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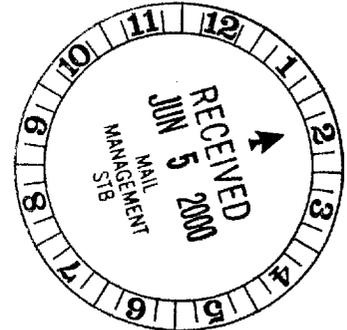
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June 2, 2000.

Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



ENTERED
Office of the Secretary

Re: Major Rail Consolidation Procedures.
Ex Parte No. 582 (Sub-No. 1)

JUN 05 2000

Part of
Public Record

Dear Sir or Madam:

Attached herewith for filing please find 25 copies of the Reply of Canadian Resource Shippers Corporation to the comments of Canadian National Railway Company in connection with the Board's Advance Notice of Proposed Rulemaking in the above proceeding issued April 6, 2000.

Also enclosed is an electronic copy of this letter and the said Reply on 3.5-inch IBM compatible floppy diskette, in WordPerfect 7.0 format

Very truly yours,

Forrest C. Hume

Attorney for Canadian
Resource Shippers Corporation

FCH/bhn
Encls.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Ex Parte No. 582 (Sub-No.1)

MAJOR RAIL CONSOLIDATION PROCEDURES

Reply of
Canadian Resource Shippers Corporation ("CRSC")
to the comments of Canadian National Railway Company ("CN")

CRSC's reply will be confined to certain arguments advanced in the "Promoting and Enhancing Competition" and "Cross-Border Issues" sections of CN's comments. *CN's comments*, sections V and X respectively.

Promoting and enhancing competition: in this section of its comments, CN argues, *inter alia*, that the Board should not fashion a rule to prescribe how merging railroads are to maintain gateways. CN's analysis focuses on the issue of inefficient foreclosure, and cites previous decisions which concluded that merged railroads continue to have strong incentives to use the most efficient routes, including interline routes where the merged railroad's single-line route is less efficient. *CN's comments*, page 34.

The need to maintain open gateways is not confined to the issue of railway efficiency however. The greater concern is the maintenance of competition in the setting of railway rates. Gateways between Canadian and U.S. railroads must remain open in order to preserve existing competitive rates and rate remedies on traffic destined to U.S. markets. Mr. Park, Vice-President of the CRSC, has described how Canadian remedial legislation and jurisprudence enables shippers to obtain competitive rates on the Canadian portion of international rail movements to U.S. markets. *CRSC's comments*, pages 3 - 8.

If the gateways between Canadian and U.S. railroads are eliminated (or even if they are not eliminated, but become uncompetitive) due to the merger of a Canadian and a U.S. railroad, then existing competition is foreclosed. Shippers of goods into U.S. markets will lose the ability to obtain competitive rates for the Canadian portion of international movements. To correct against that happening, the CRSC has urged the Board to amend its regulations governing proposals for major rail consolidations involving a Canadian railroad, to require that merger applicants demonstrate that the proposed merger will not lessen competition in respect of international traffic, and that the Board's regulations specify that the Board's competitive analysis of such mergers include formal consultation with Canadian authorities. *CRSC's comments*, page 9.

Cross-Border Issues: in this section of its comments, CN contends, *inter alia*, that cross-border issues require no merger rules. CN argues that other authorities are available to handle the adverse effects of a major rail consolidation involving a Canadian railroad. For instance, CN claims that if a merger resulted in boards of directors attempting to “subsume economic incentives and behavior to a national political agenda”, it would engender “the most serious government-to-government responses”. *CN comments*, page 48. CN also admonishes the Board against amending its rules to address concerns about major rail consolidations involving a Canadian railroad, because that might “raise serious issues” under the North American Free Trade Agreement (“NAFTA”). CN argues that issues involving concerns about domestic lumber or grain “should likewise be left to international trade dispute mechanisms”. *CN’s comments*, page 49 - 50.

In other words, CN is asking the Board to cast a blind eye to all of these issues in major rail consolidation proceedings involving a Canadian railroad. The proposed CN - BNSF combination is such a proceeding. CN’s position is that if the Board’s approval of a merger results in adverse effects, the public interest will be protected *ex post facto* by the courts, or by government intervention, or by international trade dispute mechanisms. With respect, the Board should act on its own to protect the public interest in evaluating any major rail consolidation, and it should amend its regulations to enable it to have all of the information it needs to make an informed decision. Amending the Board’s regulations to specifically require that the Board, in a major rail consolidation involving a Canadian railroad, consult with Canadian authorities, would enable the Board to do just that.

CN has pointed out that NAFTA’s goal is, in part, to “facilitat[e] the cross border movement of goods and services” between the U.S. and Canada. **Since the merger of a Canadian railroad and a U.S. railroad can result in the elimination of existing competition on the Canadian portion of international traffic, it is therefore only prudent that the Board amend its regulations to also specify consultation with NAFTA authorities on any major rail consolidation involving a Canadian railroad.**

CN has stated that “The Board should not attempt to deny shippers (and, ultimately, U.S. consumers) the benefits of efficiencies resulting from mergers between U.S. and Canadian railroads”. *CN’s comments*, page 51. CRSC would rephrase CN’s statement as follows: “The Board’s regulations should protect against denying shippers (and, ultimately, U.S. consumers) the benefits of existing competition on international traffic resulting from mergers between U.S. and Canadian railroads”.

Respectfully submitted on behalf of the CRSC this 2nd day of June, 2000.

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Attorney for Canadian Resource
Shippers Corporation

CERTIFICATE OF SERVICE

I certify that this 2nd day of June, 2000, I have served a copy of the foregoing on all parties of record on the Service List in accordance with the Board's Rules of Practice.



Forrest C. Hume