

STB EX PARTE NO. 646

OPENING REMARKS, COMMISSIONER LINDA J. MORGAN

APRIL 22, 2003

Today's hearing focuses on what the appropriate standards and procedures should be for handling smaller rail rate reasonableness cases. During my tenure at this agency, this particular matter has consumed much of my personal concern and attention. When the existing guidelines and procedures were adopted, shipper interests were comfortable with the results of our deliberations, and in fact, they supported our guidelines in court. But more recently, these interests have expressed concerns about the current approach. I hope that this hearing will provide some clarity and consensus with respect to any additional ways to refine the process for handling these matters.

As we explore the various proposals being presented here today, it is important to put the discussion in the proper historical perspective. Over the course of a number of years, this agency and its predecessor devoted considerable effort to bringing to closure a matter that had remained unresolved for a long time.

For a number of years before I came on board in 1994, the ICC struggled with the small rail rate case issue. Its staff looked at various simplified procedures, but because the statute requires that several factors be considered, when the ICC tried to apply a simple, one-step test in a non-coal rate case, its decision was reversed in court. And so the ICC tried other approaches.

During 1993, it explored an AAR proposal that was supposed to be a surrogate for SAC. Some shipper representatives here today are now advancing what they describe as a simplified SAC, although back then, it was the railroads that wanted some type of SAC, and the shippers were not in favor of that approach.

Because nobody could figure out a SAC methodology that would work for small cases, the ICC developed other tests that it thought could help in reviewing rate levels. During this process, it also took extensive comments from the parties, and held oral argument. And after ICCTA, we did in fact come up with formal guidelines.

One of the tough issues in developing those guidelines was figuring out eligibility, that is, when they should apply. Comments were all over the map on that issue, and so we decided to give parties a list of categories of information to help us decide. Parties now say that we have to be more precise on eligibility, but the comments are still all over the map as to who ought to qualify for filing a small case. I hope that the hearing today will shed further light on this concern.

Some parties today are also suggesting that the Board should pursue legislation directing mandatory arbitration. Just last year, we held administrative hearings for the express purpose of developing a record for Congress on this issue. While I was hopeful that some consensus would evolve from the record compiled, no such meeting of the minds was forthcoming, even among the shippers. The results of our proceeding were communicated to Congress in a letter from me and certainly continue to have validity in any discussion of this matter.

So, we do not begin this hearing with a clean slate. Much debate has already been had on this issue, many alternatives have been thoroughly explored, and certain of the issues being raised today are not new ones. That said, some new positions are being taken today and some new suggestions are being made as to how the agency could improve upon itself.

At a Board hearing a few weeks ago, we had a productive exchange with members of our community that helped finalize proposals for expediting large rail rate cases. I hope that our meeting today will be just as successful in focusing our attention on creative approaches to

making our smaller rail rate case process work within the mandate of the law under which we operate. I appreciate the participation of everyone here today, and I look forward to a constructive dialogue.