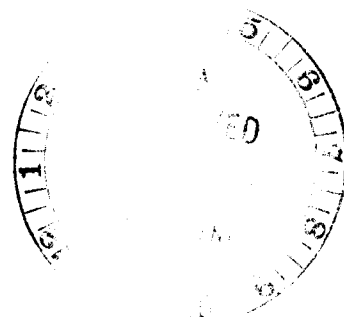


200445

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 582
(Sub-No. 1)

MAJOR RAIL CONSOLIDATION
PROCEDURES



**AMTRAK'S COMMENTS IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING**

ENTERED
Office of the Secretary

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Date: November 17, 2000

The National Railroad Passenger Corporation ("Amtrak") submits the following comments on the modifications to the regulations of the Surface Transportation Board ("the Board"), codified at 49 C.F.R. part 1180, subpart A, governing proposals for major rail consolidations that the Board has proposed in the Notice of Proposed Rulemaking served on October 3, 2000.

I. WHILE THE NEW REGULATIONS RECOGNIZE THE IMPACT OF MERGERS ON RAIL PASSENGER SERVICE, THEIR VAGUE REQUIREMENTS FOR SERVICE ASSURANCE PLANS NEED CONSIDERABLY MORE "TEETH"

Amtrak is pleased that the Board's new regulations recognize both the importance of rail passenger service and the need, when the Board reviews rail merger proposals, to give much greater consideration to how those proposals will impact guests who travel on Amtrak's trains. As the Board is aware, many of Amtrak's guests have suffered greatly as a result of the service problems that have followed recent rail mergers. This cannot be permitted to happen again.

Thus, Amtrak strongly supports the Board's decision to require future merger applicants to submit both "service assurance plans" and "impact analyses" that must, among other things, address in detail the impact of their proposed merger on affected rail lines and terminals and on Amtrak service. Proposed 49 C.F.R. 1180.10. Amtrak also agrees with the Board that the applicants should be required to identify in their service assurance plans both "potential infrastructure impediments" and "potential areas of disruption" during merger implementation, and to develop detailed capital and contingency plans to remedy such problems. Id. The requirements with respect to Amtrak service will allow the Board to ensure that, should it approve future mergers, Amtrak

trains will receive both the priority over freight trains to which they are entitled by law, 49 U.S.C. 24308(c), and the high level of on-time performance that Congress has deemed essential for Amtrak's rail passenger services. See 49 U.S.C. 24101(c)(4) & 24308(a).

However, with respect to post-merger impacts on both rail service generally and passenger service in particular, the regulations the Board has proposed to govern service assurance plans fall considerably short of the mark in two critical respects.

(i) The Regulations Must Specify When Detailed Infrastructure and Contingency Plans Will Be Required

The proposed regulations provide no guidance or thresholds for use in determining what level of merger-related impacts triggers the requirements in proposed sections 1180.10(d) & (i) for detailed analyses of infrastructure needs and development of contingency plans. Instead, they leave it entirely to the applicants to decide where "potential infrastructure impediments" and "potential areas of disruption" exist. Even if one is confident that future merger applicants will exercise this unfettered discretion in good faith, recent experience suggests that their predictive powers will leave a great deal to be desired.

The Conrail Acquisition is a case in point. Before entering into a settlement agreement with the Applicants, Amtrak expressed serious concerns - about the ability of two key lines on CSX's existing system - Washington, DC-to-Richmond, VA-to-Rocky Mount, NC, and Pensacola, FL-to-New Orleans, LA - to accommodate merger-related impacts without service disruptions that would

harm Amtrak's on-time performance.¹ CSX assured the Board that there was no basis whatsoever for Amtrak's concerns, stating that both lines had adequate capacity to handle merger-related traffic changes and that the "good performance" that Amtrak trains enjoyed on these lines would continue unabated.²

Unfortunately, that has proven not to be the case. As Amtrak has indicated in comments incorporated in the quarterly Conrail Acquisition oversight reports submitted to the Board's Office of Compliance and Enforcement, Amtrak trains operating over these two CSX lines have been experiencing extraordinary delays since the Conrail Acquisition was implemented a year and a half ago. While performance on the Washington-to-Rocky Mount line has finally begun to improve, the performance of the Sunset Limited between Pensacola and New Orleans remains abysmal. Indeed, after only four trains on CSX's portion of the Sunset Limited route arrived on time during the entire months of July and August combined, Amtrak reluctantly added more than two hours to the train's scheduled running time on CSX.

