

Risk Factors Comparison 2024-02-05 to 2023-02-03 Form: 10-K

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The risks set forth in the following risk factors could have a material adverse effect on our financial position, results of operations, or liquidity in a particular year or quarter, and could cause those results to differ materially from those expressed or implied in our forward- looking statements. The information set forth in this Item 1A “ Risk Factors ” should be read in conjunction with the rest of the information included in this annual report, including Item 7 “ Management’ s Discussion and Analysis of Financial Condition and Results of Operations ” and Item 8 “ Financial Statements and Supplementary Data. ” **We have experienced a number of the risks described below over the past year in connection with the Incident and the Incident Proceedings (defined below). The risks described below should be read in conjunction with the information regarding the Incident and Incident Proceedings provided in Note 17 in Item 8 “ Notes to Consolidated Financial Statements. ”** INCIDENT RISKS As defined and as further described in Note 17 in Item 8 “ Notes to Consolidated Financial Statements ”, there was an Incident that occurred in the first quarter that consisted of a February 3, 2023 train derailment in East Palestine, Ohio that included 11 non- Company- owned tank cars containing hazardous materials, fires associated with the derailment that threatened certain of the tank cars, and a controlled vent and burn procedure conducted on February 6, 2023 on five of the derailed tank cars, all of which contained vinyl chloride. As a result of the Incident, we have become subject to numerous legal, regulatory, legislative and other proceedings related thereto, including but not limited to, the National Transportation Safety Board (NTSB) Investigation, the FRA Incident Investigation, the FRA Safety Assessment, the U. S. Department of Justice (DOJ) Complaint, the Ohio Complaint, the Incident Lawsuits, the Shareholder Matters, and the Incident Inquiries and Investigations, (each as defined in Note 17 in Item 8 “ Notes to Consolidated Financial Statements ”), in addition to other proceedings, actions, or potential changes in response to the Incident, including but not limited to those related to, among other items, train size, train length, train composition, or crew size (collectively, the “ Incident Proceedings ”). Set forth below are additional risks pertaining to an investment in the Company that are related to the Incident and the Incident Proceedings. The costs, liabilities, fines, penalties, and / or financial impact resulting from or related to the Incident or the Incident Proceedings have been significant to date, may exceed expected or accrued amounts, and have and can be expected to continue to negatively affect our financial results. We have incurred and will continue to remain subject to incurring significant costs, liabilities, fines, and penalties related to the Incident and the Incident Proceedings, including amounts that may have a material adverse effect on our financial position, results of operations, or liquidity. **K11** In addition, while we have accrued estimates of probable and reasonably estimable liabilities with respect to the Incident and the Incident Proceedings (several of which are in early stages), we cannot predict the final outcome or estimate the reasonably possible range of loss with certainty and such estimates may change over time due to a variety of factors, including but not limited to those set forth in Note 17 in Item 8 “ Notes to Consolidated Financial Statements ” or other unfavorable or unexpected developments or outcomes which could result in our current estimates being insufficient. These estimated amounts also do not include any estimate of loss for specific items for which we believe a loss is either not probable or not reasonably estimable for the reasons set forth in Note 17 in Item 8 “ Notes to Consolidated Financial Statements. ” As a result, our currently accrued amounts of estimated liabilities may be insufficient, and any additional, new or updated accruals could have a material adverse effect on our results of operations or financial position. New or additional governmental regulation and / or operational changes resulting from or related to the Incident or the Incident Proceedings may negatively impact us, our customers, the rail industry, or the markets we serve. The legislative, regulatory, operational or other actions taken, protocols adopted (including by us), or changes resulting from the Incident or any of the Incident Proceedings may, either individually or in the aggregate, have a material adverse effect on us, our customers, the rail industry, or the markets we serve. We also face risks from requirements that may be imposed by the government in resolution of government actions, including, for example, restrictions on our methods of operations. Our inability to comply with the requirements of any new or additional laws, regulations or operating protocols resulting from or related to the Incident or the Incident Proceedings may have a material adverse effect on our financial position, results of operations, liquidity, or operations.

