

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

TESTIMONY OF LINDA J. MORGAN
CHAIRMAN, SURFACE TRANSPORTATION BOARD

ON REAPPOINTMENT

September 28, 1999

Introduction

My name is Linda J. Morgan, Chairman of the Surface Transportation Board (Board). I am appearing at the request of the Committee to discuss my renomination to the Board. I have already appeared before this Committee twice over the past two years in connection with the Board's reauthorization hearings, and have discussed at great length the issues before the Board and the accomplishments of the Board under my Chairmanship. For easy reference, I have appended as Attachments 1 and 2 the written testimony (without attachments) that I submitted for those two hearings.

This hearing is a bit different from the two recent reauthorization hearings, in that it is intended to focus more on me personally and on my record than on the Board as an institution. Nevertheless, as I have been Chairman of the Board since its creation, I have been of necessity an integral part of everything that the Board has done. Therefore, any questions that might arise in this hearing, particularly regarding rail matters, could overlap with those that have been previously addressed at the reauthorization hearings. Accordingly, this written testimony briefly reviews my approach and my record, with an emphasis on major rail issues that have been raised in connection with Board decisions.

The Transition to the Board

I was named Chairman of the Interstate Commerce Commission (ICC), the Board's predecessor, in March 1995, just as the Congressional deliberations over what was to become the

ICC Termination Act of 1995 (ICCTA) were getting underway. I faced several challenges during that first year of my Chairmanship. I had to motivate the ICC's staff to continue to produce notwithstanding the uncertainty surrounding their personal futures and the future of the agency at which many of them had worked for their entire professional careers. I worked with Congress to ensure that whatever bill was ultimately passed would be workable. And I had to figure out, once the ICCTA became law, how to make the transition from the ICC to the Board on just a few days' notice between Christmas and New Year's Day.

The days after the passage of the ICCTA presented many logistical challenges of their own. Fewer than half of the personnel who had worked for the ICC were retained by the Board. Yet, the case load remained heavy, and indeed increased in complexity and degree of challenge, particularly with the significant restructuring taking place in the rail industry and the focus of parties on testing the law in certain areas. We had to find ways to do more with less.

We hit the ground running, and quickly became what I believe to be a model Federal agency. We were given many rulemaking deadlines in the ICCTA, and we met each and every one of them. We revamped the old ICC regulations to reflect the new law; we streamlined the regulations that remained relevant to make them work better; and we issued new regulations so that we could move cases to resolution more quickly. And we did move cases faster, and as a result have made great strides in clearing up the docket.

Many of the cases that we have tackled at the Board -- some of which had been pending at the ICC for many years, and some of which have been new -- have been extremely difficult and controversial. But one of the messages that I have delivered to the Board's staff repeatedly is that parties that bring disputes to the Board want and should have the certainty of resolution and that we are here to make decisions in hard cases. Not everyone will like every decision we issue, but our job is to take the controversies that come our way, review the records carefully, and then put out decisions as expeditiously as possible that implement the law to the best of our ability. The competence of our staff and the integrity of our decisionmaking process are reflected in our

record of success in court: since I became Chairman on March 24, 1995, of the several hundred ICC and Board cases decided, 134 decisions have been challenged, and only 8 of those challenges were successful, with 19 not yet decided by the courts. Fair and expeditious case resolution and the certainty and stability that come from success on appeal will continue to be objectives of mine if I am confirmed for another term at the Board.

The Board's Overall Approach to its Responsibilities Under My Chairmanship

I believe that the Board under my leadership has been a model of "common sense government," promoting private-sector initiative and resolution where appropriate and undertaking vigilant government oversight and action where necessary. In many circumstances, private sector initiative can provide for better solutions because it can be tailored to the needs of the individual parties, can go beyond what government is able to do under the law and with its resources, and can create a dynamic in which all the parties to the initiative have been involved in its development and thus are invested in its success. And government can use its presence and its processes to encourage such results.

The work of the Board exemplifies the balance of private-sector and government action. With regard to the rail crisis in the West, for example, the Board required substantial and unprecedented operational reporting, engaged in substantial operational monitoring, and redirected operations in a focused and constructive way. The Board was successful in working on an informal basis with affected shippers to resolve service problems, and it was careful not to take actions that might have helped some shippers or regions but inadvertently hurt others. And the Board proceeded in such a way as not to undermine, but rather to encourage, important private-sector initiatives that facilitated and were integral to service recovery, such as the unprecedented creation of the joint dispatching center near Houston, TX, and the significant upgrading of infrastructure.

