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Testimony of U.S. Senator Amy Klobuchar
Surface Transportation Board
Docket No. FD 35506

Chairman Elliott and members of the Surface Transportation Board, thank you for convening this hearing to examine the Western Coal Traffic League's pending petition before the Surface Transportation Board (STB). The petition requests an order to prevent BNSF Railway Company (BNSF) from passing on to captive rail customers the roughly \$8.1 billion acquisition premium brought about by Berkshire Hathaway's acquisition of BNSF in 2010.

I am deeply concerned about this issue and have shared my views with the STB several times. Recently, I wrote to the STB outlining specific concerns regarding this acquisition premium and how it will impact captive rail shippers in Minnesota and across the nation, and asked the STB to convene this proceeding to allow all interested persons to participate to ensure public input would be received before rendering a final decision on this important matter.

As I have continued to talk with Minnesotans and others about this issue, it is clear to me that rail dependent shippers have significant concerns that they will be hit hard twice if the acquisition premium is allowed to stand.

First, the actual cost of the acquisition premium will simply be passed on to BNSF customers. This would be especially costly to those shippers that must rely solely on BNSF for rail service and have limited or no access to other transportation options. These utilities, farmers and ranchers, ethanol producers, and manufacturers are already being captive to a single railroad and this anticipated rate increase will certainly make matters worse. The increased costs will stifle economic growth, jeopardize jobs and put rural communities at risk. I reiterate the need for the STB to reexamine accounting policies to help protect shippers against this unfair and harmful practice.

Second, the acquisition premium will hurt shippers because BNSF is permitted to add the amount of the premium to their books as a capital expenditure which is considered a variable cost. By statute, when a shipper brings a rate dispute to the STB there must be at least a 180 percent ratio of rates charged by the railroad to the railroad's variable cost. The acquisition premium increases the variable cost which would mean that even higher rates would need to be charged in order to meet the 180 percent minimum to allow a rate case to be considered by the STB. This level of 180 percent ratio of rates charged to variable costs is the minimum threshold allowed by statute for a shipper to bring a rate dispute before the STB.

Therefore, the costs of the acquisition premium will not only be passed onto captive shippers, but it will make it even more difficult for those shippers to bring rate cases against BNSF in the future.

Consumer protection is one of the primary reasons that other federal and state agencies preclude

acquisition premiums from being included in the rate base of electric utilities or other regulated industries. I encourage the STB to use its authority to resolve this matter in a way that protects consumers of rail transportation services.

I urge the STB to promptly give full and fair consideration to this petition, and urge the Board to issue a decision as soon as practical in order to minimize the effect this delay may have on shippers

Thank you again for your attention to this matter of critical importance.