Agreement of Consolidation

OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

AND

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

AND

CHICAGO, MILWAUKEE AND NORTH WESTERN CORPORATION

CONSOLIDATING TO FORM A NEW CORPORATION

CHICAGO, MILWAUKEE AND NORTH WESTERN TRANSPORTATION COMPANY

THIS AGREEMENT OF CONSOLIDATION, dated as of March 18, 1965, between CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation (herein referred to as "Milwaukee"), CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (herein referred to as "North Western"), and CHICAGO, MILWAUKEE AND NORTH WESTERN CORPORATION, a Delaware corporation (herein referred to as "Milnor"), and the Directors of Milnor, or a majority of them,

WITNESSETH:

WHEREAS, Milwaukee warrants that it is a corporation organized and existing under the laws of the State of Wisconsin, having at the date hereof an authorized capital stock consisting of 1,150,000 shares of Preferred Stock of the par value of $100 each, issuable in series, and 2,637,451 shares of Common Stock without par value, of which 518,652 shares of SeriesA Preferred Stock and 2,140,594 shares of Common Stock are now issued and outstanding and 375,586 shares of Common Stock are now reserved for conversion of other securities of Milwaukee and for outstanding stock options granted by Milwaukee; and

WHEREAS, North Western warrants that it is a corporation organized and existing under the laws of the State of Wisconsin, having at the date hereof an authorized capital stock consisting of 1,174,472 shares of Preferred Stock of the par value of $100 per share, issuable in series, and 4,010,252 shares of Common Stock, without par value, of which 913,611 shares of Preferred Stock, Series A 5%, and 874,901 shares of Common Stock are now issued and outstanding, and 2,198,269 shares of Common Stock are now reserved for issuance upon conversion of other securities of North Western and for outstanding stock options granted by North Western; and

WHEREAS, Milnor warrants that it is a corporation organized and existing under the laws of the State of Delaware, having been incorporated on March 10, 1965, and having at the date hereof an authorized capital stock consisting of 100 shares of Common Stock without par value, all of which are, at the date of execution of this Agreement by Milnor, issued and outstanding and held by Milwaukee and North Western in equal parts; and

WHEREAS, the Boards of Directors of Milwaukee, North Western and Milnor desire and deem it advisable that Milwaukee, North Western and Milnor (herein collectively referred to as the "Constituent Corporations") be consolidated into a single corporation which shall be a new corporation formed by means of such consolidation under the General Corporation Law of the State of Delaware;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is agreed that Milwaukee, North Western and Milnor shall be consolidated into a single corporation which shall be a new corporation formed by means of such consolidation under the General Corporation Law of

EXHIBIT "E"

the State of Delaware, and that the mode of carrying the same into effect and the manner of converting outstanding shares of capital stock of Milwaukee, North Western and Milnor into securities of the new corporation shall be as follows:

ARTICLE I

Effective Date

The consolidation herein provided for shall take effect at 12:01 A.M. on the first day of the month next following the date on which this Agreement, duly certified and acknowledged, shall be filed in the office of the Secretary of State of Delaware and a copy thereof shall be recorded in the office of the recorder of the County of New Castle, Delaware, if (a) before such filing and recordation, this Agreement shall have been duly approved by a vote of all the stockholders of Milnor and the holders of a majority of the shares, outstanding on the record date for such vote, of each class of the capital stocks of Milwaukee and of North Western; (b) at the time of such filing and recordation, the transactions herein provided for shall have been approved and authorized as provided in the Interstate Commerce Act by an order or orders of the Interstate Commerce Commission then in effect; and (c) before such filing and recordation, the merger of Chicago Great Western Railway Company (herein referred to as "Great Western") into North Western, in accordance with the Plan and Agreement of Merger between them, dated September 10, 1964, shall have been consummated or said Plan and Agreement shall have been terminated. The time of taking effect of the consolidation provided for in this Agreement is herein referred to as the Effective Date.

ARTICLE II

Formation and Name of New Company

Milwaukee, North Western and Milnor shall be, upon the Effective Date, consolidated to form a new corporation (herein referred to as the "New Company"), the name of which shall be CHICAGO, MILWAUKEE AND NORTH WESTERN TRANSPORTATION COMPANY. The New Company shall be exclusively a Delaware corporation. The separate corporate existences of Milwaukee, North Western and Milnor shall cease upon the Effective Date.

ARTICLE III

Termination

At any time prior to the Effective Date, this Agreement may be terminated:

(1) by mutual consent of the Boards of Directors of Milwaukee and North Western; or

(2) by the Board of Directors of either Milwaukee or North Western, within sixty days following the date of service of an order of the Interstate Commerce Commission approving and authorizing the transactions herein provided for, if any term or condition, unacceptable to such Board of Directors, shall be imposed by such order which (a) varies from the express provisions of this Agreement in any manner materially and adversely affecting the interests of the holders of any class of capital stock of such corporation, or (b) is not substantially similar to a term or condition of the character customarily imposed by said Commission in proceedings involving railroads under Sections 5 and 20a of the Interstate Commerce Act and materially and adversely affects the interests of the New Company; or

(3) by the Board of Directors of either Milwaukee or North Western, if the order of the Interstate Commerce Commission approving and authorizing the transactions herein provided for shall fail to contain provisions having the effect of permitting, for the purposes of the North Western First and Second Mortgages and the Milwaukee First and General Mortgages and Debenture Indenture, apportionment of Available Net Income of the New Company to the extent of 50% thereof to North Western and 50% thereof to Milwaukee; or

(4) by the Board of Directors of either Milwaukee or North Western, if there shall not have been received prior to the Effective Date:

(a) all required consents to the amendment of the First Mortgage of Milwaukee so that payment into the Contingent Sinking Fund provided for in Section 2 of Article VIII thereof shall be required under such circumstances, and shall be in such amounts, as shall be acceptable to the Boards of Directors of Milwaukee and North Western;

(b) all required consents to the amendment of the General Mortgage of Milwaukee so that payment in any calendar year into the Sinking Funds provided for therein shall be in such amounts as shall be acceptable to the Boards of Directors of Milwaukee and North Western; and

