

COURT UPHOLDS SURFACE TRANSPORTATION BOARD'S 15-MONTH RAIL MERGER MORATORIUM

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the District of Columbia Circuit has issued a decision upholding the Board's 15-month moratorium on the filing of any major railroad merger proposals. The moratorium enables the Board to complete a comprehensive reexamination and revision of its rail merger policies and procedures--to reflect current conditions in the rail industry--before it considers any such proposals.

Imposed by the Board on March 17, 2000 (see "Surface Transportation Board News" release No. 00-17 issued March 17), the merger moratorium was issued in the context of a Board proceeding initiated in January 2000 (see "Surface Transportation Board News" release No. 00-5 issued January 24) and culminating in four days of hearings in early March (see "Surface Transportation News" release No. 00-9 issued February 17) eliciting public comment on major rail mergers and the future structure of the rail industry in the United States. The overwhelming consensus at the hearing was that a new round of mergers at this time would aggravate service problems; that the Board's existing merger policies and procedures are not appropriate for dealing with future large railroad merger proposals; and that fundamental changes in the Board's merger rules and policies are needed to properly address such proposals. Accordingly, the Board has since instituted a rulemaking proceeding seeking public comment on appropriate modifications to its merger regulations (see "Surface Transportation Board News" release No. 00-19 issued March 31, 2000). That rulemaking proceeding is scheduled to be completed by June 11, 2001.

One of the effects of the moratorium was to postpone the anticipated filing of a merger application by the Burlington Northern Santa Fe (BNSF) and Canadian National (CN) railway systems. Accordingly, those two carriers, along with certain other parties that had argued that the Board lacked the legal authority to impose such a moratorium, sought to have the moratorium overturned by the appeals court.

The main argument that BNSF and CN and their supporters raised in court was that the Board's moratorium was beyond the agency's authority because it conflicted with provisions in the law requiring the agency to act on filed merger applications within certain time frames. In upholding the moratorium, the court cited a line of cases holding that agencies have the inherent authority to defer actions mandated by statute when necessary to realize broader statutory goals. Here, given the concerns over the service and competitive issues that would be implicated if new mergers were to move forward now, the court found that

"forcing the Board to [consider new applications] before it has had an opportunity to determine where the public interest lies would defeat altogether the purpose of the agency's review, whereas allowing the Board to focus for a reasonable time upon revising its [merger] criteria would likely enable the Board to continue to meet its deadlines once it resumes processing applications."

Commenting on the court's decision, Chairman Morgan said,

"After listening to all the testimony at our hearings, we believed that we had the responsibility to call a time-out on rail mergers and to reexamine our rail merger policy before proceeding further at this important crossroads for the rail sector. I am gratified that the court concluded that we have the authority to do what needed to be done."

The court's decision was issued on July 14, 2000 in *Western Coal Traffic League, et al. v. Surface Transportation Board*, Nos. 00-1115 et al., and is available on the court's website at <http://www.cadc.uscourts.gov>. The Board's moratorium was imposed in a decision issued on March 17, 2000 in *Public Views on Major Rail Consolidations*, STB Ex Parte No. 582, and requests for administrative stay were denied in a decision issued April 7, 2000. The Board's merger rulemaking was instituted in *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), issued March 31, 2000, with notice published in the *Federal Register* at 65 FR 18,021 (April 6, 2000).

The Board's decisions are available for viewing and downloading via the Board's website at www.stb.dot.gov. Copies of the Board's decisions are also available for a fee by contacting: **Da-To-Da Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530.**

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