With the active encouragement of the Board, the National Grain and Feed Association and the Association of American Railroads recently reached groundbreaking agreements on issues of concern to agricultural shippers that provide dispute resolution procedures that are more tailored

to the interests of both parties. These agreements will hopefully provide a model for other such carrier/customer agreements. Furthermore, the Board has attempted to move in the direction of private negotiation rather than government fiat as the way of resolving employee matters, a trend which I discuss later in my testimony.

There are circumstances in which more direct government action is necessary, and in such situations, the Board has used its authority appropriately, creatively, and to the fullest extent in accordance with the law. For example, responding to the concerns of Members of this Committee, and in particular Chairman McCain and Senator Hutchison, we held extensive hearings on access and competition in the railroad industry, which resulted in a broad mix of private-sector and government initiatives, summarized in my letter to Senators McCain and Hutchison dated December 21, 1998 (December 21 letter). Those initiatives included the revision of the market dominance rules to eliminate product and geographic competition as considerations in rate cases and the adoption of formal rules providing for shipper access to a new carrier during periods of poor service. They also included the formal railroad/shipper customer service “outreach” forums (which I have attended) that are continuing to be held on a regular basis, and that have produced, for the first time, the public dissemination of performance data by the major railroads. And they included the unprecedented formal agreement between large and small railroads addressing certain access issues of concern to the smaller carriers and to various members of the shipping public, the implementation of which the Board will be closely monitoring.

In individual cases brought to it, the Board has used its authority fully as well. For example, in a case in which Amtrak sought to carry certain types of non-passenger traffic, we interpreted the statute in such a way as to bring about a private agreement between Amtrak and individual freight railroads on the matter after the Board’s decision was rendered. In railroad consolidation and construction proceedings, our process has encouraged private-sector solutions with respect to environmental and other issues, but where the private parties have been unable to reach resolution, the Board has imposed conditions to remedy the concerns expressed in a way

that preserves the benefits of the transaction under consideration. And with respect to the “bottleneck” rate complaint cases (involving rates for a segment of a through movement that is served by a single carrier), while shipper parties argued that the Board should have gone farther in granting rate review, the Board's decisions do provide for rate relief where there is a contract for the non-bottleneck segment, based on a pragmatic reading of the statute that is being challenged in court by the railroads.

I should note that there have been times when a more expansive reading of the statute by the Board has not been upheld. Of the handful of court cases that the Board has lost, one involved an abandonment in West Virginia that the Board disallowed in reliance on a broad view of the “public interest”; another involved a labor case in which the court found that the Board acted beyond the scope of the law by interpreting the labor protection provisions of the ICCTA as covering too broad a class of employees of class II railroads.

If confirmed, I will continue the theme of common sense government. I will continue to apply the Board's authority as necessary and appropriate, acting directly or promoting private-sector initiative.

Rail Mergers and Competition

One of the areas in which the Board has issued some high-profile decisions under my Chairmanship involves rail mergers. Some have said that rail mergers are inherently anti-competitive, that they cause service problems, and that we should be discouraging them. Although mergers and other changes in corporate structure have been going on in the rail industry for many years, I recognize that there has been substantial rail merger activity since the Staggers Rail Act of 1980 was passed, reflecting what has been occurring throughout the Nation's economy. In 1976, there were, by our calculations, 30 independent “class I” (larger railroad) systems; nine of those systems have since then dropped down to class II or III (smaller railroad) status because the revenue thresholds for class I status were raised substantially some years ago; two large carriers went into bankruptcy; and the remaining 19 systems have been reduced to 7 independent systems in the past 23 years. Not all of that has happened under my Chairmanship,

nor has it occurred because the Board (or the ICC) has sought out mergers. When market conditions motivate two class I railroads to want to merge, our statute tells us to review the proposal presented to us, applying certain statutory standards, and to approve the merger if it is in the public interest.

On the basis of the governing statute, under my Chairmanship of the ICC and the Board, four class I rail mergers have been approved. These mergers were not approved, however, without many significant Board-imposed competitive and other conditions. The conditions in a variety of ways provide for substantial post-merger oversight and monitoring that permit us to stay on top of both competitive and operational issues that might arise. They provide for the protection of employees and the mitigation of environmental impacts, and our recent decisions provided for the compilation of a "safety integration plan" that draws on the resources of the Board, the Federal Railroad Administration, and the involved carriers and employees. And they assure that no shipper's service options were reduced to one-carrier service as a result of a merger.

