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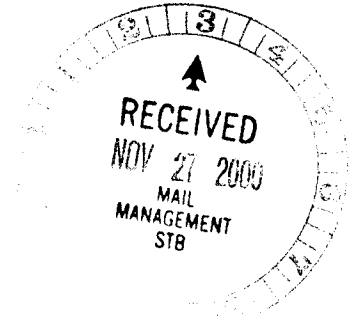
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November 24, 2000



FedEx

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 634
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Consolidated Railroad Reporting
STB Ex Parte No. 634
Comments of Bethlehem Steel Subsidiary Railroads

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 10 copies of the Comments of Bethlehem Steel Subsidiary Railroads, along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 9.0.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Very truly yours,


Eric M. Hocky

Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD
STB EX PARTE NO. 634



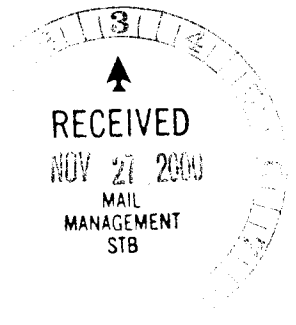
CONSOLIDATED RAILROAD REPORTING

COMMENTS
OF
BETHLEHEM STEEL CORPORATION
SUBSIDIARY RAILROADS

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Dated: November 24, 2000

Attorneys for Bethlehem Steel Corporation
Subsidiary Railroads



BEFORE THE
SURFACE TRANSPORTATION BOARD
STB EX PARTE NO. 634

CONSOLIDATED RAILROAD REPORTING

**COMMENTS
OF
BETHLEHEM STEEL CORPORATION
SUBSIDIARY RAILROADS**

The subsidiary railroads of Bethlehem Steel Corporation (the "Subsidiary Railroads") are filing these comments in response to the notice served September 25, 2000 (the "Notice") expressing the Board's intent to require consolidated reporting by commonly controlled U.S. railroads and their U.S. railroad-related affiliates. The Subsidiary Railroads believe that the Board's proposal would have an adverse impact on them as well as other groups of small carriers and should not be implemented.

The Subsidiary Railroads

Bethlehem Steel Corporation is a publicly traded, noncarrier steel company that controls directly, or indirectly, eight Class III railroads (operating at nine locations). The carriers are described on the attached Exhibit A. While each individual carrier is a Class III carrier, their consolidated annual income (approximately \$56,000,000) would re-classify them as Class II

carriers.¹ However, the railroads do not report their income on a consolidated basis; rather their income is consolidated with their parent Bethlehem Steel Corporation.

None of the Subsidiary Railroads connects with any other Subsidiary Railroad. Only one (Keystone Railroad, Inc.) operates in two locations; its divisions operate in Pennsylvania and in Indiana. The others operate in Pennsylvania, Delaware, Maryland and New York. Certain administrative services and overall supervision are provided from the Subsidiary Railroads' headquarters in Bethlehem, Pennsylvania. However, each Subsidiary Railroad is operated as a separate carrier managing its own operations and with its own operating employees. None of the operations are integrated with each other.

The Board's Proposal

The Board's regulations set forth the reports and format that are required to be filed by railroads under its jurisdiction. Currently, only Class I railroads are required to file Form R-1 Annual Reports, to keep their records in accordance with the detailed accounts described in 49 CFR Part 1201, and to file a variety of other reports under 49 CFR Parts 1241-1248. The Board also determines how carriers will be classified. *See* 49 CFR Part 1201, General Instruction 1-1.

As part of the process of establishing the Board's accounting regulations, the Board reviews statements issued by the Financial Accounting Standards Board ("FASB") to determine if carriers under the Board's jurisdiction should be required "to follow the new standards in their

¹ The Subsidiary Railroads have not yet determined which, if any, of their affiliates would qualify as a "railroad-related affiliate" as defined by the Board. *See* Notice at 4, n.6 (citation omitted). However, even if the revenues from potential railroad-related affiliates were included the total revenues would not exceed the threshold of a Class I carrier.

accounts and reports filed with the Board." 49 CFR §1200.2(a) (emphasis added). The Board also has the authority to determine if a FASB statement should not be required for Board reports. 49 CFR §1200.2(d).

The Board's current proposal is to adopt the consolidated reporting requirements of FASB Statement No. 94 ("FASB 94") (with modifications) for "all purposes." At the time FASB 94 was issued in October 1987, it was reviewed by the Board's predecessor who determined that consolidated reporting should, in effect be required only for the purposes of completing schedule 250 of Form R-1 (relating to revenue adequacy determinations), and to permit it for other reports and schedules. *See Supplemental Reporting of Information for Revenue Adequacy*, 5 ICC 2d 65 (1988). The Board, on its own initiative, now indicates that it wants to expand the application of FASB 94 not only to all of the reports required to be filed with it, but also to the determination of the classification of railroads. The Board gives no evidence of problems with how FASB 94 is currently being applied, or why it is taking this new position. It merely states, without citation, that "consolidated data would provide more meaningful and accurate information on major rail systems operating in the United States." Notice at 3.

