

SURFACE TRANSPORTATION BOARD DENIES REQUESTS THAT IT "STAY" ORDER DIRECTING RAILROADS TO TAKE A BREATH 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 denying requests that it "stay" its decision issued on March 17 directing large railroads not to pursue further merger activities before the Board until it has adopted new rules governing merger proceedings. In the March 17 decision, which was issued following 4 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 indicated that it would issue merger rules in 15 months. The requests for a stay, which would allow the BNSF/CN merger process to go forward while the March 17 decision is litigated in court, were made by BNSF and CN.

In its March 17 decision, 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 in the March 17 decision 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. In fact, on March 31, 2000, the Board issued an advance notice of proposed rulemaking setting forth several areas in which it believes that changes in the regulations are necessary or should be considered.

In support of their requests for stay, BNSF and CN argued that the Board lacks authority to temporarily decline to accept new merger filings, and that, in any event, the Board's action was not taken in a lawful manner because it was not issued after formal "notice and comment" procedures. In denying the stay requests, the Board found that the law permits it to put a temporary hold on new merger applications while it makes changes to its merger rules, and that the March 17 decision did not contravene the notice and comment procedures of the law. The Board found that a stay of the March 17 decision would not be in the public interest. The Board said:

"Through the requests for stay, BNSF and CN seek the opportunity to file their application . . . now so that they can have their announced proposal (and presumably only their announced proposal) proceed under our old rules (or some interim rules that are acceptable to them) while new rules are developed and the issue of our authority to delay new filings is litigated. But other railroads have indicated that they will seek to make strategic responses once a BN/CN application is filed, and any such proposals should be treated under the same rules that govern BNSF and CN. Because our current regulations are inadequate to address what will likely turn out to be the final round of North American rail restructuring, we must adopt new rules before any major transactions can be considered. A stay would force consideration of the BN/CN proposal (and, very likely, other proposals developed in response) before we can determine how we should assess the public interest in these major merger cases. We find that such a backwards process is not required by law and would contravene the public interest."

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 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. Today's decision is also available for viewing and downloading via the Board's website at www.stb.dot.gov.

