

Testimony of Linda J. Morgan  
Chairman of the Surface Transportation Board

Senate Committee on Commerce, Science, and Transportation  
Hearing on  
March 17, 2000 Decision Issued by  
the Surface Transportation Board

March 23, 2000

My name is Linda J. Morgan, Chairman of the Surface Transportation Board (Board). I am appearing at the request of the Subcommittee to discuss the decision served by the Board on March 17, 2000, in STB Ex Parte No. 582, Public Views on Major Rail Consolidations. For the record, I am including a copy of the Board's decision with my written statement.

Background

The Board's proceeding in STB Ex Parte No. 582 was triggered by the filing of a notice on December 20, 1999, that the Burlington Northern and Santa Fe Railway (BNSF) and Canadian National (CN) intended to file an application, on or shortly after March 20, 2000, seeking Board approval to bring their railroad systems under common control. Given the aggressive consolidation and associated disruptions that had occurred in the railroad industry during the past several years, and the likelihood that the BNSF/CN proposal would set off yet another full round of major rail consolidations, the Board issued an order on December 28, 1999, waiving the so-called "one case at a time" rule for the BNSF/CN proceeding and stating that, if the BNSF/CN proceeding went forward, the Board would consider not only the direct impacts of that combination, but also evidence of the cumulative impacts and crossover effects that would likely occur as other railroads developed strategic responses in reaction to the proposed combined new system. In addition, given the prospect of significant further consolidation within

the railroad industry, and the Board's concern that the railroad industry and the shipping public have not yet recovered from the service disruptions associated with the previous round of mergers, the Board issued an order on January 24, 2000, opening the STB Ex Parte No. 582 proceeding to obtain public views on the subject of major rail consolidations and the present and future structure of the North American rail industry.

### The March 17 Decision

As part of the STB Ex Parte No. 582 proceeding, the Board took written and oral testimony from all sectors associated with the rail industry, including large and small rail carriers; large and small shippers representing various commodity groups; intermodal and third party transportation providers; rail employees; state and local interests; financial analysts and economists; and Members of Congress (including Members of this Committee) and other federal agencies. The overwhelming weight of the testimony, particularly the testimony taken over the 4 days of oral hearings, was that, at a minimum, the Board's merger policy must be reexamined -- and must be reexamined now -- before any new major mergers are processed. The Board agreed, concluding in its March 17 decision that the rail community is not in a position to now undertake what will likely be the final round of restructuring of the North American railroad industry, and that current Board rules are not appropriate for addressing the broad concerns associated with reviewing transactions that may well produce two transcontinental railroads.

In reaching the March 17 decision, the Board recognized that the Government is not in the business of drawing railroad maps, and that this agency is not attempting to do so in this proceeding. The Board also recognized that the law it administers generally contemplates private initiatives that are then subjected to regulatory scrutiny. But the Board is required to take

actions and to fashion regulations that advance its mandate -- under which it is to approve mergers only to the extent consistent with the public interest, and under which it is to promote a safe and sound rail system that runs smoothly and efficiently to provide service for rail customers -- in a manner that is consistent with the overall rail transportation policy established by Congress. The Board found that it would be impracticable to try to act on a final round of mergers while in the process of developing new merger rules, and that such an approach would also be disruptive to the rail system and to rail service that remains well below acceptable levels in many areas. The disruption would go far beyond the specific interests of BNSF and CN and the carriers that compete with them; it could irreparably damage the entire industry, to the detriment of the interests of shippers, rail employees, and the national economy and defense.

Thus, in the March 17 decision, the Board announced that, over the next 15 months, it would initiate and complete a proceeding that will provide new merger rules. To permit the development of the new rules, and to ensure that the industry has had the opportunity to fully recover from service problems associated with recent mergers without the distractions associated with consideration of additional mergers, the Board decided that it could best maintain the status quo by ordering a suspension of all merger activity, categorized as major rail transactions, until after the final merger rules are issued, or a total period of 15 months.

#### Activity Stemming From the March 17 Decision

The Board is currently preparing an advance notice of proposed rulemaking (ANPR) to institute the process of reexamining its merger rules and policy. The Board expects to issue the ANPR to the public by April 6, 2000 (within 20 days of the March 17 decision).

BNSF, CN and the Western Coal Traffic League have appealed the Board's March 17

decision to the Court of Appeals for the District of Columbia Circuit. Also, BNSF has filed with the Board a petition for an administrative stay pending judicial review of the Board's decision.

This concludes my testimony. As I stated earlier, I am including a copy of the Board's March 17 decision, which fully explains the action taken by the Board. I will try to answer any questions that you may have regarding the March 17 decision, given the constraints that the pending agency and court proceedings impose on me at this time.