

Oral Testimony of Linda J. Morgan  
Chairman of the Surface Transportation Board  
Senate Committee on Commerce, Science, and Transportation  
Hearing on the Surface Transportation Board  
March 17 Decision on Rail Mergers

March 23, 2000

- I am appearing today at the request of this Subcommittee.
- When I was notified on Monday that there would be a hearing at which I was to be the only witness, I was told that I was to respond to questions regarding the Board's March 17 decision on rail mergers.
- I have submitted a short written statement summarizing the decision, to which I have attached a copy of the decision. I ask that all of that be submitted into the record in full.
- I will now make a few brief comments about the March 17 decision before I take questions.
- That decision followed 4 days of hearings, beginning on March 7, with over 150 witnesses from all segments of the rail sector and from various branches of government. It focused on the issue of major rail consolidations.
- The decision found that the rail industry is poised to move toward the final phase of consolidation. We concluded that the current rail merger rules are not appropriate given the level of concentration that is likely to result if the next round of mergers is carried out. For that reason, and because a new round of mergers at this time will aggravate the difficulties that the industry is already having in connection with the last round of mergers, the decision suspends for 15 months the filing of major rail consolidation proposals, pending a reexamination of our rail merger rules.
- The Board has pending before it two petitions to stay the decision, and the decision has been appealed by three parties to the Court of Appeals for the D.C. Circuit.
- The Board is working on an advanced notice of proposed rulemaking regarding changes to our rail merger rules, which will be issued by April 6, 2000.
- The decision itself is quite clear and speaks for itself, and I am proud of it. But it would not be appropriate for me to engage in extensive dialogue about it, given the suits in court and the fact that there are matters in deliberation at the Board pertaining to the decision. However, there are a few comments I wish to make about it.

- There are those who argue that what we did by suspending rail merger activity was extreme and unnecessary. The Board's action was unprecedented, but bold action was necessary, given the extraordinary circumstances presented to the Board, and the decision lays that out in detail.
- There are those who question the Board's authority to have done what it did by suspending merger filings while the merger rules are being examined. In response, all I would say is that the Board believes very strongly that it has the authority to do what it did, and the decision is clear on that point.
- There are those who argue that we should have handled the BNSF/CN merger while we reexamined our merger rules. The Board believed that it made no sense to consider new merger rules while considering what could be the final round of major rail consolidation. The Board also believed that the risk of creating more instability in an already unstable rail sector was too great. The decision lays all this out in detail.
- And there are those who have argued that the decision was issued to protect railroads from competition. Our decision was clearly made to protect the broader public interest. The decision is clear on that.
- As the decision points out, the totality of the record compiled focused on clear concerns about the state of rail service and competition today and about the negative impact of further consolidation on service and competition. The Board's March 17 decision responds to those concerns in a responsible, forceful and appropriate manner.
- The Board strongly believes that the greater public interest is served by a suspension of merger filings for 15 months, pending reexamination of our merger rules.
- In closing, let me say that I wish the Board had not been forced to take this extraordinary action, and my commenting opinion clearly reflects how difficult the deliberations were. But in my 6 years at the Board and the ICC, we have been faced again and again with new challenges, and we have always stepped up to the plate and done what was necessary. I am proud to say that we met the challenge and acted responsibly here.
- I am not sure how much more I will be able to add, but I will answer any questions as best as I can.