(c) all consents, if any, required under or with respect to any other provisions of such Mortgages or of any other instrument relating to indebtedness of or assumed by North Western or Milwaukee in order to permit the consummation of the consolidation herein provided for; or

(5) by the Board of Directors of either Milwaukee or North Western if prior to the Effective Date a written ruling shall not have been issued by the Internal Revenue Service, or an opinion shall not have been rendered to such corporation by counsel satisfactory to its Board of Directors, to the effect that under the Internal Revenue Code neither gain nor loss will be recognized for Federal income tax purposes to such corporation or its stockholders (except to the extent that any fractional share interest in the Common Stock of the New Company may be sold by or for the account of any stockholder) as a result of consummation of the consolidation herein provided for; or

(6) by the Board of Directors of either Milwaukee or North Western if (a) a decree or order shall have been entered by a court of competent jurisdiction, adjudicating the other corporation a bankrupt or insolvent, or approving a petition filed against such other corporation seeking reorganization or readjustment under the Federal Bankruptcy Act, or other law or statute of the United States of America or of any State thereof for the relief of debtors, or approving the appointment of a trustee in bankruptcy or reorganization or a receiver of all or substantially all of the property of such other corporation, and in any such case, such decree or order shall have continued unstayed on appeal or otherwise for a period of at least sixty days and shall be in effect at the time of such termination, (b) such other corporation shall file a petition in bankruptcy, or shall consent to or acquiesce in the appointment of a receiver of all or any part of its property, or shall file a petition seeking reorganization or readjustment under the Federal Bankruptcy Act, or other law or statute of the United States of America or any State thereof for the relief of debtors, including Section 20b of the Interstate Commerce Act, or shall file an answer admitting the material allegations of any such petition filed against it by creditors, or (c) the maturity of any funded debt (as presently defined in the Uniform System of Accounts for Railroads prescribed by the Interstate Commerce Commission) of such other corporation shall be accelerated or any event shall occur and be continuing permitting such acceleration by or on behalf of any holder of any such debt; or

(7) by the Board of Directors of either Milwaukee or North Western if the other corporation shall breach any warranty or agreement hereunder and such breach shall remain uncured at the time of such termination and shall have remained uncured for a period of at least ninety days after written notice of such breach has been given to such other corporation by Milwaukee or North Western, as the case may be; or

(8) by the Board of Directors of either Milwaukee or North Western, if the Effective Date shall not have occurred prior to January 1, 1969, or such later date as both of such Boards of Directors may from time to time determine.

The Board of Directors of either of such corporations may at any time waive any right of such Board to terminate this Agreement on account of any matter specified in such waiver and any such waiver shall be fully effective to the extent and subject to any conditions specified therein.

ARTICLE IV

Restrictions Prior to Consolidation

From the date of this Agreement until the Effective Date or until this Agreement is terminated in accordance with Article III hereof, Milwaukee and North Western each agrees that it will not, without the consent of the Board of Directors of the other:

(a) change or reclassify any shares of its capital stock; or

(b) declare or pay any dividends or make any other distributions on any shares of its capital stock other than such cash dividends as may be warranted in the exercise of sound and prudent business judgment; provided, however, that dividends for the year in which the Effective Date shall occur shall not be declared or paid on Preferred Stock of either Milwaukee or North Western in excess of the rate of $5 per share per annum for the portion of such year to the Effective Date; or

(c) purchase, redeem or otherwise acquire any shares of its capital stock, or permit any subsidiary to acquire any such shares, at a price in excess of the fair market value thereof at the time of acquisition; or

(d) issue or sell, or issue or grant any option or warrant to purchase, any shares of its capital stock or any security convertible into shares of its capital stock; or

(e) amend (except for any amendment referred to in clauses (a) and (b) of paragraph (4) of Article III) any provisions of any funded debt (as presently defined in the Uniform System of Accounts for Railroads prescribed by the Interstate Commerce Commission) now outstanding, or of any indenture or agreement relating thereto, if the net effect of such amendments would be to materially and adversely affect any class of its capital stock or any class of capital stock of the New Company into which any shares of capital stock are to be converted as provided in Article VIII.

The foregoing restrictions described in this Article IV shall not be applicable to the following transactions:

(1) the issuance and sale by either Milwaukee or North Western of shares of its Common Stock pursuant to options presently outstanding under its Stock Option Plan; or

(2) the pledge by North Western of its Second Mortgage Convertible Income Bonds to secure any loan pursuant to the Loan Agreement, dated April 10, 1964, between it and The First National Bank of Chicago, or any extension of such Loan Agreement; or

(3) the issuance by either Milwaukee or North Western of shares of its Common Stock upon conversion, in accordance with the terms thereof, of any of its convertible securities presently outstanding or issued pursuant to the next preceding clause (2), and the acquisition of such convertible securities upon conversion thereof; or

(4) the consummation of the transactions contemplated by the Plan and Agreement of Merger, dated September 10, 1964, between North Western and Great Western, the amendment of provisions respecting funded debt of Great Western so as to change to fixed obligations some or all of the contingent obligations thereunder, and in the event of such consummation, the issuance and sale by North Western of shares of its Common Stock pursuant to stock options outstanding on September 10, 1964 under the Stock Option Plan of Great Western; or

(5) the consummation of the transactions contemplated by the Exchange Offer, dated September 23, 1963, of North Western to the shareholders of Chicago, Rock Island and Pacific Railroad Company; or

(6) the sale, at a price not less than the fair market value thereof at the time the commitment to sell is entered into, of any shares of presently outstanding capital stock of Milwaukee or North

Western which may be acquired after the date hereof by it or any subsidiary by any purchase or redemption permitted by this Article IV.

From the date of this Agreement until the Effective Date, or until this Agreement is terminated in accordance with Article III hereof, each of Milwaukee and North Western will use its best efforts to maintain its shareholders' equity in at least as favorable a position as now exists.

