FOR RELEASE
03/17/2000 (Friday)
No. 00-17

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SURFACE TRANSPORTATION BOARD DIRECTS RAILROADS TO TAKE A BREATHER FROM MERGERS WHILE NEW MERGER RULES ARE DEVELOPED

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision directing large railroads not to pursue further merger activities until the Board has adopted new rules governing merger proceedings. The Board indicated that it would issue rules in 15 months. The decision was issued following four days of hearings triggered by the recent announcement that the Burlington Northern Santa Fe (BNSF) and the Canadian National (CN) railway systems intend to ask the Board to allow them to merge.

The Board noted that the railroad industry has consolidated aggressively in recent years, with only six large railroads remaining in the United States and Canada. But merger implementation has not typically gone smoothly, and indeed the railroad industry and the shipping public have not yet fully recovered from the service disruptions associated with the previous round of mergers. Additionally, the testimony at the hearing confirmed the Board's perception that a BNSF/CN combination would more than likely instigate, in the very near future, responsive mergers involving each of the other four large railroads. Therefore, the Board, like numerous parties that testified before it during its hearing, concluded that it needed to revisit its merger rules in light of the current transportation environment and the prospect of a North American transportation system composed of as few as two transcontinental railroads.

BNSF and CN had argued that the Board could move their proceeding forward and still revisit the merger rules, but the Board disagreed. It concluded that it simply makes no sense to attempt to develop new merger rules in the middle of what could be the final round of major railroad mergers, involving possibly all six of the largest North American railroads. The parties would not know what evidence to present or what the final approval standards would be, and in the end, once the new rules were adopted, the merger process would likely have to start all over again. Putting the industry through that process, the Board found, would likely destabilize the industry; force railroads whose management should be focused on fixing their service problems to instead look for merger partners, defend their proposals, and respond in the regulatory arena to other railroads' proposals; drive away investors, who have recently forsaken the railroad industry in favor of businesses that they have come to believe may have more favorable future prospects; and ultimately interfere with the industry's ability to finance the capital improvements necessary to provide the better service that is key to their financial revitalization.

For these reasons, the Board found that, until its merger regulations are revised 15 months from now, it would not permit further major rail mergers.

The Board's decision was issued today in *Public Views on Major Rail Consolidations*, STB Ex Parte No. 582. A printed copy is available for a fee by contacting: **Da-To-Da Office Solutions, Room 210, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. Today's notice is also available for viewing and downloading via the Board's website at **www.stb.dot.gov**.

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