

### **Surface Transportation Board Summarizes Private-Sector Dispute Resolution of Pending Proceedings**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board continues to see success with private-sector solutions for resolving disputes in proceedings before the Board that involve a broad range of issues and various sectors of the transportation community, including carriers, shippers, employees, and local communities. [FOOTNOTE 1: These private-sector resolutions are in addition to the private disposition of those disputes not formally before the Board but, instead, resolved informally with the Board's assistance or according to sector-specific private agreements. The Board has strongly encouraged such private-sector agreements that establish mechanisms for dispute resolution in lieu of the formal litigation process.]

Chairman Morgan noted that the Board has as one of its performance goals to ensure that, where regulatory oversight is necessary, it is exercised efficiently and effectively, integrating market forces, as appropriate, into the overall regulatory model. In this regard, the Board continues to process various matters brought before it in a way that encourages parties to work cooperatively with the Board and with one another to promote private-sector negotiations and to find creative resolutions to disputed issues. Evidence of the success of private-sector resolutions of disputed proceedings before the Board is seen in the number of requests for voluntary dismissal or discontinuance of a variety of proceedings in each fiscal year since establishment of the Board, as listed below. Chairman Morgan also noted that, in addition to the settlements in the cases listed herein, the Board dismissed a substantial number of motor carrier undercharge proceedings following negotiated settlement by the parties. Numerous other settlements and private-sector resolutions have been reached in other proceedings, such as rail consolidations, that, while not necessarily resolving all matters pending in those proceedings, nonetheless contributed to their efficient prosecution and resolution overall. In addition, there have been private settlements reached in a number of proceedings in which the Board issued decisions that caused the parties to settle their disputes privately.

Proceedings discontinued following settlement are as follows.

#### **Fiscal Year 2001 (To Date)**

By decision issued November 3, 2000, in *Kansas Eastern Railroad, Inc.--Abandonment Exemption--In Butler and Greenwood Counties, KS*, STB Docket No. AB-563 (Sub-No. 1), the Board granted the request of Flint Hills Railroad Association and Phillip W. Landis to withdraw their petition to reopen and to stay the effective date of the notice of exemption permitting Kansas Eastern Railroad, Inc. to abandon a 44.5-mile line of railroad in Butler and Greenwood Counties, Kansas.

By decision issued November 20, 2000, in *City of Marshfield, WI--Acquisition Exemption--Wisconsin Central Ltd.*, STB Finance Docket No. 33836, the Board granted a jointly filed request by the City of Marshfield, Wisconsin (City), through the Wisconsin Department of Transportation (WisDOT), and Wisconsin Central Ltd. (WCL), following a settlement by the parties, to withdraw a petition under 49 U.S.C. 10502 for an exemption from the prior-approval requirements of 49 U.S.C. 10901 and other pertinent provisions of Subtitle IV of Title 49, through which the City had sought to acquire, by agreement or local eminent-domain authority, an interest in the real estate that underlay a segment of WCL's passing and side tracks.

By decision issued January 5, 2001, in *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company*, STB Docket No. 42038, the Board granted the request of Minnesota Power Inc. (MPI), following its settlement with the defendant railroad, the Duluth, Missabe and Iron Range Railway (DMIR), to withdraw its complaint alleging that rates to be assessed by DMIR to move MPI's unit trains of coal from a connection with The Burlington Northern and Santa Fe

Railroad Company (BNSF) at Keenan, Minnesota, to MPI's Laskin Energy Center, a coal-fired electric generating facility near Colby, MN, would exceed a maximum reasonable level.

By decision issued February 12, 2001, in *Cemex USA--Petition for Declaratory Order--The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33853, the Board granted a joint motion to dismiss a declaratory order proceeding instituted at the request of Cemex USA (Cemex), in connection with a dispute between Cemex and BNSF over whether the 1.6-mile BNSF line serving Cemex's Fort Worth, Texas distribution terminal was a line of railroad or exempt lead or spur track under 49 U.S.C. 10906. Cemex and BNSF reached a settlement that included sale of the pertinent trackage by BNSF to Cemex, and the Board discontinued the proceeding.

### **Fiscal Year 2000**

By decision issued October 22, 1999, in *Salt Lake City Railroad Company, Inc.--Adverse Abandonment--Line of Utah Transit Authority in Salt Lake City, UT*, STB Docket No. AB-520, the Board granted the request of the Utah Transit Authority (UTA) to withdraw its application under 49 U.S.C. 10903, requesting the Board find that the public convenience and necessity require or permit the abandonment by the Salt Lake City Southern Railroad Company, Inc. (SLCS), of a 24.95-mile rail line in Salt Lake County, Utah. A settlement between UTA and SLCS made the abandonment proceeding unnecessary, and the Board discontinued the proceeding.

