

STB Chairman Daniel R. Elliott III
Remarks prepared for delivery
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Good evening and thank you, Ed, for inviting me to speak today.

First, let me explain a little about what we do at 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 railroad regulation as well as jurisdiction of some pipeline, motor carrier and water carrier matters. And Congress more recently gave the Board oversight of Amtrak's on-time performance.

As railroads go, the STB has sole jurisdiction over 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.

Today, I come here at a time of uncertainty.

It is a time of economic uncertainty. Fewer trains are running on the nation's rail network and fewer employees are on the job.

We require the nation's largest railroads to report employment figures to us at the first payroll of each month. In October, the seven Class I railroads cut another 408 jobs

bringing their total employment level down to 149,020 workers in all. That is the fourth straight monthly decline. That is down 6.6 percent from January and 9.2 percent from October 2008.

And the railroads still have thousands and thousands of locomotives and railcars in storage, waiting for the economy to bounce back.

There are so many parked, empty railcars around the country that local residents are complaining to public officials. Residents around Ordway Colorado refer to the miles and miles of Union Pacific railcars in storage as the “Iron Curtain.” On one California highway, motorists pass so many parked locomotives that they lose count.

But there are also signs of life in the railroad industry—have you heard of this guy named Warren Buffett?

As all of you know, Warren Buffett plans to buy the Burlington Northern /Santa Fe Railroad. For those of us who can't go out and buy a railroad, the development means several things, all of them, I think, good.

First, he is a good corporate citizen, and that can only be good news for BNSF, its employees and its customers. He learns about industries and then invests in them for the long haul, not just the next financial quarter.

Second, private investment in our nation's rail system is a good thing, not only for railroads but for shippers and the environment.

For those of us who remember the bad old days of disinvestment and the dismemberment of our rail network and large government bailouts, the fact that one of the richest guys in the world has placed a large bet on the future of the industry and our economy is a good thing.

Since the deal was announced, we've been asked whether the STB would have jurisdiction over any aspects.

The answer is no. Under our rules for reviewing mergers, Berkshire Hathaway would be a non-carrier, particularly now that Berkshire has indicated it will sell its small stakes in the Union Pacific and Norfolk Southern.

But . . . and this is a big but . . . news accounts report Buffett owns a model railroad in his attic. Now, I haven't been in the homes of too many billionaires, but depending on the size of his house and his toy railroad, it might qualify as a Class 3 railroad with common carrier obligations. Then, of course, we would have to become involved in a big way.

Seriously, should the deal happen, there are some issues the STB will review and address. Nothing in the deal should change the reporting requirements of BNSF. We will still get the same mountain of financial and traffic information from this carrier.

But we will need to study the impact of this deal on our annual cost of capital calculation. As Ed can probably discuss in more detail than I can, estimating the cost of equity under the approaches the STB just adopted require a stock price. With BNSF being taken private, it will obviously no longer have a stock price. I have directed Board staff to study this issue and the impact on our annual cost of capital calculations for the railroad industry.

Another issue will be how this merger will impact the valuation of BNSF's assets. I am aware of the issue and we are studying it. But overall, this deal in my view is a very positive sign for BNSF and the railroad industry in general.

There are some silver linings in today's freight transportation markets. Because of the economic downturn and fewer trains running, railroads have taken the opportunity

to streamline their route structure and make other efficiency improvements. Speeds are up and so is reliability, for both the freights and Amtrak.

(By the way, I would like to note that the improvement in on-time performance happens to coincide with my tenure as STB Chairman.)

Hopefully, the railroads will keep up their efficiency when business comes back. The last thing we want is that after spending billions and billions of dollars in stimulus funds, the railroads won't be ready. Railroads do the heavy lifting of the American economy and they must be in shape to quickly keep up with expanding commerce.

This is also a time of regulatory uncertainty, which makes his investment all the more interesting. On Capitol Hill, the House Judiciary Committee in September passed a bill that would remove the limited antitrust immunities provided to the railroads, 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 STB reauthorization bill that is expected to be unveiled soon. We do not yet know the details of his proposal. If Congress is successful, it will be the first reauthorization of the STB since it was created in 1996.

While I have had extensive conversations with members of Congress about the legislation, and Board Staff has provided technical expertise and background to Committee Staff, I have not seen the final bill. As you know, nothing in Congress is done until it is done.

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.

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 that parties have a chance to talk face-to-face with me and other board members before we rule on their dispute. We have had three oral hearings so far and I think everyone has been pleased with the way they have gone. Stakeholders and the public have been allowed a peek into a process that has long been closed.

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 be.

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 to bolster the agency's successful Rail Customer and Public Assistance program, where disputes are informally settled.

And then there is URCS, otherwise known as the Uniform Rail Costing System.

If the STB were an organism, URCS would be its heart. It's the methodology that allows us to develop ratios of revenues to a railroad's variable costs, such as fuel and labor. We use variable costs to determine whether we have jurisdiction in rate disputes between railroads and their customers. We use the model in all kinds of cases, from rates cases to merger reviews to even rate disputes over trackage rights.

The concern is that URCS is dated. It was adopted in 1989 after a long rulemaking. Yet some of the key studies that make up the URCS system date way back to 1938 and the Roosevelt Administration. And the STB has not done a review of the model in over a decade.

Can the system be saved? Or maybe it is time for a heart transplant—moving to a new costing system that will more accurately measure the variable costs of moving goods by rail.

The Board has undertaken a major initiative to flush out the issues with URCS as it currently exists and to receive and evaluate alternatives. We have asked Congress to provide funds for a scoping project in our 2010 budget. But we are not waiting on the funds. Smart men and women at the Board are studying this as we speak. And I am delighted that my colleague, Commissioner Frank Mulvey who thankfully is also an economist, has agreed to spearhead the effort.

Whatever we do, we need to get this right.

At the Board, we must continue to 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.

Last year, the Board hired a consultant to examine competitiveness in the railroad industry. The report, by Christensen Associates, showed that rates have risen in recent years. In January, we are expecting an update to the report that will cover 2007 and 2008.

Some shippers have complained that while the economy has softened, their railroad rates have remained high. We will be examining this issue closely. We need to maintain a freight rail system that provides shippers with good service at reasonable rates. Today, shippers have more recourse to the Board than ever. We have established informal ways to settle disputes and have made filing and litigating small rate cases easier and cheaper.

One is for very small disputes of less than \$1 million. Under this process, we force the railroads to engage in mediation of the dispute before STB staff at the outset of the process. This alone has 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 encourage everyone to try to work out their differences without hiring expensive lawyers and consultants 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.

Let me conclude by returning to the uncertainties of the current economic market. It is my hope that next year will see continued economic recovery and a better year for shippers and railroads alike. I am confident that the industry is poised and ready to handle a return of traffic that will be the best sign of renewed economic growth.

And the Surface Transportation Board has a role to play in making rail transportation affordable, convenient and competitive.

But we all must share a common vision. Whether you are a railroad, a shipper, or an investor, we all have a common interest in preserving a national railroad system that serves our economy efficiently, fairly, and cleanly.

Thank you again and I'd be happy to take your questions.