to "maintaining existing carrier access to locations" in the CN and Iowa Northern tariffs, but UP argues that CN does not expressly address whether it intends to provide existing carriers access to new facilities established at those locations, or to existing and new facilities that begin shipping new commodities. (Id.) UP states that CN's tariff is specific regarding shippers, locations, rates, and commodities, therefore CN's commitment is

"clear enough." (Id.) UP argues, however, that Applicants' statements regarding the IANR tariff need clarification as IANR's tariff lists commodities and associated rates per railcar for locations where reciprocal switching is provided, rather than identifying specific shippers open to reciprocal switching. (Id.) According to UP, IANR has expanded the list of commodities as necessary to accommodate the needs of existing and new shippers at the identified locations. (Id.) UP argues that CN's commitment to "maintaining existing carrier access to locations" could allow CN to restrict the tariff to existing shippers and commodities, rather than continuing IANR's practice of expanding the tariff to new shippers and commodities. (Id. at 3-4.) UP claims that this presents a vertical foreclosure issue because, post-transaction, the combined carriers would have strong incentives to use a single-line CN-IANR route for traffic that IANR would have switched to UP pre-merger. (Id. at 4.)

UP requests that the Board impose a condition requiring that CN grant existing carriers access via reciprocal switching to existing and new shipper facilities and existing and new commodities at locations listed as open to reciprocal switching in IANR's reciprocal switching tariff. (UP Comments 5, Apr. 29, 2024.) UP also points out that Applicants commit to "commercially reasonable rates" in their gateway commitment but not in their reciprocal switching commitment, thereby ignoring the "financial and operational" aspects of that commitment. (Id. at 4-5.) As such, UP requests that the Board require CN to "maintain commercially reasonable rates and service for reciprocal switching." (Id.)

In their rebuttal statement, Applicants argue that the Board should reject UP's first requested condition which, according to Applicants, appears to ask that Applicants be permanently required to add any new facility or commodity to their reciprocal switching tariff. (Rebuttal 64.) Applicants state that there is no justification for a merger condition that would permanently strip Applicants of any operational or commercial discretion relating to future reciprocal switching requests. (Id.) Applicants further assert that UP's request is not tethered to any specific transaction-related harm to competition, substantial or otherwise, and that no shipper has asked for such relief. (Id.) Applicants argue that they have gone above and beyond in committing to maintaining existing carrier access through their reciprocal switching commitment. (Id. at 65.) As such, they assert that they will evaluate any future requests for new reciprocal switching on a case-by-case basis, taking into consideration business and operational needs. (Id.) Applicants do not comment on UP's request that the Board require CN to maintain commercially reasonable rates and service for reciprocal switching.

The Board will hold Applicants to their stated representation to maintain existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs. (Appl. 7.) This commitment will ensure that shippers that currently have access to competitor railroads via reciprocal switching will continue to have such access post-transaction. To address competitive concerns raised by the Proposed Transaction, including the loss of IANR as an independent carrier, the Board will impose the broader condition requested by UP requiring CN to allow access to reciprocal switching for new shippers and shipments of new commodities on the IANR network. The Board agrees with UP that CN's commitment "to maintain[] existing carrier access to locations" in Iowa Northern's tariff is ambiguous given that Iowa Northern's tariff does not identify specific shippers open to reciprocal switching and, instead, lists commodities and associated rates per railcar for locations where reciprocal switching is

provided. Given that it is Iowa Northern's practice to expand, as necessary, the list of commodities in its tariff to accommodate the needs of existing and new shippers at identified locations, the Board recognizes the competitive risk that may result from the Proposed Transaction. Although Applicants argue that imposing a condition that would provide access to reciprocal switching for new shippers and shipments of new commodities would permanently strip it of any operational or commercial discretion relating to future reciprocal switching requests, the Board finds that the condition would maintain the status quo post-transaction and would mitigate competition issues—such as CN-GTC/IANR potentially limiting access to its network. And to ensure both financial and operational access, the Board will require CN to maintain "commercially reasonable rates and service" for reciprocal switching.

CRANDIC's Requested Conditions. CRANDIC is a Class III rail carrier that operates approximately 100 miles of rail line extending southeast and southwest from Cedar Rapids. (CRANDIC Comments 1, Apr. 29, 2024.) CRANDIC is a subsidiary of Travero Inc., which is a wholly owned subsidiary of Alliant Energy Inc. (Id.; id., V.S. Hoffmann, para. 1.) CRANDIC states that it has an interchange agreement with IANR, under which the two carriers interchange at CRANDIC's yard. (CRANDIC Comments 2, Apr. 29, 2024.) It further states that it has an interchange agreement with CN, under which the two carriers interchange at CN's Cedar Rapids yard. (Id.) According to CRANDIC, it interchanges significantly more traffic with Iowa Northern than with CN. (Id. at 1-2; id., V.S. Hoffmann, paras. 3 and 6.) CRANDIC states that, in 2023, it interchanged approximately 14,535 cars with IANR and 2,068 cars with CN. (CRANDIC Comments 2 n.1, Apr. 29, 2024.) CRANDIC notes that it believes it has a solid working relationship with Iowa Northern, but it expresses concerns that CN might be difficult to work with if CN acquires Iowa Northern. (Id. at 2.)

CRANDIC further alleges that the application contains inaccuracies and is inconsistent with the parties' current interchange agreements. For instance, CRANDIC argues that, pursuant to an IANR/CRANDIC interchange agreement, interchange occurs daily at CRANDIC's Cedar Rapids yard, but CN's application states that Iowa Northern outbound traffic will interchange at the CN yard, approximately five miles from where Iowa Northern empties are currently received in the CRANDIC yard. (Id. at 2-3.) CRANDIC notes, among other things, that it has not agreed to this arrangement, that the arrangement is contrary to its interchange agreement with IANR, and that the arrangement would cost CRANDIC thousands of dollars per day. (Id.)

CRANDIC states that, should the Board grant the application, the Board should make clear that its decision does not alter or change the existing interchange agreements involving CRANDIC, Iowa Northern, and CN. (Id. at 5-6.) CRANDIC further asserts that a process should be required for coordinating any changes to the parties' interchange operations and for escalating unresolved issues. (Id. at 6-7.) Finally, CRANDIC requests that the Board condition any approval or exemption on CN being directed to provide more specificity to its commitment to keep existing gateways open on commercially reasonable terms. (Id. at 7.) Specifically, CRANDIC states that, as part of the open gateways commitment, the IANR portion of any

current Rule 11[17] traffic involving CRANDIC, or where CRANDIC and IANR have interchanged traffic in the past six months, whether such portion is to be marketed as "CN" or "IANR" or otherwise in the control of CN, should be conditioned at maintenance of current rates with upward adjustments no more than quarterly, provided that such adjustments do not exceed the rate of inflation as evidenced by the Bureau of Labor Statistics Midwest Region Consumer Price Index for All Urban Consumers. (Id. at 7-8.) CRANDIC notes, however, that this commitment should not be written or construed to preclude CRANDIC and CN/Iowa Northern from developing interline rates pursuant to 49 U.S.C. § 10706 or interline contracts under 49 U.S.C. § 10709. (Id. at 8.)

On rebuttal, Applicants claim that CN's proposed operating plan, which would require IANR outbound traffic to interchange at the CN Yard, would improve efficiency, fluidity, and capacity in Cedar Rapids. (Rebuttal, V.S. Taylor 10-11.) However, Applicants note, among other things, that they have not asked the Board to abrogate the existing interchange agreements among the parties; thus, Applicants state that they do not oppose CRANDIC's request that the Board make clear that any approval of the Proposed Transaction would not alter or change the existing interchange agreements involving CRANDIC, Iowa Northern, and CN. (Rebuttal 77.) Nevertheless, Applicants state that CN will continue to dialogue with CRANDIC about potential changes to improve operations in Cedar Rapids. (Rebuttal, V.S. Taylor 10-11.) Applicants further assert that, given the concerns raised by CRANDIC, they "have agreed to maintain the status quo post-[t]ransaction until the parties can reach a mutually beneficial agreement." (Rebuttal 78 n.254 (citing Rebuttal, V.S. Taylor 10-11).)

Applicants argue that CRANDIC's request that any rates for Rule 11 traffic between CRANDIC and IANR be permanently capped at inflation should be summarily rejected as unwarranted and contrary to Board precedent. (Rebuttal 62.) According to Applicants, their gateway commitment—similar to others before it—ensures commercially reasonable rates and service for interline traffic, and no more is needed. (Id.) Finally, Applicants argue that it would be unnecessary to "adopt" a dispute resolution process for proposed changes to the operations governed by the parties' interchange agreements because the interchange agreements between CRANDIC and CN and between CRANDIC and Iowa Northern each already include one. (Id. at 77-78.)[18]

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[17] Rule 11 is an accounting procedure under the Railway Accounting Rules promulgated by the Association of American Railroads' accounting division. Rule 11 refers to the practice of separately billing for rail charges by each carrier in an interline movement. See Pol'y Alts. to Increase Competition in the R.R. Indus., EP 688, slip op. at 4 n.5 (STB served Apr. 14, 2009).

