

EX PARTE NO. 582 (Sub-No. 1)  
ORAL ARGUMENT ON MAJOR RAIL MERGER RULES  
OPENING REMARKS, CHAIRMAN LINDA J. MORGAN  
APRIL 5, 2001

Good morning. This oral argument is another step in a process we began in this room just about 13 months ago. At that time, while major railroads and their customers were still recovering from service disruptions following the previous round of mergers, it looked like the next round of major mergers – a round likely to result in two transcontinental railroads – was ready to begin. And so we met here, with many of the parties that are here today, to talk about whether we need to revise and update our rules for processing proposed mergers before the final round begins. We issued our 15-month moratorium, which expires in June, and we put out first an Advance Notice of Proposed Rulemaking, and then a Notice of Proposed Rulemaking (NPR).

In the NPR, the Board has proposed rules, centered on a proposed revision to its merger policy, that would raise the bar for major rail merger applicants. Some parties have expressed their views that, as proposed, the rules would not raise the bar high enough; others have expressed their perceptions that the rules could be raising the bar too high. We have reviewed the many comments that have been filed in this proceeding. This oral argument will provide you an opportunity to emphasize and summarize your key points, and will provide us an opportunity to ask you questions about matters that are important to us.

The Board's reexamination of its major rail merger policy has focused on three issues: first, we cannot afford the service and financial problems associated with the last round of mergers; second, the policy must reflect competitive concerns with further consolidation; and

third, because of the risks of finality associated with the next round, the policy must ensure that future mergers add value and provide benefits that clearly outweigh any potential harm. The proposed policy and rules are designed to reflect these objectives in several ways. They would look to merger applicants to show that a proposal would enhance competition and improve service. They would require more accountability for benefits that are claimed and a showing that such benefits could not be realized by means other than a merger. And they would require more details up front regarding the service that would be provided, as well as contingency planning and problem resolution in the event of service failures.

Today, we will be addressing issues that have been raised regarding the proposed policy and rules. Some of the topics I expect we will cover today include:

Enhanced Competition. What should be the applicants' responsibilities with respect to providing for enhanced competition in proposing transactions, and what role should enhancement of competition play in the Board's analysis?

Public Benefits. How should applicants account for the public benefits to be derived from their proposals, and how should they be held accountable for delivery of the anticipated and claimed public benefits of their transactions?

Service. How should rail merger applicants be held accountable for avoiding service disruptions and diminishment of service? What level of service assurance must be made and presented, and what contingency plans and problem-resolution mechanisms must be devised and submitted?

Downstream Effects. How are applicants to address the potential downstream effects of a merger proposal, and how should the Board take these and other projections into account?

Transnational Issues. How should applicants address transnational and cross-border issues, and how should the Board take these issues into account?

Labor Matters. How should employee impact be assessed, and what should parties' expectations be with respect to the override of collective bargaining agreements, especially given the recently negotiated agreement that, along with the UTU agreement, covers 93 percent of the unionized employees of nearly all of the Class I U.S. railroads?

Other Affected Parties. How should the Board address the impact of proposed transactions on smaller railroads, rail passenger and commuter services, and ports?

It is my continued hope that the final major merger rules will reflect the lessons learned from the past in a way that allows for the needs of the marketplace of the future. The Board's goal is to ensure that, if further mergers are pursued, we can properly evaluate whether these proposals are truly in the public interest. Today's oral argument can certainly contribute to that end, and I thank all of the parties for their participation here today.