

Opening Statement
by
Chairman Linda J. Morgan
Oral Argument in CN-IC Merger
March 18, 1999

Good Morning.

We are here today to hear oral argument in the Canadian National/Illinois Central merger proceeding. We will discuss and vote on the case in a voting conference one week from today.

The merger before us involves the acquisition by the Canadian National railroad system of the Illinois Central railroad system. The Canadian National operates a 14,000-mile system throughout Canada, connecting with its 1,200-mile system in the United States, which operates primarily in Minnesota, Wisconsin, Michigan, and northern Illinois and Indiana. The Illinois Central operates a 3,400-mile system between Chicago and the Gulf of Mexico, connecting with the Canadian National system at Chicago. The merger application is supported by more than 240 parties, including many shippers, public officials and unions. And the United States Department of Justice has not found it necessary to participate in this proceeding.

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. We will hear about a number of these issues from the various interests represented here today.

Much discussion will focus on the Alliance Agreement entered into by Canadian National, Illinois Central, and the Kansas City Southern Railway, and to a lesser extent on the Access Agreement between CN and KCS. We will hear from the parties as to how we should consider these agreements in analyzing the merger application, especially as to potential competitive harm. In that regard, we will hear about certain access proposals from the parties relating to those agreements. We also will hear about other competitive harm that may flow from the transaction, including harm to North Dakota grain rail transportation, and we will hear about the procompetitive aspects of the proposed merger transaction and the Alliance and Access Agreements.

Some discussion will focus on the related trackage rights application filed by the merger applicants and by KCS and its affiliate, Gateway Western Railway, seeking unrestricted use of certain track by Gateway Western in Springfield, Illinois. And we will hear about proposals to require CN to divest its ownership interest in the Detroit River Tunnel.

Additionally, we will hear about the potential impact of the proposed transaction on rail employees. Some rail labor interests support the merger, while others have concerns about its potentially adverse impacts on employees. In particular, we will hear concerns about moving

jobs and employees to Canada and about the importance of negotiation and in particular good faith negotiations concerning employee interests. We will also hear about safety concerns.

The Board has been faced with some challenging issues in this case, and I look forward to our dialogue today in resolving the issues before us so as to promote the public interest.