[18] In a letter filed on June 17, 2024, CRANDIC argues, among other things, that Applicants' rebuttal fails to address CRANDIC's criticism that Applicants' proposed location for interchange of traffic between CN/IANR and CRANDIC would increase train traffic and signal activations in downtown Cedar Rapids, contrary to Applicants' representations. (CRANDIC Sur-rebuttal 1-2, June 17, 2024.) CRANDIC further expresses doubts that Applicants would maintain the "status quo" until the parties reach a mutually beneficial agreement. (Id. at 2.) CRANDIC states that, despite the described effort to "continue to dialogue," CN has not responded to CRANDIC's repeated inquiries. (Id.) On June 18, 2024, in response to

Here, Applicants have not asked the Board to abrogate the existing interchange agreements involving CRANDIC, Iowa Northern, and CN. (See Rebuttal 77.) Therefore, the Board makes clear that approval of Applicants' Proposed Transaction would not alter or change the existing interchange agreements involving CRANDIC, Iowa Northern, and CN/GTC-Iowa Northern. Further, during the pendency of the oversight period, the Board will hold Applicants to their representation that they will maintain the status quo for IANR outbound traffic until the parties reach a genuine, mutual agreement on interchange. In light of the existing dispute resolution processes available for proposed changes to operations governed by the parties' interchange agreements, however, the Board finds it unnecessary to impose a condition for dispute resolution, as requested by CRANDIC.[19] Finally, as discussed further below, during the oversight period Applicants will be required to provide, upon written request by a shipper submitted to the applicable CN/GTC account representative, a written response identifying their justification(s) for any rate increase above the applicable rate of inflation for any traffic that originates or terminates on the IANR legacy lines, including interline movements. The Board finds this condition to be more suitable to address CRANDIC's concerns as it would aid shippers in receiving information necessary to determine whether a price increase is commercially reasonable, or whether the increase is the result of a potential foreclosure that warrants relief from the Board, without imposing price controls on the carrier. See CP-KCS Approval, FD 36500 et al., slip op. at 68.

NGFA's and USDA's Requested Conditions. NGFA's members include grain, feed, processing, exporting, and other grain-related companies that operate more than 8,000 facilities handling U.S. grains and oilseeds. (NGFA Comments 1, Apr. 29, 2024.) NGFA states that it does not oppose the Proposed Transaction but notes, among other things, that the transaction will change the competitive balance in the region and beyond and will alter the extent to which IANR currently provides local service to shippers on its 218-mile system. (Id. at 2.) NGFA further states that the Proposed Transaction should be categorized as a transaction of at least regional significance or even national significance under 49 U.S.C. § 11325. (Id.) It argues that, in today's consolidated railroad industry, substantive transactions like this one should be closely evaluated and the Board should err on the side of determining that the transaction is significant. (Id. at 3.) Regardless of whether the transaction is characterized as "significant" or "minor," however, NGFA states that the Board should impose certain conditions on any approval to

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CRANDIC's sur-rebuttal, Applicants argue that CRANDIC's letter was late-filed and reiterate that they do not oppose the condition to which CRANDIC's sur-rebuttal appears relevant—that the Board make clear that an approval decision would not alter CRANDIC's respective existing interchange agreements with CN and Iowa Northern. (CN Reply 2, June 18, 2024.) Because of the foregoing, Applicants request that the Board reject CRANDIC's sur-rebuttal. (Id.) As noted above, in the interest of a more complete record, the Board will accept CRANDIC's sur-rebuttal and Applicants' responsive pleading into the record. See, e.g., City of Alexandria, Va., FD 35157, slip op. at 2.

[19] In the event that the parties are unable to resolve their dispute regarding interchange points, the Board encourages the parties to utilize their agreed-upon procedures or any other dispute resolution mechanisms available to them.

preserve the current level of competition and to monitor the implementation of the Proposed Transaction. (Id. at 1.)

NGFA notes that, while Applicants' general assertions about preserving the existing interchanges between IANR and CPKC, UP, and CRANDIC, and "markedly" improving competition through the gateway commitment are welcomed, Applicants have failed to specify, among other things, what it would consider to be "commercially reasonable terms," as well as the duration of CN's commitment. (Id. at 5.) According to NGFA, the Board should require Applicants to adhere to the same open gateway condition imposed by the Board in CP-KCS Approval. Specifically, NGFA states that, to facilitate Applicants' adherence to the gateway commitment and the Board's enforcement, the Board should require during an oversight period that Applicants "provide to a shipper, upon request, a written justification for rate increases above the rate of inflation for interline movements subject to the open gateway obligation." (NGFA Comments 6, Apr. 29, 2024 (quoting CP-KCS Approval, FD 36500 et al., slip op. at 68.) NGFA states that the gateway commitment in CP-KCS Approval applied to existing joint line movements, but also to new shippers and new commodities that moved via existing routings post-transaction. (NGFA Comments 6, Apr. 29, 2024 (citing CP-KCS Approval, FD 36500 et al., slip op. at 70).) NGFA further states that the Board clarified that "commercially reasonable terms" were applicable both financially and operationally (physically). (NGFA Comments 6, Apr. 29, 2024 (citing CP-KCS Approval, FD 36500 et al., slip op. at 71).) It also required adherence to a binding arbitration process and imposed certain reporting requirements. (Id.)

According to NGFA, some version of the gateway preservation conditions applied in CP-KCS Approval should apply to this and all future transactions between Class I railroads and other railroads where the potential closure of established gateways is at issue. (NGFA Comments 6, Apr. 29, 2024.) NGFA, therefore, states that the Board should "endeavor to impose very similar, if not the same" gateway conditions it imposed in CP-KCS Approval and "affirm its views in that case on what committing to keep gateways open on 'commercially reasonable terms' means." (Id.) NGFA also asks the Board to: (1) hold CN to its representation that competition will be "markedly improved" by its plan to maintain joint line options through the open gateway commitment; (2) adopt a five-year oversight period and retain jurisdiction to impose additional conditions and take other action as necessary; (3) oversee CN's adoption of a scheduled local service plan, as the preservation of local service is critical to the success of the transaction; and (4) require CN to preserve, to the maximum extent possible, the status quo of customer service on the IANR system and closely monitor CN's integration of IANR's customer service into the CN system and be prepared to step in and act if there is degradation. (Id. at 6-10.)

USDA, which represents the interests of agricultural producers and shippers in improving transportation in the United States, does not take a stance on whether the Board should approve the Proposed Transaction. (USDA Comments 1, Apr. 29, 2024.) As referenced above, it expresses some concerns, however, about the transaction, especially as it relates to service levels and rates for small and medium-sized shippers. (Id. at 2.) To assuage its concerns, USDA has suggested that the Board impose a number of conditions on the Proposed Transaction. (Id.)

According to USDA, IANR plays a significant role in the Nation's agricultural economy. (Id. at 2-3.) USDA states that, if the Proposed Transaction is approved, it is imperative to

preserve IANR's high-quality, low-cost, efficient service. (Id. at 2.) USDA, therefore, encourages the Board to consider IANR's history and success when deciding what conditions to impose on the Proposed Transaction. (Id.) Specifically, USDA requests that the Board impose an oversight period of at least five years, provide concrete guidance on what it expects "commercially reasonable" terms to entail over time, and require the following as conditions: (1) continued price transparency for IANR shippers as a way to keep existing gateways open on commercially reasonable terms; (2) submission of historical and future service metrics for all traffic on lines currently served by IANR (e.g., origin dwell times, unfilled car orders, spot and pull fulfillment, carloadings, and the number of cars online); (3) provide shippers the option to resolve disputes through arbitration; and (4) provide shippers with written justification for any rate increase above the rate of inflation. (Id. at 2-3.)

On rebuttal, Applicants do not object to NGFA's request for clarification that the gateway commitment apply both financially and operationally. Applicants argue that the gateway commitment described in their application already contemplated this, as demonstrated by Applicants' statement that "CN would provide Iowa Northern served customers with commercially reasonable rates and service." (Rebuttal 59-60 (quoting Appl. 7).) Applicants also do not object to NGFA's requested clarification that the gateway commitment apply to new shippers and new commodities that move via existing routings post-transaction. (Rebuttal 60.) According to Applicants, this clarification reflects the intent of their commitment in the application. (Id.) Applicants, however, argue that the Board should reject NGFA's request for gateway reporting requirements as NGFA has provided no justification for this requested condition, nor has NGFA identified a harm that this request would remedy. (Id. at 62.)

Applicants also argue that no conditions related to either local service or customer service are needed. (Id. at 73.) While Applicants do not necessarily object to NGFA's request that approval of the Proposed Transaction be conditioned on CN's development and implementation of a scheduled local service plan, Applicants note that this condition is unnecessary given that CN has already planned to take such action. (Id.) Moreover, Applicants commit to submit a report on the progress of implementation of its scheduled local service plan and customer service integration nine months from the effective date of a Board decision approving the Proposed Transaction. (Id. at 74.)

Applicants argue that USDA's request that the Board collect and monitor service data as a condition of approval of the Proposed Transaction, including "historical data from IANR to benchmark service quality," should be rejected. (Rebuttal 69.) According to Applicants, USDA's request is inconsistent with Board precedent, and nothing in the record supports the broad-based service-level reporting requested by USDA. (Id. at 69-71.) Moreover, Applicants argue that there are real impediments to collecting baseline service data from Class III carriers, which generally collect and maintain more limited data than Class I carriers. (Id. at 71.) According to Applicants, Iowa Northern does not track any of the performance metrics requested by USDA, with the exception of carloadings. (Id. at 72.)