REGULATORY AND LEGISLATIVE RISKS
Governmental legislation, regulation, and Executive Orders over commercial, operational, tax, safety, security, or cybersecurity matters could negatively affect us, our customers, the rail industry or the markets we serve. Congress can enact laws, agencies can promulgate regulations, and Executive Orders can be issued that increase or alter regulation **in a way** that negatively affects us, our customers, the rail industry or the markets we serve. Railroads presently are subject to commercial and operational regulation by the STB, which has jurisdiction to varying extents over rates, routes, customer access provisions, fuel surcharges, conditions of service, and the extension or abandonment of rail lines. The STB also has jurisdiction over the consolidation, merger, or acquisition of control of and by rail common carriers. Additional or updated regulation of the rail industry by Congress or the STB, whether under new, existing or amended laws or regulations, could have a significant negative impact on our ability to negotiate prices for rail services, on our railway operating revenues, and on the efficiency, conduct, or complexity of our operations. Such additional or updated industry regulation, as well as enactment of any new or updated tax laws, could also negatively impact cash flows from our operating activities and, therefore, result in reduced capital spending on our rail network or abandonment of lines. Railroads are also subject to the enactment of laws by Congress and regulation by the DOT (including the FRA) and the DHS (including the TSA), which regulate many aspects of our operations related to safety, security

and cybersecurity. Additional or updated safety, security, or cybersecurity regulation by Congress, the DOT or DHS could have a negative impact on our business and the efficiency, conduct, or complexity of our operations including (but not limited to) increased operating costs, capital expenditures, claims and litigation. ~~K11~~ Our inability to comply with the requirements of existing or updated laws, regulations, or Executive Orders that govern our operations or the rail industry, including but not limited to those pertaining to commercial, operational, tax, safety, security, or cybersecurity matters, could have a material adverse effect on our financial position, results of operations or liquidity. **We are addressing multiple governmental actions as a result of the Incident, as noted in “ Incident Risks ” above. K12** Federal and state environmental laws and regulations could negatively impact us and our operations. Our operations are subject to extensive federal and state environmental laws and regulations concerning, among other things: emissions to the air; discharges to waterways or groundwater supplies; handling, storage, transportation, and disposal of waste and other materials; and, the cleanup of hazardous material or petroleum releases. The risk of incurring environmental liability, for acts and omissions, past, present, and future, is inherent in the railroad business. This risk includes property owned by us, whether currently or in the past, that is or has been subject to a variety of uses, including our railroad operations and other industrial activity by past owners or our past and present tenants. Environmental problems that are latent or undisclosed may exist on these properties, and we could incur environmental liabilities or costs, the amount and materiality of which cannot be estimated reliably at this time, with respect to one or more of these properties. Moreover, lawsuits and claims involving other unidentified environmental sites and matters are likely to arise from time to time. Our inability to comply with the extensive federal and state environmental laws and regulations to which we are subject could result in significant liabilities or otherwise adversely impact our operations. **As noted in “ Incident Risks ” above, in connection with the Incident, we are experiencing negative impacts related to environmental matters, including extensive cleanup costs and litigation related to alleged environmental impacts of the Incident.