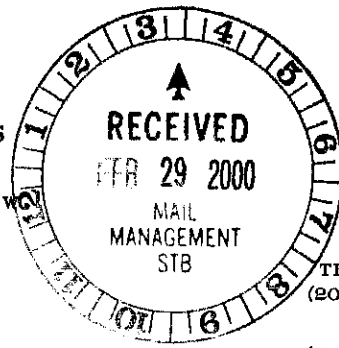


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WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036



TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

February 29, 2000

kjd@sloverandloftus.com

VIA HAND DELIVERY

The Hon. Vernon L. Williams
Secretary
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

FEB 29 2000

Part of
Public Record

Re: Ex Parte No. 582, Public Views
on Major Rail Consolidations

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 10 copies of the Comments of the Eastern Coal Transportation Association. Also enclosed is a 3.5-inch diskette containing the text of this letter and the enclosed Comments in WordPerfect 8.0 format.

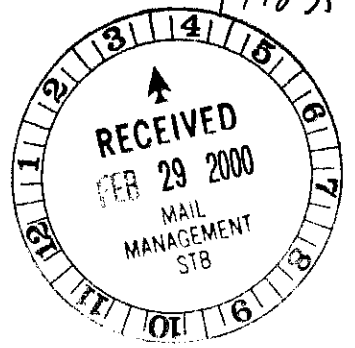
Please acknowledge receipt of the enclosed filing by stamping and returning to our messenger the enclosed duplicate of this letter.

Sincerely,

Kelvin J. Dowd

KJD:mfw
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



In The Matter Of:)

PUBLIC VIEWS ON)
MAJOR RAIL CONSOLIDATIONS)

Ex Parte No. 582

RECEIVED
Office of the Secretary

FEB 29 2000

Part of
Public Record

COMMENTS OF THE
EASTERN COAL TRANSPORTATION ASSOCIATION

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, NW
Washington, D.C. 20036

Dated: February 29, 2000

THE EASTERN COAL
TRANSPORTATION ASSOCIATION

Kevin J. Larkin
President
Kelvin J. Dowd
Executive Director
1226 Seventeenth Street, NW
Washington, D.C. 20036

BEFORE THE
SURFACE TRANSPORTATION BOARD

In The Matter Of:

PUBLIC VIEWS ON
MAJOR RAIL CONSOLIDATIONS

Ex Parte No. 582

COMMENTS OF THE
EASTERN COAL TRANSPORTATION ASSOCIATION

The Eastern Coal Transportation Association ("ECTA") submits these comments in response to the Notice of Public Hearing and Request for Comments ("Notice") served by the Board in the captioned proceeding on January 24, 2000. ECTA commends the Board for opening a public forum to address the important issues summarized in the Notice, and appreciates this opportunity to share its Members' views.

IDENTITY AND INTEREST

ECTA is a voluntary organization comprised of producers and consumers of coal mined from sources East of the Mississippi River, as well as related service providers. It is dedicated to the promotion of its Members' interests in dependable, efficient and economical transportation of coal via all surface modes, the most significant of which is rail. Collectively, ECTA Members are responsible for the transportation of over 180 million tons

of Eastern coal each year. A list of current Members is attached hereto as Exhibit A.

While the scope of rail-related issues of interest to ECTA is broad, touching upon all principal aspects of the railroads' relationships with some of their largest and most important customers, ECTA's primary focus is on rail service quality, in particular the quality of service available and adequacy of rail infrastructure dedicated to domestic and export coal transportation. Given the general dependence of coal producers and consumers on rail transportation, the producers' marketing success and the ability of electric utilities and other consumers to stabilize delivered fuel costs are intertwined with rail service quality issues, including car supply, transit and cycle times, loading and unloading procedures, claims processing, and the overall efficiency of coal train operations. ECTA's interest in this proceeding arises from the proven impacts of rail mergers, consolidations and related transactions on the quality of service offered by the participating carriers, especially with respect to the transportation of coal.

STATEMENT OF POSITION

ECTA had not yet been fully formed when the merger of the Union Pacific and Southern Pacific rail systems and the more recent acquisition and division of the former Conrail system came

before the Board for approval. Likewise, ECTA has not yet taken a formal position regarding the merits of the proposed Burlington Northern Santa Fe-Canadian National merger which prompted the initiation of this proceeding. See Notice at 2. ECTA agrees with the Board that a general forum such as this is not the proper place to debate approval or disapproval of any particular transaction, whether past, proposed or merely prospective. Id. at 3. However, ECTA respectfully submits that there are some clear lessons which have emerged from recent modern rail merger proceedings - - particularly the Conrail division - - which can and should inform the Board's review of any new, future consolidation proposals.

