

Surface Transportation Board Chairman Daniel R. Elliott III
Speech to Steel Manufacturer's Association
November 11, 2009

Thank you, Bill Lowe and Tom Danjczek, for inviting me here today.

Let me start with a little background on the Surface Transportation Board. The Board was established in 1996 after the Interstate Commerce Commission was abolished. The STB inherited some of the ICC's responsibilities, including freight railroad regulation, oversight of Amtrak's on-time performance, and jurisdiction of some pipeline, motor carrier and water carrier matters.

As railroads go, the STB has sole jurisdiction on mergers and acquisitions, new rail lines and line abandonments. The Board also looks at service levels. And the Board is the final word on rates for captive shippers, who depend on rail as their sole means for transporting their goods.

The three-member STB is decisionally independent, like the Federal Communications Commission or the Federal Trade Commission. While the Department of Transportation provides us with certain administrative functions, we are a bipartisan independent agency.

The Obama Administration has invested heavily in high-speed passenger rail and our nation's freight rail network not only because it is the most efficient method of transporting goods and people but because rail is environmentally friendly.

So is steel recycling. I was startled by some of the statistics. Every ton of recycled steel saves 2,500 pounds of iron ore and 1,000 pounds of coal. Compared to iron ore, scrap reduces mining waste by 97 percent, air pollution by 86 percent and water pollution by 76 percent. Steel recycling saves some six trillion BTUs a year and creates 70,000 jobs.

Our office building sits next to a CSX main line (The STB may be the only commercial tenant where having railroad tracks next door is a selling point) and we can see at hundreds of square metal scrap containers heading north and south every day to your plants.

Who knew that railroads and steel mills, so-called old technology, would be considered the "green technology" of the future?

Today, I come here at a time of uncertainty.

It is a time of economic uncertainty, with some signs of life in the railroad industry—have you heard of this guy named Warren Buffett?-- countered by the thousands of railcars still idled across the country.

It is also a time of regulatory uncertainty. On Capitol Hill, the House Judiciary Committee recently passed a bill that would reduce the STB's exclusive jurisdiction on anti-trust matters, which could lead to railroads facing more challenges in federal court and allow the Justice Department to review mergers and acquisitions. On the other side of the Capitol, Senator Jay Rockefeller, chairman of the Commerce Committee, is working on a comprehensive bill that is expected to be unveiled soon. We do not yet know the details of his proposal.

I know many of you are eager to see changes that would result in lower shipping costs.

At the Board, we must do our work in a way that makes sure any changes in the railroad industry would be in the public interest. And—this is the tricky part—we balance the railroads' need for “adequate” revenues with shippers' needs for “reasonable” rates and service.

In a perfect world, every shipper or community would be served by two or more rail carriers. Congress has long understood that we do not live in a perfect world. But that doesn't mean we can't try to create a better one.

While we all wait to see what Congress will come up with, I am moving forward with several projects to make the Board and its processes more transparent and more focused on settling disputes before they become formal proceedings.

For years, the Board's decision process operated sort of like this: Shippers and railroads paid lawyers lots of money to generate file cabinets worth of legal filings and briefs. They shipped it off to the STB. Then everyone waited silently, for months and months.

Then, one day, a decision would come down from above, sort of like a newspaper thrown over the Kremlin's walls.

This has to change.

Last month, President Obama sent me a memo. As you might guess, memos from the President usually rise to the top of the in-box.

This one called on government leaders to “establish a system of transparency, public participation and collaboration.”

The President said, “Openness will strengthen our democracy and promote efficiency and effectiveness in Government. Transparency promotes accountability and provides information for citizens about what their Government is doing.”

To carry out the President’s call, I’ve begun to change the culture of the STB.

I’ve begun a policy of holding oral arguments so parties have a chance to talk face-to-face with me and other board members before we rule on their dispute. We have our second oral hearing on Nov. 23.

And I plan to reinvent the STB’s rusty old Web site into a state-of-the-art information portal that will be user-friendly, interactive and explain what we do in English. And I promise you, everything that can be made public will.

I also hope to breathe some life into the arbitration process at the agency that has lain dormant and unused since it was created in the late 1990s. Finally, I plan on bolstering the agency’s successful Rail Customer and Public Assistance program, where disputes are informally settled.

If you are not familiar with the Board’s Rail Customer and Public Assistance program, you should be, because it is effective and the price is right: Free.

The program solves problems in ways ranging from a simple answer to a telephone inquiry to lengthy informal mediation efforts. Program staffers work to find some middle ground satisfactory to both the railroad and the shipper.

Because it is an informal program, staff cannot order a specific resolution or provide official opinions or rulings. And if the process does not work for one of the parties, either party always has the right to bring a formal dispute before the Board. Your identity will not be revealed to the railroad or other party without your consent.

The program began in 2000 and has grown dramatically since, as both shippers and railroads increasingly recognize the value of resolving disputes before they give rise to formal complaints and legal challenges.

The program staff, including attorneys and former employees of shippers and railroads, bring to the table decades of experience in rail shipping, operations, marketing, analysis, tariffs and rates. They try to seek common ground and settle complaints, allowing both sides to walk away satisfied.

This is exactly what government should be doing: Eliminating roadblocks to doing the business of America.

I know that for a very long time, small shippers have felt that they have no voice at the agency to bring complaints about high rates. And I think they were right. For decades, the Board offered no real avenue for relief for small shippers. It had one

monster of a rate process that cost millions and took several years to complete. This was really only used by large shippers. But it left small to midsized business out in the cold.

That has changed. In the past few years, the agency created a new simplified process to make it easier and less expensive for small to midsized businesses to bring, and argue, a rate case against the a railroad. You can now voice your complaints at the agency no matter how large or small your dispute is.

In fact, the agency created two simplified approaches. One is for very small disputes of less than \$1 million. Under this new process, we force the railroads to engage in mediation of the dispute before STB staff at the outset of the process. This alone as resulted in several quick settlements of the rate disputes. Then we quickly move forward with discovery and a quick decision from the Board.

The Board also created a second streamlined approach that offers more relief: up to \$5 million. Basically, it took the existing complex process and stripped it down to the bare bones. This permitted the agency to reduce the expense of litigating the case by 80% and cut the litigation time in half.

I know that bringing a rate case is a choice of last resort. Litigation is always expensive. It's always long. And it's outcome always uncertain. I always encourage everyone to try to work out there differences without hiring expensive lawyers and consultant and filing lawsuits. But should you need us, the Board is here to provide you a neutral forum to bring your rate disputes and committed to an expedited and transparent decision.

Thank you again and I'd be happy to take your questions, or just listen to your concerns about the economic and regulatory uncertainties you are all facing today.