Applicants state that they agree that arbitration can be an efficient tool to resolve disputes, noting that CN has long been a proponent of alternative dispute resolution. (Id. at 60.) As such, Applicants state that they will commit to using confidential, voluntary, binding

arbitration to permit efficient resolution of any future commercial disputes over the gateway commitment with customers, at their request. (Id.) Applicants do, however, object to NGFA's and USDA's suggestion that Applicants be required to provide written justification for any rate increase above inflation, arguing there is no basis for imposing such a condition. (Id. at 60-61.) According to Applicants, the Board has long recognized that gateway commitments without such a process are an effective remedy. (Id. at 61.) Further, Applicants argue that a written justification requirement would not remedy any competitive harm and that there is no reason to depart from the Board's longstanding precedent of finding that standard gateway commitments without a written justification process are an effective remedy in minor and significant transactions. (Id.)

Applicants ask the Board to deny NGFA's and USDA's requests for imposition of an oversight period of five years or more. (Rebuttal 65-69.) Applicants argue, among other things, that the Board imposes oversight conditions to allow time to assess whether conditions imposed to address serious competitive concerns "have effectively addressed the competitive issues they were intended to remedy." (Id. at 65 (citing Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 1 S.T.B. 233, 372-73 (1996)).) Applicants also argue that the Board imposes oversight conditions when "concerns" about "areas where complex rail operations—e.g., lines shared with other rail carriers or commuter trains—warrant close monitoring." (Id. at 65-66 (citing CP-KCS Approval, FD 36500 et al., slip op. at 142).) Applicants argue that the Proposed Transaction presents no such competitive concerns or operationally complex integration issues that would warrant an oversight condition. (Rebuttal 66.) Further, Applicants note that, in the handful of minor transactions where the Board has imposed oversight as a condition, it was generally for a single year. (Id.)

The Board will not hold Applicants to their claim that service on the IANR system will be "markedly improved" as a result of Applicants' plan to maintain joint line options through the open gateway commitment. Attempting to force Applicants to realize a general statement about the Proposed Transaction's purported expected benefits, particularly using an undefined metric for success, is not an appropriate use of the Board's conditioning authority. However, to address potential impacts on IANR gateways as a result of the Proposed Transaction, the Board will impose a data-reporting requirement. Specifically, Applicants will be required to provide quarterly reports on interchange volumes at gateways for at least three years as part of the Board's oversight (discussed below).[20] The required reports will include the total count of cars interchanged, categorized by two-digit STCC and broken out by interchange partner. With the first submission, Applicants will also be required to provide, to the extent they can, the same historical quarterly information for a two-year period dating back from the effective date of this decision. These reports will allow the Board to monitor traffic levels at gateways and take appropriate action if necessary.

[20] CNR-GTC/IANR will also be directed to preserve 100% of the traffic tapes covering the duration of the Board's oversight period. See, e.g., CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., FD 33388 (Sub-No. 90), slip op. at 4 (STB served Dec. 15, 1999); Canadian Nat'l Ry.—Control—Ill. Cent. Corp., FD 33556 (Sub-No. 4), slip op. at 3 (STB served Mar. 9, 2000).

Further, the Board will not impose, as NGFA requests, a condition requiring CN-GTC/IANR to preserve, to the maximum extent possible, the status quo concerning customer service on the IANR system. However, the Board will impose a condition holding Applicants to their commitments regarding development and implementation of a scheduled local service plan. Applicants shall submit to the Board and shippers a report on the progress of implementation of a scheduled local service plan and customer service integration nine months from the effective date of this decision. And, Applicants shall submit their initial plan and report to the Board and all shippers on the IANR network; the initial plan should include a detailed description of IANR's services pre-merger and what, if any, changes have been made since the parties' voting trust was instituted. Moreover, the Board will condition the Proposed Transaction on CN-GTC/IANR submitting, during the oversight period, quarterly narratives to the Board and any impacted shippers regarding changes to any operating plan, including any scheduled local service plan, on the former IANR system. Applicants' reporting commitment, along with the narrative submissions and the data reporting described above, should provide sufficient information to monitor any service issues on the IANR system without unduly restraining Applicants' ability to make appropriate operational changes.

The Board will not grant USDA's request that the Board provide concrete guidance on what the Board expects "commercially reasonable" terms to entail over time. The Board has previously explained that a flexible approach to what constitutes "commercially reasonable" terms for a gateway condition is preferable to a rigid one that imposes specific terms in perpetuity. CP-KCS Approval, FD 35600 et al., slip op. at 74. Indeed, market conditions change over time, and, in the future, commercial reasonableness could require a higher level of service, or allow for a lower level of service, than is offered today.

To promote accountability with respect to pricing, and to facilitate insight into the competitive impacts of the Proposed transaction, including continued interchange with other carriers, the Board will impose during the oversight period a condition requiring CN, post-transaction, to provide, upon request, a written justification for rate increases above the rate of inflation for any traffic that originates or terminates on the IANR legacy lines, including interline movements (discussed below). While the Board has not utilized such a condition in prior minor or significant transactions, it has imposed a similar condition in another recent case where competitive concerns were prevalent. Id. at 68. Here, the Board finds that this condition will advance the Board's efforts to enhance information available to shippers to facilitate more informed judgments about potential disputes and will incentivize CN-GTC/IANR to refrain from imposing rate increases on traffic that it cannot justify. However, it will not prohibit Applicants from raising rates and does not create a one-size-fits-all approach to determining commercial reasonableness in any future enforcement proceeding. See id. at 79.

With respect to NGFA's and USDA's requests for an arbitration mandate or a binding arbitration process, the Board will not impose such a condition, here, given that Applicants have already committed to using confidential, voluntary, binding arbitration to permit efficient resolution of any future commercial disputes with customers over the gateway commitment, at their request. (Rebuttal 60.) Applicants will be held to their representation on this issue.

As noted above, NGFA and USDA have requested that the Board establish a five-year oversight period. (NGFA Comments 7, Apr. 29, 2024; USDA Comments 2, Apr. 29, 2024.) Although the Board anticipates that the conditions imposed here will mitigate the anticompetitive effects resulting from the Proposed Transaction, the Board will establish a three-year oversight period so that it may monitor the effectiveness of the conditions imposed in this decision. Oversight will also allow the Board to closely monitor whether Applicants have adhered to the various representations made on the record in this proceeding. The Board finds that an initial three-year oversight period is appropriate to coincide with Applicants' proposed three-year post-merger operating plan. At the end of the three-year oversight period, the Board may elect to extend its oversight for an additional period if conditions warrant. Further, the Board notes that it retains authority during this oversight period to make additional appropriate orders following the transfer of control if, and to the extent, the Board determines it is necessary. See 49 U.S.C. § 11327.

CPKC's Requested Conditions. CPKC, a Canadian railway holding company, submits on behalf of its U.S. rail carrier subsidiaries[21] that the proposed control by Applicants presents significant horizontal competitive issues that the Board should mitigate by imposing narrowly tailored conditions. (CPKC Comments 1, 4-5, 31-37, Apr. 29, 2024.) According to CPKC, evidence shows that there is extensive head-to-head competition between Iowa Northern and CN for rail traffic moving to, from, and within east-central Iowa. (Id. at 17; see also id., V.S. Zebrowski, paras. 18-27.) CPKC argues, among other things, that both carriers serve many of the same shipper facilities, both serve the same types of traffic, and both participate in the movement of such traffic to the same destination regions and from the same origin regions. (CPKC Comments 17, Apr. 29, 2024.) Specifically, CPKC argues that, while IANR does not have the "direct reach" of CN, it participates in movements in the same networks through its multiple connections. (Id. at 17-18.) For example, CPKC argues that its analysis shows that for the origin-destination pairings connecting IANR-served points with service points across North America, a majority are routes on which CN and IANR compete, and on a significant number of those routes, CN and IANR are the only competitors. (Id. at 21-22.) CPKC further alleges that IANR has a unique competitive role in that it has access to multiple Class I railroads and it markets its independence as an advantage to shippers. (Id. at 23.) According to CPKC, the "potential to utilize [CN's and IANR's] independent routes would be eliminated by the [Proposed] Transaction because CN would control both sets of routes." (Id. at 18; see also id., V.S. Zebrowski, para. 27.)

As an example, CPKC argues that CN and Iowa Northern compete for movements of oats from Canada to a Quaker Oats facility in Cedar Rapids, Iowa (which, according to CPKC, is the largest cereal mill in the world, and which is accessible both to CN and IANR). (CPKC Comments, V.S. Harman, para. 13, 31-34.) CPKC assets that it has successfully moved oats to this facility via an interline route with IANR, through which IANR interchanges the oats with

[21] The U.S. operating rail carrier subsidiaries of CPKC include Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware & Hudson Railway Company, Inc.; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company. (CPKC Comments 1 n.1, Apr. 29, 2024.)

CPKC at Nora Springs and then moves the oats approximately 125 miles to Cedar Rapids. (Id. at para. 32.) Consistent with IANR's "boutique rail" offerings, IANR is willing to take "larger shipments of oats and then hold[] the train and send[] individual cars to Quaker Oats over several days." (Id.) According to CPKC, this "reduces the cost" to Quaker Oats and makes the CPKC-IANR alternative routing competitive with CN's single line alternative. (Id. at paras. 32-33.) It notes that after the transaction, this competition will no longer be viable as CN will control IANR. (Id. at para. 33.) Moreover, CPKC does not consider other interline routing options with carriers having access to Quaker Oats to be realistic, noting, for example, that UP "has not been interested" in marketing its services for what would be, for it, a short haul movement of cars that would "go off-line into Canada." (Id. at para. 34.)

