

Vice Chairman Mulvey, commenting:

While I vote to approve the draft decision before us today, I am concerned about the procedures used by the railroads to obtain authorization for their operating arrangements, especially the trackage rights transactions here. I find that these dealings, when viewed collectively, constitute a significant engagement among the carriers that will undeniably affect a number of their employees and possibly the rail competitive landscape of southern New York State. I am concerned that the interrelated nature of and the significance of these transactions— though complying with the letter of law—might violate the spirit of the class exemption for trackage rights agreements. Because the parties to the MOU clearly regarded the transactions as related and, to some degree, interdependent, I call into question the argument that the discontinuance is limited in scope. It would have been preferable if the railroads had filed formal applications for approval of these transactions, and if the Board had held a hearing in these proceedings.