** OPERATIONAL RISKS Pandemics, epidemics or endemic diseases could..... is not presently known to us. A significant cybersecurity incident or other disruption to our technology infrastructure could disrupt our business operations. ~~We~~ **To conduct business, we extensively** rely on information **and operational** technology **systems**, and improvements in ~~that those technology technologies~~ in all aspects of our business. ~~If we experience~~ **The threat landscape is vast and includes hobbyists, cybercriminals, nation- states and state- sponsored activities. Attacks from these entities include, but is not limited to, denial of service, unauthorized access, theft of money, and data and extortion. System upgrades, redundancy and other continuity measures may be ineffective or inadequate, and our business continuity and disaster recovery planning may not be sufficient for all eventualities. Regardless of the cause,** significant disruption or failure of one or more of information **or operational** technology systems operated by us or under control of third parties, including computer hardware, software, **cloud services** and communications equipment, ~~we could~~ **can result in us** ~~experience~~ **experiencing** a service interruption, data breach, or other operational difficulties. **Such failures or disruptions can adversely impact our business by, among other things, preventing intercompany communications and disrupting operations that may result in direct or indirect monetary losses, damage to equipment or property, or loss of confidence in corporate competency. These events could have a materially adverse effect on our business, reputation, results of operations and financial condition**. Although we maintain comprehensive security programs designed to protect our information technology systems, **including our risk- based approach to cybersecurity, our reliance on the Framework for Improving Critical Infrastructure Cybersecurity drafted by the U. S Department of Commerce' s National Institute of Standards and Technology (NIST CSF) and our layered defense system**, we are continually targeted by threat actors attempting to access our networks **and we may be unable to detect or prevent a breach of our systems or disruption to our service in the future**. While we have previously experienced **technology outages and** cybersecurity events that have ~~had minimal impact~~ **impacted our systems and service**, future events may result in more significant impacts to our operations, reputation or **financial** results of operations. These potentially impactful **future** events could include **service disruptions**, unauthorized access to our systems, viruses, ransomware, and / or compromise, acquisition, or destruction of our data. We also could be impacted by cybersecurity events targeting third parties that we rely on for business operations, including third party vendors that have access to our systems or data and third parties **who provide services and are** in our supply chain. Such a direct or indirect cybersecurity incident could interrupt our service, cause safety failures or operational difficulties, decrease revenues, increase operating costs, impact our efficiency, damage our corporate reputation, and / or expose us to litigation or government action or increased regulation, which could result in penalties, fines or judgments. In addition, our failure to comply with **or adhere to** privacy- related or data protection laws and regulations could result in government investigations and proceedings against us, or litigation, resulting in adverse reputational impacts, penalties, and legal liability. ~~K12~~ **K13** Our business may be seriously harmed if we fail to develop, implement, maintain, upgrade, enhance, protect and integrate our information technology systems. If we fail to develop, acquire or implement new technology, or otherwise fail to maintain, protect or integrate our information technology systems, we may suffer a competitive disadvantage within the rail industry and with companies providing alternative modes of transportation service. As a common carrier by rail, we must offer to transport hazardous materials, ~~regardless of risk~~ **which exposes us to significant costs and claims**. Transportation of certain hazardous materials ~~could~~ **or third party- owned equipment (typically used to transport such materials) create-creates catastrophic risks of significant** losses in terms of personal injury and property (including environmental) damage and compromise critical parts of our rail network. The costs of a catastrophic rail accident involving hazardous materials **or third party- owned equipment** could exceed our insurance coverage. We have obtained insurance for potential losses for third- party liability and first- party property damages (see Note 17 **in Item 8 “ Notes to the Consolidated Financial Statements ”**); however, insurance is available from a limited number of insurers and may not continue to be available or, if available, may not be obtainable on terms acceptable to us. **Any future legislation preventing the transportation of hazardous materials through specific cities could have negative impacts including increased network congestion and operating costs, reduced operating efficiency, and increased risk of an accident involving**

