

29431
EB

SERVICE DATE - LATE RELEASE JULY 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 574

SAFE IMPLEMENTATION OF BOARD-APPROVED TRANSACTIONS

Decided: July 27, 1998

The Surface Transportation Board (Board) has decided to proceed jointly with the United States Department of Transportation/Federal Railroad Administration (DOT/FRA) to develop a notice of proposed rulemaking addressing procedures for the safe implementation of Board approved transactions.

BACKGROUND

By advance notice of proposed rulemaking (ANPR) published in the Federal Register on December 4, 1997, at 62 FR 64193, we requested comments on the extent to which railroads should be required to provide detailed information pertaining to the manner in which they provide for the safe implementation of authority granted by the Board. We explained that this information, and the process by which it is developed, was formally required for the first time in CSX Corporation and CSXT 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 (STB served Nov. 3, 1997) (Conrail Acquisition).

In Conrail Acquisition, at the suggestion of FRA and rail labor interests, we required the applicants to file detailed Safety Integration Plans (SIPs), explaining how they proposed to provide for the safe integration of their separate corporate cultures and operating systems, if the Board were to approve the proposed transaction. Following cross scrutiny of the SIPs by both FRA and our Section of Environmental Analysis, they have concluded that applicants satisfactorily addressed the safety implementation concerns presented by the transaction. The Board subsequently has entered into a Memorandum of Understanding with FRA, with DOT's concurrence, to establish an ongoing monitoring process during implementation of the transaction.

Comments in response to our ANPR were filed by the following parties: DOT; Public Utilities Commission of the State of California (CPUC); The City of Reno;¹ National Railroad

Passenger Corporation (Amtrak); Association of American Railroads; American Short Line and Regional Railroad Association; the Durden Group;² Genessee & Wyoming, Inc.; a joint filing by the Idaho Northern & Pacific Railroad Company, Nebraska Central Railroad Company, and Tillman & Jackson Railway Company, Inc.; Wisconsin & Southern Railroad Co.; The Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees (BMWE); International Brotherhood of Teamsters; The Transportation Communications International Union; Transportation Trades Department of the AFL-CIO (TTD); The National Industrial Transportation League (NITL); a joint filing by the Chemical Manufacturers Association and The Society of Plastics Industry, Inc.; and Transportation Lawyers Association.

The commenters varied widely in their recommendations. DOT urges us to undertake a joint rulemaking proceeding and announced that FRA on its own is developing procedures that would be required for Board transactions. DOT maintains that a joint rulemaking would: (1) ensure that there are no “gaps, redundancies or inconsistencies in regulatory requirements;” (2) forestall forum shopping; (3) make FRA’s rail safety expertise available to the Board; and (4) impose less of a participatory burden on the parties.

Other commenters stress the need for coordination with FRA. NITL asserts that the Board should “provide for FRA input” and “closely coordinate its approach with FRA procedures and requirements.” BMWE urges that we make SIPs “subject to the Board and Federal Railroad Administration review and approval.” TTD urges that FRA be “full participants with the Board in evaluating the information provided by the carriers and in making a final determination of whether the transaction will negatively affect safety.”

The railroad participants argue that special procedures are not necessary and that we should proceed only on a case-by-case basis. Amtrak cautions that there is no need for special procedures concerning its activities under the Rail Passenger Service Act.

On the other hand, the labor participants urge us to adopt special procedures. The labor participants request that we develop special procedures for all transactions, including minor ones

¹ The City of Reno’s comments were accompanied by a motion to file them late, which we hereby grant.

² The Durden Group notes that it owns and controls 13 small railroads in 11 different states.

involving small or start-up railroads. The labor participants also provide numerous and specific categories of information for inclusion in the procedures they propose.

The parties representing shippers take positions in between those of the railroad and labor participants.³ NITL urges that (1) there be formal rules for major control and construction transactions but that, (2) for minor control transactions, we require only that safety be considered, with less advance documentation required. The Chemical Manufacturers Association would require advance documentation only for "future rail mergers and acquisitions."

Comments on the procedural aspects of safety implementation were sparse. CPUC suggests a separate FRA review proceeding, with a public notice and comment period. The City of Reno proposes that an environmental impact, including preparation of a SIP as in Conrail Acquisition, be required for all rail mergers and that there be an FRA certification process for certain transactions.

DISCUSSION AND CONCLUSIONS

Based on the comments in response to our ANPR and on our experience with the SIP process in Conrail Acquisition, we see sufficient merit to warrant further exploration of establishing procedures for the safe implementation of Board approved transactions. We will proceed via the development of a joint notice of proposed rulemaking with DOT/FRA. A joint approach will facilitate coordination between the two agencies and will eliminate the burden on parties of having to participate in separate proceedings. We hereby direct the Board staff to work with the staff of DOT/FRA to develop a joint notice of proposed rulemaking.⁴

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

It is ordered:

³ The following parties also appear to be in this category: CPUC [proposes that prior documentation be required for parties without experience]; the City of Reno [require advance documentation for mergers, acquisitions, construction and operation, and "occasionally" abandonments]; and the Transportation Lawyers Association [supports advance documentation for rail mergers].

⁴ This joint approach is predicated upon assurances by the Executive Branch that this joint process will not subject the exercise by the Board of its rulemaking authority in this proceeding to review by the Office of Management and Budget, in contravention of this agency's Congressionally mandated independence.

1. Board staff is instructed to work with the staff of DOT/FRA to develop a joint notice of proposed rulemaking to address the issues that have arisen in this proceeding and are of concern to DOT/FRA and to submit the proposed notice for our evaluation and approval prior to going forward with publication.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary