

Chairman Buttrey's Remarks
Transportation Table
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Geopolitical forces were fully engaged and commerce was flowing at an astonishing pace. Trade issues were at the top of the list for entrepreneurs even as wars and rumors of wars were the talk of the day in every capital. There was a thirst for knowledge about how differing cultures would impact the desire to establish new trading partners. New trade routes and an ever-increasing supply of new products and commodities were being demanded by consumers and producers. But the transportation providers needed additional capacity to carry larger cargoes and achieve economies of scale, and they needed better technology and better infrastructure to withstand weather conditions and to improve their operational performance. There were frequent and troubling disruptions to trade and peace caused by totalitarian despots. An overarching question was, how could all these global activities be properly secured, and who was going to pay for that?

Self-proclaimed visionaries sprang up to address these concerns and elevate them to the forefront of public debate. They announced that more reliable long-range planning and forecasting was required, and that politicians should be paying much more attention to trade and transportation issues. They warned that the way ahead was fraught with unpredictable events and possibly cataclysmic economic consequences. This was the world faced by Marco Polo in the thirteenth century. Some things never change!

As we focus on the STB's role in transportation regulation, I hope we can set aside personal interests and parochial viewpoints, at least for a while, to reflect on our mutual concerns in a spirit of conciliation and productive dialogue. I firmly believe that we can achieve more real progress by sitting down and talking, than by suing each other or waging rhetorical warfare in the media. Even in the contentious area of rail rates, we have an occasional bright spot of cooperative problem solving. Last summer, in the only small rate case ever to be filed, the Board's non-binding mediation process resulted in a private settlement in about three days. Some were disappointed because the case did not reach a regulatory conclusion, but I must say that I was pleased. Alternative dispute resolution is often superior to adversarial proceedings in my view, and can work if we just give it a chance.

When I go out to speak to consumers of rail service, I am often reminded of the story about Sir Winston Churchill sailing to New York to make a major address just before the attack on Pearl Harbor. He gave a splendid speech and got a standing ovation. When he returned to his seat, he was greeted by a lady who was smiling and applauding enthusiastically. She said, "Mr. Churchill, you must be thrilled that so many Americans have turned out to hear you speak." Mr. Churchill reportedly paused, then smiled and said, "Yes madam, but there would have been a lot more people here if I were being hanged." I told that story when I was in Montana at a town hall meeting filled with grain farmers, and a gentleman in the back of the room shouted, "I have a rope in my truck." I have decided to drop that story from my Western grain country speeches.

I tell that story not just because the gentleman got a big laugh — and some rather unnerving applause — but because I believe there was an important message there. Some shippers are very frustrated with rail rates and service, and I find, as I travel around the country, that there are some very basic misconceptions about what the Board can and cannot do about rail problems. I have had rail customers say to me: “The Board could do something about my problem if it wanted to.”

That statement suggests that they think the Board does not know or care about shipper concerns. I can assure you that is not true. Many rail issues concern me, but the Board cannot necessarily do anything about them, either because of the limits on our statutory authority, or because no party has brought a case before the Board.

Because of this misunderstanding, I have begun the practice of explaining more often how the Board works. The Board is an adjudicatory body, which means that we cannot, in most cases, institute a formal proceeding on our own initiative. Some aggrieved party must file a case under our statutory jurisdiction, seeking relief that we have the authority to grant. We are like a special Federal Court for shippers and railroads.

Like a court, we are bound by the record before us and the law, which in our case is our governing statute. When I’m asked: “What is your regulatory philosophy?,” my stock answer is: “Follow the statute.” The process for confirming Supreme Court justices has recently been in the news. You have no doubt heard Senators ask nominees to elaborate on their judicial philosophy. If you listen closely to the answers, you will often hear Supreme Court nominees say they are guided by the principle of “judicial self restraint.” Translation: “They will not legislate from the bench and they will conservatively apply Constitutional principles.” In stating my regulatory philosophy, I try to follow the example of my legal brethren who aspire to the highest court in the land. The Congress makes the policy, and the Board must very judiciously stay within the confines of the Interstate Commerce Act as modified by the Staggers Act and ICCTA.

I am, by nature, a true believer in deregulation, and that the least government is the best government. Consequently, being a regulator sometimes feels for me like wearing my shoes on the wrong foot. The Staggers Act, which began the process of freight railroad deregulation, calls upon the agency to balance the interests of shippers and railroads. Webster’s definition of “balance” is to bring things into equilibrium. That can be a tall order! Nowadays, I hear folks talk about balancing the playing field, but I have never met a business person who really wants a level playing field. Adam Smith would roll over in his grave if he heard that statement coming from any self-respecting businessman in America. What that statement really means is. . . “Take that other guy’s advantage away from him and give it to me. I will be a better steward of the public interest than that other guy.” Well, I don’t think the law expects the Board to arbitrarily take an advantage from one party and give it to another. However, the Board must, when called upon to do so, determine what is or is not a “reasonable” advantage. The law does not talk about what is fair, but instead, what is “reasonable.”