ARTICLE V

Certificate of Incorporation of the New Company

The facts required to be set forth in a Certificate of Incorporation of a corporation incorporated under the laws of the State of Delaware, which can be stated in the case of the consolidation provided for in this Agreement, are set forth in Exhibit A attached hereto and made a part hereof, and as so set forth shall be the Certificate of Incorporation of the New Company on and after the Effective Date unless and until it shall be amended or repealed thereafter in accordance with the provisions thereof and the laws of the State of Delaware, which power to amend or repeal is hereby expressly reserved. The Certificate of Incorporation as so set forth shall constitute the Certificate of Incorporation of the New Company and may be separately certified as its Certificate of Incorporation.

ARTICLE VI

By-Laws

The By-Laws of Milnor as in effect immediately prior to the Effective Date shall, among other things, provide for the offices referred to in Article VII hereof and shall constitute the By-Laws of the New Company upon and after the Effective Date unless and until amended or repealed thereafter in accordance with the provisions thereof and the laws of the State of Delaware, which power to amend or repeal is hereby expressly reserved.

ARTICLE VII

Management

Prior to the Effective Date, the Board of Directors of Milnor shall consist of three members, two of whom shall be persons designated by the Board of Directors of North Western, and one of whom shall be a person designated by the Board of Directors of Milwaukee.

On the Effective Date, the number of directors of the New Company shall be fifteen, divided into three classes of five directors each, and of such fifteen directors, eight (consisting of three of the first class, two of the second class and three of the third class) shall be persons designated by the Board of Directors of North Western, and seven (consisting of two of the first class, three of the second class and two of the third class) shall be persons designated by the Board of Directors of Milwaukee.

No person shall, however, be designated, as above provided, by the Board of Directors of either Milwaukee or North Western who is unacceptable to the Board of Directors of the other as a director of Milnor or the New Company, as the case may be.

On the Effective Date, the Executive Committee of the Board of Directors of the New Company shall consist of seven directors of the New Company, four of whom shall be persons designated by the Board of Directors of North Western and three of whom shall be persons designated by the Board of Directors of Milwaukee.

The officers of Milnor immediately preceding the Effective Date shall serve as officers of the New Company, holding the same offices as those held by them respectively as such officers of Milnor, until the first meeting of the Board of Directors of the New Company on or after the Effective Date, at which time their offices as officers of the New Company shall become vacant. At such first meeting, the Board of Directors of the New Company shall elect new officers to serve until the first meeting of the Board following the next annual meeting of stockholders of the New Company, and until their respective successors shall have been duly elected and qualified. Such new officers shall consist of a Chairman (who shall be the chief executive officer), a Vice Chairman, a President, a Secretary and such other officers as are deemed appropriate in conformity with the By-Laws of the New Company. The Chairman elected at such first meeting on or after the Effective Date shall be that member of the Board of Directors of the New Company selected by a majority of those members of such Board who shall have been designated by the Board of Directors of North Western, and the Vice Chairman elected at such first meeting shall be that member of the Board of Directors of the New Company selected by a majority of those members of such Board who shall have been designated by the Board of Directors of Milwaukee.

The remaining officers of Milwaukee and North Western immediately preceding the Effective Date shall be retained by the New Company pending integration of management by the Board of Directors of the New Company, with such changes in titles and duties as the Board shall determine. In effecting such integration, the Board of Directors of the New Company shall base the retention, promotion and compensation of personnel on merit, without discrimination or regard to whether such personnel were theretofore employed by North Western or Milwaukee.

ARTICLE VIII

Conversion of Shares of Milwaukee and North Western

Upon the Effective Date, the number of authorized shares of capital stock of the New Company shall be 6,245,309 shares of Common Stock (without par value) and 1,706,568 shares of Preferred Stock ($100 par value), and the outstanding shares of capital stock of Milwaukee and North Western shall be changed and converted into capital stock of the New Company in the following manner:

(a) Upon the Effective Date, each share of Preferred Stock of Milwaukee which shall be outstanding immediately prior to the Effective Date, without any action on the part of the holder thereof, shall automatically become and be converted into one share of Preferred Stock of the New Company; and each outstanding certificate representing immediately prior to the Effective Date shares of Preferred Stock of Milwaukee shall thereupon, except as hereinafter provided, become and be deemed for all corporate purposes to evidence the ownership of the same number of full paid, nonassessable shares of Preferred Stock of the New Company.

(b) Upon the Effective Date, each share of Common Stock of Milwaukee which shall be outstanding immediately prior to the Effective Date, without any action on the part of the holder thereof, shall automatically become and be converted into seven-tenths of a share of Common Stock of the New Company; and each outstanding certificate representing immediately prior to the Effective Date shares of Common Stock of Milwaukee shall thereupon, except as hereinafter provided, become and be deemed for all corporate purposes to evidence the ownership of the number of full paid, nonassessable shares of Common Stock of the New Company into which the number of shares of Common Stock of Milwaukee so represented by such certificate are so converted.

(c) Upon the Effective Date, each share of Preferred Stock of North Western which shall be outstanding immediately prior to the Effective Date, without any action on the part of the holder thereof, shall automatically become and be converted into one share of Preferred Stock of the New Company; and each outstanding certificate representing immediately prior to the Effective Date shares of Preferred Stock of North Western shall thereupon, except as hereinafter provided, become and be deemed for all corporate purposes to evidence the ownership of the same number of full paid, nonassessable shares of Preferred Stock of the New Company.

(d) Upon the Effective Date, each share of Common Stock of North Western which shall be outstanding immediately prior to the Effective Date, without any action on the part of the holder thereof, shall automatically become and be converted into one share of Common Stock of the New Company; and each outstanding certificate representing immediately prior to the Effective Date shares of Common Stock of North Western shall thereupon, except as hereinafter provided, become and be deemed for all corporate purposes to evidence the ownership of the same number of full paid, nonassessable shares of Common Stock of the New Company.