To address potential vertical impacts, CPKC asserts that the Board should impose as a condition Applicants' commitment to keep all gateways, including specifically the Nora Springs gateway between Iowa Northern and CPKC, open on commercially reasonable terms. (Id. at 31.) CPKC argues that including the Nora Springs gateway in the gateway commitment would avoid any vertical competitive harm associated with the elimination of IANR-Nora Springs-CPKC routings for traffic moving to and from points served by Iowa Northern today, and not reached by CN, mitigating the potential that CN would force longer CN system hauls by shutting off those routing options. (Id. at 31-32.)

CPKC, however, argues that Applicants' proposed gateway commitment is insufficient to address the loss of horizontal competition that would result from the Proposed Transaction, as "commercially reasonable" services may not necessarily be the same as the "competitive rates and services" offered by IANR today. (CPKC Comments 28-31, Apr. 29, 2024.) According to CPKC, the Board has addressed similar concerns through structural relief, such as trackage or haulage rights. (Id. at 28-29 (citing CSX Corp.—Control & Merger—Pan Am Sys., Inc., FD 36472 et al., slip op. at 6-7, 14-15 (STB served Apr. 14, 2022)).) Thus, CPKC argues that the Board should require Applicants to negotiate and enter into a binding haulage agreement that grants a carrier independent of CN the right to offer to shippers transportation via CN/IANR between Nora Springs (and between other IANR-served gateways) and (a) the points served by both CN and IANR pre-transaction (i.e., Cedar Falls/Waterloo and Cedar Rapids) and (b) IANR's Manly and Butler transload facilities, with the latter case being limited to traffic that would be transloaded at those points. (Id. at 4.) CPKC argues that this condition would provide for reasonable cost-based compensation to CN and require CN to adhere to appropriate service standards ensuring that CN/IANR could not defeat the competition that the haulage rights would preserve by degrading service levels relative to what was available in the pre-transaction marketplace or discriminating against haulage traffic. (Id. at 4, 33.)

According to CPKC, enabling an independent carrier such as CPKC or CRANDIC to quote competitive rates to these customers using haulage rights would preserve the best available approximation of the independent competitive outcomes that IANR provided prior to its acquisition by CN. (Id. at 4.) And, to ensure that the Proposed Transaction would not lead to adverse impacts for shippers that have benefited from IANR's independence, CPKC suggests that any haulage rights apply to certain build/outs or build/ins and to the regulatory framework established in Reciprocal Switching for Inadequate Service, EP 711 (Sub-No. 2) (STB served Apr. 30, 2024), without regard to any determination of whether shippers are located in a terminal

area and without regard to whether their traffic is exempt or under contract. (CPKC Comments 35-36, Apr. 29, 2024.) Finally, CPKC argues that the Board should reserve jurisdiction to conduct oversight of the implementation of the Proposed Transaction and, under 49 U.S.C. § 11327, to issue supplemental orders, as necessary, in the event CN's rates, services or other actions diverge from the procompetitive portrait painted by Applicants. (Id. at 5, 37.)

On rebuttal, Applicants note that they have no objection to CPKC's request that the Board impose as a condition the commitment to keep gateways open, "including specifically the Nora Springs gateway between Iowa Northern and CPKC." (Rebuttal 59; see also Appl. 7 n.7.) Applicants state that they already committed in their application to maintain existing active gateways, specifically including Nora Springs and the interchange with CPKC. (Rebuttal 59.) Applicants further argue that, because there is no competitive harm as a result of the Proposed Transaction, there is, therefore, no basis for the Board to consider CPKC's proposed haulage remedy. (Id. at 8.) Relying on their expert's verified statement, Applicants challenge CPKC's assertion that, post-transaction, CN will be the only viable rail option over certain origin-destination pairs over which CN currently competes with IANR. (Rebuttal 36-37; see also id., V.S. Carey 3.) Applicants contend that a number of these routings are CN-closed stations (i.e., having access only to CN), and thus would be unaffected by the transaction. (See, e.g., Rebuttal, V.S. Carey 3.) Relatedly, Applicants argue that, for other routings, IANR does not present an economically plausible transportation option (and indeed does not serve those routings), such as where, in the example of goods moving from Cedar Rapids to Chicago, an IANR routing would require movement in the opposite direction. (Id. at 20.) Applicants further contend that, post-Transaction, shippers will continue to have at least one alternative rail option that is independent from both CN and IANR. (E.g., id. at 3.) They argue that this is the case with respect to the Quaker Oats example, which they point out is the only specific example offered by CPKC of a potential, post-Transaction 2-1 reduction. (Rebuttal 37-38 ("Quaker Oats has an independent Union Pacific-CPKC routing alternative that is readily available post-Transaction."); id., see also Carey V.S. 8-17.)

Applicants argue that, even if there were competitive harm, there is no justification for a condition that would place a competing Class I railroad in a better position than it occupies now. (Id. at 8-9.) According to Applicants, CPKC's assertion that it needs to be granted discount haulage rights to "preserve competition" does not acknowledge that UP already has perpetual haulage rights over nearly all of Iowa Northern's main line. (Id. at 9, 49; see also Applicants Suppl., App. A at 3, Apr. 12, 2024 (describing the September 17, 1986, agreement between IANR and UP's predecessor, the Chicago & North Western Transportation Company, as amended and supplemented, providing that IANR will handle cars in overhead haulage movement between Cedar Rapids and Waterloo, between Manly and Waterloo, and between Manly and Cedar Rapids).)

Applicants also argue that CPKC has not historically developed substantial interline business with IANR because, in part, CPKC has been unwilling to provide competitive pricing and service for such business. (Rebuttal 9; see also id., App. A, V.S. Sabin at 3-4.) Applicants, therefore, argue that there is no basis to give a discount haulage windfall to a railroad that has been unwilling to provide the competitive rates and service that are needed to develop interline business with IANR in Iowa's competitive transportation environment. (Rebuttal 10.)

Here, the Board need not specify that the open gateway condition specifically includes Nora Springs, as Applicants confirmed in their application that they would maintain existing active gateways, specifically including Nora Springs and the interchange with CPKC. (See Rebuttal 59; see also Appl. 7 n.7.) Nor will the Board require that Applicants enter into a haulage agreement granting a carrier the right to offer transportation between IANR-served gateways and points served by both CN and IANR pre-Transaction. Here, through the Carey Verified Statement, Applicants have demonstrated that there will be no meaningful reduction in competition as it specifically concerns rail users in Cedar Falls/Waterloo and Cedar Rapids. As Applicants explained, certain shippers at those points are closed to carriers other than CN, while for others, IANR does not present an "economically plausible" alternative. (See, e.g., Rebuttal, V.S. Carey 20.) For these particular shippers, the Proposed Transaction poses little to no harm. And for others at these locations, Applicants pointed out the existence of other, independent rail options which are being used today. (Id. at 3).

To be sure, the Quaker Oats example shows that not all alternative rail options at these points may be as competitive as IANR. But data provided in the Carey Verified Statement suggests that it is an isolated case. (See Rebuttal, V.S. Carey 10, Fig. 2, 14.) Moreover, Applicants provide support for their argument that a CPKC-Union Pacific routing would be "economically attractive." (Rebuttal, V.S. Carey 11-15.) The Board agrees with Applicants that this is relevant regardless of the extent to which that alternative routing is being used today. (Rebuttal 38-39 (citing NS/D&H, FD 35873, slip op. at 19).) And the haulage agreement proposed by CPKC would not necessarily replicate the level of customized service that IANR currently provides Quaker Oats. In this regard, CPKC's proposed condition, as it pertains to the points served by both IANR and CN, is not narrowly tailored to remedy the harm it is intended to address and will not be granted. Burlington N. Inc.—Control & Merger—Santa Fe Pac. Corp., 10 I.C.C. 2d at 730.

While the Board is concerned about the loss of horizontal competition as a result of the Proposed Transaction, the Board will deny CPKC's request that CN provide haulage to the Manly and Butler transloading facilities. As CN points out, such traffic starts on truck and can be driven to other transloading facilities. While in certain markets the loss of a competitor for transloaded traffic may result in a significant reduction in competition, here, there is a CPKC transloading facility within 10 miles of the Manly facility and less than 40 miles of the Butler facility, in addition to other transload options within trucking distances. (CN Reply 56-57.) Therefore, requiring haulage to the Manly and Butler transloading facilities as requested by CPKC would not significantly improve the competitive landscape post-transaction. Moreover, as mentioned above, because under a haulage agreement, CN would be responsible for performing the local service, the requested condition would not necessarily preserve the quality of service offered by IANR.

The Board will reject CPKC's request to apply the regulatory framework established in Reciprocal Switching for Inadequate Service, EP 711 (Sub-No. 2), to customers in Manly and Butler/Shell Rock without regard to whether such customers are located in a terminal area and without regard to whether such customers' traffic is exempt or under contract. That request is inconsistent with the principles outlined in Reciprocal Switching for Inadequate Service.

