

STB DOCKET NO. S5R 100

ASSOCIATION OF AMERICAN RAILROADS AND AMERICAN
SHORT LINE AND REGIONAL RAILROAD ASSOCIATION--
AGREEMENT--APPLICATION UNDER 49 U.S.C. 10706

Decided September 21, 1998

AGENCY: Surface Transportation Board.

ACTION: Notice of Interim Approval.

SUMMARY: The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) have filed an application under 49 U.S.C. 10706 for approval of the rate-related provisions of an AAR-ASLRRA Agreement (the Agreement) that addresses issues raised in *Review of Rail Access and Competition Issues*, 3 S.T.B. 92 (1998) (*Review*). The Agreement, to which rail carriers may subscribe on an individual basis, is intended to provide a framework for improving the ability of smaller (Class II or III) railroads and Class I railroads to work together to fulfill their shared goal of serving the shipping public in the most efficient possible manner. The rate-related principles outlined in the Agreement constitute a series of bilateral commitments by each subscribing Class I carrier to each subscribing smaller railroad with which it connects with respect to switch charges and interline rates between those two carriers. These principles relate to rates within the meaning of 49 U.S.C. 10706(a)(2)(A). The Board is approving the application on an interim basis, subject to comments. If opposing comments are timely filed, the Board will consider the comments, and any reply, and issue a further decision on the application. Absent opposing comments, this notice will constitute final approval of the application and will be the final Board action.

DATES: Comments must be filed by October 26, 1998. Applicants may file a reply by November 10, 1998. If no comments are filed by October 26, 1998, this interim approval will be final as of that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. S5R 100 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to applicants' representatives: Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, DC 20044-7566, for AAR; and Alice C. Saylor, American Short Line and Regional Railroad Association, 1120 G Street, N.W., Suite 520, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In *Review*, 3 S.T.B. at 100, we discussed impediments to the ability of smaller railroads to reach their full potential in providing service to the shipping public. Noting our preference for private-sector over government-mandated solutions, we urged the railroads to address and resolve these issues expeditiously. We committed to take administrative action as necessary and appropriate to facilitate any constructive privately-reached agreement. We appreciate the substantial efforts of AAR and ASLRRRA and their members in working cooperatively to reach agreement on these difficult and important issues. We now address the instant application seeking approval of certain aspects of the agreement.

Our jurisdiction to approve rate agreements under 49 U.S.C. 10706 extends to agreements of at least two rail carriers that relate to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of the same.¹ In order to approve an agreement under 49 U.S.C. 10706(a)(2)(A), we must find that the making and carrying out of the agreement will further the rail transportation policy (RTP) of 49 U.S.C. 10101. If we approve the agreement, which may require compliance with conditions necessary to make the agreement further the RTP, it may be carried out under its terms and under the required conditions, and the antitrust laws (enumerated in that subsection) do not apply

¹ Applicants note that the Agreement contains other provisions that are unrelated to rates, classifications, divisions or traffic rules. These provisions are aimed at better meeting the car supply needs of customers served by short line and regional railroads, improving the quality of interline service provided jointly by smaller railroads and Class I carriers, and giving Class III carriers access to new routes and haulage arrangements in certain circumstances in order to develop new business. The Application provides for arbitration as a means of dispute resolution.

to parties and other persons with respect to the making or carrying out of the agreement. We may not approve or continue approval of an agreement if the required conditions are not met or if we do not receive a verified statement specifying for each rail carrier that is a party to the agreement certain information concerning its identity and that of any affiliates. *See*, 49 U.S.C. 10706(a)(2)(B) and the regulations at 49 CFR 1331.1. The regulations also require that certain exhibits be filed with the application (49 CFR 1331.2) and that new parties to an agreement comply with the requirements of 49 CFR 1331.1(b) (49 CFR 1331.4).

Applicants submit verified statements identifying each of the AAR and ASLRRRA members that either has subscribed or is eligible to subscribe to the Agreement.² Applicants seek an exemption under 49 U.S.C. 10502 for further detailed information about the railroads that will subscribe to the Agreement and request that we also approve the Agreement with respect to possible future participation by railroads that have not been identified in their attached verified statements. Applicants contend that we can make the findings necessary to approve the Agreement without having the precise information concerning the identities of all of the railroads that will ultimately become subscribers. Applicants submit that they will maintain a record of the railroads that subscribe in the future and make that list available to the Board and any interested party upon request.

We agree with applicants that we have enough information with regard to the carriers listed in their verified statements to make the necessary findings under 49 U.S.C. 10706(a)(2)(A).³ Accordingly, under 49 U.S.C. 10706(a)(2)(A), we find that the rate-related provisions of the Agreement further the RTP. The Agreement memorializes certain principles that would apply in specified circumstances when a subscribing Class I carrier provides switching services to, or makes interline rates with, a subscribing smaller railroad. It does not involve collective rate-setting; rather, it embodies principles to be applied by

² Applicants do not provide the detailed information required by 49 U.S.C. 10706(a)(2)(B)(iii), which calls for identifying every affiliate, officer, director, and affiliate of an officer or director, of each subscriber to an agreement, because the Agreement does not entail any collective ratemaking or ongoing bureau process. To the extent that such information is required by 49 U.S.C. 10706, applicants request that we exempt them from "unnecessary and burdensome procedural requirements."

³ More detailed information with regard to their affiliates is not necessary to carry out the RTP. Accordingly, we exempt applicants from this requirement under 49 U.S.C. 10502. As to the identities of possible future participating railroads, 49 CFR 1331.4 provides a mechanism for adding new parties to an agreement, and applicants have committed to maintaining a record of all future railroad subscribers and making that list available to the Board and other interested persons.

independent railroads acting independently. Application of these principles will assist smaller railroads in reaching their potential and playing a more significant role in providing reasonably priced high-quality and efficient service to the shipping public, thereby enhancing the overall strength, efficiency, and responsiveness of the Nation's rail network. By encouraging a more rational, efficient and cooperative relationship between Class I carriers and smaller railroads, we find that the rate-related provisions of the Agreement promote a safe and efficient rail transportation system [49 U.S.C. 10101(3)]; ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. 10101(4)]; foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers [49 U.S.C. 10101(5)]; and encourage honest and efficient management of railroads [49 U.S.C. 10101(9)].

Applicants submit, and we agree, that the rate-related provisions of the Agreement do not have any anticompetitive effects and preserve rather than override market forces. They further submit that the Agreement's rate-related provisions offer participating Class I carriers and smaller railroads the unique opportunity to address issues without the need for new regulatory requirements that supplant, rather than harness, market forces. We find that this aspect of the Agreement furthers the twin RTP goals of minimizing the need for Federal regulatory control over the rail transportation system [49 U.S.C. 10101(2)] and providing for the resolution of proceedings permitted to be brought under the statute [49 U.S.C. 10101(15)].

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

It is ordered:

1. This application is approved, on an interim basis, subject to comments.
2. Comments must be filed by October 26, 1998. Applicants may file a reply by November 10, 1998. If no comments are filed by October 26, 1998, this interim approval will be final as of that date.
3. This decision is effective on September 22, 1998.
4. A copy of this notice will be served on: (1) The Federal Trade Commission, Bureau of Competition, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580; and The Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

By the Board, Chairman Morgan and Vice Chairman Owen.