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Committee on Commerce, Science & Transportation
Washington, D.C. 20510

Dear Committee Members,

I am writing with regard to the September 10th hearing of the Committee on Commerce, Science & Transportation, pertaining to improving the performance of America's freight rail system. Thank you for bringing additional attention to this important issue. As you know, the Surface Transportation Board ("STB") has been closely monitoring, and actively working to improve the health of the United States freight rail network, and this agency will continue to do so until current rail service problems are resolved. The reliability of our Nation's freight rail system is vitally important to the larger economy to support growth across all sectors and continued job creation. I would welcome the opportunity to meet individually with Committee members and staff on these important matters, or should you have another hearing on this topic, to provide testimony before the Committee.

Toward the end of 2013, the STB became particularly concerned about the reliability of the freight rail system. At that time, key metrics for industry performance – such as system average train speed, terminal dwell time, and railcars online – were showing trend lines indicative of deteriorating rail service. Additionally, the STB's Rail Customer and Public Assistance ("RCPA") program – which conducts much of the agency's stakeholder outreach and has been a particular focus during my tenure – was beginning to receive an increasing number of informal service complaints from shippers. Agricultural, coal, and chemical shippers, in particular, were reporting various service-related problems, including the inability to obtain empty railcars; potential shut-down scenarios due to delayed delivery of critical raw materials; lost business due to logistical constraints; and, the need to divert freight from rail to other modes. Although most Class I's were involved, the problems were reported as being acute on the Canadian Pacific Railway ("CP") and BNSF Railway Company ("BNSF") networks.

The Board's response to these issues began immediately with informal assistance, communication and information-gathering. At my direction, RCPA worked closely with shippers and railroad contacts to resolve individual service issues and to mitigate disputes. RCPA initiated weekly service calls with CP and BNSF, and continued to explore problems during monthly calls with operating personnel from the other Class I carriers. Through diligent efforts, RCPA assisted in averting shut-down scenarios for several chemical and coal shippers,

and worked to improve the movement of grain shipments. Additionally, RCPA staff also held meetings in Fargo, N.D. on March 25-27th with dozens of shippers from several states in the upper Midwest to better understand the service issues and to explain avenues for relief available before the STB.

In the face of increasingly dire reports, on February 5th and March 6th, respectively, then-Vice Chairman Begeman and I sent joint letters to the chief executives of BNSF and CP, the two railroads experiencing the most severe service disruptions. The letters requested detailed information relating to the causes of the problems and the plans for service recovery. We requested immediate in-person meetings with senior level executives, so that we could personally convey our concerns and gain a better understanding of the carriers' remedial efforts. These meetings were held at STB headquarters in mid-February and early March and resulted in more information about service metrics being submitted to the Board.

Recognizing the severity of the nation's rail service problems, on April 10th, the Board held a public hearing in Washington, D.C. There were four key goals: (1) to better understand the nature and extent of service issues across the network; (2) to have the carriers present their plans to restore the network to normal operating conditions; (3) to hear from shippers about their difficulties and their perspective on the proposed solutions; and, (4) to improve the flow of information among stakeholders.

At the hearing, the Board heard from nine separate panels, comprising over 40 speakers, including Senator John Thune of South Dakota. A large number of shippers representing many different commodities shared serious concerns about rail service. Farmers and representatives of agricultural interests discussed negative effects of delayed fertilizer deliveries, backlogged grain car orders, and delayed shipments of loaded grain cars. Reported impacts included diminishing or non-existent storage capacity at elevators, risks of stored grain spoiling, lost sales, financial loss related to underutilization of shuttle trains, penalties for late-delivered products, buyers shifting to foreign suppliers, and damage to the reputation of the United States agricultural industry. Representatives of other industries described supply chain disruptions in shipments of coal, chemicals, feed, sugar, and paper. Amtrak's Vice President for Operations described the serious effects that rail network congestion and delays have on passenger service.