In varying degrees, these mergers have had the support of segments of the shipping public, as well as employees and various localities, and were considered by interested parties to be in the public interest. A variety of shippers actively supported the Burlington Northern/Santa Fe merger, the inherently procompetitive Conrail acquisition, and the recent Canadian National/Illinois Central (CN/IC) merger. And the Union Pacific/Southern Pacific merger, which segments of the shipping community opposed while others supported it, was necessary, the Board believed, not only to prop up the failing Southern Pacific, but also to permit the development of a rail system in the West with enough of a presence to compete with the newly merged Burlington Northern/Santa Fe.

Some say that, while each merger, reviewed individually, might seem acceptable, the cumulative effect is that the industry is now too concentrated, and so competition must be added throughout the industry to temper this new market power. As I have testified previously, in analyzing this premise, we must carefully review proposals intended to address it. We should

want to make sure that the rail system will look the way we want it to look for now and for the future. We have to be sure about the mix of shippers that will be served, about the level of rates that will be charged and the service that will be provided, about the quality and extent of the infrastructure that will exist, and about the impact on employees, and that the result in those areas is what we want. As I have also testified before, as we examine proposals for change, we must be sure that we do not take actions that, while perhaps benefitting some shippers or regions, could hurt others in an unintended way. Of course, if I am confirmed, I will faithfully implement any changes to the law that Congress might adopt.

In any event, the Board will continue its active oversight of rail service and the implementation of these four mergers. In approving these four mergers, the Board (and the ICC before that) concluded that, with all the conditions imposed, they would not diminish competition and in fact could enhance competition; would produce significant transportation benefits; and were otherwise in the public interest. The Board will continue to exercise its oversight authority in accordance with these objectives.

Rail Rate and Service Issues

Since becoming Chairman of the ICC and then of the Board, I have tackled several important rail rate and service matters, and in this regard I believe that I have been responsive to shipper and other concerns in accordance with the law. In particular, I have been committed to resolving formal and informal shipper complaints expeditiously, clarifying applicable standards for resolution of formal complaints, and leveling the playing field to ensure that the formal process is not used simply to delay final resolution and that it encourages private-sector resolution where possible. I believe that my record reflects those objectives.

With respect to rate matters, the Board has established deadlines, never before in place, and procedures to expedite the decisional process, and decisions resolving large rail rate complaints have refined the standards for developing the record in these cases. Furthermore, as I

have already noted, we eliminated the product and geographic competition elements from the market dominance rules, and I feel confident that this action will be upheld by the court in the appeal brought by the railroads. The “constrained market pricing” (CMP) procedure for determining whether a rate is reasonable or not is now a well accepted way of measuring rate reasonableness for larger rate cases, and of the three large rail rate cases that have been decided by the Board, the shippers won two, while the defendant railroad won one. Some new large rate cases are pending, and several others have been settled without involvement of the Board.

Although most parties agree to the use of CMP in major rate cases, not all agree as to how it should be applied. Thus, much debate over the past two years has centered on the Board's “bottleneck” decisions that I referenced earlier, which construed the statute as permitting challenges to bottleneck rates (as explained before, rates for a segment of a through movement that is served by a single carrier) only when the shipper has a contract over the non-bottleneck segment. The court reviewing the challenge to those decisions brought by the shippers -- which sought a broader interpretation of the availability of bottleneck segment rate challenges -- found that the Board had correctly interpreted the existing statute. With respect to the relief granted by the Board, the appeal of the bottleneck decisions brought by the railroads -- in which the railroads are asking the court to require the Board to adopt a more narrow interpretation of the availability of bottleneck segment rate challenges -- is still pending before the D.C. Circuit. Two bottleneck rate challenges pursuing the rate relief provided in the Board's bottleneck decisions are currently before the Board.

The Board at the end of 1996 adopted simplified rules for small rail rate cases. However, no such cases have been brought to date under these rules. Concerns remain that those rules are still too complex. In my December 21 letter, I explained that the Board's rules reflect the statute and the standards that must be balanced, but I also recommended that Congress consider adopting a single benchmark test or some other simplified procedure for small rate cases to address those process concerns.

