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SERVICE DATE - LATE RELEASE JANUARY 24, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing and Request for Comments.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing beginning on Wednesday, March 8, 2000, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of major railroad consolidations and the present and future structure of the North American railroad industry.

DATES: The public hearing will begin on Wednesday, March 8, 2000, and, if necessary, will continue on Thursday, March 9, 2000. Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, and must indicate therein a requested time allotment, by February 8, 2000. A schedule for the hearing, which will include a list of speakers and their allotted times, will be issued by the Board by February 18, 2000. Each speaker or commenter must file with the Board the text of his/her anticipated written statement, and/or a summary thereof, by February 29, 2000.

ADDRESSES: An original and 10 copies of all notices of intent to participate and all written comments and/or summaries must refer to STB Ex Parte No. 582, and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Ex Parte No. 582, 1925 K Street, N.W., Washington, DC 20423-0001. In addition to submitting an original and 10 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, WordPerfect 7.0 format), an electronic copy of each such paper document.<sup>1</sup>

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: 1-800-877-8339.]

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<sup>1</sup> Any party may seek a waiver from the electronic submission requirement.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) has decided, on its own motion, to hold a public hearing beginning at 10:00 a.m. on Wednesday, March 8, 2000, at its offices in Washington, DC, to provide a forum for the expression of views by interested persons, including railroads, rail shippers and other users, rail employees, and other elements of the rail sector, on major rail consolidations and the present and future structure of the North American railroad industry.

Issues. This public hearing is prompted in part by the initiation of, but will be conducted separate and apart from, the “BNSF/CN” control proceeding in STB Finance Docket No. 33842, which was initiated on December 20, 1999, with the filing by Burlington Northern Santa Fe Corporation and The Burlington Northern and Santa Fe Railway Company (referred to collectively as BNSF) and Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, and Illinois Central Railroad Company (referred to collectively as CN) of a notice indicating their intent to file an application seeking Board authorization under 49 U.S.C. 11323-25 and 49 CFR part 1180 for a transaction (referred to as the BNSF/CN transaction) under which BNSF and CN would be brought under common control.<sup>2</sup> We are aware that, in the wake of the filing of the BNSF/CN notice of intent, there has been a great deal of speculation that the strategic responses of the remaining North American rail carriers to the proposed BNSF/CN transaction will lead to a new round of major railroad consolidations, ultimately resulting in the formation of two North American transcontinental railroad systems.

We are also aware that this speculation has caused concern given that the structure of the North American railroad industry has already changed dramatically in the past half decade. There remain two major western railroads and two major eastern railroads in the United States. And, although there have been no major changes in the structure of the Canadian rail network following the privatization of CN, the “CN/IC” transaction represents a significant tightening of the bonds between the Canadian and American components of the overall North American rail network. Recognizing the restructuring that has occurred and the speculation about future restructuring, by joint letter dated January 14, 2000, Chairman Bud Shuster and Ranking Democratic Member James L. Oberstar of the House Committee on Transportation and Infrastructure have urged the Board “to promptly explore all options to ensure an early and vigorous debate” on whether the “downstream” effects of the proposed BNSF/CN transaction are in the public interest. Given this letter and the concerns that have been voiced publicly, there appears to be strong sentiment for a public review at this time of what the evolving structure of the North American railroad industry is and should be.

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<sup>2</sup> See Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Northern Santa Fe Corporation, and The Burlington Northern and Santa Fe Railway Company — Common Control, STB Finance Docket No. 33842, Decision Nos. 1 & 1A (STB served Dec. 28, 1999) (published in the Federal Register on January 4, 2000, at 65 FR 318).

In scheduling a hearing now, we intend no prejudgment of the yet-to-be-filed BNSF/CN application. Rather, we are providing a forum for the discussion of broader matters that have been raised since the announcement of the proposed BNSF/CN transaction. In this regard, there are several issues upon which we seek specific comments, and any other relevant comments, as always, are welcome.

