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STB EX PARTE NO. 582 (Sub-No. 1)
ADVANCE NOTICE OF PROPOSED RULEMAKING

Comments Of The Mayo Foundation
d/b/a/ Mayo Clinic

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DATED: May 16, 2000

ORIGINAL

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Pursuant to the Advance Notice of Proposed Rulemaking served on March 31, 2000, the Surface Transportation Board ("STB" or "Board") requested comments on ways in which to modify current merger regulations in order to promote and enhance competition and other public interest goals. Mayo Foundation, d/b/a Mayo Clinic ("Mayo Clinic"), appreciates this opportunity to present its views and specific concerns focusing on rail safety and other key public interest issues.

Mayo Foundation is a charitable, not-for-profit health care organization based in Rochester, MN. The Foundation's mission is to provide the best patient care through its integrated programs in clinical practice, education and research.

Mayo Clinic and all its affiliated entities are dedicated to the protection and advancement of human life.

In Rochester, MN Mayo Clinic and its affiliates Saint Marys Hospital and Rochester Methodist Hospital ("Mayo Rochester") together form an integrated medical center offering patients virtually every medical expertise, treatment and diagnostic service. Its patient care activities are supported by

extensive programs in medical education and research. Half of Mayo Rochester's patients come from Minnesota while the other half come from all 50 states and throughout the world.

Approximately 80% of the patients who come to Mayo Rochester are treated as outpatients. On a typical day over 1,000 new outpatients arrive for treatment and there are about 150 new admissions to one of the Rochester hospitals. Mayo Rochester employs almost 1,400 highly skilled physicians and scientists who are supported by over 1,500 residents and over 20,000 dedicated allied health care personnel.

Mayo Foundation has affiliated subsidiaries in Jacksonville, FL and Scottsdale, AZ: Mayo Clinic Jacksonville, a 229 physician group practice; Mayo Clinic Scottsdale, a 241 physician group practice; St. Luke's Hospital, Jacksonville, with 272 licensed beds and Mayo Clinic Hospital, Scottsdale with 178 licensed beds. In addition, the Foundation is also affiliated with Charter House, a 245-unit retirement community located in Rochester, MN and Mayo Health System; a network of clinics and hospitals located in 60 communities in southern Minnesota, northern Iowa and western Wisconsin.

Mayo Rochester is the third largest employer in Minnesota and the largest employer in southern Minnesota. The majority of patients served at Mayo Rochester facilities come from outside the region - all 50 states and more than 100 countries around the world. In addition to the excellent medical

care available at Mayo Clinic facilities, these patients are attracted by the pleasant, clean, peaceful community of Rochester. A good measure of Mayo Clinic's growth and success is directly attributable to its patient and family friendly environment.

Until recently Mayo Clinic has not concerned itself with railroads and the STB. However, with the advent of the Dakota, Minnesota & Eastern Railroad (DM&E) construction project and the prospect of 37 coal trains per day rumbling through the center of Rochester, Mayo Clinic has found it necessary to learn a great deal about railroads and the authority of the Board. In particular, Mayo Clinic's interest has been focused on the public interest and safety issues that concern the Board in its decision-making capacity.

Mayo Clinic has noted the concerns raised by the State of Ohio in its February 29, 2000, statement to the Board in the predecessor to this proceeding. In that statement, Ohio advised that it has found it necessary to commit to a \$200 million program to build railroad/highway grade separations, almost all of which will be at taxpayer expense. The State emphasized that this program is an outgrowth of dramatic increases in rail traffic through Ohio communities as a direct result of the recent division of Conrail lines between CSX and Norfolk Southern.

Although some mitigation was granted to Ohio communities by the Board, the record indicates that no grade

separations were required within the State. In its February 29 statement, Ohio was frank in emphasizing that the mitigation provided by the Board was by no means enough to mitigate emergency service and other safety problems that have resulted from the division of Conrail lines. In this regard, news accounts have noted that increased rail traffic has resulted in children crawling under stopped trains; ambulances diverted as much as 21 miles as a result of blocked crossings and communities expressing concerns that they have been cut off from their fire stations. As a result of these problems, the State has received over 250 urgent requests for grade separations. However, the \$200 million program will be adequate to fund only 40 grade separations over a ten-year period.