On the matter of service, as I discussed previously, the Board applied its formal and

informal powers judiciously in dealing with the recent rail service crisis in the West. And it is actively monitoring and dealing with service issues in the East in connection with the implementation of the Conrail acquisition. In addition, as I also have noted, we have adopted new rules that permit a shipper to obtain the services of an alternative railroad when service is poor. Those rules, which require prior consultation among all of the involved parties to ascertain whether the problem can be readily fixed by the "incumbent" carrier, and, if not, to make sure that the proposed service will solve the problem without creating new problems, have been invoked in three cases thus far. In one, the Board granted relief; in the other, the parties worked out their concerns privately before the Board acted; and the third case is still pending. I believe that the Board can fully address service disruptions.

Rail Employee Issues

Background. Under the law, the Board becomes involved in rail employee issues as a result of its approval of various types of rail transactions. Certain significant employee issues are raised by class I consolidations. When larger railroads consolidate, the individual collective bargaining agreements (CBAs) and protective arrangements into which the merging railroads earlier entered are not always compatible. The law that the Board administers provides for imposition of the so-called New York Dock conditions upon such transactions. The New York Dock conditions have their origins in the negotiated Washington Job Protection Agreement of 1936, which sets up the framework within which consolidations are to be carried out. New York Dock provides (1) substantive benefits for adversely affected employees (including moving and retraining allowances, and up to 6 years of wage protections for employees dismissed or displaced as a result of the consolidation), and (2) procedures under which carriers and employees are to bargain to effectuate changes to their CBAs if necessary to carry out the transaction, with resort to arbitration and, as a last resort, limited Board review if bargaining is not successful.

When the parties go to arbitration, the arbitrator must make a determination in all areas of disagreement, including, the extent, if any, to which it is necessary to override a particular CBA where a change in a CBA is being proposed. In 1991, the Supreme Court confirmed that the law

provides that agency approval of a consolidation overrides all other laws, including the carrier's obligations under a CBA, to the extent necessary to permit implementation of the approved transaction.

Thus, among the issues that may come to arbitration are whether a particular CBA change is necessary to effectuate a transaction, and whether a particular transaction that implicates a CBA at issue is sufficiently connected to an approved transaction. Neither the arbitrator nor the Board can override "rights, privileges, or benefits." And the Board's review of the often fact-bound decisions made by arbitrators chosen under the auspices of the National Mediation Board with substantial experience in labor law is based on a deferential standard of review.

Labor Concerns. Certain employee interests have argued that the Board under my Chairmanship has stacked the deck against rail employees. They assert, for example: that the override of CBAs is purely an administrative remedy that the Board could readily reverse if only it chose to do so; that the Board has too broadly construed the "transactions" pursuant to which a CBA may be overridden; that the Board has too broadly construed the "necessity" of an override of a CBA; and that the Board has too narrowly construed the rights, privileges and benefits that may not be abrogated. They have also argued that the Board has handled arbitration appeals in such a way as to favor management.

I understand the concerns of rail labor about the law concerning CBA overrides. In fact, in my December 21 letter, I suggested that Congress consider addressing these issues through legislation. Where I disagree with the arguments made by labor in this area is not with their concerns about the wisdom and propriety of CBA overrides, but rather with their argument that CBA overrides were the Board's idea, that we have caused labor concerns in this area, and that we have gone out of our way to implement the law in a way that they term as "anti-labor." It is in this vein that I feel compelled to respond. Accordingly, I make the following points concerning how the agency has implemented the existing law under my Chairmanship.

First, while I do understand the concerns of rail labor regarding CBA overrides, I do not view the override of a CBA as simply an administrative remedy that the Board could readily

reverse if only it chose to do so. The 1991 Supreme Court decision (often referred to as the “Dispatchers” case, rendered before I arrived at the ICC) and other court decisions have made that clear. The Supreme Court pointed out that “the consolidation provisions of the Act . . . were designed to promote ‘economy and efficiency in interstate transportation.’” Citing a 1939 Supreme Court opinion, it recognized that consolidations may result in dismissals and transfers, involving the loss of seniority rights. And the Court pointed out that it was for this reason that “the Act imposes a number of labor-protecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible.” However, the Supreme Court found that, once the consolidation is approved and those labor protection requirements are met, the law ensures that obligations imposed by contracts such as CBAs, or by other laws such as the Railway Labor Act, “will not prevent the efficiencies of consolidation from being achieved.” In short, given its view of the statutory scheme, the Supreme Court did not simply hold that the ICC had the “discretion” to decide whether to find that CBAs could ever be overridden, but rather stated that CBAs are to be overridden, when necessary to do so, because that is what the law and Congressional intent require. Thus, to change this overall approach and to prevent any override of a CBA would require a change in the law.