In particular, we note that a majority of the large railroads have recently stated that now is the time to concentrate on existing opportunities to improve service rather than on further consolidation. And, other parties have expressed concern about more restructuring while the industry is still recovering from service difficulties and other disruptions associated with implementation of the last round of major rail consolidations.<sup>3</sup> Accordingly, we especially wish to explore public and, in particular, rail shipper and other user views on the timing of any proposed large railroad consolidation.

In addition, we have made reference earlier in this notice to the concern publicly expressed that the strategic responses engendered by another large railroad consolidation would lead to significant additional consolidation, and possibly other changes in the structure of the rail industry or in the way in which the industry is regulated. The views of all interested persons are invited on these matters, as well as on the question of whether or not these eventualities would be a good thing for large and small railroads, and for their customers and employees, and, more broadly, whether it would be in the public interest.

Views are sought also on fundamental questions related to the effects of railroad consolidations on the financial condition of the railroad industry and the industry's ability to provide responsive service at reasonable prices. In this regard, we seek comments on whether the railroad industry has and will have the necessary infrastructure, capacity and configuration to meet expected demand for freight service now and in the future.

The public hearing that will be held beginning on March 8, 2000, will allow all interested persons, including railroads, rail shippers and other users, rail employees, and other elements of the rail sector, to voice their views on rail consolidation in general, and on the present and future structure of the North American railroad industry, and will give us a better sense of the current thinking of those most directly affected by our regulation. The hearing is scheduled for that date both because the letter from Chairman Shuster and Ranking Democratic Member Oberstar has

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<sup>3</sup> In this regard, while we would expect commenters to reference implementation and other issues that have arisen in the wake of mergers that have already been approved, we remind parties that we have other proceedings more specifically focused in oversight of individual mergers and thus would not expect the use of this proceeding to litigate or relitigate issues specifically related to those transactions.

urged prompt action on our part and because the application in the BNSF/CN control proceeding could conceivably be filed as early as March 20, 2000.

It should be emphasized that the comments made at this hearing will not be regarded as “evidence” in the BNSF/CN control proceeding. That application, if and when it is filed, will be judged on its merits, on the basis of the record compiled in STB Finance Docket No. 33842, in accordance with the evidentiary directives already issued by the Board in its decision notifying the public of the future BNSF/CN filing, and subject to any other future rulings of the Board regarding that filing.

Date(s) Of Hearing. The hearing will begin on Wednesday, March 8, 2000, at 10:00 a.m., in the 7th floor hearing room at the Board’s headquarters in Washington, DC, and will be conducted as other Board hearings have been conducted in recent years: there will be only short breaks during the hearing; the hearing can be expected to continue into the evening hours; and, if necessary, the hearing will resume on Thursday, March 9, 2000, and continue until every person scheduled to speak has been heard.

Notice Of Intent To Participate. Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, and must indicate therein a requested time allotment, by February 8, 2000.

Schedule. A schedule for the hearing, which will include a list of speakers and their allotted times, will be issued by the Board by February 18, 2000.

Statement And/Or Summary. Each speaker or commenter must file with the Board the text of his/her anticipated written statement, and/or a summary thereof, by February 29, 2000.

Paper Copies; Electronic Copies. Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (these must be submitted by February 8, 2000). Each person intending to speak or to submit written comments must submit his/her written comments and/or a written summary thereof (these must be submitted by February 29, 2000). Each such person should also submit, in addition to an original and 10 copies of all paper documents filed with the Board, an electronic copy of each such paper document. The electronic copy should be on a 3.5-inch IBM-compatible floppy diskette, and should be in, or convertible by and into, WordPerfect 7.0. Any person may seek a waiver from the electronic submission requirement.

Coordination Encouraged. We encourage interested persons to coordinate the presentation of their views by selecting a single individual to appear at the hearing on behalf of their common interests. Because of the importance of shipper views on the subject matter, however, we encourage individual shippers to appear and express their positions.

Post-Hearing Action. We will take such action, if any, as necessary to respond in an appropriate fashion to the views expressed at the hearing.

Federal Register Publication. Notice of the March 8, 2000 hearing will be published in the Federal Register.

Board Releases Available Via The Internet. Decisions and notices of the Board, including this notice, are available on the Board's website at "www.stb.dot.gov."

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

Decided: January 21, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary