



Cynthia M. Lummis
Congress of the United States
Wyoming

March 8, 2012

233446

The Honorable Daniel R. Elliott, III
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

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Office of Proceedings
March 12, 2012
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Public Record

RE: STB Finance Docket No. 35506

Dear Chairman Elliott:

I write regarding Berkshire Hathaway's 2010 acquisition premium of BNSF Railway Company (BNSF), a premium now estimated to be \$8.1 billion. It is my understanding that the Western Coal Traffic League (WCTL), other interested shipper groups, the National Association of Regulatory Utility Commissioners (NARUC), and the U. S. Department of Agriculture have expressed their concerns regarding the effect of the acquisition premium on certain costing determinations and rates. I appreciate the Surface Transportation Board (STB) opening a proceeding and holding a March 22, 2012 hearing to review this matter.

Among the concerns regarding the treatment of the acquisition premium is its inclusion in BNSF's capital asset and regulatory rate bases. Including the premium in a railroad's capital asset base impacts the revenue-to-variable cost ratio of 180% required by statute for a shipper to bring a rate dispute before the STB; it also affects the value used to determine a railroad's revenue adequacy. Moreover, the inclusion of BNSF's acquisition premium in its regulatory rate base may result in higher costs for captive consumers. As you may be aware, those higher costs would impact a large segment of rural America and those who rely on BNSF Railway for service. According to a 2010 Study of Rural Transportation Issues released by the U. S. Department of Agriculture and the U. S. Department of Transportation, the railroad industry and the STB are the only industry and regulator that add merger premiums into the rate base. Other federal regulatory agencies disallow the practice of including acquisition premiums when assessing asset value.

Statute requires that the STB maintain reasonable rates when there is an absence of effective competition. In *Farmers Union Cent. Exch. v. FERC*, 584 F.2d 408, 418 (D.C. Cir. 1978), the Court stated, in part, that "it is rates, not bookkeeping, that the statute requires to be reasonable and there is no assurance . . . that reasonable accounting measures translate automatically into reasonable rates." In October 2011, the STB announced the 2010 Cost of Capital figure used to evaluate a railroad's revenue adequacy. Many shippers have stated that they are already experiencing the effects of higher rates due to the inclusion of the acquisition premium.

To resolve this matter and minimize any further impacts on the shippers and other affected parties, I

respectfully request that the STB conduct a thorough and impartial review of this proceeding and provide full and fair consideration to testimony delivered at the March 22 hearing. Thank you for your willingness to investigate this issue and for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Cynthia M. Lummis". The signature is written in a cursive style with a large initial "C" and "L".

Cynthia M. Lummis
Member of Congress

cc: Francis P. Mulvey, Vice Chairman
Ann D. Begeman, Commissioner