(e) After the Effective Date, each holder of an outstanding certificate theretofore representing shares of capital stock of Milwaukee or North Western (hereinafter referred to as an "Old Certificate"), upon surrender thereof to the New Company or its exchange agent, shall thereupon be entitled to receive in exchange a certificate or certificates (hereinafter referred to as a "New Certificate") for the number of whole shares of capital stock of the New Company into which the shares of capital stock of Milwaukee or North Western theretofore represented by the Old Certificate so surrendered shall have been converted. Until the holder of an Old Certificate shall have surrendered the same, no dividends payable to holders of record of the capital stock of the New Company as of any date more than twelve months after the Effective Date shall be paid to such holder, and no voting rights of holders of record of the capital stock of the New Company as of any date more than twelve months after the Effective Date shall be possessed by such holder, with respect to the number of shares of capital stock of the New Company evidenced by such Old Certificate. Upon surrender of an Old Certificate, however, there shall be paid to the record holder of the New Certificate issued in exchange therefor the amount of dividends (without any interest thereon) which have theretofore become payable but which have not been paid by reason of the foregoing, with respect to the number of whole shares of capital stock of the New Company represented by the New Certificate issued in exchange, but in no case shall such payment exceed the amount of such dividends which have theretofore become so payable during the six year period ending on the date of surrender of such Old Certificate.

(f) Neither certificates for fractional shares of Common Stock of the New Company nor scrip certificates therefor will be issued to the holders of Old Certificates for shares of Common Stock of Milwaukee, but arrangements will be made with an exchange agent so that for a period of ninety days after the Effective Date any such holder may, through the exchange agent, acting as agent for such holder, and upon surrender of such Old Certificate of such holder in exchange for a New Certificate for Common Stock of the New Company, purchase any additional fraction required to make up a whole share of Common Stock of the New Company or sell the fractional interest in a share of Common Stock of the New Company to which such holder is entitled. After the expiration of such period, the exchange agent will sell (for the account of such holders entitled to such fractional share interests) the number of shares of Common Stock of the New Company equivalent to the aggregate of the fractional share interests indicated by the then outstanding Old Certificates for shares of Common Stock of Milwaukee. The exchange agent will thereafter and until six years after the Effective Date pay to such holders upon exchange of their Old Certificates for shares of Common Stock of Milwaukee their pro rata share (without any interest thereon) of the proceeds of such sale. Any balance of such proceeds remaining after such six-year period shall be paid over to the New Company and thereafter such holders shall have no right to receive payment of such proceeds or any part thereof.

Upon the Effective Date, all shares of capital stock of Milnor and all shares of capital stock of Milwaukee or North Western then held in its treasury (excluding any shares so held which may be acquired after the date of this Agreement) shall be retired and cancelled and, notwithstanding any other provision hereof, no shares of capital stock or other securities of the New Company shall be issued in respect thereof.

ARTICLE IX

Vesting of Assets and Assumption of Liabilities

Upon the Effective Date, the New Company shall possess all the rights, privileges, immunities, powers and franchises (except any franchises to be a corporation of any State other than the State of Delaware) as well of a public as of a private nature, and shall be subject to all the restrictions, liabilities, disabilities and duties, of each of the Constituent Corporations; and all and singular, the rights, privileges, powers and franchises (except as aforesaid) of each of the Constituent Corporations, including without limitation its right to exercise the power of eminent domain to the extent permitted by law, and all property, real, personal and mixed, and all debts due to any of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations shall be vested in the New Company; and all property, rights, privileges, immunities, powers and franchises (except as aforesaid), and all and every other interest shall be thereafter as effectually the property of the New Company as they were of the several and respective Constituent Corporations, and the title to any real estate vested by deed or otherwise in any of the Constituent Corporations shall not revert or be in any way impaired by this Agreement or by the consolidation provided for herein; but all rights of creditors and all liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the Constituent Corporations shall thenceforth attach to the New Company, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. The New Company shall and hereby does as of the Effective Date expressly assume (without limitation of the foregoing), all contracts, including all then existing employment contracts, all mortgages, deeds of trust and indentures made by Milwaukee, North Western or Milnor or their predecessors and the supplements and amendments thereto and all bonds and other obligations secured thereby. Nothing herein is intended to extend or enlarge the lien of any indenture, agreement or other instrument executed or assumed by Milwaukee, North Western or Milnor.

Nothing in this Article shall be deemed to limit the generality of the properties and rights vested in and liabilities assumed by the New Company pursuant to the provisions of laws applicable to the consolidation herein provided for or to exclude any other effects, obligations, liabilities or duties provided by law as incident to or resulting from such consolidation and not specifically mentioned herein.

ARTICLE X

Stock Option Plans and Pension Plans

The New Company will take such action as may be appropriate so as to assume as of the Effective Date, in such manner that Section 425(a) (or any provision substituted therefor) of the Internal Revenue Code shall apply thereto, all obligations of Milwaukee under options theretofore granted pursuant to its Stock Option Plan and all obligations of North Western under options theretofore granted pursuant to its Stock Option Plan or (in the event of consummation of the merger of Great Western into North Western) pursuant to the Stock Option Plan of Great Western; but the holders of such options granted pursuant to the Stock Option Plan of Milwaukee shall be entitled to purchase seven-tenths of a share of the New Company's Common Stock in lieu of each share of Milwaukee Common Stock to which such holders were entitled under such options, for the same price and upon the same terms and conditions stated in such options, subject to appropriate provision with respect to fractional shares. Following the Effective Date no options shall be granted under any of said Stock Option Plans.

The pension plans of the Constituent Corporations shall be adopted by the New Company for the respective benefits of those employes entitled to participate thereunder immediately prior to the Effective Date who shall be in active service with the New Company on the Effective Date, subject, however, to the right of the New Company to amend or terminate any such plans in accordance with the provisions thereof. The New Company may adopt an appropriate pension plan or plans for its employes whose active service commences after the Effective Date. Pension benefits with respect to persons who on the Effective Date are on the pension rolls under the several pension plans of the Constituent Corporations shall be payable after the Effective Date by the New Company (except to the extent paid out of any trust fund theretofore established) in accordance with the provisions of such respective plans.

ARTICLE XI

Further Assurances

If at any time the New Company shall deem or be advised that further deeds, assignments or assurances in law or any other acts or things are necessary or desirable to vest or to perfect or confirm of record or otherwise the title to or the right to use or operate any property of Milwaukee, North Western or Milnor acquired or to be acquired by reason of or as a result of the consolidation provided for in this Agreement, Milwaukee, North Western and Milnor and their respective proper officers will execute and deliver any and all such proper deeds, assignments and assurances in law, and do all such other acts and things.

