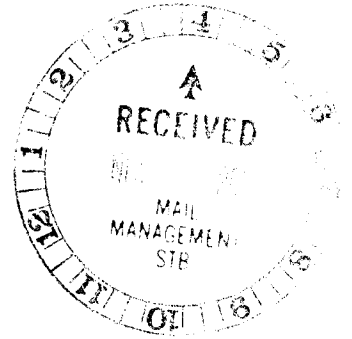


200430

FGLK-4



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

MAJOR RAIL CONSOLIDATION PROCEDURES

**VERIFIED COMMENTS OF
FINGER LAKES RAILWAY CORP.**

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Dated: November 17, 2000

Attorneys for Finger Lakes Railway Corp.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

MAJOR RAIL CONSOLIDATION PROCEDURES

**COMMENTS OF
FINGER LAKES RAILWAY CORP.**

Finger Lakes Railway Corp. ("FGLK") files these Comments in response to the Notice of Proposed Rulemaking ("NPR") served by the Board on October 3, 2000.

Comments

In its comments filed earlier in this proceeding (FGLK-2), FGLK stated that instead of imposing a number of new fixed conditions, the Board should instead require realistic, specific disclosures by applicants of how the applicants will handle different relevant issues. As a Class III carrier, FGLK was particularly interested in requiring disclosures about how a proposed merger would treat affected short lines. FGLK has carefully reviewed the merger rules proposed by the Board in the NPR, and recognizes that Board is attempting to provide merger applicants with the widest possible latitude in structuring an application to the Board. This is consistent with the approach previously suggested by FGLK, and FGLK supports this position of the Board.

In reviewing a number of the Board's statements of the rationale for proposed rule changes, it is evident that the Board's intention is to develop a more inclusive consideration of the concerns of shippers and Class II and Class III carriers in merger applications. In some instances however, the proposed rule did not specifically state as such. Therefore, FGLK asks that the Board include in the final rules specific references to Class II and Class III carriers in each instance where it is appropriate.

FGLK fully supports the Board's requirement that applicants develop service assurances and contingency plans to try to avoid the service problems that have followed recent mergers. See Proposed Section 1180.1(h). However, the Board should specify that Class II and Class III railroads are entitled to compensation when the applicants' breach of their assurances causes lost traffic or other harms.

One area not covered by the proposed rules that FGLK believes the Board should review is the general approach by all carriers to the handling of merchandise freight (a.k.a. "loose car business"). FGLK noticed in many of the comments and replies filed earlier in this proceeding that there was a willingness to explore options for improvements in this area. Unit train and intermodal services that carriers provide are scheduled between the specific origins and destinations. Merchandise freight on the other hand is unscheduled and dependent upon the flow through multiple rail yards. Equipment supply and utilization is also dependent upon service. This in turn affects carrier profitability and the capability to offer competitive prices to shippers. FGLK believes that most of the service complaints that the Board receives in connection with post-merger service problems involves the merchandise freight business segment. To ensure that the applicants address this issue in their planning process, FGLK proposes the addition of a

specific change to proposed Section 1180.10 to reference the coordination of merchandise freight.¹

Attached hereto are FGLK's recommended changes to the proposed rules. FGLK has highlighted, in bold type, the suggested changes to the Board's proposed rules.

Conclusion

For the foregoing reasons, FGLK requests that the Board adopt the revisions to the proposed rules suggested by FGLK.

Respectfully submitted,



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Dated: November 17, 2000

Attorneys for Finger Lakes Railway Corp.

¹ To the extent this is representative of a more general industry problem the Board may also wish to address these issues in a separate proceeding. This would allow shippers, railroads, government and other interested parties the opportunity to provide meaningful input on the needs and issues surrounding the handling of merchandise traffic.

VERIFICATION

I, Michael V. Smith, President of Finger Lakes Railway Corp., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Comments.

Executed on November 17, 2000.

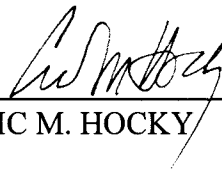
A handwritten signature in black ink, appearing to read 'M. V. Smith', is written over a horizontal line.

Michael V. Smith

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Comments of Finger Lakes
Railway Corp. was served by First Class Mail, Postage Prepaid, on all Parties of Record.

