

conditions¹¹ imposed in Decision No. 89, CSX and NS already are subject to implementing agreements governing their operational integration of the NYC Allocated Assets and the PRR Allocated Assets, respectively; and petitioners state that no changes will be required in those agreements or in any other agreements between petitioners and their employees. Petitioners add that, although they expect that the *New York Dock* conditions will be imposed on all aspects of the proposed transaction, the proposed transaction will not produce any employee impacts triggering the Article I, § 4 implementing agreement requirements or other provisions of *New York Dock*.

Environmental and/or Historic Review

Petitioners contend that, because the proposed transaction does not involve any changes in rail operations or service to shippers, no environmental documentation is required, *see* 49 CFR 1105.6(c)(2)(ii), and no historic report is required, *see* 49 CFR 1105.8(b)(2).

The Proposed Restructuring of Conrail Debt

Petitioners acknowledge that the proposed transaction will have an effect on Conrail's "preexisting" debt and equipment lease obligations (*i.e.*, Conrail's debt and equipment lease obligations that were in existence as of the Split Date). The holders of the relevant obligations will not, petitioners claim, be adversely impacted by the proposed transaction, but petitioners concede that, because the proposed transaction will require a restructuring of Conrail's current debt, the accomplishment of the proposed transaction will require either the consent of the holders of such debt or an order of the Board pursuant to 49 U.S.C. 11321(a).

Petitioners explain that, although CSX and NS are individually responsible for payment of "new" liabilities attributable to their operation of the NYC and PRR Allocated Assets accruing from the Split Date forward, most of Conrail's "preexisting" debt and equipment lease obligations remained with Conrail. *See* Decision No. 89, 3 S.T.B. at 230. These preexisting obligations include: Certain unsecured debentures issued by Conrail; a number of obligations that are secured, in various forms, by a first-priority lien on certain items of equipment owned by or leased to Conrail; and certain long-term finance leases of equipment. Petitioners describe these preexisting

obligations as follows: All of Conrail's preexisting equipment obligations, including secured debt and long-term finance leases, are referred to as "secured debt" or "secured debt obligations"; such secured debt and Conrail's preexisting unsecured debentures are referred to as its "debt obligations"; and participants in long-term equipment leases, whether as equity or debt, are included in the terms "holders" and "debtholders."

Petitioners advise that some of the agreements underlying Conrail's preexisting debt obligations contain provisions requiring the consents of various parties (or of a majority of certain classes of debtholders) for certain corporate transactions. Most of these agreements, petitioners indicate, require such consents in connection with the proposed transfer of NYC and PRR to CSX and NS, respectively. Petitioners advise that, because the proposed transaction will transfer the major portion of Conrail's assets (its membership interests in NYC and PRR) out of Conrail's ownership, petitioners considered a number of alternative approaches, including the use of keepwell agreements, to assure that holders of Conrail's existing debt obligations (and the credit ratings of such debt obligations) will not be adversely affected by the proposed transaction.¹² Petitioners further advise that they concluded that guarantees and/or assumptions by CSXT and NSR would be the most desirable alternative for the holders of Conrail's existing debt obligations, and, accordingly, they have included such guarantees and/or assumptions in the proposed transaction. Petitioners refer to this aspect of the proposed transaction as the "debt restructuring," and it is the accomplishment of this "debt restructuring" that petitioners have acknowledged will require either the consent of the Conrail debtholders or an order of the Board pursuant to 49 U.S.C. 11321(a).¹³

Petitioners advise that the proposed debt restructuring provides differing treatment as respects unsecured debt, on the one hand, and secured equipment

financing agreements, on the other hand.

Unsecured Debt. Petitioners advise that, with respect to Conrail's preexisting unsecured debt, CSX and NS will cause NYC Newco and PRR Newco, respectively, to issue their own debt securities that will be offered in a tax-free exchange, through a series of consecutive steps occurring at approximately the same point in time, for the existing unsecured debt of CRC. Petitioners further advise that the new debt securities offered by NYC Newco and PRR Newco will have the same maturity dates, principal and interest payment dates, and interest rates as those of the respective issues of CRC unsecured debentures. And, petitioners add: NYC Newco and PRR Newco will issue debt securities in a combined aggregate principal amount equal to the aggregate principal amount of CRC's unsecured debentures to be tendered (by the holders of CRC's debentures) in the proposed exchange offer; the new debt securities offered by NYC Newco will be fully and unconditionally guaranteed by CSXT, and the new debt securities offered by PRR Newco will be fully and unconditionally guaranteed by NSR; and these NYC Newco and PRR Newco debt securities will be issued (in a series of consecutive steps occurring at approximately the same time) to the holders of CRC's unsecured debentures who elect to exchange their existing CRC debentures for the newly issued NYC Newco and PRR Newco debt securities (with NYC Newco becoming the new obligor for securities equal to 42% of each CRC unsecured debenture tendered in the exchange offer, and with PRR Newco becoming the new obligor for securities equal to 58% of each CRC unsecured debenture tendered in the exchange offer).

Petitioners note that a condition of acceptance (by NYC Newco and PRR Newco) of the exchange described in the preceding paragraph will be the grant by the exchanging bondholder of a consent that allows the proposed transaction (including the issuance of the securities contemplated by the proposed transaction) to go forward, and the termination of most of the restrictive covenants contained in the indenture under which Conrail issued its unsecured debentures (the "Unsecured Indenture"). Petitioners further note that the exchanged Conrail debentures will be canceled, and that the exchange offer will include a customary "exit" consent solicitation that will permit the transfer of ownership of NYC and PRR and the other elements of the proposed transaction as previously described. Petitioners point out that, given the

¹¹ *See New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84–90 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

¹² Petitioners appear to be using the terms "existing debt obligations" and "preexisting debt obligations" interchangeably.

¹³ It is not entirely clear that the proposed debt restructuring applies only to Conrail's *preexisting* debt obligations (*i.e.*, the obligations that existed on the Split Date and that continue to exist today). It may be that the proposed debt restructuring applies to Conrail's *current* debt obligations (*i.e.*, the obligations that existed on the Split Date and that continue to exist today, and, in addition, any post-Split Date obligations incurred by Conrail).