By decision issued November 19, 1999, in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, and *Responsive Application--State of New York, By and Through Its Department of Transportation, and The New York City Economic Development Corporation*, STB Finance Docket No. 33388 (Sub-No. 69), the Board dismissed, at the request of the petitioners, a petition asking that the Board revisit the conditions granting trackage rights that permit the Canadian Pacific Railway Company and its affiliates to operate over certain lines owned by CSX Corporation and CSX Transportation, Inc. (CSX), to serve shippers in the New York City area, after the parties had resolved their differences privately.

By decision issued November 29, 1999, in *Prairie Creek and Connecting Railway, Inc.--Construction and Operation Exemption--in Cedar Rapids, IA*, STB Finance Docket No. 33759, the Board dismissed, at the request of the petitioner, a petition for exemption under 49 U.S.C. 10502 from the requirements of 49 U.S.C. 10901 to construct a line of railroad, approximately one mile in length, from an interchange with the Union Pacific Railroad Company (UP) to the facilities of the Archer-Daniels-Midland Company in Cedar Rapids, Iowa. The Board discontinued the proceeding and dismissed other pending motions as moot, following an agreement among the parties making the proceeding unnecessary.

By decision issued February 14, 2000, in *Ocean Logistics Management, Inc. v. NPR, Inc., and Holt Cargo Systems, Inc.*, STB Docket No. WCC-102, the Board dismissed at the joint request of the parties, following settlement of all claims, a complaint filed under 49 U.S.C. 13701(c) by Ocean Logistics Management, Inc., a non-vessel operating common carrier, seeking a finding that NPR, Inc., a vessel operating common carrier providing transportation between the United States and Puerto Rico, and its affiliate, Holt Cargo Systems, Inc., had engaged in certain unreasonable practices in violation of 49 U.S.C. 13701(a)(1)(B).

By decision issued April 3, 2000, in *Central of Tennessee Railway & Navigation Company Incorporated DBA The Longhorn Railway Company--Petition for Declaratory Order*, STB Finance Docket No. 33820, the Board granted the petitioner's request following a settlement to withdraw a petition for declaratory order alleging, and requesting a finding, that Capital Metropolitan Transportation Authority of the Austin, TX area, the owner of the line, engaged in a pattern of behavior inconsistent with its common carrier obligation.

By decision issued April 28, 2000, in *Western Fuels Service Corporation v. The Burlington Northern and Santa Fe*

*Railway Company*, STB Docket No. 41987, the Board granted the request following a settlement to dismiss the complaint filed under 49 U.S.C. 11102 in which the complainant had sought an order requiring BNSF to grant certain terminal trackage rights in the Powder River Basin of Wyoming.

By decision issued May 18, 2000, in *Burlington Northern Inc., and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (Petition to Reopen--Roquette America, Inc.)*, STB Finance Docket No. 32549 (Sub-No. 22), the Board granted the request of Roquette America, Inc. (RAI), following its agreement with BNSF, to withdraw its petition to reopen the decision in *Burlington Northern Et Al.--Merger--Santa Fe Pacific Et Al.*, 10 I.C.C.2d 661 (1995), to remedy an alleged loss of railroad competition at RAI's facilities at Keokuk, IA. The Board dismissed the proceeding.

### **Fiscal Year 1999**

By decision issued December 2, 1998, in *Rochelle Railroad Co.--Petition to Set Trackage Rights Compensation and Other Terms and Conditions--City of Rochelle, IL*, STB Finance Docket No. 33555, the Board dismissed a petition filed by the railroad requesting that the Board institute a proceeding to determine the compensation and other terms for its continued operation over a 2.1-mile rail line owned by the City of Rochelle, Illinois, after the parties entered into a settlement agreement resolving the issues raised in the proceeding.

By decision issued December 31, 1998, in *Sault Ste. Marie Bridge Co.--Acquisition and Operation Exemption--Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33290, the Board granted the request of the Inland Steel Company and LTV Steel Company, Inc., (protestants) to withdraw their petition requesting the Board's rejection or revocation of a notice of exemption filed by Sault Ste. Marie Bridge Company to acquire and operate UP rail lines in the Upper Peninsula of Michigan and northern Wisconsin. The Board discontinued the proceeding as to filings made by these protestants.