Effect of Proposed Reporting Requirement

If the Board merely wanted Class I carriers to use consolidated data in all of the reports it receives (and not just schedule 250 to Form R-1) to reflect consolidated data, it could simply do so by changing the instructions for the reports and their schedules. It does not need to adopt

FASB 94 for "all purposes." In particular, it does not need to adopt FASB 94 for the purposes of determining the classification of carriers.²

For some groups of carriers, applying FASB 94 to the classification of carriers will mean that all of the affiliated carriers in the group will become classified as Class I carriers, subject to all of the Board's substantial accounting and reporting rules. For the Subsidiary Railroads, the change would mean that instead of each railroad being a Class III carrier as its individual revenues would dictate, each will become a Class II carrier, as would any newly formed subsidiary railroads or any additional railroads they or their parent Bethlehem Steel Corporation might acquire. The effects of such a change in how railroads are classified go well beyond the mere disclosure of financial information in a more meaningful way, they affect how a number of substantive provisions of Board's regulations will be applied. As discussed more fully below, these changes would have a substantial adverse affect on costs and on the ability of noncarriers such as Bethlehem Steel Corporation and groups of short lines like the Subsidiary Railroads to enter into new transactions.

The Subsidiary Railroads have been able to use shared administration and expertise, combined purchasing power and borrowing ability to keep down costs for its subsidiaries. These benefits of group ownership of short lines have long been recognized:

As the short-line interests point out, their continuing expansion has both resulted in and been facilitated by "group owners," *i.e.*, individuals or corporate parents that own or control a group of noncontiguous rail carriers or lines. These short-line conglomerates often provide common administrative, maintenance,

² The Board apparently believes that using the data for "all purposes" includes using it to change the classification of carriers. *See* Notice at 4.

marketing, and other management function, thus permitting economies of scale and lower costs.

Rail Consolidation Procedures – Continuance in Control of a Nonconnecting Carrier, 2 ICC 2d 677, 678 (ICC 1986). The Board's new proposal would now, without any stated reason, take away those benefits and, as described below actually discourage short line groups like the Subsidiary Railroads from making further acquisitions through the additional costs and delays that will be imposed.

The Board's regulations and the governing statute use a carrier's classification as a short hand for the carrier's market power – the larger the carrier, the more regulation that is needed to make sure that it does not abuse that market power. However, the class exemptions adopted with respect to the control of noncontiguous small carriers recognize that those problems do not exist with groups of small carriers. In adopting the class exemption, the Board's predecessor noted that there were limited reasons to worry about the common control, and that there were, in fact, good reasons to encourage such common ownership:

The transactions are of limited scope. They involve only non-Class I carriers and their continuance in control of new subsidiaries or affiliates that are initiating operations as rail carriers. Furthermore, the operations of the subject carriers typically are limited in terms of territory and shippers served.

Regulation is also not needed to protect shippers from abuse of market power. Continuance-in-control of nonconnecting lines has little, if any, impact on market power. The exemption also is limited to non-class I carriers. If anything, the exemption should assist in stimulating competition, since the lines the carriers are to operate often were or may be abandoned. Thus, the exemption should serve the vital interests of shippers, communities, and carriers by facilitating continuation or rapid resumption of service that might otherwise be delayed or lost.

Rail Consolidation Procedures, 2 ICC 2d at 679-680.

This is certainly illustrated by groups such as the Subsidiary Railroads. As noted above, each of the Subsidiary Railroads is operated as an independent entity. Each serves a separate territory and different shippers (although each serves a Bethlehem Steel facility). Judging each carrier by the consolidated data of the group would not present an accurate picture of the size and scope of each individual carrier's operations, and would actually be less accurate than examining their data separately.³ Thus, especially in the case of nonconnecting short lines there is no reason to require consolidated reporting of data or to use such data for classification purposes.

Implementing the board's proposal will mean that similarly situated individual carriers will be treated differently depending on whether they are part of a successful group of carriers. Where using consolidated data will re-classify carriers from Class III to Class II status, transactions under 49 USC §§10901 and 10902 will be subject to additional advanced notice requirements, and transactions under 49 USC 10902 and 11323 will be subject to additional labor protection requirements.

The potential effects of re-classifying the Subsidiary Railroads as Class II carriers can be seen by examining how two recent transactions involving the Subsidiary Railroads would have been different if the new rules had been in effect:

³ The class exemption applies only to non-Class I carriers. However, the ICC recognized that it is not necessarily appropriate to consolidate even commonly controlled Class I carriers when they are operated as separate systems. *See Standards for Railroad Revenue Adequacy*, 3 ICC 2d 261, 302-303 (1986).