ARTICLE XII

Changes Required by Interstate Commerce Commission

If any order of the Interstate Commerce Commission shall impose terms or conditions to its approval and authorization of the consolidation provided for in this Agreement, then, unless as a result thereof this Agreement shall be terminated in accordance with Article III hereof, such terms and conditions shall be deemed to be as binding as if included in this Agreement and no further vote or approval of stockholders of any of the Constituent Corporations shall be required; provided, however, that no term or condition which varies from the express provisions of this Agreement, or requires any change in the provisions of Exhibit A attached hereto, in any manner materially and adversely affecting the interests of the holders of any class of capital stock of Milwaukee or North Western shall be deemed binding or included in this Agreement unless such term or condition is approved by the holders of a majority of the shares outstanding at the time of such approval of each class of capital stock so affected.

ARTICLE XIII

Capital and Surplus of New Company

On the Effective Date, the stated capital of the New Company shall be (a) the aggregate amount of the stated capital of each of North Western and Milwaukee immediately prior to the Effective Date, minus (b) $30 for each share of Common Stock of Milwaukee outstanding immediately prior to the Effective Date. On the Effective Date, each class of surplus of North Western and Milwaukee immediately prior to the Effective Date shall continue without change in the aggregate as such surplus of the New Company and available for payment of dividends to the extent permitted under the laws of the State of Delaware, except that the amount referred to in clause (b) of the preceding sentence shall be added to capital surplus of the New Company.

ARTICLE XIV

Filing of Agreement of Consolidation in Other States

A counterpart or copy of this Agreement shall be tendered for filing or recording in the office of the Secretary of State of the State of Wisconsin, and in all such other offices in such State or elsewhere as any officer of the New Company shall deem appropriate for the purpose of evidencing in the public records the consolidation herein provided for of Milwaukee, North Western and Milnor into the New Company, or for any other purpose, but neither said consolidation nor any such filing or recording shall have the effect of making the New Company a domestic corporation of any State other than the State of Delaware and no failure or refusal of any public officer of any State other than the State of Delaware to file or record this Agreement shall affect the validity of the consolidation herein provided for.

This Agreement shall constitute Articles of Consolidation of Milwaukee, North Western and Milnor.

ARTICLE XV

Accomplishment of Consolidation

Each of the Constituent Corporations agrees, at its own expense, to use its best efforts to cause the consolidation provided for in this Agreement to be consummated, subject, however, to the rights herein provided of termination of this Agreement.

ARTICLE XVI

Action by Boards of Directors

Action by the Board of Directors of either Milwaukee or North Western for any purpose of this Agreement, including termination of this Agreement, shall be evidenced by a resolution duly adopted and notice thereof given to the other corporation.

ARTICLE XVII

Counterparts

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the corporate parties hereto have caused these presents to be signed, and their respective seals to be hereunto affixed and attested, by their respective officers thereunto duly authorized, and all or a majority of the Directors of Milnor have hereunto set their hands, all as of the day and year aforesaid.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

By WILLIAM J. QUINN
President

(CORPORATE SEAL)

ATTEST:

J. T. TAUSSIG
Secretary

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

By BEN W. HEINEMAN
Chairman

CLYDE J. FITZPATRICK
President

(CORPORATE SEAL)

ATTEST:

T. A. ROSS
Secretary

CHICAGO, MILWAUKEE AND NORTH WESTERN CORPORATION

By T. A. ROSS
President

(CORPORATE SEAL)

ATTEST:

J. T. TAUSSIG
Secretary

BEN W. HEINEMAN

WILLIAM J. QUINN

CLYDE J. FITZPATRICK

Being all of the Directors of
Chicago, Milwaukee and North
Western Corporation

EXHIBIT A

CERTIFICATE OF INCORPORATION
OF
CHICAGO, MILWAUKEE AND NORTH WESTERN TRANSPORTATION COMPANY

FIRST: The name of the corporation (hereinafter referred to as the "Company") is CHICAGO, MILWAUKEE AND NORTH WESTERN TRANSPORTATION COMPANY.

SECOND: The principal office of the Company in the State of Delaware is located at 100 West Tenth Street, in the City of Wilmington, County of New Castle, and the name and address of its resident agent is The Corporation Trust Company, 100 West Tenth Street, Wilmington 99, Delaware.

THIRD: The nature of the business of the Company, and the objects or purposes to be transacted, promoted or carried on by it, are as follows:

1. To conduct, engage in and carry on any and all branches of the business of transportation (whether by land, water or air, or by railroad, motor vehicle, pipe line or any other means) of passengers, freight, mail, express, baggage and other property.

2. To purchase, lease, construct, or otherwise acquire, own, hold, use, improve and operate, and sell, convey, lease or otherwise dispose of, any improved or unimproved real property of every kind and description or any interest therein.

3. To manufacture, purchase, lease or otherwise acquire, own, hold, use, improve and operate, sell, transfer, lease or otherwise dispose of, and deal in and with, goods, wares, merchandise and personal property of every kind and description or any interest therein.

4. To purchase or otherwise acquire, own and hold, sell, transfer or otherwise dispose of, and deal in and with, shares of capital stock, scrip, warrants, rights, bonds, debentures, notes and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any person (the term "person," as used in this Article Third meaning any natural person, corporation, partnership, joint venture, unincorporated association, government or governmental agency, or other entity) to the extent permitted by the laws of the State of Delaware, and as owner thereof to exercise all rights, powers and privileges of ownership and to do all acts and things for the protection and the enhancement of value thereof.

5. To borrow or raise moneys and issue, sell and pledge its notes, bonds, debentures and other evidences of indebtedness, and secure the payment or performance of any of its obligations by mortgage, pledge or otherwise on or of all or any of its property and rights, and to guarantee and to secure the payment or performance of obligations of any other person.

6. To engage in any other lawful business for the transaction of which corporations may be organized under the General Corporation Law of the State of Delaware.

7. To have one or more offices, and to carry on, without restriction as to limit or amount, all or any of its operations and business, in any of the states, districts, territories or possessions of the United States, and in any foreign country or countries, subject to any applicable requirements of law.