Dated: November 17, 2000



ERIC M. HOCKY

FGLK PROPOSED REVISIONS

GENERAL POLICY STATEMENT

Amended Proposed § 1180.1(a): General. To meet the needs of the public and the national defense, the Surface Transportation Board seeks to ensure balanced and sustainable competition in the railroad industry. The Board recognizes that the railroad industry (including Class II and III carriers) is a network of competing and complementary components, which in turn is part of a broader transportation infrastructure that also embraces the nation's highways, waterways, ports, and airports. The Board welcomes private sector initiatives that enhance the capabilities and the competitiveness of this transportation infrastructure. Although mergers of Class I railroads may advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation, the Board does not favor consolidations that reduce the railroad and other transportation alternatives available to shippers **(including Class II and III carrier shippers)** unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved. Such public benefits shall include improved service, **a more seamless interface with Class II and Class III carriers**, enhanced competition, and greater economic efficiency. The Board also will look with disfavor on consolidations under which the controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand.

Amended Proposed § 1180.1(b): Consolidation criteria. The Board's consideration of the merger or control of at least two Class I railroads is governed by the public interest criteria prescribed in 49 U.S.C. 11324 and the rail transportation policy set forth in 49 U.S.C. 10101. In determining the public interest, the Board must consider the various goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. The Board must ensure that any approved transaction will promote **and emphasize effective competition, remedies for potential transitional service harms, and a greater emphasis on the coordinated service of railroads (including Class II and Class III carriers) in an efficient, and reliable national rail system.**

Amended Proposed § 1180.1(c)(2): Potential harm. The Board recognizes that consolidation can impose costs as well as benefits. It can reduce competition both directly and indirectly in particular markets, including product markets and geographic markets. Consolidation can also threaten essential services and the reliability of the rail network. In analyzing these impacts we must consider, but are not limited by, the policies embodied in the antitrust laws. (i) Reduction of competition. Although in specific markets railroads operate in a highly competitive environment with vigorous intermodal competition from motor and water carriers, mergers can deprive shippers **(including shippers on Class II and Class III carriers)**

of effective options. Intramodal competition is reduced when two carriers serving the same origins and destinations merge. Competition in product and geographic markets can also be eliminated or reduced by end-to-end mergers. Any railroad combination entails a risk that the merged carrier will acquire and exploit increased market power. Applicants shall propose remedies to mitigate and offset competitive harms. Applicants shall also explain how they would at a minimum preserve competitive options such as those involving **Class II and Class III carriers**, the use of major existing gateways, build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) *Harm to essential services.* The Board must ensure that essential freight, passenger, and commuter rail services are preserved. An existing service is essential if there is sufficient public need for the service and adequate alternative transportation is not available. The Board's focus is on the ability of the nation's transportation infrastructure to continue to provide and support essential services. Mergers should strengthen, not undermine, the ability of the rail network to advance the nation's economic growth and competitiveness, both domestically and internationally. The Board will consider whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and Class III rail carriers and ports) to sustain essential services.

(iii) *Transitional service problems.* Experience shows that significant service problems can arise during the transitional period when merging firms integrate their operations, even after applicants take extraordinary steps to avoid such disruptions. Because service disruptions harm the public, the Board, in its determination of the public interest, will weigh the likelihood of transitional service problems. In addition, under paragraph (h) of this section, the Board will require applicants to provide a detailed service assurance plan. **Applicants should explain the steps that will be taken to avoid computer information disruptions that may stem the flow of cars during transition.** Applicants also should explain how they will cooperate with other carriers in overcoming natural disasters or other serious service problems during the transitional period and afterwards.

(iv) *Enhanced competition.* To offset harms that would not otherwise be mitigated, applicants shall explain how the transaction and conditions they propose will enhance competition.

Amended Proposed § 1180.1(h): Service assurance and operational monitoring.

(1) Good service is of vital importance to shippers. Accordingly, applicants must file, with the initial application and operating plan, a service assurance plan, identifying the precise steps to be taken to ensure continuation of adequate service and to provide for improved service. This plan must include the specific information set forth at § 1180.10 on how shippers and connecting railroads (including Class II and III carriers) across the new system will be affected and benefited by the proposed consolidation. As part of this plan, the Board will require applicants to establish contingency plans that would be available to address the negative impacts if projected service levels do not materialize in a timely fashion. **Affected shippers and Class II**

and III carriers shall be entitled to compensation for losses and increased costs that result if projected service levels do not materialize in a timely fashion.

(2) The Board will evaluate the plan submitted by the applicants, and ask for public comment on the adequacy and viability of the plan.

(3) The Board will conduct extensive post-approval operational monitoring to help ensure that service levels after a merger are reasonable and adequate.

(4) We will require applicants to establish problem resolution teams and specific procedures for problem resolution to ensure that post-merger service problems, related claims issues, and other matters are promptly addressed. Also, we would envision the establishment of a Service Council made up of shippers, railroads, and other interested parties to provide an ongoing forum for the discussion of implementation issues.

