

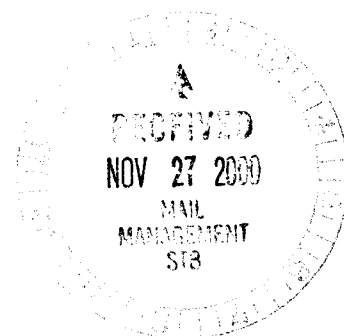
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Before the
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 634
CONSOLIDATED RAILROAD REPORTING



COMMENTS

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Due Date: November 27, 2000

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COMMENTS

Preliminary Statement

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment GO-386 (UTU-GO/386), submits these comments to the Surface Transportation Board (STB), in response to the STB's "Proposal to Require Consolidated Financial Reporting by Commonly Controlled Railroads" (Proposal), dated September 18, 2000 (served September 25, 2000), 65 Fed. Reg. 57650 (Sept. 25, 2000).^{2/}

UTU-GO/386 was an active participant in the former Interstate Commerce Commission (ICC) proceedings when the rail classification provisions were most recently amended in 1992, upon the 1990 joint petition of Montana Rail Link, Inc. (MRL) and Wisconsin Central

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^{2/} It is not clear whether the STB's September 25, 2000 issuance is for proposed rulemaking, inasmuch as neither the STB's Proposal nor the Federal Register notice set forth any statutory basis, and both are silent as to the character of the agency "Proposal."

Ltd. (WC). See: Montana Rail Link, Inc., and Wisconsin Central Ltd., 8 I.C.C.2d 625, 629 n.10 (1992).

This proceeding, of course, is also related to the recently-filed petition by WC to amend the very same reporting classifications involved herein. Ex Parte No. 584, Wisconsin Central Ltd.--Petition for Rulemaking--Classification of Carriers (filed November 15, 2000).3/

Presently, a rail carrier files an annual report with the STB if its revenue is equal to or greater than for a class 1 carrier; in addition, for revenue adequacy purposes (See: 49 U.S.C. 10704(a)(3)), the class 1 carrier is required to submit consolidated revenue in its Form R-1, Schedule 250.4/

The STB's September 25, 2000 Proposal would fundamentally revise present procedures and STB administration of numerous regulatory provisions. The Proposal would require consolidated reporting of a carrier's data with that of its majority-owned subsidiaries; that such reporting would be for all regulatory purposes; and a "carrier" would be classified by such revenue through the consolidation process for all regulatory purposes.

Contrary to the Proposal, the STB should require dual reporting, i.e., a class 1 carrier should file its usual R-1 annual report, and also a consolidated report with its subsidiary

3/ UTU-GO/386 presently anticipates becoming a participant to the proceeding, if it should be noticed for comment. Moreover, consolidated handling of Ex Parte No. 584 with the instant Proposal proceeding is suggested.

4/ See: Supplemental Reporting of Info. for Revenue Adequacy, 5 I.C.C.2d 65 (1988).

carriers; the STB should expand its reporting requirements to reinstate required reporting for class 2 and class 3 carriers.

ARGUMENT

The STB's Proposal has confused the need for carrier reports, with the specific regulatory purposes to be achieved by changed classifications.

I. THE STB AND THE PUBLIC NEED GREATER REPORTING, NOT THE REDUCED REPORTING ADVANCED BY THE STB IN ITS PROPOSAL.

The events since the 1992 amendments clearly indicate that the former ICC erred in limiting carrier data reporting, overriding UTU-GO/386's contentions. Montana Rail Link, Inc., and Wisconsin Central Ltd., 8 I.C.C.2d 625 (1992). The instant Proposal would further limit reporting, and confuse the data which is reported.

It would proper and useful for the STB to require a rail carrier and its subsidiaries to file a consolidated report, but the STB should not stop at that point. Separate reports also should be filed for each carrier. For example, there are numerous switching and terminal carriers, and other smaller carrier entities, which are subsidiaries of a major class 1 carrier. The STB should require separate reports from these smaller carriers, and all class 2 and class 3 carriers should file annual reports, irrespective of whether they are affiliated with a class 1 carrier. Many of these affiliated and subsidiary carriers have a separate work force.

It is eminently reasonable, and not an undue burden, for these smaller carriers to file separate reports with the STB. A good number of these smaller carriers do, in fact, report their data to the Association of American Railroads (AAR).^{5/} Railroad employees, and the public generally, should have the benefit of these reports and, moreover, the data should be verified and subject to federal scrutiny for accuracy.

The STB's Proposal to only require consolidated reports would confuse the actual facts concerning a particular carrier, and would result in lesser reporting of information. Instead, the STB should require a class 1 carrier to report on a separate as well as on a consolidated basis, and the reporting requirement should be extended to all class 2 and class 3 rail carriers, on an individual and on a consolidated basis.

II. THE STB CAN DEAL WITH THE CONSEQUENCES
OF AGGREGATE DATA WITHOUT CHANGING THE
THE DEFINITION OF CARRIER FOR ALL PURPOSES.

From the preliminary filings already made in this proceeding, it is apparent there are many objections to the STB's proposal that revenue be aggregated for a family of carriers, particularly if it would raise the level of classification for one or more of the carriers to the higher classification for the single (aggregate) reporting carrier.

However, the STB cannot and should not ignore the economic impact shown by the aggregate data, and the financial prowess for a family of carriers. Heretofore, the STB has made an exception to

^{5/} For example, see: Profiles of U.S. Railroads, published annually by AAR.

the separate identity of each family member when it comes to revenue adequacy, and has required such consolidated revenue reporting to determine "carrier" revenue adequacy.

The same treatment can be given carrier classification for purposes of employee protection. The STB can require separate carrier reports (as suggested herein) and, at the same time, require a "family" of carriers to file a consolidated report. The level of employee protection to be imposed in a transaction where employee protection is mandatory should be determined by the carrier classification for the family, even though the constituent carriers may have different classifications.

Employee protection, like revenue adequacy, is a financial consideration which a carrier should not escape through splintering the overall carrier enterprise into smaller entities.

Respectfully submitted,


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