8. To do any or all of the things hereinbefore set forth as principal, agent or otherwise, either alone or in association with any one or more persons, or as the owner or holder of any share or interest in any person, and in connection therewith to enter into and perform contracts and instruments of every kind and description with any such person.

9. In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of the State of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as any natural person might or could do.

Notwithstanding any other provision contained herein, the Company shall not be authorized to construct, maintain or operate public utilities within the State of Delaware.

The objects and purposes specified in the foregoing clauses shall be in no wise limited or restricted by reference to or inference from the terms of any other clause or provision of this or any other Article of this Certificate of Incorporation, but the objects and purposes specified in each of the foregoing clauses of this Article Third shall be regarded as independent objects and purposes.

FOURTH: The total number of shares which the Company shall have authority to issue is 7,951,877, divided into two classes, as follows: 1,706,568 shares of Preferred Stock of the par value of $100 per share, and 6,245,309 shares of Common Stock without par value.

The designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, in respect of each class of stock of the Company are as hereinafter provided in this Article Fourth, to-wit:

I

PREFERRED STOCK

(a) *Purpose for which Issued.* Such number of the authorized shares of Preferred Stock as may be required for such purpose shall be issued in conversion of shares of preferred stock of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter sometimes referred to as "Milwaukee") and of Chicago and North Western Railway Company (hereinafter sometimes referred to as "North Western") outstanding immediately prior to the date (hereinafter sometimes referred to as the "Effective Date") on which the consolidation of Milwaukee, North Western and Chicago, Milwaukee and North Western Corporation into the Company becomes effective and shall upon such issuance be deemed to be fully paid and non-assessable. To the extent, if any, that any of the authorized shares of Preferred Stock shall not be so issued, such shares shall not be issued for any other purpose, the number of authorized shares of Preferred Stock shall be reduced accordingly, and the Company shall take such action, if any, as may be appropriate to accomplish such reduction.

(b) *Dividends.* The holders of shares of Preferred Stock shall be entitled to receive, when and as declared payable from time to time by the Board of Directors from any funds legally available therefor, dividends at the rate of 6% per annum on the par value thereof, and no more, computed from and including the Effective Date. If for any calendar year dividends shall not have been paid, or declared and set apart for payment, upon all outstanding shares of Preferred Stock at the aforesaid rate, such deficiency shall be cumulative (and thereby accumulate) only to the extent of the excess (up to the amount of such deficiency), if any, of the Net Income Available for Dividends, as hereinafter defined, for such year over the aggregate amount of dividends for such year which shall have been paid, or declared and set apart for payment, upon outstanding shares of Preferred Stock, and such deficiency otherwise shall be non-cumulative and shall not accumulate. Accumulations of dividends shall not bear interest. So long as any shares of Preferred Stock shall be outstanding, no dividend (other than dividends payable in shares of Common Stock) shall be paid, or declared and set apart for payment, on any date on shares of Common Stock unless all dividends accumulated and unpaid to such date on all outstanding shares of Preferred Stock shall have been paid, or declared and set apart for payment.

For purposes of determining the extent to which dividends on shares of Preferred Stock shall be accumulated and unpaid as of any date, such dividends shall be deemed to be accumulated and unpaid (i) for any then expired calendar year for which Net Income Available for Dividends shall not have been determined, to the extent, if any, to which dividends for such year shall not have been paid, or declared and set apart for payment, upon all outstanding shares of Preferred Stock at the aforesaid rate, and (ii) for the then current calendar year, to the extent, if any, to which dividends for the then expired portion of such year shall not have been paid, or declared and set apart for payment, upon all outstanding shares of Preferred Stock at the aforesaid rate.

(c) *Redemption.* The outstanding shares of Preferred Stock may be redeemed, in whole or in part, at the option of the Company by vote of the Board of Directors, at any time, or from time to time, on or after (but not before) five years after the Effective Date, at a redemption price with respect to each share being redeemed equal to the par value thereof, plus an amount equal to all dividends accumulated and unpaid thereon to the date fixed for redemption.

In the event of the redemption at any time of all then outstanding shares of Preferred Stock, then, subject to any approval required by law of the Interstate Commerce Commission or other public regulatory body, any portion of the redemption price (other than the portion thereof representing an amount equal to dividends accumulated and unpaid to the date fixed for redemption) payable on such redemption may, at the option of the Board of Directors, be paid in a like principal amount of debentures of the Company, dated the date fixed for such redemption, and having the following characteristics: (i) interest on such debentures shall accumulate and be payable from the date thereof at the rate of 6% per annum on the principal amount thereof, but only, in case of any calendar year for which Income Available for Redemption Debentures, as hereinafter defined, shall have been determined, to the extent of Income Available for Redemption Debentures for such year; (ii) such debentures shall be redeemable in whole or in part, at any time or from time to time at a redemption price equal to the principal amount thereof being redeemed and unpaid accumulated interest thereon to the date fixed for redemption; (iii) such debentures shall mature 40 years after the date thereof; (iv) such debentures shall have the benefit of a sinking fund for the retirement thereof, and there shall be required to be deposited in such sinking fund, in each calendar year next following the date of issue of such debentures, the lesser of ½ of 1% of the aggregate principal amount of such debentures originally issued or Income Available for Redemption Debentures, less interest on such debentures, for the preceding calendar year; and (v) such debentures shall have such other characteristics as the Board of Directors may determine.

If less than all the outstanding shares of Preferred Stock are to be redeemed, the shares to be redeemed shall be determined by lot or in such other equitable manner as the Board of Directors may determine. Notice of every redemption of shares of Preferred Stock shall be mailed, addressed to the holders of record of the shares to be redeemed at their respective addresses as they shall appear on the stock books of the Company.

