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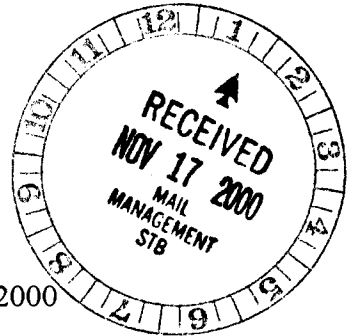
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Public Record

November 17, 2000



HAND DELIVERY

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No.1)
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Ex Parte No. 582(Sub-No.1) Major Rail Consolidation Procedures

Dear Ladies/Gentlemen:

Enclosed please find an original and 25 copies of NY/NJ-3, Comments on Behalf of the Port Authority of New York and New Jersey to be filed in the above-captioned proceeding. In addition, please find a 3.5-inch IBM-compatible floppy diskette in WordPerfect 9.0 of the same document.

Very truly yours,

Paul M. Donovan

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Office of the Secretary

NOV 17 2000

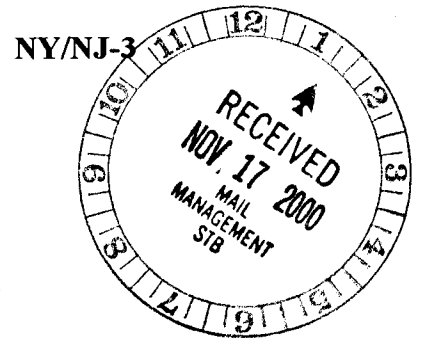
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS ON BEHALF OF THE
PORT AUTHORITY OF NEW YORK AND NEW JERSEY



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Attorneys for The Port Authority of
New York and New Jersey

Dated: November 17, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

MAJOR RAIL CONSOLIDATION PROCEDURES

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PORT AUTHORITY OF NEW YORK AND NEW JERSEY

INTRODUCTION

The Port Authority of New York and New Jersey ("the Port Authority") is filing these comments in response to the Board's Notice of Proposed Rulemaking served October 3, 2000. The Port Authority filed its initial comments in this matter on May 16, 2000 in response to the Board previous Advanced Notice of Proposed Rulemaking.

The Port Authority is an agency of the States of New York and New Jersey whose bi-state compact was approved by the Congress. Among the statutory responsibilities of the Port Authority is the protection of the commerce of the New York/New Jersey Port District. The Port District, an area defined by law, is roughly a 25-mile radius around the Statue of Liberty. The Port Authority has, over the course of many years, invested hundreds of millions of dollars in port facilities designed to facilitate the flow of export/import traffic through the Port of New York/New Jersey. Foremost among these investments are those to permit rail carriers to serve

the Port in a expeditious and efficient manner.

COMMENTS

In its initial comments, the Port Authority proposed several changes in the Board's Major Rail Consolidation Procedures. In its proposed rules, the Board has essentially satisfied the concerns of the Port Authority, and set forth a cogent and persuasive rationale for new consolidation procedures that more accurately reflect today's rail situation, and today's competitive environment.

The Port Authority also welcomes the Board's explicit recognition of the fact that the rail industry is part of a transportation network that includes the nation's ports. The nation's railroads and the nation's ports are partners in the movement of the nation's commerce. Anything that substantially harms a railroad serving a port such as the Port of New York and New Jersey, must inevitably injure the port as well.

The Port Authority would suggest two relatively minor clarifying additions to the proposed procedures. First, the Port Authority suggests that the potential negative impact on United States ports versus their foreign competitors should be specifically recognized as a transnational issue under the proposed Section 1180.1(k). In addition, the Port Authority suggests that a greater emphasis be placed on the ability of any surviving railroad entity to possess sufficient financial resources so that it is able to make the necessary long-term capital investments necessary to meet its common carrier obligations on all segments of its system.

Transnational Issues

In its proposed Section 1180.1(k), the Board notes that future merger applications may present novel and significant transnational issues. For example, the Board suggests that Section

1180.1(k) state: "When an application would result in foreign control of a Class I railroad, applicants must assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations and be detrimental to the interests of the United States rail network, and applicants must address how any ownership restrictions imposed by foreign governments should affect our public interest assessment."

The Port Authority is in full agreement with the Board's concern that foreign control of a rail carrier operating in the United States may lead to decisions, particularly marketing and routing decisions, being made for other than normal commercial reasons. To the extent that those decisions may involve the movement of export/import traffic over Atlantic Coast or Pacific Coast ports, such non-commercial reasons may be detrimental to the interests of U.S. ports as well as the U.S. rail network. While the Port Authority believes that any fair reading of the Consolidation Procedures taken as a whole would support a conclusion that they mean to protect both the U.S. rail network and U.S. ports from such injurious non-commercial considerations, it would be preferable for the Procedures to specifically state that U.S. ports are among those interests that must be considered as transnational issues.

Railroad Financial Health

The Port Authority believes that the Board's Proposed Consolidation Procedures place considerable emphasis on the ability of any surviving carrier interest to meet its common carrier obligations following a merger or consolidation. At the same time, however, the Port Authority believes that the public interest considerations outlined in Section 1180.1(c) should contain specific reference to the fact that no merger or consolidation can be found to be in the public interest when the resulting carrier or carriers are to be placed in a position of questionable

financial health. The Board must be able affirmatively to find that the merger or consolidation will not impose such financial burdens upon the remaining carrier or carriers so as to interfere with the ability of that carrier or those carriers to meet it or their common carrier obligations, and have sufficient revenues to be able to properly maintain rail infrastructure in the future.

In addition, the Board must consider the financial impact on any other carriers that may be adversely affected by any proposed merger or consolidation. Accordingly, Section 1180.1(i) should contain specific language calling upon applicants to anticipate , not only the likely downstream affects of their application, but the likely financial health of both their consolidated railroad, but the ultimate financial health of the responding carriers as well. Certainly, the Board should not approve any merger that would force upon other carriers a Hobson's choice of entering into a financially unsound merger, or being crushed by the competitive strength of the merging carriers.

CONCLUSION

The Port Authority supports the Major Railroad Consolidation Procedures proposed by the Board, but does offer the suggestions noted above to further clarify and effectuate the goals of the Board set forth in the proposal.

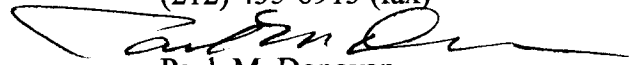
Respectfully submitted,

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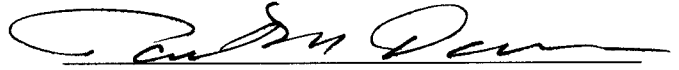
(202) 298-8200 (fax)

Attorneys for the Port Authority of
New York and New Jersey

Dated: November 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of November, 2000, caused a copy of the foregoing document to be served upon each party to this proceeding by first class mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Paul M. Donovan", is written over a horizontal line.

Paul M. Donovan