

## ***2015 UPDATE***

### **NATIONAL COAL TRANSPORTATION ASSOCIATION**

**Denver, Colorado  
September 15, 2015**

Good morning. I'm Dan Elliott, Chairman of the Surface Transportation Board. I'm happy to be here this morning, and I would like to thank the National Coal Transportation Association for extending its invitation.

Today I'd like to give you a brief update on what's going on at the Surface Transportation Board and what some of my goals are for my second term.

One focus for me is improving accessibility of the Board's processes for all stakeholders. The obvious place to start is the Board's rate reasonable case procedures. The rate case process is increasingly complicated, time consuming, and expensive – a view that I know is shared by many of the agency's stakeholders. During my first term, the Board initiated several reforms, including the adoption of rules that (1) clarified certain

revenue allocation issues in large rate cases, (2) raised the award caps for smaller rate cases, and (3) changed the interest rate for damage awards. In addition, in several recent complex rate cases, the Board developed a modified test for the threshold market dominance inquiry known as the “limit price test.” And, I thought it was important to reduce the fees the Board charges for non-rate related complaints, which the Board did in 2011, lowering fees from \$20,600 to \$350.

I’ve also worked to turn the Board into more of a problem solver and not just an adjudicator. I grew the Board’s alternative dispute resolution program, fostering the agency’s use of mediation and broadening our arbitration rules. I bolstered the Rail Customer and Public Assistance program, which informally assists many smaller shippers that may not be in a position to bring a formal case at the Board. Staffed by industry analysts and attorneys, the office has resolved hundreds of transportation matters since the beginning of my term, and is cited by rail shippers and rail carriers alike as a tremendous success at the agency.

But, there is more to do to make sure that all of our stakeholders have a meaningful path to the Board. During my first term, the agency initiated an examination of whether agricultural shippers have meaningful access to the Board's rate reasonableness process, and the Board held a two day public hearing in July to consider issues related to railroad revenue adequacy and issues regarding how the Board calculates the railroad industry's cost of equity capital. My goal is improve access to the Board and complete these proceedings within a year.

During my first term I also engaged an independent firm to evaluate potential alternative rate regulation approaches, with the goal of reducing the time, cost, and complexity of rate cases. The engagement continues and I look forward to hearing their conclusions. This is the time to consider new ideas, so that the Board has an effective regulatory process that makes sense today.

At the same time, internally, I'm working on best practices and improving the Board's case management – not just for rate cases but for all cases. As an agency, we must always look for ways

to be more efficient. It is simply good government to innovate and improve. I encourage STB employees and practitioners to suggest ways for us to do that, and we have gotten some good results already.

Specifically, last year, I started a process to examine best practices for the Board to use in adjudicating cases, starting with our most complex cases – rate reasonableness cases. As part of this process, I brought in experts to aid us in taking a close look at the Board’s rate case procedures and to recommend things we can do to improve them. It’s great to see the initiative I put in place last year start to bear fruit, and I have every reason to believe this will lead to positive changes in the way the Board manages case workflow.

These efforts are ongoing, and we have arrived at a number of steps we can take to help cases run more smoothly. I’m not talking about whether to use SAC or another methodology.

Rather, I’m talking about issues related to how our own employee teams coordinate with one another within a complex process. It takes a lot of people and hours to get big decisions

out of the door and I want to make sure that we use our resources efficiently. We already have put into place several process improvements. For example: (1) we are making greater use of technical conferences with parties early so we can communicate clearly the Board's evidentiary expectations; (2) we are making internal management structure changes for rate cases; (3) we are improving coordination of staff working on a case; and, (4) we are setting additional milestone markers within our internal workflow.

The improvements that we developed and are implementing for the rate case process will flow to other types of cases. There are long-term steps, some of which will depend on our agency budget going forward. My hope is that shortly, I will be able to share more of our best practices with our stakeholders.

A third area of focus for me is making sure the Board gets the data it needs to properly monitor rail service, both freight and rail. Last year, during the severe disruptions in service that affected the railroad industry from late 2013 through 2014, the Board began collection of railroad service data on a temporary

basis. That effort was well-received and stakeholders have expressed to me that the data collection has been extremely helpful to them as well. Currently, the Board is considering a proposed rule to establish a permanent collection of service data. We know how important it is to the Board's stakeholders to have access to this data for their own logistics and planning decisions. It is equally important for the Board to have the tools it needs for monitoring, staying on top of industry developments, and looking ahead.

Among the things we're monitoring, of course, is the fast-approaching December 31 deadline for implementation of positive train control -- a deadline that the whole rail industry is facing. Safety is, of course, a paramount concern, and safety regulation is an area within the primary authority and expertise of other regulators and Congress. The issue of PTC has the ability to impact rail service, and that's why we're staying on top of it, but first and foremost this is a safety issue. We're communicating regularly with the Federal Railroad Administration and Department of Transportation, staying in

contact with the Class I railroads and shipper groups, and making sure we're ready to assist in any way we can.

I know that there has been some speculation about the relationship between PTC implementation and freight railroads' common carrier obligation to provide service. From my perspective, and based on our precedent, the STB would need to give substantial deference to FRA with respect to PTC, as we typically do with issues related to railroad safety.

In terms of industry developments with respect to coal transportation, I'm aware that you are facing some large scale issues: environmental policy changes, growing competition with utilities shifting to natural gas, plant retirements, and changes in international markets. At the STB, here's what we're seeing in terms of how coal *transportation* is working these days. Overall, the coal networks are experiencing improved fluidity and more reliable and timely service, compared with this period one year ago. Coal stockpiles have improved, and very few, if any, plants are currently facing inventory shortages.

Many factors have contributed to these positive developments,

including increased crew and locomotive resources and capacity expansion projects that are paying dividends. At the same time, we've seen softer demand, not just for coal, but also for other commodities, which has freed up railroad resources. We will continue to monitor coal service, going into the winter months.

In closing, I want to thank you for this opportunity to speak about the Board and its work. The Board will continue to conduct public outreach and hold hearings on significant matters and rulemaking proceedings, so that the Board and its staff can hear directly from our stakeholders such as the NCTA and its members. I would be happy to answer questions.

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