Second, with respect to “necessity,” court precedent established in a 1993 D.C. Circuit decision (rendered before I came to the ICC), followed by another D.C. Circuit decision in 1994 reviewing a 1992 ICC decision, established that the necessity standard is met by a showing that override of the CBA is necessary to produce transaction-related transportation benefits beyond those resulting simply from the override itself. Moreover, the application of the standard of necessity was explicitly approved in a more recent D.C. Circuit decision, in which the court stated that it is “obvious on its face” that incompatible agreements for work crews would impede a consolidation and interfere with the ability of the merged carriers to offer “reduced rates to shippers and ultimately to consumers.” Thus, the discretion with regard to the determination of necessity has been shaped by court precedent, although in its “Carmen III” decision, discussed

later, the Board limited what could be overridden in this regard. That unappealed decision is now binding on all arbitrators in addressing CBA override issues, although, of course, legislation could codify such limitations.

Third, with respect to the transactions pursuant to which a CBA may be overridden, again court precedent in a 1994 D.C. Circuit decision (affirming an ICC decision voted on before I became a Commissioner) established that the test for determining a covered transaction is not based on the passage of time, but rather is based on a linkage to the original transaction. The court noted that carriers sometimes effectuate their consolidations gradually; that when employees are adversely affected in those instances, they are entitled to their substantial New York Dock protections; but that “the passage of time does not diminish a causal connection.” Again, the discretion to determine a covered transaction has been shaped by court precedent. A limit on covered transactions to a particular time period following approval of the underlying consolidation would need to be adopted through legislation.

Fourth, with respect to the preservation of “rights, privileges, and benefits,” the Board did rule that they include benefits such as life insurance, hospitalization and medical care, sick leave, and so forth. At the same time, the Board ruled that, in accordance with prior court precedent arising out of review of ICC decisions issued before I came to the ICC, mergers of seniority districts could not be included as “rights, privileges, and benefits.” Indeed, the D.C. Circuit in a 1997 decision upheld the Board’s decision, finding that under this approach, “the public interest in effectuating approved consolidations is ensured without any undue sacrifice of employee interests. In our view, this is exactly what was intended by Congress.” Again, the determination of “rights, privileges, and benefits” was made in light of prior court precedent. Of course, what is not absolutely protected as “rights, privileges and benefits” could only be overridden if necessary to implement the approved transaction, subject to the limitations of the Carmen III decision discussed herein.

With respect to arbitration, employee interests believe that railroads have the upper hand in the collective bargaining process, because of their perception that, during the 1980s, the ICC

would always agree to break CBAs at the merging railroads' request whenever the issue was presented to it by way of an arbitration appeal. Therefore, their sense is that railroads have no incentive to bargain in good faith over implementing agreements. I understand that concern; it is my clear impression that, prior to 1985, more agreements were bargained, while during the next several years, more were imposed by arbitration.

Agency Approach. Since I have been Chairman of the ICC and the Board, I have attempted to make the playing field more level in this entire area. As I have already noted, by the time I arrived at the ICC, court precedent in addition to the 1991 Supreme Court decision dealing with the override of CBAs had already established standards with respect to the definition of necessity and the standard for determining the necessary nexus to the approved transaction. Even given this precedent, the Board has worked to move away from the breaking of CBAs, has taken action to limit overrides in the decisions that it has rendered, and has encouraged private negotiation as a preferred way of resolving related issues.

Indeed, in its landmark 1998 Carmen III decision already referenced, the Board specifically held that the authority of arbitrators to override CBAs is limited to that which was exercised by arbitrators during the years 1940-1980, a period marked by peaceful relationships between rail labor and rail management with regard to mergers. Responding to the concerns of rail labor that CBA overrides were more expansive starting in the 1980s, this decision thus restores the pre-1980 way of handling CBA overrides. In connection with its approval of the Conrail transaction and the CN/IC merger, the Board expressly confirmed, as requested by rail labor, that approval of a transaction did not indicate approval of any of the CBA overrides that the applicants may have indicated are necessary, and it admonished the carriers to bargain in good faith with their employees with respect to necessary changes to CBAs. I am aware that certain rail labor interests have cited an arbitration award by Arbitrator Fredenberger in connection with the Conrail transaction as evidence that the Carmen III decision was not favorable to employees because, while purporting to rely on Carmen III, he did not limit the override of a CBA accordingly. But I should note that, after the Fredenberger Award was appealed to the Board, the

involved railroads reached an agreement with the Brotherhood of Maintenance of Way Employees (BMWE) and the International Association of Machinists and Aerospace Workers (IAM) rather than risk having the Board reverse the award. Thus, the matter was resolved through negotiation among the parties, and, as a result, the Fredenberger Award cannot be used as an indication of how the Board will implement its Carmen III decision.