The late 70's and early 80's ushered in sweeping deregulation legislation in the transportation field. I had the privilege of serving as Republican Counsel to the Senate Committee on

Commerce during the late 70's when most of the deregulation legislation was developed. During that time, the Congress deregulated cargo airlines, passenger airlines, well-head natural gas prices, and interstate trucking. And, of course, Congress passed the Staggers Act. Like democracy itself, the Staggers Act is an experiment in free market economics but because of the nature of railroading, the experiment is limited in scope. The deregulation of freight railroads is not complete. The Board remains as a regulatory backstop in situations where Congress determined that market forces may not work freely.

Staggers has had a huge and positive impact, but the world continues to change. Today there are new challenges that were not dreamed of in 1980, related to infrastructure and constrained capacity. So for us at the Board, and for you, there will be bends and twists in the road. In the new world of re-engineering and innovation, those who can adapt to the changing global marketplace will likely do well; those who try to hold on to the past may not.

Consider this, when you think about change — the Supreme Court of the United States has reversed itself over 200 times in its history. More than 80% of those reversals were on questions of Constitutional interpretation. Decisions concerning the rights of the criminally accused, the power of eminent domain, and the right of personal privacy, to name just a few, are examples of landmark changes that have taken place in our lifetimes. To think that the transportation sector is immune from change is simply out of touch with reality.

The Board must be receptive to change, too. I'm a strong believer in precedent, but what was good precedent in the past may not make good sense today. So if you ask me whether future decisions will follow and affirm every precedent, the answer is, probably not. It is inconceivable to think that old wineskins can hold new wine. It was not true in ages past and it is not true today. Anyone who watches our docket knows that the Board has a lot of ongoing matters on its plate right now. For instance, railroad fuel surcharges (on which we held a hearing all day yesterday), changes in the notice required for class exemptions, paper barriers, and changes to the way we handle large rate cases and small railroad abandonments, are all being considered. We are actively trying to bring our processes up-to-date in the areas we regulate.

My priorities as Chairman are focused in particular on the adequacy of rail infrastructure; and the efficient movement of essential commodities. The combination of increased demand for rail service, and limited infrastructure, results in congestion. The railroads are making significant investments themselves, but people are beginning to realize that some railroad improvements — those with a significant public benefit — will need some Federal help. Indeed, it seems like the U.S. Congress may be ready to give serious consideration to enacting an investment tax credit for rail infrastructure expansion. Many states have also stepped up to the plate in assisting with funding specific projects to upgrade rail infrastructure.

The efficient movement of coal is essential to the economic health and national security of this country. The Board will use its authority, at least as long as I am there, to do whatever is within its power to do, to facilitate a steady supply of coal to the Nation's power grid.

The efficient and timely movement of this Nation's grain harvests is also critical. The true strength of this Nation is not just tied to the number of Super Tomcat fighter jets or Tomahawk missiles we can launch, but also to the fact that we can feed ourselves and still have enormous amounts of food commodities to export. But there are service problems in our grain growing regions, which I have seen first-hand. There are periodic shortages in power units, grain cars, and employees. Rail infrastructure needs to catch up to demand in the grain sector. But there's no free lunch. The only way that is going to happen is if the service can generate sufficient revenues to make it profitable. Railroads and shippers need to work together on this issue. I also think that short line operators can play a very useful role in supplementing Class I service for ag shippers.

No discussion of rail issues would be complete without a reference to our friends in the investment analyst community. I am troubled by what I believe to be the shortsightedness of some analysts and amused by their apparent desire to substitute their judgment for the judgment of seasoned railroad management. It is as if they are not satisfied with counting the money in the till every 15 minutes, they want to tell the railroads how and when to spend their money as well. If the railroads hadn't largely ignored them several years ago and made necessary investments in infrastructure and other critical areas, where would we be today? Railroads are just now beginning to recover from years of losses and deferred maintenance. They need to be given a chance to return reasonable amounts of their earnings back into the infrastructure in order to meet future traffic demands.

When Marco Polo left the Mongol kingdom of the great Kublai Khan to return to his beloved Venice, the Great Khan reportedly gave him a small golden tablet which was the equivalent of a royal passport. The engraving said that the tablet entitled Marco Polo to any horses, lodging, food and guides he might require, and that failure to be hospitable to him and his party would mean certain death. The President didn't give me one of those tablets when I was sworn in — so I'm still watching out for the guys with ropes.

Thank you, it has been a pleasure for me to be here. I'll be glad to respond to any questions you may have.