Amended Proposed § 1180.1(m): Public participation. *To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties. The Board specifically encourages applicants to discuss and resolve issues of all affected parties, to the extent possible prior to applicant's submission of a merger application to the Board.*

TECHNICAL RULES

• ***Amended Proposed § 1180.10 Service assurance plans.***

For major transactions: service assurance plan. Applicants shall submit a service assurance plan, which, in concert with the operating plan requirements, will identify the precise steps to be taken by applicants to ensure that projected service levels are attainable and that key elements of the operating plan will improve service. The plan shall describe with reasonable precision how operating plan efficiencies will translate into present and future benefits for the shipping public. The plan must also describe any potential area of service degradation that might result due to operational changes. The plan must encompass:

(a) Integration of operations. Based on the operating plan, and using benchmarks for the year immediately preceding the filing date of the application, applicants must describe how the transaction will result in improved service levels and must identify potential instances where service may be degraded. While precise in nature, this description is expected to be a route level review rather than a shipper-by-shipper review. Nonetheless, the plan should be sufficient for individual shippers to evaluate the projected improvements and respond to the potential areas of service degradation for their customary traffic routings. The plan should inform Class II and III railroads and other connecting railroads of the operational changes that may have an impact on their operations, including operations involving major gateways.

(b) Coordination of freight and passenger operations. If Amtrak or commuter services are operated over the lines of the applicant carriers, applicants must describe definitively how they will continue to operate these lines to fulfill existing performance agreements for those

services. Whether or not the passenger services operated are over lines of the applicants, applicants must establish operating protocols that ensure effective communications with Amtrak and/or regional rail passenger operators in order to minimize any potential transaction-related negative impacts.

(c) Coordination of Merchandise Freight(single carload freight) Operations.

Applicants must describe the intended plan for the coordinated movement of single carload freight over its lines. Such description shall include details of the coordinated interchange of traffic between applicants and other Class I, Class II and Class III carriers.

(d) Yard and terminal operations. The operational fluidity of yards and terminals is key to the successful implementation of a transaction and effective service to shippers. Applicants must describe how the operations of principal classification yards and major terminals will be changed or revised and how these revisions will affect service to customers. As part of this analysis, applicants must furnish dwell time information for one year prior to the transaction for each facility described above, and estimate what the expected dwell time will be after the revised operations are implemented. Also required will be a discussion of on-time performance for the principal yards and terminals in the same terms as required for dwell time.

(e) Infrastructure improvements. Applicants must identify potential infrastructure impediments (using volume/capacity line and terminal forecasts), formulate solutions to those impediments, and develop time frames for resolution. Applicants must also develop a capital improvement plan (to support the operating plan) for timely funding and completing the improvements critical to transition of operations. They should also describe improvements related to future growth, and indicate the relationship of the improvements to service delivery.

(f) Information technology systems. Because the accurate and timely integration of applicants' information systems are vitally important to service delivery, applicants must identify the process to be used for systems integration and training of involved personnel. This must include identification of the principal operations-related systems, operating areas affected, implementation schedules, the realtime operations data used to test the systems, and pre-implementation training requirements needed to achieve completion dates. If such systems will not be integrated and on line prior to implementation of the transaction, applicants must describe the interim systems to be used and how those systems will assure service delivery.

(g) Customer service. To achieve and maintain customer confidence in the transaction and to ensure the successful integration and consolidation of existing customer service functions, applicants must identify their plans for the staffing and training of personnel within or supporting the customer service centers. This discussion must include specific information on the planned steps to familiarize customers with any new processes and procedures that they may encounter in using the consolidated systems and/or changes in contact locations or telephone numbers.

(h) Labor. Applicants must furnish a plan for reaching necessary labor implementing agreements. Applicants must also provide evidence that sufficient qualified employees to effect implementation will be available at the proper locations prior to the transaction.

(i) Training . Applicants must establish a plan to provide necessary training to employees involved with operations, train and engine service, operating rules, dispatching, payroll and timekeeping, field data entry, safety and hazardous material compliance, and contractor support functions (i.e., crew van service), as well as to other employees in functions that will be affected by the transaction.

(j) Contingency plans for merger-related service disruptions. In order to address potential disruptions of service that may occur, applicants must establish contingency plans. Those plans, based upon available resources and traffic flows and density, must identify potential areas of disruption and the risk of occurrence. Applicants must provide evidence that contingency plans are in place to minimize negative service impacts and promptly restore service.

(k) Timetable. Applicants must identify all major functional or system changes/consolidations that will occur and the time line for successful completion.