On the date fixed for redemption of any shares of Preferred Stock the Company shall, and at any time prior to such date may, deposit the aggregate of the redemption price of the shares to be redeemed with a bank or trust company (hereinafter referred to as the "Depositary"), designated in the notice of such redemption, in the City of Chicago, Illinois, or in the Borough of Manhattan, The City of New York, New York, having a combined capital, surplus and undivided profits aggregating at least $5,000,000, in trust for payment to the holders of the shares to be redeemed, and deliver irrevocable written instructions authorizing the Depositary to apply such deposit solely to the redemption of the shares to be redeemed; provided, however, that said written instructions may provide that any of such deposit remaining unclaimed, at the expiration of six years after the date fixed for such redemption, by the holder of any of such shares shall be returned to the Company, after which return such holder shall have no claim against the Depositary but shall have claims as an unsecured creditor against the Company for the redemption price thereof, without interest, except, to the extent that any of such redemption price shall be payable in debentures, for unpaid accumulated interest on such debentures.

Notice of redemption having been duly given, or the Depositary having been irrevocably authorized by the Company to give said notice, and the redemption price of the shares to be redeemed having been deposited, all as aforesaid, then all shares of Preferred Stock with respect to which such deposit shall have been made shall forthwith, whether or not the date fixed for such redemption shall have occurred or the certificates for such shares shall have been surrendered for cancellation, be deemed no longer to be outstanding for any purpose, and all rights with respect to such shares shall thereupon cease and terminate, except only the right of the holders of the certificates for such shares to receive, out of such deposit in trust, on the redemption date (or such earlier date, if any, as may be fixed by the Board of Directors), the redemption price to which they are entitled without interest, except to the extent that any of such redemption price shall be payable in debentures, for unpaid accumulated interest on such debentures. The Company shall be entitled to receive the interest, if any, allowed by the Depositary with respect to any funds which may be deposited with it as aforesaid.

(d) *Liquidation.* In the event of any dissolution, liquidation or winding up of the Company, whether voluntary or involuntary, the holders of the then outstanding shares of Preferred Stock shall be entitled to receive payment in full of the par value of their shares, plus an amount equal to all dividends accumulated and unpaid thereon, before any distribution of assets shall be made to the holders of shares of Common Stock, but if the distributable assets are insufficient to make such payment in full to the holders of the then outstanding shares of Preferred Stock, such assets shall be distributed pro rata among such holders according to the number of shares of Preferred Stock held by each. The merger or consolidation of the Company into or with any other corporation, or the merger of any other corporation into it, shall not be deemed to be a dissolution, liquidation or winding up of the Company for the purposes of this paragraph (d).

(e) *Net Income Available for Dividends.* Net Income Available for Dividends for any calendar year shall mean the net income of the Company for such year determined in accordance with generally accepted accounting principles, (i) minus (but only to the extent not deducted in determining such net income) all contingent amounts which shall be payable by reason, among other things, of any net earnings of any character of the Company for such year (and in the absence of such net earnings would not be payable) on or with respect to any paragraph (e) debt assumed or issued by the Company at any time, including, without limitation, all such amounts payable into any sinking or similar fund for the purchase or redemption of any such debt and into any capital or additions and betterments or similar fund established under any such debt or under any instrument pursuant to which the same may have been or may be issued, and (ii) plus or minus, as the case may be, any adjustment of net income of the Company for any prior period after the Effective Date which is reflected in such year in retained income (earned surplus) of the Company. The term "paragraph (e) debt," as used in this paragraph (e), shall mean any bond, debenture, note or other evidence of indebtedness assumed or issued by the Company which (i) shall have been outstanding (including those held in any sinking fund) on the Effective Date, or shall be thereafter issued, pursuant to any of the First Mortgage, dated January 1, 1939, of North Western, the Second Mortgage, dated January 1, 1939, of North Western, the First Mortgage, dated January 1, 1944, of Milwaukee, the General Mortgage, dated January 1, 1944, of Milwaukee, and the Indenture, dated January 1, 1955, of Milwaukee, including any amendment or supplement to any of the foregoing, whether prior or subsequent to the Effective Date, or (ii) shall be issued after the Effective Date to refund or refinance any indebtedness referred to in the next preceding clause (i).

(f) *Income Available for Redemption Debentures.* Income Available for Redemption Debentures for any calendar year shall mean the Net Income Available for Dividends for such year, before reflecting the deduction of any amounts which shall be payable on or with respect to any debenture issued, pursuant to the provisions of this Subdivision I, in payment of any of the redemption price of any shares of Preferred Stock, all as determined in accordance with generally accepted accounting principles.

II

COMMON STOCK

(a) *Issuance of Common Stock.* Of the authorized shares of Common Stock of the Company:

(i) such number of shares as may be required for such purpose shall be issued in conversion of shares of common stock of Milwaukee and of North Western outstanding immediately prior to the Effective Date, and shall upon such issuance be deemed to be fully paid and nonassessable;

(ii) such number of shares as may from time to time be required for such purpose shall be reserved for issuance upon conversion of obligations outstanding on the Effective Date assumed by the Company which are convertible into shares of Common Stock and upon exercise of options outstanding on the Effective Date assumed by the Company to purchase shares of Common Stock, and shall upon such issuance be deemed to be fully paid and non-assessable; and

(iii) any remaining shares may, subject to any approval required by law of the Interstate Commerce Commission or other public regulatory body, be issued, sold or otherwise disposed of by the Company for such amount of consideration and upon such other terms and conditions as the Board of Directors may from time to time fix and determine in connection with the issue, sale or other disposition thereof.

(b) *Dividends.* Subject to the rights of the holders of shares of Preferred Stock to receive preferential dividends before dividends are paid, or declared and set apart for payment, on shares of Common Stock, the holders of shares of Common Stock shall be entitled to receive dividends, when and as declared payable from time to time by the Board of Directors, from any funds legally available therefor.

(c) *Liquidation.* In the event of any dissolution, liquidation or winding up of the Company, whether voluntary or involuntary, after there shall have been paid to the holders of shares of Preferred Stock the full amounts to which they shall be entitled, the holders of the then outstanding shares of Common Stock shall be entitled to receive, pro rata, all of the remaining assets of the Company available for distribution to its stockholders. The Board of Directors may distribute in kind to the holders of the shares of Common Stock such remaining assets of the Company or may sell, transfer or otherwise dispose of all or any part of such remaining assets to any other corporation and receive payment therefor in cash, stock or obligations of such other corporation, or any combination thereof, and may sell all or any part of the consideration so received, and distribute any balance thereof in kind to the holders of the shares of Common Stock. The merger or consolidation of the Company into or with any other corporation, or the merger of any other corporation into it, shall not be deemed to be a dissolution, liquidation or winding up of the Company for the purposes of this paragraph (c).

