

We have had an extremely busy year at the Surface Transportation Board, and I appreciate the invitation from RailTrends to tell you about it. As you know, our Board is charged with regulating America's freight railroad system.

In the decades since the U.S. freight system was largely deregulated by the Staggers Act of 1980, our freight-rail system has become the model of business efficiency. Our railroads are some of the most respected and profitable corporations

in the nation. U.S. shippers have seen their average rail rates drop to some of the lowest in the world. And for many, service overall has improved dramatically.

But we also know that the story for shippers and railroads is an uneven one.

Deregulation worked so well that many shippers say there is now a lack of real competition. They say mergers have left the country dominated by two regional duopolies who increasingly offer high take-it-or-leave-it rates to companies who have no other transportation alternative.

Our job at the STB is not to pick winners or to champion shippers or railroads. Our job is to help parties with freight transportation disputes solve their issues innovatively so that freight keeps moving, businesses keep growing, and commerce flows.

It is this innovation that has been driving my tenure at the Board. A lot has changed since the current rules on rail competition were put in place. I am taking a hard look at these regulations and have asked our stakeholders how, if and where the Board should update its rules and

procedures in light of the many changes in the rail industry.

I want railroads to continue to invest in their infrastructure and provide the most efficient, environmentally sound freight transportation. I also want American companies and farmers to be able to ship their goods anywhere and anytime at reasonable rates. The Board is here to ensure that happens.

When I spoke to you last year, the Board had just held a two-day public hearing on competition issues. This past summer, we

issued two decisions based on what we learned at that hearing and from the public comments submitted to us.

We proposed several reforms for how the Board resolves rate disputes, to ensure that all captive shippers have a meaningful way to challenge rates. Captive shippers have long told us that they don't bring rate disputes to the STB because of high litigation costs associated with the Board's complex Stand Alone Cost (SAC) test traditionally used to resolve big rate cases.

A few years ago, the Board simplified its evidentiary procedures to provide rail customers with two lower-cost, expedited alternatives to the SAC test. The

methodologies used in the simplified procedures are less precise than those used in the full-SAC cases, so the Board capped the amount of relief available under them.

The centerpiece of the Board's proposal is to remove that limitation on relief for cases brought under the Simplified Stand-Alone Cost alternative, hoping that this will draw more usage. The Board also proposes to double the relief available under its other simplified rate approach, the Three-Benchmark method. Included in our plan is to make sure the Full-Stand Alone Cost test works fairly by examining the use of cross-over traffic, and the interest rate that railroads must pay on reparations to

shippers if the railroads are found to have charged unreasonable rates.

The Board is also busy considering a proposal submitted by the National Industrial Transportation League to increase rail-to-rail competition through reciprocal switching. Under NITL's proposal, certain shippers located in terminal areas that lack effective transportation alternatives would be granted access to a competing railroad if there is a working interchange within 30 miles. The Board conducted a lengthy preliminary analysis of NITL's proposal and

found that it is in the public's interest to obtain empirical information from stakeholders before we could determine how to proceed.

I encourage audience members to submit your input on these initiatives. We're asking for information on the impact on rates and service for shippers that would qualify under the proposal; the impact on rates and service for captive shippers who would NOT qualify; the impact on the railroad industry's financial condition and network efficiencies; and finally, we're looking for an access pricing proposal.

Opening comments are due on March 1<sup>st</sup> of next year.

We've also just issued proposed rules on interchange commitments, or paper barriers. Long-term interchange commitments can affect the competitive environment for years. The Board's rules currently require that a party seeking STB authority to sell or lease a line disclose an interchange commitment in the transaction. The proposal requires a party to file additional information on the interchange commitment's impact on shippers and on the purchaser or lessee railroad. The goal of the disclosures is to encourage transactions

that are in the public interest, while ensuring that we have enough information to judge whether competitive issues require a harder review.

And, we've refined our approach to analyzing market dominance in certain rail rate cases. From our view, the approach has become cumbersome as we are asked to consider cases with many lanes of traffic, and we're doing all we can to simplify the analysis.

We're also getting a lot done outside of the competition realm.

In May, we proposed new rules to clarify liability for railcar demurrage. Conflicting decisions by the Courts of Appeal for 3<sup>rd</sup> and 11<sup>th</sup> Circuits have created uncertainty regarding the party ultimately responsible for demurrage. Under our proposal, a person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the “free time” provided in the carrier’s tariff will generally be responsible for paying demurrage if that person has had actual notice of the demurrage tariff prior to rail car placement. The comment period for this concluded on September 21<sup>st</sup>, and the matter is now under active consideration.

We continue to look at our current exemption rulings, which removed the federal protections of reasonable service and rates from various shippers in the 1980s.

As I mentioned last year, I have worked hard to emphasize alternative dispute resolution efforts between railroads and shippers. I see the Board's role as encouraging greater cooperation -- and through it more harmony -- between railroads and shippers.

It is certainly better for solutions to freight disputes to come directly from parties instead of having one imposed on you by the STB. A large part of my tenure has been dedicated to resolving disputes before they result in formal case filings.

The Rail Customer and Public Assistance Program has proven itself to be a worthy resource to our stakeholders. Some of you in the room have probably used its services. It helps shippers informally settle disputes with their rail carrier at no cost. The number of disputes and public informational inquiries handled by this program was around 1, 400 last year.

Our mediation program is also growing. We have had some tremendous successes with formal mediation efforts. We held a hearing earlier this year on our existing mediation and arbitration procedures. We've conducted mediation in a new area this year – passenger rail on-time performance – and expanded our staff trained to conduct mediations. We're in the process of revising our rules on mediation and arbitration, to make the most of our resources and streamline dispute resolution for all.

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

Of course, shippers and railroads still have recourse to formal proceedings before the Board. The cases that do go formal are often the most difficult, complex and time-consuming ones. But we have a highly-educated, highly-motivated workforce at the Board who works through these difficult cases in an efficient but careful way.

I mentioned passenger rail moments ago. The Board has been more active in this area over the past year than ever before.

This spring, we approved a cost allocation formula for Amtrak's state supported routes, which we were charged with under the Passenger Rail Investment and Improvement Act of 2008. We currently have pending a case in which Amtrak is challenging its on-time performance over Canadian National's rail lines in and around Chicago.

We recognize that DOT has been pushing out millions of dollars toward high speed rail projects and other infrastructure

improvements – and we have a role to play here in improving our nation’s rail network and economy. We look forward to assisting on other passenger rail issues as needed.

While it has been a productive year, there are challenges. Like many federal agencies, budgets are becoming even tighter, and we are being charged to do more with less. We are lucky in that we haven’t seen a wave of retirements, despite the fact that a large portion of our workforce is eligible to retire. When people do leave, we get the best folks to replace them. And the fact that the STB has been named the Best Place to Work in the federal

government for the past several years has helped retain our talented workforce and aided in the recruitment of the best employees.

While we work on these many key issues, it is important that we conduct ourselves in ways that are as open and transparent as possible. We will continue to hold oral arguments on important and controversial cases. It gives both parties and the Board a valuable opportunity to talk face-to-face before we rule on a dispute.

**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, there is a lot going on at the Board not only to settle these disputes, but also to enable fair, innovative industry practices to thrive within an updated regulatory framework. I think we can all agree that shipping goods**

by rail is environmentally and economically beneficial. The nation's reliance on rail service is expected to grow, and the Board will be there to ensure that the railroads serve the public interest and remain strong.

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