As this example illustrates, applicants in recent merger proceedings have significantly underestimated the number of locations on their systems where additional rail line and terminal capacity, and contingency plans to address merger implementation service problems, will be required. Therefore, the

¹ Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corp. and Norfolk Southern Ry. – Control and Operating Agreements/Leases – Conrail, Inc. and Consolidated Rail Corp. ("Conrail Acquisition"), "Amtrak's Comments and Request for Conditions" (NRPC-7), filed October 21, 1997, Verified Statement of James L. Larson, pp. 17-18.

² Conrail Acquisition, "Applicants' Rebuttal" (CSX/NS-176), filed December 1997, vol. 1, pp. P-228 to P-229.

Board's proposed regulations must be revised to establish some objective means for making these determinations.

There are a number of different ways to address this problem. In its comments on the Advance Notice of Proposed Rulemaking ("ANOPR"), Amtrak suggested that applicants be required to conduct capacity studies and operational simulations, and develop infrastructure plans, for all rail lines on which their proposed merger will increase traffic by four or more trains a day, or on which capacity problems are already being experienced. Other parties commenting on the ANOPR advocated different approaches. For example, CSX urged the Board to adopt a process much like that in which the Board discharges its environmental responsibilities in merger cases, with the Board retaining outside consultants at the applicants' expense to scrutinize their service and infrastructure plans.³ Alternatively, the Board could apply to sections 1180.10(d) & (i) the same thresholds for merger-related increases in traffic volume and terminal activity, codified at 49 C.F.R 1105.7, that it uses to identify those impacts of mergers that require environmental scrutiny in non-attainment areas.

Regardless of which approach it chooses, the Board should modify the proposed regulations in a way that ensures that applicants will be required to undertake detailed infrastructure studies, and develop contingency plans, with respect to all rail lines and facilities where their proposed transaction creates the potential for service disruptions.

(ii) Passenger/Freight Coordination Plans Must Include Performance Measurements

Proposed section 1180.10(b) requires applicants to “describe definitively” in their service assurance plans how they will ensure that they “fulfill existing performance agreements” with Amtrak and commuter service operators. However, with respect to rail passenger services, the regulations do not specifically require applicants to provide either “benchmark” performance data for the period preceding their application or projected performance data for the period following implementation of their merger. By contrast, the provisions in sections 1180.10(a) & (c) dealing with impacts on shippers and yard and terminal operations specifically require that applicants include in their service assurance plans both benchmark and projected performance data.

There is no reason for treating passenger operations differently from freight operations with respect to benchmarking and quantitatively measuring performance. Indeed, by not requiring applicants to provide specific pre- and projected post-merger performance measurements for rail passenger performance, the regulations make it impossible for the Board to accurately measure potential benefits of proposed transactions, or to hold applicants to their commitments post-merger.

With respect to Amtrak operations, appropriate performance measurements are readily available. The total number of minutes that each Amtrak train has been delayed during a month or year by causes within a particular freight railroad’s control (e.g., freight train interference, slow orders, or

³ Comments of CSX Corp. and CSX Transportation Inc., filed May 16, 2000, pp. 13-14.

restrictive signals) can readily be derived from the delay reports that are used by Amtrak and freight railroads to determine the railroads' entitlement to contractually agreed upon "incentive" payments. Agreements between freight railroads and commuter authorities typically include quantifiable performance measures.

Accordingly, the Board should revise proposed section 1180.10(b) to require applicants to furnish, for each route over which passenger services are operated, mutually agreed-upon performance measurements that quantify railroad-controlled delays to passenger trains for one year prior to the transaction, and projected performance figures for the same route after the implementation of the proposed transaction.