Moreover, while the Board has generally deferred to the expertise of arbitrators, it has reversed arbitrators' decisions or otherwise used the appeal process with favorable results for labor. In one case, the Board granted a United Transportation Union (UTU) appeal as it pertained to health benefits; in another arbitration appeal brought by a railroad, the Board supported the Transportation Communications International Union's position that dismissed employees do not forfeit their dismissal allowances if they refuse to accept a recall to work that would require them to relocate to a location that would require a change of residence. In other cases, the Board has stayed arbitration awards for the following reasons: to provide time for consideration of labor appeals (at the request of the American Train Dispatchers); or to provide time for the parties to negotiate further (at the request of UTU and the Brotherhood of Locomotive Engineers, in two related cases, and BMWE in another case). The disputes impacted by those stays were ultimately settled by the parties, except for the American Train Dispatchers case, which remains the subject of a stay at the union's request due to safety concerns. In another arbitration review case (involving BMWE and a smaller railroad), the Board issued three separate decisions favorable to labor.

The Board has specifically placed emphasis on negotiation as the preferred way of resolving labor implementation matters, which is consistent with the tenor of the Railway Labor Act. In connection with the four mergers approved under my Chairmanship, many if not most employees were covered by negotiated rather than imposed agreements. Some employee interests have said that they have entered into unsatisfactory agreements only to avoid arbitrations that would have left them in even worse positions. But in connection with the recent Conrail transaction, the Board's action on appeal in staying the Fredenberger Award, referenced earlier,

was credited by the representative of one of the major unions as “enabling the parties to reach agreement.” And in supporting for the first time ever a merger of two class I railroads in the recent CN/IC merger, the BMW E stated that the implementing agreement it negotiated with the applicants should serve as a guide as to how the New York Dock implementing process should work. Thus, the focus on leveling the playing field has resulted in negotiated agreements viewed more favorably by labor interests.

Even in the face of court precedent on CBAs not favorable to rail labor's position, I believe that the Board under my Chairmanship has worked to move the disposition of these matters in what could be characterized as a more positive direction for rail employees. The Board's focus on narrowing what can be overridden by arbitrators in its Carmen III decision, the messages that it has sent in recent merger decisions regarding overrides, its use of stays in the arbitration appeals process, and its efforts to leave labor matters to private negotiation as much as possible, I believe, have all resulted in a more level playing field that has produced more privately negotiated agreements between labor and management than we have seen in recent memory. However, to ensure that this trend is secured, and that consolidations found to be in the public interest can be carried out with minimal disruption to all involved, legislation would be an appropriate way for Congress to reflect an interest in preserving CBAs and the wisdom in promoting private negotiation. As I have indicated before in my December 21 letter, I understand the concerns of labor regarding the existing law and court precedent on CBA overrides, and have indicated that legislative relief would be necessary to fully address these concerns.

Conclusion

Under my Chairmanship, the Board, pursuant to Congressional directive in eliminating the ICC, has been a model of doing more with less in a common sense way -- of putting its limited resources to the most efficient use in handling its caseload expeditiously and resolving complex matters before it in an effective and responsible manner in accordance with the ICCTA. The Board has approached its work with fairness, balancing the many varied and often conflicting interests under the statute in reaching its decisions on the record.

During the hearings before this Committee in the recent past, not all of the Members of the Committee have agreed with my position as to the law governing each of the several difficult issues that come before the Board. I have heard the concerns raised, I have understood them, and I have not ignored them. At the same time, I have made decisions that I believe have been appropriate based on the records compiled and the mandates of the existing law. There may be areas in which certain Members of this Committee would like to see legislative changes, and indeed I have recommended in my December 21 letter changes that Congress could consider, particularly with respect to small rail rate cases and rail labor matters. However, until the law is changed, I will continue to implement current law as I believe Congress intended, using my existing authority fully and fairly, in accordance with the goals of common sense government and the decisional directions that I have outlined. If confirmed, I look forward to continuing to work with the Committee, other Members of Congress, and all other interested parties as we tackle the many important transportation issues that confront us.