

United States Senate
WASHINGTON, DC 20510

232243

ENTERED
Office of Proceedings
April 25, 2012
Part of
Public Record

April 18, 2012

Mr. Daniel R. Elliott
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Elliott:

We are writing regarding the Surface Transportation Board's (STB) Finance Docket 35506, which was the subject of a public hearing on March 22, 2012.

As you know, this case revolves around Berkshire Hathaway's 2010 acquisition of the BNSF Railway Company (BNSF) and the effect that purchase may have on the STB's Uniform Rail Costing System used for rate-making purposes and for making revenue-adequacy findings. Berkshire Hathaway paid a premium when it purchased BNSF and there is concern this could indirectly influence rates for a number of shippers. It is important the STB closely reviews these variable cost impacts to ensure fairness for any existing or future rate threshold relief determinations.

In 2009, Basin Electric and the Western Fuels Association won a judgment from the STB that ties its future rates to BNSF's variable costs. That case capped rates for the next 16 years. These capped rates would be affected by any inclusion of an acquisition premium. Because there is over \$200 million in the form of future rate calculations, the pending decision would have a significant impact on the 2009 case, consumer electricity bills, and rail rates for North Dakota businesses and citizens.

Congress has given the STB discretion to protect shippers from unreasonable rates, and STB should ensure its regulations for cost are fair and conform to its regulatory purposes. The STB's decision to open this docket reflects an acknowledgement of that authority. STB should make a timely and considerate decision in this case and finalize the appellate remand issue from the 2009 case.

Thank you for your thoughtful consideration of our comments, and we look forward to reviewing the STB's final decision in this case.



Kent Conrad
U.S. Senator

Sincerely,



John Hoeven
U.S. Senator

10:25