III

GENERAL PROVISIONS

(a) *Restrictions on Certain Corporate Action.* The Company shall not:

(i) merge or consolidate with any other corporation, or dispose of the assets of the Company as an entirety or substantially as an entirety, by sale, lease, or otherwise, without (in addition to such other vote, if any, as may be required by law) the affirmative vote, at a meeting duly convened for the purpose, of the holders of at least a majority of the shares of Preferred Stock and of the holders of at least a majority of the shares of Common Stock, each acting separately as a class, entitled to vote at such meeting, but this clause (i) shall not limit any right of the Company to acquire any properties or assets of another corporation by purchase or lease therefrom or upon liquidation thereof or the right of the Company to create any mortgage, pledge or lien upon all or any of its property; or

(ii) effect any amendment of this Certificate of Incorporation, substantially affecting the rights or interests of the holders of any class of stock of the Company adversely, without (in addition to such other vote, if any, as may be required by law) the affirmative vote, at a meeting duly convened for the purpose, of the holders of at least a majority of the shares of such class of stock entitled to vote at such meeting.

(b) *Voting*. Except as provided by law or this Certificate of Incorporation with respect to voting by classes, the holder of each outstanding share of stock, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders; provided that at each election of directors, each holder entitled to vote thereat shall have the right to vote the number of shares of stock held by such holder for as many persons as there are directors to be elected, or to cumulate such votes and give to one candidate as many votes as the number of directors to be elected at such election multiplied by the number of such shares shall equal, or to distribute them on the same principle among as many candidates as such holder shall think best.

(c) *Quorum at Stockholders' Meetings*. At any meeting of stockholders, the holders of record of one-third of the total number of outstanding shares of stock of the Company, present in person or represented by proxy, shall constitute a quorum for all purposes, except as otherwise provided by this Certificate of Incorporation, or required by applicable law.

(d) *Pre-emptive Rights, etc.* No holder of shares of any class of stock of the Company shall have any pre-emptive, preferential or other right to purchase or subscribe for any shares of any class of stock of the Company, whether now or hereafter authorized, or any obligations convertible into or carrying options or warrants to purchase any class of stock of the Company, whether now or hereafter authorized, issued or sold, other than such, if any, as the Board of Directors may from time to time determine, and at such price as the Board of Directors may from time to time fix; and any shares of stock or any such obligations which the Board of Directors may determine to offer for subscription to the holders of stock may, as the Board of Directors shall determine, be offered to holders of any class or classes of stock, and, if offered to more than one class of stock, in such proportions as between said classes of stock as the Board of Directors in its discretion may determine.

FIFTH: The minimum amount of capital with which the Company will commence business is One Thousand Dollars.

SIXTH: The Company is to have perpetual existence.

SEVENTH: The private property of the stockholders of the Company shall not be subject to the payment of corporate debts of the Company to any extent whatsoever.

EIGHTH: The directors of the Company shall be divided into three classes, each consisting, as nearly as may be, of one-third of the whole number of directors. The initial term of office of directors of the first class shall expire at the first annual meeting of stockholders after the Effective Date; the initial term of office of directors of the second class shall expire at the second annual meeting of stockholders after the Effective Date; and the initial term of office of directors of the third class shall expire at the third annual meeting of stockholders after the Effective Date. At each annual meeting of stockholders after the Effective Date, the directors of the class whose terms expire at such annual meeting shall be elected for a term expiring at the annual meeting of stockholders three years thereafter.

NINTH: In furtherance and not in limitation of the powers conferred by law, the Board of Directors of the Company, without the assent or vote of the stockholders, is expressly authorized:

(a) To make, alter or repeal the By-Laws of the Company;

(b) To authorize and cause to be executed and delivered mortgages, pledges and liens upon all or any of the property of the Company and obligations secured thereby;

(c) To set apart out of any funds of the Company otherwise available for dividends a reserve or reserves as working capital or for any other proper purpose or purposes, and to reduce, abolish or add to such reserve or reserves from time to time; and

(d) To determine, to the extent permitted by the laws of the State of Delaware, at what times and places and under what conditions and regulations the accounts and books of the Company shall be open to the inspection of stockholders.

TENTH: In the absence of fraud and to the extent permitted by law, no contract or other transaction of the Company shall be affected or invalidated in any way by the fact that any director of the Company is in anywise interested in, or connected with any other party to, such contract or transaction, provided that such interest or connection shall be disclosed or otherwise known to the directors of the Company present at the meeting of the Board of Directors or committee of the Board of Directors at which such contract or transaction is authorized or ratified, and that such contract or transaction shall be authorized or ratified by a majority of the directors present at such meeting.

ELEVENTH: Each director or officer or former director or officer of the Company, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, shall be indemnified by the Company against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of his being or having been a director or officer of the Company or of such other corporation (whether or not he continues to be such director or officer at the time of incurring such expenses), except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties. In case of settlement of any such action, suit or proceeding before a final adjudication as to any such director or officer, former director or officer or person being liable as aforesaid, the right of indemnification shall exist (except as to amounts paid or payable to the Company pursuant to such settlement), but only to the extent, if any, which the Board of Directors, exclusive of the director or directors affected by such settlement, may authorize; provided, however, that if the Board of Directors is unable to act due to self-interest of some or all of its members, the Company shall obtain the opinion of independent counsel, and indemnification shall be had only if it is the opinion of such counsel that such director or officer, former director or officer or person has not been guilty of negligence or misconduct in the performance of his duties with respect to the matter involved. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer, former director or officer or person may be entitled by law or under any by-law, agreement, vote of stockholders or otherwise.

TWELFTH: There is hereby reserved to the Company the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereinafter prescribed by the laws of Delaware, and all rights and powers conferred herein on stockholders and directors are granted subject to this reservation.