

United States Senate

WASHINGTON, DC 20510-2309

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March 4, 2013

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

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Dear Chairman Elliott:

We write to express our concerns with Berkshire Hathaway, Inc.'s (Berkshire) announcement that it did not realize that its acquisition of BNSF Railway (BNSF) in February 2010 was subject to the jurisdiction of the Surface Transportation Board (STB) under 49 U.S.C. 11323(a)(5). Under existing law, Berkshire is not authorized to own or control multiple rail carriers without the Board's approval, and this transaction should have only been allowed to proceed after a determination by the Board that it was in the public interest. The fact that this did not occur and is just now coming to light—more than two and a half years after Berkshire acquired BNSF—is very concerning, especially since BNSF is the second largest freight railroad in North America.

We have written to you previously to express our concern that the \$8 billion acquisition premium that was paid by Berkshire to BNSF could be used to artificially inflate the railroad's regulatory rate base and could also be passed on to captive shippers in the form of higher rates. Since Berkshire's acquisition of BNSF, we have heard from a number of shippers that have complained of elevated rates. As railroads have consolidated over the last several decades, captive shippers have become more and more vulnerable to excessive rates and unreliable service. If BNSF is able to include the \$8 billion acquisition premium in its capital asset base, we are concerned that fewer shippers will be eligible to file rate cases with the STB. This is unacceptable to us. We urge the Board to exclude the acquisition premium for the two years that the transaction was not approved by the Board, as well as all subsequent years that the railroad is owned by Berkshire.

Additionally, we think it is very significant that Berkshire was able to pay such a substantial premium when it acquired BNSF—more than 30 percent above the trading price of BNSF's shares—and yet, BNSF is still considered to be revenue inadequate by the Board. Over the last two years, Berkshire Hathaway has sent shareholder letters noting the strength of BNSF's financial performance and that it "delivered record operating earnings." If Berkshire Hathaway is able to assure its investors that BNSF will be able to cover its operating costs and will remain a strong financial investment, and yet the formula used by the Board continues to indicate that BNSF is "revenue inadequate," then we can only conclude that something is amiss with the formula. We urge the Board to carefully examine this information when considering BNSF's revenue adequacy.

Thank you for your consideration of our views on this subject. We look forward to your response.

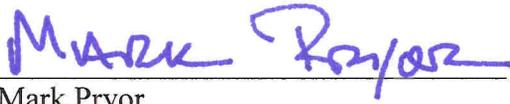
Sincerely,



Al Franken
United States Senator



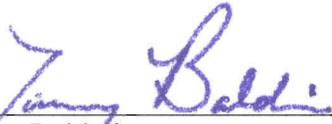
David Vitter
United States Senator



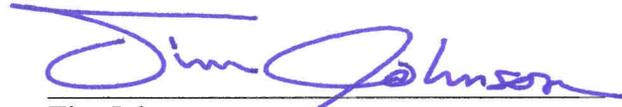
Mark Pryor
United States Senator



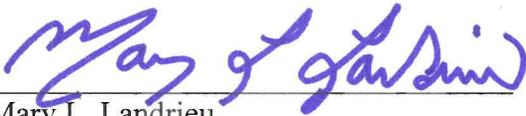
Amy Klobuchar
United States Senator



Tammy Baldwin
United States Senator



Tim Johnson
United States Senator



Mary L. Landrieu
United State Senator