Representatives of the Class I railroad industry described several factors that contributed to the deterioration of rail service, including strained track capacity, unexpected volume growth, crew and personnel shortages, lack of locomotives, severe winter weather, and congestion at major gateways, in particular, Chicago, Ill. Although the railroad participants acknowledged service problems, they generally predicted that improvements would occur over the spring and summer. CP's President and Chief Operating Officer estimated that CP's service would be restored to normal in four to six weeks. BNSF committed to moving last year's crop prior to the next fall harvest.

After the hearing, the STB continued both formal and informal actions to improve rail service. In response to hearing testimony about delayed fertilizer deliveries and the severe impact such delays would pose for spring planting, the Board, on April 15th, issued an order to CP and BNSF. The order directed the carriers to provide their plans to ensure delivery of

fertilizer shipments, and to provide status reports regarding such deliveries over a six week period. Over the six week reporting period, BNSF moved 56 trainloads of fertilizer (ranging from 65-85 cars) in BNSF-direct unit train service. CP moved approximately 2,600 fertilizer carloads over the six week reporting period. Based on conversations with shippers and carriers, I believe that the fertilizer deliveries largely met demand for spring planting in a timely manner.

On the informal side, I sent RCPA staff to a series of confidential sessions with affected stakeholders in the upper Midwest in Sioux Falls, S.D., on May 6th; Bloomington, Minn., on May 14th; and, Malta, Mont., on June 11th. Representatives of RCPA were also available for one-on-one meetings at the National Coal Transportation Association meeting in Hilton Head, S.C. on April 28-30th, and the North American Rail Shippers Association meeting in San Francisco, Cal. on May 29-30th. RCPA also continued its informal dispute resolution efforts with shippers and railroads to resolve service emergencies, and its monitoring of rail performance metrics.

The Board continued to monitor CP's and BNSF's progress in moving the 2013 grain harvest. Recognizing the limited time until the 2014 harvest, the large quantities of grain that remained to be moved, and the Board's concerns about the railroads' paths towards meeting their respective commitments, on June 20th, the Board directed CP and BNSF to provide and/or update their respective plans to reduce the backlog of unfilled grain car orders, to resolve grain car delays, and to provide weekly status reports regarding the transportation of grain on their networks (for CP, on its United States network).

For the eight week period following this second order, BNSF showed considerable progress in reducing the number of backlogged orders, and the average number of days late for such orders. By contrast, CP's reporting failed to demonstrate similar progress. The problem was compounded by the fact that CP's reporting of its backlog and average days late was both confusing and ambiguous. CP's data suggested that CP would not clear its backlog prior to the start of this year's harvest. An additional concern with regard to CP was its interchange with the Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E) which became the new operator of the western portion of the Dakota, Minnesota & Eastern Railroad sold by CP through an agreement executed May 31st. RCP&E became the primary carrier for much of South Dakota's grain, heavily reliant on CP for locomotive power, cars, interchanges, and through service for its customers. To help facilitate an improvement in both service and communication, the Board hosted a meeting at its offices on August 8th in which CP, RCP&E and Governor Daugaard of South Dakota and his staff participated, along with RCPA staff.

During this same period, the Board continued to receive reports from coal-fired utilities, ethanol manufacturers, propane shippers, automobile manufacturers and others about growing cycle times, unreliable service, and the potential impact on rail shippers and receivers. For example, utility coal shippers reported increased cycle times and irregular delivery of unit trains, which, in some instances, have severely strained stockpile inventories. Some coal-fired plants incurred significant costs by purchasing replacement power from the grid, or reducing their generation. Coal-fired plants also expressed concerns over their ability to rebuild stockpiles and manage inventory going forward. With regard to more general system metrics, it appeared that the same issues continued to hinder the industry's recovery, and key measures of overall rail

performance failed to improve. Publicly available key metrics such as system average train speed, dwell time at major terminals, and cars online reflected an industry still struggling to provide rail service at acceptable levels. Over the last several months, each Board Member has held numerous meetings with impacted shippers and carriers to discuss issues in detail. We have also made site visits to both railroads and shippers. For example, Commissioner Begeman and I recently visited Chicago to observe firsthand some of the bottleneck areas, railroad efforts to improve the flow of traffic, and the effects on local communities.

Because of its ongoing concerns, the Board issued an order on August 18th for a formal field hearing in Fargo, N.D. on September 4th. The order directed executives of CP and BNSF to appear at the hearing, and also required the carriers to submit additional data. In particular, CP was instructed to state in its weekly status reports the number of locomotives interchanged with RCP&E and to provide an updated plan to reduce its backlog of unfilled grain car orders and resolve grain car delays on its United States network, including its timeline for doing so. In order to better track BNSF's progress with regard to grain shuttle transportation, the Board directed BNSF to include in its weekly status reports its plan versus performance for grain shuttle trips, by region, updated to reflect the previous four weeks. The order encouraged impacted shippers and/or shipper organizations to appear at the hearing to discuss their service concerns and to comment on the railroads' progress and plans.

At the Fargo hearing, the Board heard from nine panels and approximately 40 speakers. Shippers of soybeans, corn, wheat and other agricultural products described continuing problems in rail service on the BNSF and CP networks, and a concern for reliable service into the next harvest. Coal and ethanol shippers informed the Board of continued problems of erratic service, increasing cycle times and stopped train sets, leading to potential shut-down scenarios. All shippers and several representatives of state governments expressed a need for greater transparency and reporting of rail performance data in real time. Both BNSF and CP acknowledged that their respective recoveries had not proceeded as well as they hoped, but expressed cautious optimism that service improvements would occur in the fall, in particular for agricultural shippers. Overall, the hearing helped to crystallize the Board's understanding of the current challenges.

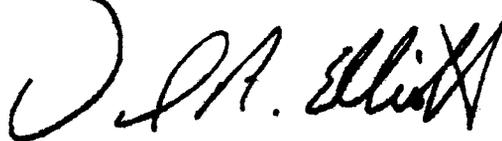
Based on the foregoing, the Board is considering what additional steps may be necessary to facilitate the recovery of the rail system. Under its governing statute, the Board has a range of available tools that could be used for this purpose, depending on the scope and magnitude of the ongoing service problems. Although it has long been Board policy to favor private sector resolutions when possible, further regulatory action may be warranted for expediting the overall recovery or alleviating particularly intractable service failures. I also believe that any such action should not benefit one industry at the expense of others, or spur unintended negative consequences. While I cannot speak for my fellow Board Members, I anticipate further action in light of the recent hearing.

I also note that the STB is currently examining the availability of relief for grain shippers under our rate reasonableness regulations in Ex Parte 665 (Sub-No. 1), *Rail Transportation of Grain, Rate Regulation Review*, and that I intend to hold a formal hearing in this proceeding to receive further input from our stakeholders. This hearing will give the Board the opportunity to

explore in greater detail various aspects of the shuttle train service that several railroads have implemented, including how cycle times impact the overall cost borne by shippers for this service. The Board is also working on Ex Parte 711, a proceeding related to a proposal to revise the existing competitive access rules. Finally, in Ex Parte 722 and 664, the Board is reviewing its methodology for determining revenue adequacy and how it calculates the rail industry's cost of capital, both of which have an impact on rate reasonableness cases. Separately, given the expense and complexity of the Stand-Alone Cost rate case methodology, the Board has recently contracted for an independent study that will look at alternative rate case methodologies.

I thank you for the opportunity to submit this letter to the record. Please contact me with any questions you may have about the Surface Transportation Board's important work involving the current freight and passenger rail challenges facing our country. Do not hesitate to call on me for assistance should your constituents need help with their individual freight rail matters.

Sincerely,

A handwritten signature in black ink, appearing to read "D.R. Elliott, III". The signature is fluid and cursive, with a large initial "D" and "R".

Daniel R. Elliott, III
Chairman

cc: The Honorable Deb Miller, Vice Chairman
The Honorable Ann D. Begeman, Commissioner