

STB Chairman Daniel R. Elliott III
Midwest Shipper's Association
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Thank you for inviting me to speak.

First, let me explain a little about the Surface Transportation Board, since our name doesn't describe what it is exactly we do.

We used to be called the Interstate Commerce Commission, but Congress abolished the Interstate Commerce Commission in 1996, divvying up its responsibilities.

As you know, the STB was created and given responsibility for the economic regulation of the nation's freight railroads. We don't handle safety or operational matters; those are the responsibility of the Federal Railroad Administration and the National Transportation Safety Board.

We have sole jurisdiction over mergers and acquisitions, new rail lines and line abandonments. Recently, Congress gave the Board oversight of Amtrak's on-time performance. The Board also looks at railroad service levels and has some jurisdiction over some pipeline, motor carrier and water carrier matters.

Also, as you know, the Board is the final word on railroad rates for captive shippers, who depend on rail as their sole means for transporting their goods.

In carrying out our mission we must balance the railroads' need for "adequate" revenues with shippers' needs for "reasonable" rates and service.

Easier said than done.

Because our work is so specific and requires such deep knowledge of the economics of rail transportation, Congress has carved out a special place in federal law for the STB.

The Board is comprised of more than 150 experts including economists, lawyers, environmental specialists, analysts and even an anthropologist. They have hundreds of years of collective experience in this very specific -- some would say arcane—world of economic regulation of railroads.

I just want to take a moment to brag. Earlier this month, the STB was voted as the Best Place to Work in the federal government-- for the second year in a row. We have a motivated, talented staff dedicated to help you and your businesses succeed.

Since the STB was created in 1996, it has operated like a court. We have cases, dockets, we issue decisions etc. You file a complaint, the experts analyze it, Board members vote on it and out comes a decision -- months, and sometimes years, later.

Since 1996, the STB has issued 2,772 full Board decisions.

But we are struggling with many of the same core issues as we were 14 years ago.

It is time for a new direction.

As a former practitioner before the Board and as its chairman for the past year, I've been giving this a great deal of thought. If there is anything I learned when I was a labor lawyer it is this: An agreement between two parties is always better than an order from a third.

I see my role as encouraging greater cooperation -- and through it more harmony -
- between railroads and shippers.

That is why it is time to move the Board philosophically away from the "court" model and toward a "problem-solving" model.

Instead of using our tremendous human resources to push cases along the assembly line, why don't we use our expertise to solve disputes before they result in formal case filings?

That is what I will be trying to do during my remaining time as chairman.

And we have already made some significant steps.

I've bolstered the staff of the Rail Customer and Public Assistance Program, which helps shippers informally settle disputes with their rail carrier. The number of disputes handled by this program has jumped from 93 in 2007 to 1,450 last year.

I urge you to take advantage of the program. Not only is the price right -- free-- but it is also effective. We've been reaching out to shipper groups to post links to the Rail Customer and Public Assistance Program on their Web sites. Please help spread the word.

Of course, there is always the recourse of filing a formal complaint with the STB. And even that we've made smoother, especially for small shippers.

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.

I think the Board has been more successful at it than is generally perceived. Of the 18 rate cases that the Board has issued decisions in since 1996, 10 of those decisions went in favor of the shipper.

Also, we have had some tremendous successes with formal mediation efforts. Mediation recently between a large chemical shipper and a Class 1 railroad led to the settling of four rate cases that would have taken years and tens of millions of dollars to litigate.

And we just had a large coal rate case settle as well.

The Board is especially well-suited to successfully mediate disputes because we have the experts on staff who understand the issues backwards and frontwards, making each side feel comfortable.

I plan to dramatically increase the Board's mediation efforts over the coming years.

I am also reinventing the agency's long-dormant arbitration process. Since it was established a dozen years ago, nobody has used it.

Nobody.

We are looking into why it hasn't worked and how we can make it a key part of the agency's mission in the future.

Another priority of mine is increasing transparency and openness at the Board. In my travels and conversations I've been surprised at the level of distrust of the STB.

Sunshine is part of the cure.

I've begun a policy of holding oral arguments on important or controversial cases so that parties have a chance to talk face-to-face with me and other board members before we rule on their dispute.

In addition, we are in the middle of a major redesign of the Board's website, to make it more user-friendly and to allow the public to better monitor what we're up to. I promise you that everything that can be made public will.

I have an open-door policy to all stakeholders. I'll say yes to almost any meeting - which of course runs my office staff ragged.

I've gone to Chicago three times to walk the tracks involved in the controversial Canadian National/EJ&E merger, speaking with community groups and elected leaders. And the Board has remained vigilant in making sure all of the environmental and other conditions imposed on the merger are followed.

I think I'm the first STB chairman to visit and address Consumers United for Rail Equity, historically one of the agency's biggest critics.

And I've been on an ongoing "Grand Tour" of America's most beautiful chemical plants, ports and rail yards.

But there is still much to do.

Earlier this month, I testified before the Senate Commerce Committee about the Board's future plans.

In that testimony, I stated that over the next year I plan to review long-standing issues between railroads and shippers.

First, we need to revisit Board rules on railroad industry competition, including those that govern competitive access. Those rules were adopted over 25 years ago, when the financial health of the industry was completely different than it is today.

Second, for similar reasons, I also believe it is time to revisit several of the Board's exemption rulings, which removed the federal protections of reasonable service and rates from various shippers in the 1980s.

At the time, most of those shippers supported the exemptions. But many of those same shippers now say that these exemptions have outlived their usefulness.

I'm listening.

Third, I would like to review the level of filing fees in complaint cases. Right now, a shipper has to pay a filing fee of over \$20,000 to complain about service or other unreasonable practices.

That does not seem right.

I understand that agencies are supposed to charge fees that recover their costs. But I am concerned that high fees may discourage meritorious complaints.

As you may know, the Commerce Committee approved a bill that would expand the Board from three members to five and increase our responsibilities as part of an STB reauthorization bill.

The House Transportation and Infrastructure Committee is also looking at reauthorizing legislation.

I promise that any congressionally mandated changes will be carried out smoothly and in a transparent fashion.

But if there is no Congressional action, I will move forward on looking into some of these pressing issues.

Overall, my goal is that the Surface Transportation Board is seen as an honest broker by shippers, railroads and Congress.

We all share a common interest in preserving a national railroad system that serves our economy efficiently, fairly and cleanly.

While there are still serious disagreements over rates and service, I think we can all agree that shipping goods by rail is environmentally and economically beneficial to our nation.

The freight train, which helped win the Civil War in the 19th Century, can help America tackle our environmental challenges in the 21st Century.

At the Board, we aim to be part of the solution. We want you to join us in working toward that goal in a way that is fair to all the players.

If we all work together, we can do this.

Thank you again for your gracious invitation and I would be pleased to answer any questions.