

OPENING STATEMENT
OF
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MEMBER OF THE
SURFACE TRANSPORTATION BOARD

AT ORAL ARGUMENT
CN/IC-MERGER

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Good morning, and welcome, everyone! I am looking forward to an insightful discussion today about the merits of a rail merger billed as one consistent with the public interest. It will be premature to conclude, at this point, whether this merger is or is not in the public interest. And I know that you, the parties of record, have specific views about that.

I see my mission here today as being that of a good listener. But I am not new to the process that we are initiating today. I have deliberated over many proceedings regarding, among others, the legal, economic, and social aspects of transportation issues. And as such, I consider myself experienced and adept at listening to arguments, filtering out irrelevancies, and discerning when issues are being comprehensively addressed by both sides. Also, given my background, I am familiar with these applicants.

Accordingly, today we begin to discuss publicly what has to be, considering its international implications, a most novel merger in sheer size, scope, demographic and geographic reach.

So I am sure the litigants here today will fully address the competing interest with respect to the impact of this proposed merger on competition, the rail infrastructure, safety, rail employees, communities and the environment. This is your chance to develop fully the record on these most important considerations.

As you well know, the benchmark, indeed the one question that must be asked in the context of such mergers is whether it is in the public interest. Controlling federal statutes, as well as judicial pronouncements, by and large, set forth the scope of the analysis by our professional staff. You know, or should know, what the scope of the legal, economic, and environmental analysis consist of, so I will not belabor the point here.

However, from my point of view, what is not etched in stone, and where there is tremendous room for public input, is in the deliberative process.

I, for one, cannot emphasize enough that you here today should consider yourselves charged with the responsibility of bringing meaningful and productive dialogue to this debate. You must take this opportunity to illuminate every aspect of this proposed merger, ranging from the interpretation and application of the law, to the reconciliation of competitive, economic, environmental, safety, and labor considerations. Indeed, from my point of view, the very uniqueness of the geographic reach of this merger requires that kind of a qualitative effort on your parts.

I also expect to hear today well thought out considerations of the interests of rail labor and the environment. As you know, labor has a stake in this and should rightfully be heard. A dedicated workforce will be one of the key ingredients to the success of an endeavor of this kind.

Management is right to plan for and take steps to enhance the bottom line. Stockholders expect that. On the other hand, this industry is perhaps unique in view of its special relationship with its labor forces. It owes a lot to its labor forces. No one is ever successful alone, a lot of people are involved in that process. Thus, I expect to hear today that labor and management are committed to working out their differences. Let me repeat something I said moments ago,

management has the right to expect a dedicated and flexible workforce. But it is also true that labor has a right to count on some degree of fairness, equity, and stability. The statute and the courts, have made it very clear that management must not effect its labor forces in such instances, more than what is necessary to achieve the public transportation benefits of such transactions. And, as you well know, there are recognized procedures in place designed to smooth out most bumps in this road before resorting to federal relief.

Also, there must be a critical assessment of the impact of such a merger on the environment and effected communities. I am sure that we will hear productive and meaningful dialogue on this aspect of the merger.

In closing, let me reiterate that I expect to hear today, in the presentation of your cases, not just that there yet remains areas of differences, but also that the parties have come to the bargaining table with respectable positions and good faith efforts to do, not only what is best for them individually, but what is best for the public as a whole.

I trust that we will have wisdom in our decisions, understanding in our thinking, love in our attitudes, and mercy in our judgments.

Good luck and best wishes to you all.