

28665

SERVICE DATE - DECEMBER 1, 1997

EB

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 574]

Safe Implementation of Board-Approved Transactions

AGENCY: Surface Transportation Board

ACTION: Advance Notice of Proposed Rulemaking

SUMMARY: The Board seeks comments from all interested persons on the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction.

DATES: Notices of intent to participate are due by December 24, 1997. Shortly thereafter, a list of participants will be issued. Comments are due by January 19, 1998. Replies are due by February 12, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and pleadings referring to STB Ex Parte No. 574: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

Once the list of participants has been issued by the Board, send one copy of each comment and each reply to each party on the list of participants.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600

[TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The rail transportation policy (RTP) (49 U.S.C.

10101), which was adopted in the Staggers Rail Act of 1980 and amended in the ICC Termination Act of 1995, establishes the basic policy directives against which all of the statutory provisions we administer must be weighed. The RTP provides, in relevant part, that, “[i]n regulating the railroad industry, it is the policy of the United States Government . . . to promote a safe and efficient rail transportation system” . . . [by allowing rail carriers to] operate transportation facilities without detriment to the public health and safety” The rail transportation policy applies to all transactions subject to Board jurisdiction.

Over the years, the Board and its predecessor, the Interstate Commerce Commission (ICC), have considered the issue of safety along with other relevant issues in individual cases. For example, the ICC and the Board, in consultation with the Federal Railroad Administration (FRA), which has primary responsibility over railroad safety enforcement, have routinely considered safety in their environmental review of all rail mergers, acquisitions, line constructions, and similar transactions. In 1993, the ICC denied an application because the agency believed that no conditions could sufficiently mitigate the unsafe conditions arising out of the proposed construction of the rail line in Construction and Operation--Indiana and Ohio Ry. Co., 9 I.C.C.2d 783 (1993). In a similar vein, we routinely address safety issues, with the advice of the FRA, in the context of rail embargoes.¹

Recently, in a pending railroad merger proceeding, we undertook to address safety

¹ In the embargo context, for example, a shipper might dispute a railroad’s contention that it is temporarily unable to provide service because of unsafe operating conditions. The Board, in a recent decision, declared that, in such situations, it would secure an inspection from an FRA-certified safety inspector before directing service over a line embargoed for safety reasons. Service Obligations Over Excepted Track, STB Ex Parte No. 564 (STB served Oct. 22, 1997).

issues in a more systematic way. Specifically, in response to a request in the ongoing Conrail Acquisition proceeding by the FRA, we required the applicant railroads in that case to prepare detailed plans addressing how they propose to integrate their operations to ensure continued safety if the merger is approved by the Board. CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 52 (STB served Nov. 3, 1997) (Conrail Acquisition). In our decision, we explained that the railroads' submissions would be made part of the environmental record in that proceeding and dealt with in the ongoing environmental review process in that case. We stated that the railroads' submissions, which are due to be filed December 3rd, will be incorporated in a separate section of the Draft Environmental Impact Statement (DEIS) that is to be issued by the end of the year. We requested the FRA to provide us with its analysis of the plans, and invited comments from all other interested persons, during the 45-day comment period that will be provided on the DEIS. After review of these analyses and comments, the Board's environmental staff will address safety implementation issues in the Final Environmental Impact Statement for the proposed Conrail Acquisition. We will then consider the full environmental record, including the information concerning Applicants' safety implementation plans, in arriving at our decision in the Conrail Acquisition proceeding.

The approach outlined above will assure our ability to fully address safety implementation issues in the proposed Conrail Acquisition proceeding. Having developed a vehicle by which to evaluate the impact on rail safety of one transaction, we believe it is

appropriate to consider the advisability of promulgating a rule to extend this process to other rail transactions subject to the Board's jurisdiction. Accordingly, we seek public comment on the question of how the Board should proceed in this regard in exercising its jurisdiction over such transactions.

We are aware that the FRA has suggested that rules of general applicability might be appropriate for future mergers. In our view, the process adopted in STB Finance Docket No. 33388, which provides for full utilization of the expertise of both the Board and the FRA, establishes a mechanism for handling future merger cases. It might also have wider applicability to other types of transactions subject to the Board's jurisdiction; alternatively, different procedures for implementing the Board's responsibilities under the RTP to consider matters bearing on the safe implementation of transactions might be preferable outside the merger area. The administrative process permits the Board to proceed either by rule or on a case-by-case basis, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

Accordingly, because the questions at issue here are significant and of broad interest, we are initiating sua sponte this proceeding to address the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction. We specifically seek the views of the FRA and of any other interested persons on these issues. We seek public comments on whether we should proceed broadly or on a case-by-case basis, and on specific standards and procedures that the Board could adopt by rule to assure the safe implementation of rail transactions subject to our jurisdiction.

Parties filing comments should indicate whether their specific recommendations would apply to all transactions or only to certain types and, if the latter, which ones.

Depending on the nature of the submissions presented, we will determine at a future date whether to propose formal rules, issue a policy statement, or proceed on a case-by-case basis, as we have done in the Conrail Acquisition proceeding.

Decided: November 26, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

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