Pursuant to those newly adopted regulations, the prescription for reciprocal switching must occur in a terminal area and is inapplicable for movements of exempt commodities or for traffic that is moved under a transportation contract. See 49 C.F.R. § 1145.1; see also Reciprocal Switching for Inadequate Serv., EP 711 (Sub-No. 2), slip op. at 5, 21. However, as discussed above, the Board will impose a condition that maintains IANR's practice of granting other carriers expansive reciprocal switching access to the customers and industries on its network. And as noted above, the Board will conduct oversight of the implementation of the Proposed Transaction and, under 49 U.S.C. § 11327, can issue appropriate supplemental orders, if necessary, to address any demonstrated issues affecting customers in Manly and Butler/Shell Rock.

E. Employee Protection. SMART/TD and ATDA[22] request that the Board impose employee protective conditions under New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), and impose as conditions any and all commitments made by Applicants. (SMART/TD-ATDA Comments 4-5, Apr. 29, 2024.) They also submit that, with respect to the related trackage rights requests filed on behalf of Iowa Northern and CCP, such transactions should be protected by the employee protective conditions set forth in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980). (SMART/TD-ATDA Comments 4, Apr. 29, 2024.)

The Allied Rail Unions (a collective reference to BMWED, BRS, SMART-MD, NCFO, BLET, IBB, and IAM #19, each of which are separate participants in this proceeding) comment that the Proposed Transaction must be conditioned under New York Dock Railway; they also urge the Board to incorporate as conditions any and all commitments made by Applicants. (Allied Rail Unions Comments 2-3, Apr. 26, 2024.)[23] Lastly, the Allied Rail Unions argue that the related requests for trackage rights should be protected by the employee protective conditions set forth in Norfolk & Western Railway, as modified in Mendocino Coast Railway. (Allied Rail Unions Comments 3, Apr. 26, 2024.)

Applicants state that they agree to imposition of labor conditions in accordance with New York Dock Railway. (Appl., Ex. 15 at 31-32.) With respect to the related trackage rights requests, Applicants note that employees would be protected by the conditions set forth in Norfolk & Western Railway, as modified in Mendocino Coast Railway. (Id. at 32.)

[22] SMART-TD is the certified representative of the craft or class of train service employees, including conductors, employed by CN and the majority of its wholly owned U.S. rail subsidiaries, and Iowa Northern; ATDA is the certified representative of the craft or class of dispatchers employed by CN and the majority of its wholly owned U.S. rail subsidiaries. (SMART/TD-ATDA Comments 3, Apr. 29, 2024.) SMART/TD supports, and ATDA does not object to, the Proposed Transaction. (Id. at 4.)

[23] The Allied Rail Unions state that, while BLET supports the Proposed Transaction and has submitted a separate letter of support, the other unions in the ARU coalition neither support nor oppose the Proposed Transaction. (Id. at 2.)

Under 49 U.S.C. § 11326(a), the Board must impose employee protective conditions on its approval of this control transaction. Because this transaction is a line sale under 49 U.S.C. § 11323(a)(2), the Board will impose the employee protective conditions set out in New York Dock, as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc., 6 I.C.C. 2d 799, 814-26 (1990), aff'd sub nom. Ry. Labor Execs.' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). See Bessemer & Lake Erie R.R.—Acquis. & Operation—Certain Rail Lines of CSX Transp. Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, & Franklin Cntys., FD 36347, slip op. at 13-14 (STB served Apr. 6, 2020).

F. Related Filings. The Board received notices of exemption in two related subdockets in connection with the Proposed Transaction. Applicants state that the requests are for mutual trackage rights between Iowa Northern and CCP, and that the proposed trackage rights are intended to give the combined CN-Iowa Northern maximum operational flexibility by allowing those carriers to operate trains with their own crews over each other's track in Iowa. (Appl. 2.) The Board will address each proceeding in turn, below.

CCP Acquisition of Trackage Rights. In Docket No. FD 36744 (Sub-No. 1), CCP seeks overhead and limited local trackage rights from Iowa Northern, pursuant to 49 C.F.R. § 1180.2(d)(7), for a rail line extending between IANR milepost 157.5 at Cedar Falls Junction in Cedar Falls and IANR milepost 225.8 at Manly Yard in Manly, a distance of approximately 68.3 miles. CCP states that the proposed trackage rights arrangement would not be consummated until and unless CN acquires control of Iowa Northern pursuant to approval by the Board of the Proposed Transaction.

The notice of exemption will be allowed to take effect on the effective date of this decision. As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in Norfolk & Western Railway, as modified in Mendocino Coast Railway.

Iowa Northern Acquisition of Trackage Rights. In Docket No. FD 36744 (Sub-No. 2), Iowa Northern seeks overhead and limited local trackage rights from CCP, pursuant to 49 C.F.R. § 1180.2(d)(7), for (1) rail extending from CCP milepost 275.8 at Waterloo east to CCP milepost 183.0 at Dubuque, a distance of approximately 92.8 miles; (2) rail extending from CCP milepost 275.8 at Waterloo west to CCP milepost 381.2 at Tara, a distance of approximately 105.4 miles; and (3) an approximately 2.7-mile connecting track at Waterloo. In total, the lines consist of approximately 200.9 miles. Iowa Northern states that the proposed trackage rights arrangement would not be consummated until and unless CN acquires control of Iowa Northern pursuant to approval by the Board of the Proposed Transaction.

The notice of exemption will be allowed to take effect on the effective date of this decision. As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in Norfolk & Western Railway, as modified in Mendocino Coast Railway.

G. Environmental Issues. The projected traffic levels involved in the proposed acquisition transaction fall below the Board's thresholds for environmental review in 49 C.F.R.

§ 1105.7(e)(4) and (5). Therefore, the transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2), and no environmental review is required. Furthermore, no historic review is required for this line sale. See 49 C.F.R. § 1105.8(b)(1), (3).

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

It is ordered:

1. The application seeking authority for CNR and GTC to acquire control of Iowa Northern is approved, subject to the following conditions, as discussed more fully above:

- Applicants' commitments to keep gateways open on commercially reasonable terms in perpetuity, with the clarifications and enhancements described herein, including requirements that:
    - Applicants provide to a shipper, upon request, a written justification for any rate increase above the rate of inflation, measured by Rail Cost Adjustment Factor or, in the case of a rate that contains a fuel surcharge provision, the All-Inclusive Index Less Fuel (AII-LF) Index published by the Association of American Railroads, during the oversight period for traffic that originates or terminates on the IANR legacy lines, including interline movements;
    - Applicants provide quarterly reports on interchange volumes at gateways for at least three years as part of the Board's oversight. The required reports will include (1) a count of cars interchanged in total and for each interchange partner and (2) a count of cars interchanged for each two-digit STCC and be submitted in a template provided by the Board. With their first submission, Applicants will also provide the same historical information for a two-year period dating back from the effective date of this decision, or if data is no longer available for the entirety of that time period, then from the earliest date for which it is available;
- Applicants preserve 100% of the traffic tapes covering the duration of the Board's oversight period;
- Applicants' commitments to develop and implement a scheduled local service plan and a report on the progress of implementation of a scheduled local service plan and customer service integration nine months from the effective date of the Board decision, including requirements that:
    - Applicants shall submit such initial plan and report to the Board and all shippers on the IANR system;
        - In the initial plan, Applicants should include a detailed description of IANR's services pre-merger and what, if any, changes have been made since the voting trust was instituted;
    - Applicants shall submit, during the oversight period, quarterly narratives regarding changes to any operating plans on the former IANR system to the Board and any impacted shippers;

- Applicants, for the duration of the oversight period, are prohibited from unilaterally terminating or modifying the interchange agreements between CN/GTC-Iowa Northern and CRANDIC.
- Applicants maintain existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs and that they do so by maintaining "commercially reasonable rates and service," and by allowing access to reciprocal switching for new shippers and shipments of new commodities on the IANR network;
- Applicants must comply with the oversight condition, including the reporting requirements described above.
- The terms of the settlement agreement entered into by CN/GTC with IAIS;
- Applicants' adherence to their commitments to:
    - maintain the status quo for IANR outbound traffic until the parties can reach a mutually beneficial agreement on interchange; and
    - utilize confidential, voluntary, binding arbitration to permit efficient resolution of any future commercial disputes over the gateway commitment with customers, at a customer's request.

2. Approval of the transaction is subject to the employee protective conditions set out in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc., 6 I.C.C.2d 799, 814-26 (1990), aff'd sub nom. Railway Labor Executives' Association v. ICC, 930 F.2d 511 (6th Cir. 1991).

3. Any condition requested by any party in this proceeding that has not been specifically approved in this decision is denied.

4. In Docket No. FD 36744 (Sub-No. 1), CCP's verified notice of exemption to acquire overhead and limited local trackage rights is approved, subject to the employee protective conditions set out in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

5. In Docket No. FD 36744 (Sub-No. 2), Iowa Northern's verified notice of exemption to acquire overhead and limited local trackage rights is approved, subject to the employee protective conditions set out in Norfolk & Western Railway—Trackage Rights, 354 I.C.C. 605, as modified in Mendocino Coast Railway—Lease & Operate, 360 I.C.C. 653.

6. Petitions for reconsideration of this decision must be filed by February 3, 2025. Requests for stay must be filed by February 3, 2025.

7. This decision will be effective on February 13, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz. Board Members Fuchs, Hedlund, and Schultz concurred with separate expressions. Board Member Primus dissented with a separate expression.

BOARD MEMBER FUCHS, concurring:

I concur with today's decision (Decision) because it is an acceptable compromise that, by allowing the Proposed Transaction to move forward, brings the Board into compliance with applicable legal requirements.[1] Though some of the Decision's analysis and conditions do not reflect my first preferences, it includes justifiable competition-related protections for shippers while, in effect, increasing the IANR system's financial stability, offering modest operational benefits in some circumstances, and reducing uncertainty for parties.[2] More broadly, considering recent proceedings in which the Board has missed statutory deadlines, I write separately to offer four interrelated suggestions for focusing, expediting, and improving the Board's review of non-major transactions[3] to further the purpose of the governing statute.[4]

First, the Board should minimize the need for its recent time-consuming practice of requiring parties to submit supplemental data after they have already submitted their application. In this proceeding, like past cases, the Board extended certain procedural deadlines when it asked Applicants to supplement their application with, among other things, additional traffic data and agreement information.[5] The Board certainly should get the facts it needs to evaluate competition-related effects thoroughly, but the Board's industry-wide, continuous collections could provide much of the desired data. For example, the Board separately requires carriers to regularly submit waybill data with many of the same fields (e.g., commodity, weight) required by the supplemental order in this proceeding. To the extent the timeliness or breadth of extant data

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[1] The applicable statute here sets deadlines, 49 U.S.C. § 11325(d)(2), and gives a specific command: the Board "shall approve" an application "unless" it finds the transaction likely results in substantial lessening of competition, creation of a monopoly, or restraint of trade (collectively, "substantial anticompetitive effects") and those anticompetitive effects outweigh the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d). In this case, notice of acceptance of the application was published in the Federal Register on February 29, 2024. 89 Fed. Reg. 14,919. Under 49 U.S.C. § 11325(d)(2), the Board was thus required to conclude evidentiary proceedings by June 13, 2024 (105 days) and to issue a final decision by July 26, 2024 (45 days, accounting for weekend). The Board did not grant approval by July 26, 2024.

[2] I agree with the concurrence of Board Member Schultz concerning the Board's conditioning authority.

[3] 49 C.F.R. § 1180.2(b)-(c).

[4] Staggers Rail Act of 1980 (Staggers Act), Pub. L. No. 96-448, 94 Stat. 1895.

[5] See generally Canadian Nat'l Ry.—Control—Iowa N. Ry., FD 36744 et al. (STB served Mar. 29, 2024).

is insufficient, the Board should consider enhancing its regular data collection programs.[6] This change could not only help the Board in the context of transactions but also improve general oversight of the industry. To the extent certain information is especially relevant only for a transaction (e.g., certain agreements), rather than general oversight, the Board could take advance action to ensure future applicants submit this information with their application, mitigating the need for supplemental orders. For example, the Board could amend its regulations or otherwise provide guidance. If equipped with needed facts on the front end, the Board and commenting parties would be better positioned to start analysis earlier, expediting review.

Second, the Board should also consider more clearly defining its framework for using the data to analyze competition-related effects, helping future parties refine their presentation of evidence and argument and thus facilitating quicker and more effective review. More specific merger guidelines are not unusual for agencies with competition-related responsibilities. The submissions in this proceeding were highly informative; this suggestion is inspired more by other proceedings and the need for the Board to continue to increase its analytical consistency and rigor so that parties better know what to expect with relatively similar problems across transactions. For example, the Board could explain in more detail how it expects to define the relevant market for a customer or set of customers on a line. It could then indicate how it plans to systematically evaluate competitive forces, particularly intramodal and intermodal competition, pre- and post-transaction. And it should specify its expected sources of evidence. The Board's decisions would then follow suit, and the Board would conduct similarly framed and executed competition analyses across proceedings. The Board already does some of this, including in the Decision, but a more transparent and systematic approach could further hasten the analytical process because the Board would have the pertinent data in the most helpful format with pre-determined analytical processes expeditiously informing outcomes.

Third, the Board should use ongoing oversight periods to validate the effectiveness of recently imposed conditions. Considering that much of the controversy in the Board's consideration of transactions emanates from the potential imposition of conditions, validating effectiveness could enable the Board to signal to parties (as part of guidelines or future decisions) that they could, as appropriate, tighten their requests for conditions. For example, in this proceeding, the Board imposes a condition—applicable during the oversight period—that Applicants provide to a shipper, upon request, a written justification for any rate increase above the rate of inflation. Setting aside any conceptual problems with this type of condition, I note that the Board imposed a similar condition in approving the acquisition of Kansas City Southern Railway Company by Canadian Pacific Railway Limited, see Canadian Pac. Ry.— Control— Kan. City S., FD 36500 et al., slip op. at 78-79 (STB served Mar. 15, 2023), and—as part of oversight in both proceedings—I will closely scrutinize the practical utility of this condition, including how frequently shippers invoke it and what actions or effects ensue. As another example, the Decision requires—during the oversight period—quarterly reports with additional interchange data. Here, too, as the Board conducts oversight, I plan to closely examine the utility of these reports in assisting the Board in proactively identifying problems; if the Board is not using the reports except in circumstances where it is reacting to problems, I will consider

[6] That is not to say the Board should regularly collect each item in the supplemental order.

whether the Board—in considering any responsive action—could instead rely on traffic tape data (subject to a separate condition) or its regularly-collected data. In the future, if the Board has better information about the effectiveness of its conditions, it could focus debate and drafting burden away from less effective interventions while continuing to standardize validated, effective interventions across similar problems.

Finally, consistent with the agency's interpretation immediately following enactment of the Staggers Act, the Board should consider a bolder action of making clear that, if it does not find a substantial anticompetitive effect with a transaction, "its analysis is at an end," and any balancing with the public interest in meeting significant transportation needs is unnecessary and potentially antithetical to the statute. See Illinois v. ICC, 687 F.2d 1047, 1053 (7th Cir. 1982) ("The mandatory language 'shall approve' of [this section] denotes that if the Commission finds no substantial anticompetitive effects flowing from the proposed transaction, its analysis is at an end. At that point, the Commission must approve the transaction, and any finding about consistency with the public interest would be superfluous.").[7] Per the agency's original explanation, the statute directs the agency to consider the public interest in meeting significant transportation needs "*solely* as a possible ground for 'saving' an otherwise unapprovable application." 1982 ICC Brief, at 6 (emphasis added).[8] On review, the Seventh Circuit in Illinois v. ICC noted that the agency's focused approach at the time was consistent with the new, expedited statutory deadlines, reflecting a Congressional judgment that smaller transactions without substantial anticompetitive effects are in the public interest. See Illinois, 687 F.2d at 1054-55 (explaining that Congress reduced factors for consideration and imposed deadlines, and that "Congress legislatively determined that rail consolidations not involving the merger or control of two or more Class I railroads and not having substantial anticompetitive effects are consistent with the public interest and should be approved").

Indeed, a more disciplined review enables faster decisions. In the years immediately after Congress amended the statute and the Seventh Circuit validated the agency's interpretation,[9] the agency would conduct a competition-focused analysis, and—if it could not make a significant anticompetitive effect finding—it would declare that no such effect needs to be balanced. See, e.g., S.C. Cent. R.R. Co., Inc.—Purchase—CSX Transp., Inc. Line Between

[7] See also Joint Brief for Respondents (1982 ICC Brief) at 14-16, Illinois v. ICC, 687 F.2d 1047 (7th Cir. 1982) (explaining that "[t]he mandatory language 'shall approve' means that once the agency finds no substantial anticompetitive effects, its analysis is at an end," and that it would be "completely irrational" for the agency "to balance the public interest regardless of whether it finds substantial anticompetitive effects").

[8] See also Bessemer & Lake Erie R.R.—Acquis. & Operation—Certain Rail Lines of CSX Transp., Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, & Franklin Cntys., N.Y., FD 36347, slip op. at 13 n.8 (STB served Feb. 25, 2021) (with Board Member Fuchs dissenting) (drawing a link between the agency's approval and conditioning standards and acknowledging that the agency has not applied a consistent conditioning standard to address competition-related issues in non-major transactions).

[9] Agency decisions in this era generally cited Norfolk & Western Railway—Purchase—Illinois Terminal Railroad, 363 I.C.C. 882 (1981), aff'd Illinois, 687 F.2d.

E. Greenville and Laurens, S.C., FD 31469, slip op. at 3 (ICC served July 30, 1990); Tenn. S. R.R. Co., Inc.—Purchase and Lease—CSX Transp., Inc., FD 31329, slip op. at 6 (ICC served Jan. 26, 1989). When parties occasionally raised matters unrelated to competition, the agency might briefly discuss them but would first assert, generally, that such matters "are not relevant" to its analysis. See, e.g., Ind. Hi–Rail Corp.—Purchase—CSX Transp., Inc. Line Between Richmond, Ind., and Fernald, Ohio, FD 31445, slip op. at 6 (ICC served Sept. 5, 1989). These focused decisions were, in general, significantly shorter and issued on time, and that outcome comported with the simultaneously-enacted tighter statutory deadlines, as expected.[10]

As the agency's decisions in non-major transactions transformed into expansive explorations as much as ten times longer (including appendices) than decisions immediately following the Staggers Act, it is unclear—perhaps doubtful—that the more time-consuming approach has generated net benefits. Though the Decision largely focuses on competition and avoids some of the problems of recent similar proceedings, the agency—in non-major transaction reviews—has probed wide-ranging matters reviewed in major mergers, see 49 C.F.R. §§ 1180.1, 1180.10—such as IT systems integration, passenger services, and service assurance plans—all untethered to a finding of substantial anticompetitive effects. See generally Canadian Nat'l Ry.—Control—Wis. Cent. Transp. Corp., FD 34000 (STB served Sept. 7, 2001). In addition to potential statutory problems,[11] these more expansive explorations, in some instances, involved concerns that pertained to subjects already addressed by broader statutory provisions. In other instances, concerns preceded the relevant transaction and thus resulted in denials of requested conditions. Other concerns were imprecise and downstream of potential root causes (i.e., not centered on a core competition-related problem), or—where effective competition would exist—the concerns would have been poorly addressed by government regulation, particularly relative to market forces. More broadly, smaller transactions have been less likely to raise problems unrelated to competition. Thus, I cannot find that any benefits from the more expansive reviews in non-major transactions have outweighed associated costs from, among other things, slowing down benefits, increasing burden, and creating unneeded uncertainty. In other words, the statute appears to wisely command discipline. Whether the Board adopts this bolder suggestion, which dovetails with other suggestions in this expression, the agency must continue to explore ways to increase the timeliness and effectiveness of its actions.

[10] Illinois, 687 F.2d at 1054 (explaining that legislative history shows "Congress intended to reduce the factors the Commission must consider for minor rail consolidations in part because of the limited amount of time Congress granted to the Commission . . . to act on this type of transaction," and that the statute "requires balancing of transportation benefits only if any anticompetitive effects are discerned").

[11] With little explanation, the agency has blurred the lines of the Staggers Act's categorization of transactions. See Illinois, 687 F.2d at 1053 ("[T]he Staggers Act has separated rail consolidation proposals into two distinct groups: major rail consolidations, which involve the merger or control of two or more Class I railroads, and minor rail consolidations, which do not involve the consolidation of two or more Class I railroads."); see also 1982 ICC Brief, at 4-5 (explaining "dichotomy" that "limited substantially the issues that are relevant" to non-major mergers).

BOARD MEMBER HEDLUND, concurring:

I fully support the determination in this case (Decision), but not without certain misgivings. I remain concerned about whether the conditions imposed on Applicants will in fact preserve the "dedicated service" to almost 20 small- and medium-sized grain elevators historically provided by Iowa Northern (IANR).

Citing in part the analysis of the U.S. Department of Agriculture (USDA), the Decision expresses trepidation that "post-merger, Applicants would not have the incentive to offer rates and service that are as competitive as those that IANR currently offers to its customers, particularly for smaller agricultural shipments or shipments that have shorter haul movements." Decision 10. Indeed, "CN does not rebut USDA's basic assertion that customers shipping less than 25 cars will be worse off as a result of the Proposed Transaction, given the combined carrier's pricing abilities and incentives." Id. USDA's comments in this proceeding explained that there has been a consolidation of grain storage capacity driven in part by the growth in shuttle trains—typically made up of more than 75 cars—and observed that shuttle train programs disadvantage small- and medium-sized elevators, which lack sufficient volumes and capacity to support a shuttle train station. (USDA Comments 5-6, Apr. 29, 2024.) Ultimately, the Decision concludes that "there is good reason to believe that prices for smaller shipments will increase post-Transaction and that shippers will be deprived of IANR's specialized service, which has been enabled by IANR's unique position in the market, including its horizontal competition with CN." Decision 12.

To address these concerns, the Decision imposes several conditions. First, it establishes a three-year oversight period, subject to extension if conditions warrant, during which the Board will have an opportunity to determine whether further remedial action is appropriate. Second, it requires Applicants to provide to a shipper, upon request, a written justification for any rate increase above inflation during the oversight period for traffic that originates or terminates on the IANR legacy lines, including interline movements. Third, it imposes a condition holding Applicants to their commitments to develop and implement what they describe as a "scheduled local service plan," and to submit to the Board and shippers a report on the progress of implementation of such plan and customer service integration within nine months. Fourth, it requires Applicants to submit to the Board and any impacted shippers quarterly narratives regarding changes to any operating plans on the former IANR system during the oversight period.

I remain concerned that many of these mechanisms put the burden on smaller shippers to complain about future changes in a formal case or arbitration proceeding, which could involve significant expense with an uncertain result. It certainly seems possible that such shippers could simply decide that trucking their goods—an option that foregoes the energy conservation and environmental benefits of shipping by rail—may be a more attractive alternative. However, I sincerely believe that all of the imposed conditions, taken together, will go a long way toward mitigating the clear anticompetitive impact resulting from the loss of IANR as an independent short line.

Finally, I note briefly that this case raised numerous difficult issues, the resolution of which took longer than any of us would have liked. While a previous decision in this case designated the proposed Transaction as "minor," it promised that:

> [A]fter the record is fully developed, the Board will conduct a careful review before making a final determination as to whether the Proposed Transaction would substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest.

Decision No. 1, FD 36744 et al., slip op. at 7. As evidenced by the length of, and the level of detail contained in, the Decision, that "careful review" required a period of time more consistent with that deemed necessary for "significant" transactions, and—given the Decision's conclusions regarding the Transaction's clear anticompetitive effects and limited public benefits—that is how this Transaction probably should have been treated.

BOARD MEMBER SCHULTZ, concurring:

I believe that under 49 U.S.C. § 11324(d), findings under both § 11324(d)(1) and § 11324(d)(2) are necessary before the Board can impose competition-related conditions in non-major transactions.[1] In other words, not only must the Board find a "substantial lessening of competition, creation of monopoly, or restraint of trade," but the Board must also find that such anticompetitive effects of the transaction outweigh "the public interest in meeting significant transportation needs." I would require both findings in this case before conditions are imposed. However, even though not stated explicitly, under the Board's analysis, the anticompetitive effects of the transaction as proposed by Applicants do outweigh the public interest in meeting significant transportation needs under § 11324(d)(2). See Decision at 11-12. Accordingly, the Board's use of its conditioning authority is warranted. I join the Board's decision in order to ensure that this transaction is approved, even if, ideally, I would not have imposed every condition contained within the Board's decision.[2]

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[1] See Canadian Pac. Kan. City Ltd.—Acquis. & Operation—Certal Rail Line of Meridian & Bigbee R.R., L.L.C. in Lauderdale Cnty., Miss., & Choctaw & Marengo Cntys., Ala., FD 36732, slip op. at 24 (STB served Oct. 17, 2024) (Board Member Schultz, concurring); CSX Transp., Inc.—Acquis. & Operation—Rail Line of Meridian & Bigbee R.R., L.L.C., FD 36727, slip op. at 18-19 (STB served Oct. 17, 2024) (Board Member Schultz, concurring); Bessemer & Lake Erie R.R. Co.—Acquis. & Operation—Certain Rail Lines of CSX Transp., Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, & Franklin Cntys., N.Y., FD 36347, slip op. at 33-35 (STB served Feb. 25, 2021) (Board Member Schultz, dissenting).

[2] I also agree with the thoughtful suggestions by Board Member Fuchs for improving the Board's review of non-major transactions.

BOARD MEMBER PRIMUS, dissenting:

We all have heard the timeless adage: Never judge a book by its cover. Sage advice that, unheeded, can leave the reader disillusioned and disappointed. Such advice should be applied to the Proposed Transaction, for on the surface this appears to be a minor transaction with promises of greater access and growth for shippers along the freight rail network in east-central Iowa. And yet, just a few pages in, the small and medium-sized shippers who have come to rely on IANR for superior performance, rates, and customer service will discover that this transaction turns from a budding, feel-good romance into something resembling an Edgar Allan Poe novel.

While I have great respect for CN and its recent network and service accomplishments, I regrettably believe this transaction will do very little to build upon the local success established and enjoyed by IANR. Instead, it will foster a lessening of competition and create haves and have-nots based on carload amounts, ultimately reducing the number of small and medium-sized shippers accessing the network. And, because its potentially adverse impact upon the network is of regional or national transportation significance, I maintain that this transaction should have been classified as significant. See Canadian Nat'l Ry.—Control—Iowa N. Ry., FD 36744 (STB served Mar. 29, 2024) (Member Primus dissenting).

Though I disagree with the final decision of the Board, I am in lockstep with many of its findings, one such being that CN's acquisition of IANR, without conditions, would likely cause a substantial lessening of competition. See 49 U.S.C. § 11324(d)(1). The Board correctly concluded that, given IANR's unique role in the regional transportation market and the competitive pressure created by IANR's neutrality with its interchange partners, the Proposed Transaction presents both horizontal and vertical competition issues. I also agree with the Board's finding that the potential benefits of the Proposed Transaction are modest or unsubstantiated and, as such, the transaction does not appear to substantially further the public interest in meeting transportation needs. See id. § 11324(d)(2). However, the majority and I part ways when it comes to the conditions imposed in today's decision. I believe they are insufficient to mitigate the Proposed Transaction's anticompetitive effects. Even as conditioned by the Board, I believe the likely anticompetitive effects of the transaction remain and continue to outweigh the modest anticipated public interest benefits.