By decision issued February 23, 1999, in *Kansas City Terminal Railway Company and The Atchison, Topeka and Santa Fe Railway Company--Contract to Operate Exemption--In Kansas City, MO*, STB Finance Docket No. 32896, the Board granted the request of petitioners to withdraw their joint petition for exemption from the requirements of 49 U.S.C. 11323 to enter into a joint contract for The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) to operate the Kansas City Terminal Railway Company's (KCT) facilities for the benefit of the owners of KCT, including Kansas City Southern Railway Company (KCS). Permission to withdraw the petition was sought following settlement of the issues of concern to petitioners and KCS, and the Board discontinued the proceeding.

By decision issued March 12, 1999, in *Shell Chemical Company and Shell Oil Company v. Boston & Maine Corporation, et al.*, Docket No. 41670, the Board granted the request of the complainants to dismiss the complaint relative to CSX and all other remaining defendants. In a number of earlier decisions issued between June 24, 1996, and April 6, 1998, the Board had dismissed the complaint as it applied to certain other defendants. The complainants had alleged that the defendant railroads were charging unreasonable rates on complainants' carload shipments of polyethylene terephthalate to and from referenced points in violation of 49 U.S.C. 10701a. The Board discontinued the proceeding.

By decision issued March 17, 1999, in *Application of Ventura County Transportation Commission for an Order Directing Emergency Relief in Ventura County, CA*, in Service Order No. 1519, the Board granted the request of the Ventura County Transportation Commission (VCTC) to withdraw its request for an emergency order requiring UP to allow temporary joint or common use of certain of its facilities for commuter rail operations conducted for VCTC by the Southern California Regional Rail Authority.

By decision issued May 11, 1999, in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated*

*Rail Corporation (Arbitration Review)*, STB Finance Docket No. 33388 (Sub-No. 89), at the request of the petitioner, the Board dismissed the petition filed by the Transport Workers Union of America (TWU) for review of an arbitration award following a settlement agreement among TWU and the involved railroads.

By decision issued May 13, 1999, in *Pennsylvania Power & Light Company v. Consolidated Rail Corporation, et al.*, Docket No. 41295, the Board, at the request of the complainant, dismissed the complaint involving rail rates for the transportation of coal and discontinued the proceeding after the complainant had reached a voluntary settlement with the defendant railroads.

By decision issued May 13, 1999, in *PSI Energy, Inc. v. CSX Transportation, Inc. and Soo Line Railroad Company*, STB Docket No. 42034, at the request of the complainant following a settlement reached by the complainant with the defendant railroads, the Board dismissed the complaint in which the complainant had sought an order requiring the railroads to establish reasonable rates for the movement of coal in specified volumes from origins in Indiana to PSI's generating station at Cayuga, in Vermillion County, Indiana.

By decision issued May 18, 1999, in *CSX Corporation and CSC Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Ry. Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation (Arbitration Review)*, STB Finance Docket No. 33388 (Sub-No. 88), the Board dismissed, at the requests of the petitioners, the petition filed by the International Association of Machinists and Aerospace Workers and the Brotherhood of Maintenance of Way Employees (BMWE) for review of an arbitration award following settlement agreements reached by the unions with the railroads.

By decision issued September 24, 1999, in *Vermont Railway, Inc. Request for Service Order Under 49 U.S.C. 11123*, STB Service Order No. 1522, the Board dismissed, at the request of Vermont Railway, Inc. (VTR), its request for a service order under 49 U.S.C. 11123 for the Board to direct and authorize VTR, or a subsidiary, to operate over an approximately 14-mile rail line in Vermont, between Montpelier Junction and Graniteville, owned by the State of Vermont, and to exercise certain related trackage rights over the lines of another railroad in Vermont. VTR instead filed a notice for a modified certificate of public convenience and necessity to operate between Montpelier Junction and Graniteville.

## **Fiscal Year 1998**

By decision issued February 13, 1998, in *The Burlington Northern and Santa Fe Railway Company v. American Train Dispatchers Department Brotherhood of Locomotive Engineers*, STB Finance Docket No. 33429, the Board granted the request following settlement to dismiss the complaint in which BNSF had sought an order requiring the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers to cease alleged unlawful attempts to invoke arbitration of an implementing agreement, under *New York Dock Ry--Control--Brooklyn Eastern Dist.*, 360 I.C.C. (1979) (*New York Dock*), in connection with the relocation of former Santa Fe train dispatchers and other management employees from Schaumburg, IL, to BNSF's headquarters in Ft. Worth, TX.