Ohio entreated the Board to recognize that when it fails to mandate adequate environmental (and safety) mitigation, the burden of necessary action falls back on state and local tax payers.

Mayo Clinic joins with Ohio in urging the Board to look much more closely at emergency service and safety ramifications in rail merger and consolidation proceedings. Mere seconds of delay in emergency response to a heart attack or serious accident victim can mean the difference between life or death. Mayo Clinic maintains that no alleged economic benefit can outweigh the value of the life of a provider to his/her family or of a youngster just starting out on life's pathways.

As previously noted, Mayo Clinic's interest and resources are focused on public health and safety issues. Of necessity that interest extends to any external activity that could threaten the Clinic's ability to provide the highest possible quality of health care.

If approved, the DM&E construction project could well be the largest rail project in the United States in over 100 years. The result could be a dramatic increase from the current 3 to 4 slow moving trains to 37 fast moving, mile-long coal trains a day thundering directly through the middle of Rochester, Mayo's home community. The potential impact of the health and safety as a result of this significant increase in the number and speed of trains on its patients, employees and the entire community is why Mayo Clinic is actively participating in the DM&E proceeding.

Mayo Clinic has learned that the Board is responsible for promoting safe railroad transportation. The rail transportation policy that guides all of the Board's actions establishes that it is the policy of the United States Government "... to promote a safe and efficient rail transportation system ...[by allowing rail carriers] ...to operate transportation facilities and equipment without detriment to the public health and safety"...(emphasis supplied) [49 U.S.C. 10101(8)]. Mayo also notes that the statutory provisions governing rail consolidations and mergers (49 U.S.C. 11324) and authorization of

construction and operation of railroad lines (49 U.S.C. 10901) both provide that the Board may impose conditions in the public interest. In addition, environmental issues, including the impact on the human environment must be considered both in merger and construction proceedings.

In view of the broad scale implications of major rail construction projects such as the DM&E proposal, Mayo Clinic urges the Board to expand its review in this proceeding to encompass existing policies and regulations concerning railroad construction projects under 49 U.S.C. 10901. Mayo submits that such an expansion will not unduly broaden the scope of this inquiry and should serve to focus worthwhile attention on important public interest considerations that are affected by rail construction projects.

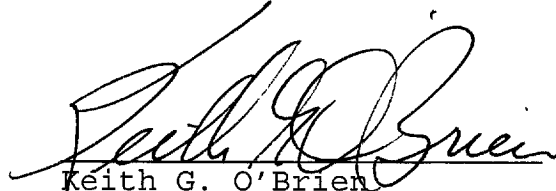
Mayo Clinic is aware that the STB has required rail carrier applicants to work with the Federal Railroad Administration ("FRA") to develop Safety Integration Plans (SIP's) to ensure that safe operations would be maintained during implementation of merger proposals. Mayo is also aware of the joint rule making proceeding in which FRA and STB have proposed regulations to provide a coordinated consideration of safety regulation issues in railroad merger cases (STB Ex Parte No. 574 and FRA Docket No. SIP-1). However, Mayo notes with considerable concern that the STB has not proposed to extend its regulations to include construction proposals although FRA deems such

coverage both necessary and appropriate.

Mayo Clinic respectfully urges the STB to reconsider coverage of its proposed rules in STB Ex Parte No. 574 to include construction proposals in view of the critical importance of public health and safety. Mayo submits that such coverage is consistent with the rail transportation policy and public interest directives of the controlling statute.

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing on all known parties of record on the Service List on this the 16th day of May, 2000.

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", is written over a horizontal line.

Keith G. O'Brien
Counsel for:
The Mayo Foundation d/b/a
Mayo Clinic