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BEFORE THE  
**SURFACE TRANSPORTATION BOARD**

STB EX PARTE NO. 582 (Sub-No. 1)



**MAJOR RAIL CONSOLIDATION PROCEDURES**

ENTERED  
Office of the Secretary

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Public Record

**REPLY OF  
OKLAHOMA DEPARTMENT OF TRANSPORTATION**

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Dated: June 2, 2000

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**SURFACE TRANSPORTATION BOARD**  
 STB EX PARTE NO. 582 (Sub-No. 1)

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On May 16, 2000, the Oklahoma Department of Transportation (“ODOT”) filed its Comments in response to the Advance Notice of Proposed Rulemaking (“ANPR”) served by the Board on March 31, 2000. In its Comments, ODOT expressed its concerns about service related losses, post-merger pricing (in particular, of agricultural products), the need for elimination of barriers and other short line issues, the impacts on passenger service and cross-border issues. Upon review of the Comments filed by numerous other parties in this proceeding, ODOT believes that there are a number of parties that share its concerns. ODOT files this Reply in order to set forth its general observations with respect to the Comments of other parties, and to specifically support certain of the regulations proposed by various parties in their Comments.

**1. Passenger Service.** Applicants should be required specifically to address in their proposed operating plan how interference with Amtrak and other passenger service (either in existence or proposed) will be minimized. Although shippers desire (and deserve) more timely and consistent freight service, the needs of passenger service for on-time performance clearly are greater. Past mergers have seen problems despite applicants

representations to the contrary. *See State of Maryland*<sup>1</sup> at 2-3 (effects of CSX/NS/Conrail on MARC); *SCRRA* at 3-4 (effects of UP/SP on Metrolink); *American Public Transportation Association* (“*APTA*”) at 2-3 (effects of recent mergers on Metra, SCRRA, MARC and VRE).

Oklahoma has recently seen the commencement of Amtrak service between Oklahoma City and Fort Worth. Even today with the minimal passenger service level that has been established (one round-trip daily), there have been a number of problems where freight service has interfered with the passenger service. ODOT has concerns, for example, that the proposed BNSF/CN merger would increase traffic on the line that it shares with Amtrak and that such additional traffic would further interfere with service.

Applicants should be required to do more than just pay lip service to how passenger service disruptions will be minimized, and they should be required to work with potentially affected operators and to demonstrate concretely to the Board that such service will not be adversely affected. *See Amtrak* at 9-10; *APTA* at 5.

**2. Increased Leverage on Pricing.** The Comments of the Class I carriers consistently take the position that the issues of, for example, grain pricing and short line access, are not merger related problems. However, as carriers get bigger they have increased leverage over shippers and their short line connections. This increased power has given merged carriers the ability to increase rates and demand changes in routes and shipment sizes to meet their perceived needs regardless of the needs of the shipping public. *See North Dakota Parties* at 4-6; *Kansas Agencies* at 9-10; *Bunge* at 2-3. *See also AG Processing* at 2-3 (cost of complying with

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<sup>1</sup> References to a party and a page number are references to the initial comments filed by such party in this proceeding.

new requirements). Their power to dictate these items grows as they do. Thus, while these problems are “industry problems” to some extent, they are clearly exacerbated by mergers.

**3. Short Line Issues.** Similarly, while Class I treatment of short line railroads is an industry issue, ODOT believes their treatment following recent mergers shows that the problems are related and should be dealt with in the context of future mergers. For example, after recent mergers, ODOT has seen in Oklahoma, declines in service frequency, as merging carriers eliminate employees, focus on their main routes, and reduce service on rural branch lines (and to the short lines that feed them). As noted by the North Dakota Agencies, as Class Is merge and focus on bigger loads and larger trains, short lines and the services they provide are seen as less important. *North Dakota Parties* at 7. *See also Kansas Agencies* at 15; *Farmrail System* at 16-18.