By decision issued April 9, 1998, in *Southwest Railroad Car Parts Company v. Missouri Pacific Railroad Company*, Docket No. 40073, the Board granted the request following settlement to dismiss a complaint alleging that the rail rate charged by the Missouri Pacific Railroad Company for transporting retired rail cars was unreasonable.

By decision issued May 19, 1998, in *Reading Blue Mountain & Northern Railroad Company--Acquisition and Operation Exemption--Consolidated Rail Corporation*, STB Finance Docket No. 33004, the Board granted the request of the Delaware and Hudson Railway Company, Inc., to withdraw its petition for revocation of an exemption filed by the Reading Blue Mountain & Northern Railroad Company, Inc., to acquire and operate specified lines of the Consolidated Rail Corporation (Conrail).

By decision issued June 18, 1998, in *Potomac Electric Power Company v. CSX Transportation, Inc.*, STB Docket No. 41989, the Board granted the request of the complainant following settlement with CSX to dismiss the complaint seeking the establishment of reasonable rates for the transportation of coal in unit trains between, on the one hand, certain origins and/or interchanges in Pennsylvania, West Virginia, and Maryland, and, on the other, Potomac Electric Power Company's Dickerson Station generating plant at Dickerson, Maryland.

By decision issued July 17, 1998, in *DeBruce Grain, Inc. v. Union Pacific Railroad Company*, STB Docket No. 42023, the Board dismissed the proceeding following settlement where DeBruce Grain, Inc. had sought damages from UP for alleged service and car service violations and alleged discrimination.

By decision issued July 17, 1998, in *Sierra Pacific Power Company and Idaho Power Company v. Union Pacific Railroad Company*, STB Docket No. 42012, following settlement, the Board dismissed the complaint in which the Sierra Pacific Power Company and the Idaho Power Company sought the prescription of reasonable rates and service terms, and reparations for the transportation of coal in unit trains by UP from the loadout facilities in Sharp, UT, to the complainants' North Valmy Station in north central Nevada.

By decision issued August 17, 1998, in *Track Tech, Inc.--Acquisition and Operation--The Burlington Northern and Sante Fe Railway Company*, in STB Finance Docket No. 33434, the Board granted the request of the United Transportation Union (UTU) to withdraw its petition for revocation of an exemption filed by Track Tech, Inc. to acquire and operate specified lines of BNSF in Iowa.

By decision issued September 9, 1998, in *Brotherhood of Maintenance of Way Employes--Petition for Declaratory Order*, STB Finance Docket No. 32549 (Sub-No. 21), the Board granted the request of the petitioner following settlement to dismiss the petition of the BMWWE seeking a declaratory order that BNSF's April 7, 1998 notice of proposed consolidation of seniority districts did not comply with certain procedural notice requirements of *New York Dock* employee protective conditions.

By decision issued September 11, 1998, in *Application of Ventura County Transportation Commission for an Order Requiring Joint Use of Terminal Facilities In Ventura County, CA*, STB Finance Docket No. 33557, the Board granted the request of VCTC following settlement to withdraw its application in which it sought an order under 49 U.S.C. 11102(a) to require UP to permit VCTC to use certain of its terminal facilities and 18.6 miles of main line trackage for commuter rail operations.

### **Fiscal Year 1997**

By decision issued October 18, 1996, in *Application of The National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)--Order to Require Service and Set Compensation Terms*, STB Finance Docket No. 32911, the Board dismissed the proceeding following settlement where the National Railroad Passenger Corporation (Amtrak) had sought an order under 49 U.S.C. 24308(a) requiring BNSF (1) to continue to make rail lines and other facilities available to Amtrak and to provide ancillary services necessary to the continued operation of Amtrak's trains and (2) to determine reasonable terms and compensation for Amtrak's use of the facilities and services.

By decision issued October 28, 1996, in *Habco Steel Service, Inc.--Petition for Declaratory Order--Illinois Central Railroad Company*, Docket No. 41621, the Board following settlement by the parties dismissed the petition seeking a declaratory order that it would be unlawful for Illinois Central Railroad Company to attempt to collect certain demurrage charges.

