

CSX/NS/CONRAIL Oral Argument

Opening Statement

June 3, 1998

Good morning.

We are here today and tomorrow to hear oral argument in the CSX/NS/Conrail merger proceeding. We will discuss and vote on the case in a voting conference next Monday.

This merger is, in many ways, unprecedented. It is unprecedented in its size, with 44,000 miles of rail line covered by the application, which itself amounted to almost 15,000 pages. It is unprecedented in its range, with 24 states and the District of Columbia affected. It is unprecedented in terms of the number of private sector agreements reached, including agreements with three major labor unions and the Nation's largest shipper organization, and a number of agreements regarding the environment and safety. It is unprecedented in terms of the number of parties, more than 150; the number of speakers at the argument, around 70; the length of the argument, two full days; and the number of Members of Congress speaking at the argument, around 20. And it is unprecedented in that the Board has already issued some 85 decisions in this matter.

Also unprecedented is the way in which the Board has handled the environmental and safety issues in this case: the Board issued the first full Environmental Impact Statement (EIS) in a merger proceeding; the EIS was expansive in scope, covering 3,000 pages and addressing a variety of environmental issues over a broad section of the Nation; and there was close cooperation between the Board and the Department of Transportation in developing unprecedented safety integration plans or SIPs.

And finally, the applicants would say that this merger is unprecedented because it would

redraw the rail map in the East, completing a process begun by Congress to resurrect rail service in the East after the failure of the Penn Central, and would do so in a procompetitive way that will produce \$1 billion in quantifiable public benefits.

In assessing major merger transactions, the Board is directed by law to approve mergers that it finds are in the public interest. In determining whether a merger is in the public interest, the Board must consider at least five factors: (1) the effect of the merger on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. The Board has broad authority to impose conditions to alleviate anticompetitive effects or harm to essential rail service, or to mitigate potential environmental impacts, and it must impose labor protective conditions to mitigate the harm to non-management employees who are adversely affected by the transaction.

The law thus places many issues before us when carriers propose major financial transactions. Today and tomorrow, we will hear about these issues from a broad spectrum of interests.

Much discussion will focus on competition. There is a general view that this merger, if approved, will provide new competition in certain areas. However, we will hear today that that is not the end of it. Some of the speakers will want us to act in a way that they believe maintains the competition they already have; some will argue that they will be competitively disadvantaged because the merger, if approved without additional changes, will provide new

options to their competitors, and that we should act so as to equalize their competitive position; some will argue that we should use this proceeding as an opportunity to add even more competition in certain areas beyond the proposal before us today. All of these issues are serious, and we take them seriously.

Some of the discussion will focus on the need to retain essential rail services. A number of short line and regional carriers and their customers will argue that any approval of this merger must assure that services that these carriers provide to their shippers not be disrupted by actions of the merging carriers that divert traffic away from their smaller connecting railroads. We are sensitive to the role that the smaller railroads play in serving the shipping public.

Other discussion will focus on environmental and safety issues. This merger, if approved, will shift traffic patterns, and should also divert traffic from truck to rail, which would increase the rail traffic moving through several communities. As I said, our Environmental Section issued an extensive EIS, for which I compliment them. The Board will review the arguments about environmental impacts carefully as it considers its final disposition of the EIS.

Discussion will also center on operational and service issues, including the interaction between freight and passenger service. Parties today will ask us to monitor carefully the implementation of any merger that may be approved, to ensure that it is implemented safely, and in a way that enhances rather than disrupts good service. Obviously, those issues are important, and we take them seriously.

Finally, we will hear about the potential impact of this proposed transaction on rail employees. Some rail labor interests support the merger, while others have concerns about its potentially adverse impact on employees. We take the concerns of rail labor seriously.

In this case, the Board has been faced with many complex and challenging issues, and I look forward to our dialogue today in resolving the issues before us in a way that promotes the public interest.