Oklahoma has made a substantial public investment (over \$50 million) in various rail lines throughout the State, with the specific intention of increasing access to all areas of the State, including the largely rural agricultural areas served by its 19 short lines. Mergers, and Class I behavior following such mergers, are frustrating ODOT’s public investment and its attempts to maintain rural rail service through its purchase of lines and its support of short lines. Accordingly, ODOT believes that short line issues need to be closely reviewed by the Board and protections adopted where necessary to help preserve local service.

**4. Service Claims.** Numerous parties have commented on the need for improved planning to minimize post-merger service disruptions and better measurement standards to determine if promised service improvements are being satisfied. ODOT agrees with these requests. ODOT also believes that where service problems occur, shippers and short line

railroads deserve prompt reimbursement for related business losses. Together with establishing the right to damages, the regulations should establish a mechanism that would promptly resolve service related claims. For example, ODOT believes that the escrow arrangement proposed by CPUC could be helpful in this regard. *See CPUC* at p.6.

**5. Measurement of Merger Benefits.** One of the benefits applicants often claim is that they will be better able to utilize their equipment. However, as carriers get bigger they do not necessarily use their equipment more efficiently. For example, BNSF has grown over the years through various mergers, yet it now reports that it has 500 excess locomotives and 25,000 cars in storage. *BNSF* at 5. On the other hand, Oklahoma grain shippers often face car shortages during harvest season despite the fact that harvest season comes at the same time every year and the car supply needs should be predictable.<sup>2</sup> ODOT questions why carriers need to grow larger to make more efficient use of their equipment, when they seem to have more efficient ways that they could use their equipment now. Accordingly, ODOT believes that in any future merger proceeding, the applicants should not be permitted to claim merger benefits resulting from better equipment utilization unless they can demonstrate that their equipment is being utilized effectively prior to the merger.

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<sup>2</sup> The car shortages can be found on the BNSF and Union Pacific, both being entities that are the product of recent mergers.

## Specific Regulations

ODOT specifically supports the regulations proposed by the following parties in their Comments<sup>3</sup>:

1. Statements of Policy/ Public Interest
  - a. *ASLRRA* at 5-6
  - b. *FMRS* at 28
  - c. *KCS* at 12
2. Short Line Issues
  - a. *ASLRRA* at 6-8
  - b. *FMRS* at 28-29
  - c. *Montana Rail Link* at 6
  - d. *KCS* at 84
  - e. *Coal Shippers* at 22-23
  - f. *Ports of Seattle, et al.* at 12-13
3. Service Integration Planning
  - a. *BNSF* at 38
  - b. *CSX* at E-1 - E-5 (especially as they relate to review for the Board by independent experts at the cost of applicants)

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<sup>3</sup> ODOT's endorsement of these specific referenced proposals does not mean it opposes others that are consistent with the issues it has raised in its Comments and this Reply. Changes that address other issues on which ODOT has chosen not to comment may be advisable as well.

4. Damages for Service Related Losses
  - a. *ASLRRA* at 7
  - b. *FMRS* at 29
  - c. *BNSF* at 39 (relating to service guaranties, if right to damages were specified and extended to short lines)
  - d. *Coal Shippers* at 18 (if right to damages were extended to short lines)
  - e. *IMPACT* at 41

### **Conclusion**

ODOT supports the regulations proposed by commenting parties that are consistent with the views expressed in its Comments and this Reply, and requests that any changes that the Board proposes be consistent as well.

Respectfully submitted,

  
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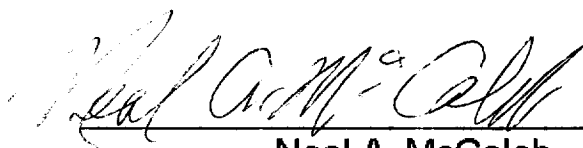
Dated: June 2, 2000

Attorneys for  
Oklahoma Department of Transportation

## VERIFICATION

I, Neal A. McCaleb, Director of the Oklahoma Department of Transportation, verify under penalty of perjury that the foregoing Reply is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Reply.

Executed on June 2, 2000



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Neal A. McCaleb

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing Reply of Oklahoma Department of Transportation was served by First Class Mail, Postage Prepaid, on all Parties of Record.

Dated: June 2, 2000

  
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ERIC M. HOCKY