By decision issued February 20, 1997, in *Demurrage Provisions and Charges, Burlington Northern Railroad*, Docket No. 41494, (Suspension Case No. 71651), the Board, following notification by all of the protestants to the tariff stating that they had reached a voluntary settlement and release agreement, dismissed the proceeding where the former Interstate Commerce Commission had instituted an investigation into the lawfulness of the Burlington Northern Railroad Company's (BN) tariff, ICC BN 6004, to consider whether that tariff constituted an unreasonable practice in violation of 49 U.S.C. 10701.

By decision issued March 31, 1997, in *Armstrong World Industries, Inc. v. Consolidated Rail Corporation*, STB Docket No. 41990, the Board dismissed, following settlement, the complaint in which Armstrong World Industries, Inc. had alleged that Conrail's failures to timely deliver rail cars was an unreasonable practice resulting in assessment of excessive demurrage charges.

By decision issued April 4, 1997, in *Commencement Bay Corrugated v. Burlington Northern Railroad Company*, STB Docket No. 41983, the Board dismissed, following settlement, the complaint in which Commencement Bay Corrugated had alleged that BN had failed to provide service on reasonable request in violation of 49 U.S.C. 11101.

By decision issued April 24, 1997, in *Central Michigan Railway Company--Trackage Rights Exemption--Detroit & Mackinac Railway Company*, Finance Docket No. 32404, the Board granted the request of the Lake State Railway Company to withdraw its petition for revocation of an exemption authorizing non-exclusive, local and overhead trackage rights for Central Michigan Railway Company over specified lines in Michigan of Detroit & Mackinac Railway Company.

By decision issued July 15, 1997, in *The Clark Grave Vault Company v. Consolidated Rail Corporation*, Docket No. 41667, following settlement, the Board dismissed the complaint of The Clark Grave Vault Company alleging that certain rules and practices of Conrail were unreasonable and unlawful in violation of 49 U.S.C. 10701.

**Fiscal Year 1996 (9 Months)**[FOOTNOTE 2: The Board came into existence on January 1, 1996.]

By decision issued July 8, 1996, in *Union Pacific Corporation, et al.--Control--Chicago and North Western Transportation Company and Chicago and North Western Railway Company, et al.*, STB Finance Docket No. 32133 (Sub-No. 4), *et al.*, the Board dissolved a stay of UP's implementation of the arbitration awards and discontinued the proceeding following an agreement on modifications to, and interpretations of, the arbitrator's awards that addressed the concerns expressed by the Brotherhood of Locomotive Engineers and the UTU.

By decision issued August 2, 1996, in *United Transportation Union--Western Maryland Railway Company--Petition for Order Compelling CSX Transportation, Inc. to Comply With Oregon Shortline Conditions*, Finance Docket No. 32983, the Board dismissed the petition filed by the General Committee of Adjustment of the United Transportation Union--Western Maryland Railway Company (UTU-WM), requesting that the Board compel CSX to comply with the arbitration provisions imposed in an earlier abandonment proceeding, after CSX's agreement to arbitration and UTU-WM's withdrawal of the petition.

By decision issued September 4, 1996, in *Putnam County--Petition for Declaratory Order--Common Carrier Obligation*, STB Finance Docket No. 32971, the Board granted the request of Putnam County following settlement to withdraw its petition for a declaratory order regarding the common carrier obligation on the Harlem Line in New York State.

By decision issued September 20, 1996, in *American Iron & Metal Co., Inc. v. The Atchison, Topeka and Santa Fe Railway Company and Burlington Northern Railroad Company*, ICC Finance Docket No. 32840, the Board dismissed the complaint concerning the removal by Santa Fe of a switch to a side track serving American Iron & Metal Co., Inc. at Pueblo, Colorado, following the parties' agreement in principle for reinstallation of a track connection.

Chairman Morgan also indicated that several proceedings are being held in abeyance at the request of the parties either to await completion of pending settlement negotiations or to await other developments. Those proceedings are: *Mid Atlantic Railroad Co., Inc. v. Horry County of the State of South Carolina and the Waccamaw Coastline Railroad Company*, Finance Docket No. 32142; *Metro Regional Transit Authority--Acquisition Exemption--CSX Transportation, Inc.*, STB Finance Docket No. 33838; *Trainload Rates on Radioactive Materials, Eastern Railroads*, I&S Docket No. 9205; *U.S. Department of Energy, et al. v. The Baltimore and Ohio Railroad Co., et al.*, Docket No. 38302S; *U.S. Department of Energy, et al. v. Aberdeen & Rockfish Railroad Co., et al.*, Docket No. 38376S; and *Northern Indiana Public Service Company v. Consolidated Rail Corporation*, STB Docket No. 42027.

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