II. APPLICANTS SHOULD BE REQUIRED TO DEMONSTRATE THAT KEY LINES MERGERS ARE BEING IMPLEMENTED

Many of the delays that Amtrak trains experienced after the implementation of both the UP-SP merger and the Conrail Acquisition were attributable to the implementation of these transactions at a time when key lines on SP and CSX had an immediate need for major maintenance work. This resulted in a multitude of slow orders, and an urgent need to take track out of service to catch up on deferred maintenance, at the very same time that merger implementation was placing unprecedented demands upon UP's and CSX's rail systems.

For example, in the midst of its efforts to resolve the service crisis in Texas that followed the implementation of its merger with SP, UP was also undertaking a "massive maintenance effort" to remedy "deferred maintenance"

on SP's Sunset Route between Beaumont, Houston and El Paso.⁴ At the same time, on the New Orleans-to-Lake Charles, LA portion of the Sunset Route, which BNSF acquired as a result of the UP/SP merger, BNSF had to impose slow orders that delayed Amtrak trains while it undertook an "extensive rehabilitation program" to bring this "key route" up to "industry standards".⁵ Likewise, during its struggles to remedy the service problems that followed the Conrail Acquisition, CSX was forced to impose numerous slow orders as a result of track defects discovered by the FRA.⁶

Amtrak is, therefore, very concerned that the Board's new regulations do nothing to ensure that future mergers will not be implemented until key rail lines are in such condition that they will not require major maintenance during merger implementation. At a minimum, proposed Section 1180.10 should be revised to require applicants to describe in their service assurance plans (i) what steps they will take before they implement their proposed mergers to address maintenance needs on key lines, and (ii) how they will schedule or augment their pre-implementation maintenance-of-way activities so that they will not have to take key lines and tracks out of service for major maintenance during the crush of merger implementation. Applicants should also be required to update this portion of their service assurance plans prior to the implementation of their merger.

⁴ Finance Docket No. 32760, Union Pacific Corp., Union Pacific R.R., and Missouri Pacific R.R. – Control and Merger – Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry, SPCSL Corp., and the Denver & Rio Grande Western R.R., "Burlington Northern and Santa Fe Railway Co.'s Quarterly Progress Report, filed July 1, 1998, pp. 45-46.

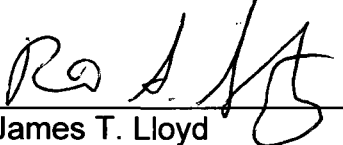
⁵ Service Order No. 1518, In re. Union Pacific Corp., Union Pacific R.R., Missouri Pacific R.R., Southern Pacific Rail Corp., Southern Pacific Transportation Co., and St. Louis Southwestern Ry., "Union Pacific's Response to Petition", filed Oct. 24, 1997, pp. 34-35.

⁶ CSXT Press Release dated April 20, 2000 (available at www.csxt.com).

CONCLUSION

The Board's proposed regulations reflect the broad consensus, shared by nearly every party to this proceeding, that the Board must "rais[e] the bar" with respect to service issues and "requir[e] merger applicants to demonstrate that a proposed rail consolidation will materially improve rail service."⁷ In order to achieve this objective, the Board's regulations must provide clear guidance as to what level of merger-related changes will trigger the requirements for detailed infrastructure and contingency plans. The regulations must also require applicants to demonstrate that key portions of their rail systems will not require major maintenance work during the implementation of their proposed merger. Finally, merger applicants must be required to provide both benchmark and projected performance measurement data for rail passenger services operated over their lines, just as the new regulations require them to do for freight services

Respectfully submitted,



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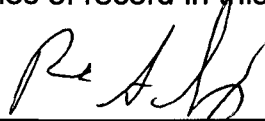
Attorneys for National Railroad
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Dated: November 17, 2000

⁷ "Comments of Norfolk Southern in Response to Advance Notice of Proposed Rulemaking", filed May 16, 2000, pp. 2-3.

CERTIFICATE OF SERVICE

I certify that I have, this 17th day of November 2000, served copies of the foregoing Amtrak's Comments in Response to Notice of Proposed Rulemaking by first class mail, postage prepaid, upon all parties of record in this proceeding.



Richard G. Slattery