hazardous materials. With regard to the risks arising from the transportation of hazardous materials, the Incident and the Incident Proceedings have given rise to significant costs to us and impacts on our rail network, as noted in “ Incident Risks ” above. With respect to third party- owned equipment, the primary risk arises from the potential for a latent defect we are unable to identify despite robust safety inspection protocols .

We face competition from other transportation providers. We are subject to competition from motor carriers, railroads and, to a lesser extent, ships, barges, and pipelines, on the basis of transit time, pricing, and quality and reliability of service. While we have primarily used internal resources to build or acquire and maintain our rail system, trucks and barges have been able to use public rights- of- way maintained by public entities. Any future improvements, expenditures, legislation, or regulation changing or materially increasing the efficiency or reducing the cost of one or more alternative modes of transportation in the regions in which we operate (such as granting materially greater latitude for motor carriers with respect to size or weight limitations or adoption and utilization of autonomous commercial vehicles) could have a material adverse effect on our ability to compete with other modes of transportation. Capacity constraints could negatively impact our service and operating efficiency. We have experienced and may again experience capacity constraints on our rail network related to employee or equipment shortages, increased demand for rail services, severe weather, congestion on other railroads, including passenger activities, or impacts from changes to our network structure or composition. Such constraints could result in operational inefficiencies or adversely affect our operations. Significant increases in demand for rail services could result in the unavailability of qualified personnel and resources like locomotives. Changes in workforce demographics, training requirements, and availability of qualified personnel, particularly for engineers and conductors, have negatively impacted and may again negatively impact our ability to meet short- term demand for rail service. Unpredicted increases in demand for rail services may exacerbate such risks and could negatively impact our operational efficiency. Constraints on the supply chain or the operations of carriers with which we interchange may adversely affect our operations. Our ability to provide rail service to our customers depends in large part upon a functioning global supply chain and our ability to maintain collaborative relationships with connecting carriers (including shortlines and regional railroads) with respect to, among other matters, freight rates, revenue division, car supply and locomotive availability, data exchange and communications, reciprocal switching, interchange, and trackage rights. Deterioration in the supply chain or ~~operations of~~ service provided by connecting carriers, or in our relationship with those connecting carriers, could result in our inability to meet our customers’ demands or require us to use alternate train **K14** routes, which could result in significant additional costs and network inefficiencies. Additionally, any significant consolidations, mergers or operational changes among other railroads may **alter significantly** ~~redefine~~ our market access and reach. We may be negatively affected by terrorism or war. Any terrorist attack, or other similar event, any government response thereto, and war or risk of war could cause significant business interruption. Because we play a critical role in the nation’ s transportation system, we could become the target of such an attack or have a significant role in the government’ s preemptive approach or response to an attack or war. Although we currently maintain insurance coverage for third- party liability arising out of war and acts of terrorism, we maintain only limited insurance coverage for first- party property damage and damage to property in our care, **K13**-custody, or control caused by certain acts of terrorism. In addition, premiums for some or all of our current insurance programs covering these losses could increase dramatically, or insurance coverage for certain losses could be unavailable to us in the future. We may be negatively affected by supply constraints resulting from disruptions in the fuel markets or the nature of some of our supplier markets. We consumed approximately **376-377** million gallons of diesel fuel in **2022-2023** . Fuel availability could be affected by limitation in the fuel supply or by imposition of mandatory allocation or rationing regulations. A severe fuel supply shortage arising from production curtailments, increased demand in existing or emerging foreign markets, disruption of oil imports, disruption of domestic refinery production, damage to refinery or pipeline infrastructure, political unrest, war or other factors could impact us as well as our customers and other transportation companies. Due to the capital- intensive nature, as well as the industry- specific requirements of the rail industry, high barriers of entry exist for potential new suppliers of core railroad items, such as locomotives and rolling stock equipment. Additionally, we compete with other industries for available capacity and raw materials used in the production of locomotives and certain track and rolling stock materials. Changes in the competitive landscapes of these limited supplier markets could result in increased prices or significant shortages of materials -

Pandemics, epidemics or endemic diseases could further negatively impact us, our customers, our supply chain and our operations. The magnitude and duration of a pandemic, epidemic or endemic disease, and its impact on our customers and general economic conditions can influence the demand for our services and affect our revenues. In addition, such outbreaks could affect our operations and business continuity if a significant number of our essential employees, overall or in a key location, are **quarantined** ~~unable to work~~ from contraction of or exposure to the disease or if governmental orders prevent our employees or critical suppliers from working. To the extent such diseases adversely affect our business and financial results, they may also have the effect of heightening many of the other risks described in the risk factors included herein, or may affect our operating and financial results in a manner that is not presently known **to us** .

LITIGATION RISKS We may be subject to various claims and lawsuits that could result in significant expenditures. The nature of our business exposes us to the potential for various claims and litigation related to labor and employment, personal injury, commercial disputes, freight loss and other property damage, and other matters. Job- related personal injury and occupational claims are subject to the Federal Employer’ s Liability Act (FELA), which is applicable only to railroads. FELA’ s fault- based tort system produces results that are unpredictable and inconsistent as compared with a no- fault worker’ s compensation system. The variability inherent in this system could result in actual costs being different from the liability recorded. A catastrophic rail accident, whether on our lines or another carrier’ s, involving any or all of release of hazardous materials, freight loss, property damage, personal injury, and environmental liability could compromise critical parts of our rail network. Losses associated with such an accident involving us could exceed our insurance coverage, resulting in a material adverse effect on our liquidity. Any material changes to current litigation trends could also have a material adverse effect on our liquidity to the extent not covered by insurance. **K15** We have obtained insurance for

potential losses for third- party liability and first- party property damages; however, insurance is available from a limited number of insurers and may not continue to be available or, if available, may not be obtainable on terms acceptable to us. **We are incurring significant expenditures as a result of claims and lawsuits arising from the Incident and the related Incident Proceedings, as described in “ Incident Risks ” above.** HUMAN CAPITAL RISKS ~~operations.~~ Failure to attract and retain key executive officers, or skilled professional or technical employees could adversely impact our business and operations. Our success depends on our ability to attract and retain skilled employees, including a sufficient number of craft employees to enable us to efficiently conduct our operations. ~~K14~~ Difficulties in recruiting and retaining skilled employees, including train and engine workers, key executives, and other skilled professional and technical employees; the unexpected loss of such individuals; and / or our inability to successfully transition key roles could each have a material adverse effect on our business **and operations.** The vast majority of our employees belong to labor unions, and the renegotiation of labor agreements or any provisions thereof, or any strikes or work stoppages (including any entered into in connection with any such negotiations), could adversely affect our operations. Approximately 80 % of our railroad employees are covered by collective bargaining agreements with various labor unions. **We** ~~Although we recently~~ entered into updated labor agreements with these labor unions ~~in December 2022 and~~ future national labor agreements, or renegotiation of labor agreements or provisions of labor agreements, could significantly increase our costs for health care, wages, and other benefits. Additionally, if our craft employees were to engage in a strike, work stoppage, or other slowdown, including in connection with the renegotiation of any such agreements or any provisions thereof, we could experience a significant disruption in our operations, thereby adversely impacting our results of ~~operations. Failure to attract and retain.....~~ material adverse effect on our business and operations. CLIMATE CHANGE RISKS Severe weather and disasters have caused, and could again cause, significant business interruptions and expenditures. Severe weather conditions and other natural phenomena resulting from changing weather patterns and rising sea levels or other causes, including hurricanes, floods, fires, landslides, extreme temperatures, significant precipitation, and earthquakes, have caused, and may again cause damage to our network, our workforce to be unavailable and us to be unable to use our equipment. Additionally, shifts in weather patterns caused by climate change are expected to increase the frequency, severity or duration of certain adverse weather conditions, which could cause more significant business interruptions that result in increased costs, increased liabilities, and decreased revenues. Concern over climate change has led to significant federal, state, and international legislative and regulatory efforts to limit greenhouse gas (GHG) emissions. Restrictions, caps, taxes, or other legislative or regulatory controls on GHG emissions, including diesel exhaust, could significantly increase our operating costs and decrease the amount of traffic we handle. In addition, legislation and regulation related to climate change or GHG emissions could negatively affect the markets we serve and our customers. Even without legislation or regulation, government incentives and adverse publicity relating to climate change or GHG emissions could negatively affect the markets for certain of the commodities we carry, or our customers that use commodities we carry to produce energy (including coal), use significant amounts of energy in producing or delivering the commodities we carry, or manufacture or produce goods that consume significant amounts of energy associated with GHG emissions. **K16** MACROECONOMIC AND MARKET RISKS We may be negatively impacted by changes in general economic conditions. Negative changes in domestic and global economic conditions, including reduced import and export volumes, could affect the producers and consumers of the freight we carry. Economic conditions could also result in bankruptcies of one or more large customers. We may be negatively affected by energy prices. Volatility in energy prices could have a significant effect on a variety of items including, but not limited to: the economy; demand for transportation services; business related to the energy sector, including crude oil, natural gas, and coal; fuel prices; and, fuel surcharges. The state of capital markets could adversely affect our liquidity. We rely on the capital markets to provide some of our capital requirements, including the issuance of debt instruments and the sale of certain receivables. Significant instability or disruptions of the capital markets, including the credit markets, or deterioration of our financial position due to internal or external factors could restrict or eliminate our access to, and / or significantly increase the cost of, various financing sources, including bank credit facilities and issuance of corporate bonds. Instability or disruptions of the capital markets and deterioration of our financial position, alone or in combination, could also result in a reduction of our credit rating to below investment grade, which could prohibit or restrict us from accessing external sources of short- and long- term debt financing and / or significantly increase the associated costs.