

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 December 9, 1998

The Board grants final approval of the rate-related provisions of an agreement jointly filed under 49 U.S.C. 10706.

BY THE BOARD:

In *Assn. of American Railroads et al. -- Agreement -- 49 U.S.C. 10706*, 3 S.T.B. 673 (1998), and published at 63 Fed Reg. 51,398 (1998), we approved, on an interim basis subject to comments, the rate-related provisions of an agreement submitted jointly by applicants, the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA), under 49 U.S.C. 10706. Comments in response to the notice, to which applicants replied, were filed by the California Public Utilities Commission (CPUC), and by John D. Fitzgerald on behalf of the United Transportation Union-General Committee of Adjustment (Fitzgerald). After considering the comments, we have decided to grant final approval of the application.

DISCUSSION AND CONCLUSIONS

Our jurisdiction to approve agreements under 49 U.S.C. 10706 extends to the rate aspects of such agreements. The rate-related provisions to which we gave interim approval in the notice are one aspect of a broader agreement negotiated by applicants. That agreement 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 manner possible. The rate-related provisions are 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.

In addition to these rate-related provisions, on which we sought comment, the AAR/ASLRRRA agreement also contained several non-rate provisions, for which approval was not requested, and on which we did not seek comment. The non-rate 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 comments filed in response to the notice focus on the non-rate aspects of the privately negotiated agreement. CPUC takes issue with three public policy principles enunciated in the "Principles of Relationship" section of the agreement.¹ According to CPUC, these principles do not take into account the concentration of Class I railroads and do not do enough to improve the lot of small railroads. In addition, CPUC opposes restrictions on interchange imposed by contract upon short lines at the time they are created—the so-called paper barriers—and mileage limitations on access via haulage or trackage rights provided in the new routes provisions of the agreement.² Although the agreement clearly reduces the effect of paper barriers in some respects, CPUC would eliminate all paper barriers and, instead of a set amount of miles, would redefine the mileage limitation in terms of the distance it takes to reach the next reasonable junction point, *i.e.*, the point of interconnection with the nearest competitive railroad. While CPUC applauds the agreement's treatment of reciprocal switching charges as one area where real progress appears to have been made, it still asks us to move the railroads to renegotiate the agreement. Fitzgerald expresses general concerns over this proceeding, antitrust immunity, and private arbitration for certain disputes.

The concerns raised in the comments do not address the specific rate-related provisions that we have been asked to approve. As to those provisions, we granted interim approval and will grant final approval under 49 U.S.C. 10706(a)(2)(A), because the provisions further the rail transportation policy (RTP) of 49 U.S.C. 10101. By encouraging a more rational, efficient and

¹ These principles are: (1) laws and regulations must be consistent with the fundamentals of rail economics; (2) private sector solutions are best; and (3) large and small railroads are integral to the provision of rail service in the U.S.

² In the case of new traffic between short lines, there is a 50-mile limitation for haulage or trackage rights over a Class I railroad's line that connects the two short lines. In the case of new traffic between a short line and either a Class I or II railroad, there is a 15-mile limitation for haulage or trackage rights over a Class I railroad's line that connects the other railroads. In both cases, the agreement provides for a longer distance by mutual agreement.

cooperative relationship between Class I carriers and smaller railroads, we found, and continue to 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)]. We further found on an interim basis, and continue to find, that the rate-related provisions of the agreement do not have any anticompetitive effects and preserve, rather than override, market forces. Furthermore, 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, furthering 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)].

We note that CPUC enthusiastically supports the rate-related principles embodied in the agreement. Specifically, CPUC states that in the area of reciprocal switching " * * * the effort seeks both to equalize switching charges between all railroads and to reduce the charge to a figure closer to the actual expense incurred. Every railroad would pay the same charge for a particular switching operation and the charge itself would be reasonable."

The non-rate related aspects of the agreement with which CPUC and Fitzgerald take issue are matters that were privately negotiated, and as to which no approval has been sought. We see no basis on which we should disapprove aspects of the agreement that are clearly in the public interest, simply because of CPUC's views that the agreement should have gone farther in other areas for which our approval was not sought, or because of Fitzgerald's non-specific concerns about using arbitration in the context of this proceeding.

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

It is ordered:

1. The application is approved.
2. This decision is effective on December 11, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.