



Roger P. Nober
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September 13, 2012

**Via Electronic Submission and
Overnight Mail**

**233115
FD 35506**

The Honorable Daniel R. Elliott, III
Chairman
United States Surface Transportation Board
395 E Street S.W., Suite 1220
Washington, DC 20423

**ENTERED
Office of Proceedings
September 13, 2012
Part of
Public Record**

Dear Chairman Elliott:

I write on behalf of Berkshire Hathaway Inc. (Berkshire) and Berkshire's wholly-owned subsidiary, BNSF Railway Company (BNSF) regarding Berkshire's purchase of BNSF in February, 2010.

Berkshire is a holding company which is engaged in numerous diverse lines of business and employs a unique decentralized management philosophy. When Berkshire purchased BNSF, neither Berkshire nor BNSF believed that the transaction was subject to the jurisdiction of the Surface Transportation Board (STB), because Berkshire was not a rail carrier and Berkshire did not believe it owned or controlled any other rail carriers. As such, Berkshire and BNSF believed the transaction was not of the type enumerated in 49 U.S.C. Section 11323(a) and therefore outside of STB jurisdiction.

However, Berkshire and BNSF have recently become aware that two of Berkshire's more than 75 operating business groups with nearly 2,000 subsidiaries do in fact have entities within their organizational structure that own or control an interest in a total of two rail common carriers, and as a result Berkshire's purchase of BNSF would have been subject to STB jurisdiction pursuant to 11323(a)(5) prior to the closing of that transaction.

In particular, at the time of its purchase of BNSF, Berkshire owned nearly 90 percent MidAmerican Energy Holdings Company, whose subsidiary MidAmerican Energy Company, a regulated public utility, owns a majority of the CBEC Railway, Inc., a six mile common carrier railroad in Council Bluffs, Iowa which principally serves certain MidAmerican Energy Company-owned coal fired power plants.

In addition, at the time of its purchase of BNSF, Berkshire owned a controlling interest in the Marmon Group, an association of about 150 manufacturing and service businesses. One of

those 150 businesses is a company called Railserve, Inc., a company which provides in-plant rail services, industrial switching of rail cars, unloading and loading services, locomotive leasing, car inspection and track repair. One of Railserve's holdings is a common carrier shortline railroad in Oregon, the White City Terminal Union Railway (WCTU), which serves an industrial park in Oregon, has 12 miles of track, two employees, two locomotives and annual revenues of approximately \$250,000. Berkshire recognizes that not only was its purchase of BNSF subject to STB jurisdiction, but when it purchased its initial 60% ownership stake in Marmon in 2008, then by extension its ownership and control over the WCTU was also a transaction that was likely subject to STB jurisdiction.

Berkshire is aware of these two instances and intends to fully comply with the requirements of Section 11323 of the Interstate Commerce Act. Berkshire will work expeditiously to do so, by divestiture of both entities, or by other appropriate means. On behalf of Berkshire, I will inform the STB when Berkshire has done so.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Nober", followed by a long horizontal line extending to the right.

Roger Nober

Executive Vice President, Law & Secretary

cc: The Honorable Francis Mulvey
The Honorable Ann Begeman