Common Control. In May, 1998, Bethlehem Steel Corporation acquired another steel company, and along with the acquisition gained control of two additional carriers.

Bethlehem Steel Corporation – Control Exemption – Brandywine Valley Railroad

Corporation and Upper Merion and Plymouth Railroad Company, STB Finance Docket

No. 33602 (served June 16, 1998). Because all of the carriers involved were Class III carriers, under 49 USC §11326(c) no labor protection was required. However, if the Subsidiary Railroads had been re-classified, the transaction would have involved two Class III carriers (the Lukens carriers) and six Class II carriers, and would have been subject to full labor protection under 49 USC §11326(a).

Start up. In September 1999, Keystone Railroad, Inc. formed a new division to lease and operate tracks at the Burns Harbor, Indiana steel facility. Because Keystone Railroad was a Class III carrier with revenues of less than \$5,000,000 it was able to use the exemption provisions of 49 CFR 1150.31, with the exemption effective on 7 days notice. *See Keystone Railroad, Inc. d/b/a Lake Michigan and Indiana Railroad Company -- Lease and Operation Exemption -- Bethlehem Steel Corporation*, STB Finance Docket No. 33797 (served December 13, 1999). However, if Keystone Railroad was required to consider consolidated data, as a Class II carrier, it would have been required to comply with the additional notice requirements of 49 CFR§1150.35.

Thus, carriers that are part of groups such as the Subsidiary Railroads will be forced to incur additional expenses to acquire lines or expand operations, prejudicing them in making bids vis-a-vis other smaller groups of carriers, and expanding their business.

The additional costs imposed on groups of carriers will not be limited to the transaction costs described above. The proposal will require carrier groups to prepare special accounting reports under the Board's modified FASB 94 rules to determine what classification the carriers in the group will have. In the case of the Subsidiary Railroads, neither they nor Bethlehem Steel Corporation are required now to prepare any consolidated reports of their operations; rather their financial results are, pursuant to FASB 94, consolidated with those of Bethlehem Steel Corporation and all its affiliates. Thus, the Board's proposal would require creation of a whole new set of financial reports that would consolidate just the railroads and railroad-related affiliates, reports not in any way contemplated by FASB 94. Thus, it is clear that the Board's proposal will mean increased accounting costs for the Subsidiary Railroads.

The Board's proposal will also affect group owned Class III railroads in other ways to the extent it will result in their being reclassified as Class II carriers. For example, boxcars with Class III markings that continue to have prescribed rates could lose their protected status if Class carriers are re-classified as Class II carriers. Additionally, under the Railroad Industry Agreement (privately negotiated between large and small carriers under the auspices of STB Ex Parte 575), Class II carriers are not provided as many rights as Class III carriers. This will make it harder for carriers to avoid burdensome paper barriers and expand their business.

In sum, the Board's proposal will markedly increase the operating and transaction costs of Class III carriers that are commonly controlled with other small carriers. As such, the change proposed by the Board is inconsistent with the goals of the nation's rail transportation to minimize regulatory control, remove unnecessary regulatory burdens to entry, and encourage the development of a sound rail transportation system (including the short line industry). 49 USC §10101 (2), (4), (7). Groups of carriers should not be penalized merely for being part of a successful group of carriers. The Board should be reducing the regulation of small carriers and breaking down barriers to their growth, not setting up additional regulatory barriers.

Conclusion

For all the foregoing reasons, the Subsidiary Railroads believe that the Board should not require consolidated reporting as a general rule. If the Board continues to believe the use of consolidated data present a more complete report than current regulations, then it should require the use of such data only in the reports themselves. Consolidated data should not in any circumstances be used to determine the classification of carriers.

Respectfully submitted,



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Subsidiary Railroads

Dated: November 24, 2000

Exhibit A

**BETHLEHEM STEEL CORPORATION
SUBSIDIARY RAILROADS**

Railroad (state(s) of operation)	1999 Annual Revenues⁴
Keystone Railroad, Inc., and its divisions Philadelphia, Bethlehem and New England Railroad Company (Pennsylvania)	3,264,000
Lake Michigan and Indiana Railroad Company (Indiana)	1,061,000
Steelton & Highspire Railroad Company (Pennsylvania)	4,049,000
South Buffalo Railway Company (New York)	19,890,000
Patapsco & Back Rivers Railroad Company (Maryland)	15,327,000
Cambria & Indiana Railroad Company (Pennsylvania)	1,000
Conemaugh & Black Lick Railroad Company (Pennsylvania)	5,691,000
Upper Merion and Plymouth Railroad Company (Pennsylvania)	1,264,000
Brandywine Valley Railroad Corporation (Pennsylvania, Delaware)	5,127,000
Railroad Total:	55,674,000

⁴ Revenues have been rounded to the nearest \$1,000.