The dramatic increase in rail transportation market concentration which has been an obvious by-product of recent mergers and related transactions has been justified by proponents in individual cases based on claims that the combinations and acquisitions would allow the participants to improve rail operating efficiency and lower costs. These "public benefits" were alleged to outweigh any adverse public interest impacts that otherwise might result from a reduction in the number of market participants, or from the branch line abandonments and other system rationalizations that typically accompany these transactions. Promises of improved rail service quality likewise were raised in rebuttal to shipper concerns over potential rate

increases and the elimination of "redundant" facilities. In approving the Conrail acquisition and other major transactions in recent years, the Board and its predecessor implicitly (and in some cases, explicitly) endorsed these carrier claims.

Unfortunately, in all too many instances the claimed benefits in the form of efficiencies, cost savings and service quality improvements have failed to materialize. On the contrary, the recent spate of rail industry consolidations has left a wake of higher operating costs, deteriorated service and constrained facilities and resources in many regional and commodity sub-markets, including Eastern coal. Of particular concern to ECTA and its Members are the service failures and related problems resulting from implementation of CSXT and Norfolk Southern's division of Conrail, including the following:

- * Terminal and switching delays at major facilities such as Harrisburg, PA, which have forced shippers to incur millions of dollars in added transportation and equipment costs.
- * Capacity constraints throughout the CSXT and NS systems, which have led, among other problems, to CSXT's chief executive predicting a form of rationing of capacity through planned rate increases.
- * Shipper complaints and claims which experts have estimated could run as high as \$250 million, putting added pressure on the railroads' cost structures.
- * Significant and unanticipated expenditures by the carriers themselves in efforts to correct service dislocations, which will delay even further the realization of even some of the cost efficiencies promised when the transaction was proposed.

* An apparent reluctance on the part of Wall Street to underwrite further rail infrastructure expansion and enhancements, even as the existing systems are strained and challenged to deliver on promised traffic diversions from motor carriage.

What is particularly vexing about the service problems and capacity constraints that have followed Board approval of the Conrail transaction is that unlike the UP-SP merger, the participants in the Conrail division seemed to anticipate the challenges of integrating their respective shares, and planned extensively for the transition. Both CSXT and NS devoted substantial human, economic and logistical resources to the task, and delayed formal implementation of the transaction until their preparations were complete. Despite what by all accounts were the very best efforts of these carriers, however, many of the key public interest benefits upon which the transaction was justified by both the proponents and the Board have been frustrated, or at a minimum, deferred indefinitely.

ECTA acknowledges and appreciates that the Board has taken steps in the past to try to address merger-related service deficiencies through oversight and other, related proceedings. ECTA itself exists, in part, to pursue collective solutions to rail service problems affecting Eastern coal shippers through direct negotiations with the carriers. Such after-the-fact remedies are by definition imperfect, however, as they depend for their success on post-hoc changes in transaction structures or

operating plans that already have been implemented, and upon which too many elements - - financial, commercial and otherwise - - already depend. ECTA therefore urges the Board to modify its current policies governing rail merger review proceedings to place a higher priority on consideration of the likely impacts of proposed transactions on the quality of service experienced by the participants' customers, and to more carefully scrutinize carrier claims of future operating efficiencies and cost savings from system consolidations. Steps the Board may wish to consider include the following:

- * A requirement that rail merger applicants file formal and separate service impact statements, containing detailed analyses and reflecting the results of customer inquiry and comment consistent with that now required for environmental assessments or impact statements.
- * A re-evaluation of the standards for approval of voting trust agreements and other regulatory favors that permit carriers to proceed with various corporate and financial aspects of a transaction before final Board approval is granted, thereby creating additional outside pressure to permit a merger to be completed.
- * More serious and skeptical evaluation of claimed operating cost savings and merger-related efficiencies, with full public access to the data underlying the claims and a requirement that carriers seeking to justify a proposed merger on the basis of such claims also present evidence of contingency plans in the event that the savings or efficiencies are not realized.
- * Elimination of the apparent bias in favor of expedited schedules for rail merger approval proceedings, and expansion of the minimum advance public notice period for the filing of a new rail merger or consolidation application.

* The formal recognition of service quality and rail infrastructure capacity impacts within the meaning of "adequacy of transportation to the public" under 49 U.S.C. § 11324(b)(1).

CONCLUSION

Whether and to what extent major U.S. rail carriers should be permitted to engage in future mergers, consolidations and similar transactions is a matter that should be decided on a case-by-case basis under existing law. In evaluating any such proposals, however, the Board should place the public's interest in a full, careful and adequate review process ahead of the applicants' interest in expedited proceedings, and elevate consideration of the impacts of a proposed transaction (including its logical and foreseeable consequences) on the quality of service to shippers and the adequacy of rail infrastructure capacity to meet current and anticipated demand to a priority position in the Board's evaluation of the public merits of the transaction. At a minimum, such a policy shift should include adoption of the measures outlined herein.

Respectfully submitted,

THE EASTERN COAL
TRANSPORTATION ASSOCIATION

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, NW
Washington, D.C. 20036

Dated: February 29, 2000

Kevin J. Larkin
President
Kelvin J. Dowd 
Executive Director
1226 Seventeenth Street, NW
Washington, D.C. 20036