By all accounts, IANR has been an exemplary short line railroad. Founded in 1984 on a section of the bankrupt Chicago, Rock Island & Pacific Railroad Company, IANR has since grown its traffic from 15,000 carloads to over 60,000 carloads per year. (Appl., V.S. Sabin 2.) And while its carload growth has been impressive, IANR is consistently recognized for providing exceptional customer service, its pricing independence, and acting as a reliable neutral switch carrier with its connecting carriers: three Class I railroads (CN, UP, and CPKC) and one Class III railroad (CRANDIC). (See CPKC Comment, V.S. Harman 8-10, Apr. 29, 2024.) Indeed, shippers have chosen to locate on IANR because of these reasons, (see id.), which in turn has helped fuel the company's growth, even within markets shunned by Class Is. Notably, in two instances IANR has also expanded its network through preserving rail service on low density branch lines owned by UP, which UP had planned to abandon. See Iowa N. Ry.—Operation

Exemption—N. Cent. Iowa Rail Corridor, LLC, FD 35508 (STB served May 26, 2011); Iowa N. Ry.—Operation Exemption—Rail Lines of D&W R.R., FD 34402 (STB served Oct. 8, 2003).

Today IANR directly serves twenty grain elevators, two ethanol plants, a soybean processing plant, and two mineral processing facilities, and handles other commodities such as fertilizer, farm machinery, food, chemicals, and lumber. (Appl. 3.) According to a comment filed by USDA, IANR has a stellar reputation among local shippers and has provided high-quality customer service to both large and small shippers. (USDA Comment 4, Apr. 29, 2024.) USDA distinguishes between the large shippers on IANR, who are mostly engaged in the growing biofuels industry and ship to destinations around the country, and small and medium-sized shippers, who operate grain elevators that load small lots consisting of less than 25 cars and rely on IANR's local service to ship to local processors. (Id. at 5.) USDA notes that IANR's dedicated service to small and medium elevators contrasts with broader trends in the grain handling and storage industry, which has experienced consolidation, in part because many railroads have moved to utilizing shuttle trains of 75 or more cars for grain transport. (Id. at 5-6.)

Post-merger, the boutique service and switch neutrality that IANR has offered its customers as an independent short line will likely disappear once IANR is integrated into CN's sprawling Class I network. CN's operating model is to run a "scheduled railroad," premised on three concepts: "make the plan, run the plan, sell the plan." (Appl., V.S. Robinson 1-2.) According to CN, it develops a central plan that accounts for and optimizes all the volume across the CN network and the unique characteristics of that network. (Id. at 2.) On a grand scale, this is a highly efficient and effective business model. However, applying it to the much smaller and highly customized IANR network will be the equivalent of trying to fit a square peg into a round hole—it just won't fit. Post-transaction, CN will make decisions affecting IANR's 218-mile network based on what will be best for the entire 18,600-mile CN network.

CN also states that it is committed to long-term growth and asserts that, post-transaction, the new single-line service on CN's network will open "new efficiencies and market opportunities to Iowa Northern customers," particularly farmers and sustainable biofuels producers across Iowa. (Id. at 3.) The Board was right to be skeptical of CN's claimed benefits, noting that CN offered little evidence to support the argument that the transaction would open new markets to IANR customers. But, even if certain large biofuels shippers on IANR realize some benefits from the transaction, and thereby contribute to CN's overall growth, I worry about the consequences for small and medium-sized shippers on IANR, especially the grain elevators that rely on local service. Many of these shippers chose to locate on IANR because of its competitive rates and reputation for specialized service, and in so doing contributed to IANR's growth and helped make it an attractive target for CN. However, once integrated into CN's "scheduled railroad" operating model post-transaction, these same shippers face the potential for higher rates and service that fails to match levels enjoyed under IANR.

Additionally, the Board was correct in its stated concern that, post-merger, CN would not have the incentive to offer rates and service that are as competitive as those IANR currently offers to its customers, particularly for small agricultural shipments or shipments that have shorter haul movements. For instance, IANR's tariff for the movement of corn between Oelwein

and Cedar Rapids provides only a rate for single car shipments, while CN's tariff for a comparable move provides two rates, with a lower rate for shipments of 25 cars or more. (USDA Comment 7-8, Apr. 29, 2024; Rebuttal 75-76.) Under CN's current tariff, the rate to move less than 25 cars to Cedar Rapids is nearly double the rate IANR offers. (Rebuttal 76.) The Board found unpersuasive CN's response to this concern—that rates for movements of larger blocks of 25 cars or more are closer to IANR's rates and that certain grain elevators on IANR are large enough to load in 25-car blocks and could take advantage of the lower rates. Indeed, the Board noted that CN did not rebut the basic assertion put forth by USDA that customers shipping less than 25 cars will be worse off post-transaction given CN's pricing abilities and incentives.

Unfortunately, while the Board correctly identified the anticompetitive effects of the transaction, in particular the harm to small and medium-sized shippers, the conditions it imposes are too narrow to sufficiently mitigate those effects. The Board imposes a three-year oversight period and a series of behavioral remedies, including an open gateway condition and a condition that CN develop and implement a local service plan.[1] Academic commentators, however, have argued that behavioral remedies are often ineffective, as regulated firms are able to work around such restrictions as circumstances change over time and it can be difficult for agencies or courts to enforce these remedies and address loopholes. See Steven C. Salop, Invigorating Vertical Merger Enforcement, 127 Yale L.J. 1962, 1993 (2018). Moreover, the Board has imposed behavioral remedies such as an open gateway condition to mitigate the vertical impacts of a merger, but such remedies are especially inadequate to remedy a loss of horizontal competition. Here, because CN's acquisition of IANR results in a substantial loss of horizontal competition, additional conditions in the form of targeted structural relief should have been imposed to preserve competition. (See CPKC Comment 2, Apr. 29, 2024; see also id., V.S. Majure para. 68); see also Fed. Trade Comm'n, Negotiating Merger Remedies 5 (2012), https://www.ftc.gov/advice-guidance/competition-guidance/negotiating-merger-remedies (stating that the Federal Trade Commission "prefers structural relief in the form of a divestiture to remedy the anticompetitive effects of an unlawful horizontal merger.")

At a minimum, the Board should have imposed a condition requiring CN to negotiate a haulage or trackage rights agreement with an independent carrier to preserve competition to transloading facilities, including grain elevators, on the IANR. Grain elevators shipping less than 25 cars have benefitted from the current horizontal competition between IANR and CN and would be especially harmed by CN's acquisition of IANR. The Board has recognized that car haulage can be an effective means of preserving competition. See, e.g., Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 1 S.T.B. 233, 252 (1996) ("'Through trackage rights, haulage, ratemaking authority or other mutually acceptable means,' BNSF will be able to provide competitive service to all 2-to-l shippers . . . ."); CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. 196, 388-89 (1998) (CSX ordered to negotiate with CPR a haulage or trackage rights agreement over the east-of-the-Hudson Conrail line to provide

[1] The Board also imposes a condition requiring CN to maintain existing carrier access to locations in current CN and IANR voluntary reciprocal switch tariffs and that CN do so by maintaining "commercially reasonable rates and service," and by allowing access to reciprocal switching for new shippers and shipments of new commodities on the IANR network.

CPR access to Fresh Pond in Queens, NY). The Board has also recognized that trackage rights may achieve the same goal. See Union Pac. Corp.—Control—Mo.-Kan.-Tex. R.R., 4 I.C.C.2d 409, 456-58 (1988) (ordering UP to negotiate trackage rights with another carrier—without specifying which carrier—that addressed the competitive concerns identified by the Board). While it is true that UP already has perpetual haulage rights over nearly all of IANR's main line, (see Applicants Suppl., App. A at 3, Apr. 12, 2024), such rights are for overhead haulage movements only, between Cedar Rapids and Waterloo, between Manly and Waterloo, and between Manly and Cedar Rapids. With few exceptions, UP does not have the right to provide rates to customers on IANR, meaning its overhead haulage rights do not help maintain competition for local movements on the IANR line.

In addition to the likely harm to shippers, CN's acquisition of IANR and the implementation of CN's "scheduled railroad" operating model will also likely impact carriers who connect to IANR's line, particularly CRANDIC. As recounted by the Board, CN desires to move the interchange location for outbound IANR traffic from CRANDIC's Cedar Rapids Yard to CN's Cedar Rapids Yard, five miles away, which CN argues would improve efficiency, fluidity, and capacity in Cedar Rapids. (Rebuttal, V.S. Taylor 10-11.) CRANDIC asserts that such an arrangement is contrary to its interchange agreement with IANR and would cost it thousands of dollars per day. (CRANDIC Comment 2-3, Apr. 29, 2024.) Although the Board imposes a condition requiring CN to maintain the status quo for IANR outbound traffic until CN and CRANDIC reach an agreement on interchange, CN states that it will continue to dialogue with CRANDIC about potential changes to improve operations in Cedar Rapids. (Rebuttal, V.S. Taylor 10-11.) Now that the Board has approved the Proposed Transaction, CRANDIC, which has expressed concern that CN might be difficult to work with, (CRANDIC Comment 2, Apr. 29, 2024,) will have to negotiate any changes to the current interchange location with a Class I railroad rather than a fellow short line.

For the reasons discussed above, CN's acquisition of IANR, even as conditioned by the Board, will likely cause a substantial lessening of competition, and those anticompetitive effects continue to outweigh the modest public benefits of this transaction. Therefore, I respectfully dissent.