

2016 UPDATE

NORTHEAST ASSOCIATION OF RAIL SHIPPERS

Baltimore, Maryland

April 27, 2016

Good afternoon. I'm Dan Elliott, Chairman of the Surface Transportation Board. I'm happy to be here today, and I would like to thank the Northeast Association of Rail Shippers for extending its invitation.

I'd like to give you a brief update on what's going on at the Surface Transportation Board.

The headline news for the Board these days is the STB Reauthorization Act of 2015, which was enacted on December 18, 2015. Before the Reauthorization Act, the Board was administratively aligned with the U.S. Department of Transportation—which meant we received a variety of administrative support from DOT, provided in light of the Board's very small size as an agency. However, we've been

decisionally independent ever since the Board was created. The Reauthorization Act separated the Board from DOT entirely, making the Board a wholly independent agency.

Among other changes, the Reauthorization Act also:

- Increases the Board's membership from three to five Board Members;
- Directs the Board to adjust its existing voluntary arbitration process, including increases in the maximum damage awards;
- Shortens the timelines that apply to large rate case proceedings, including limits on the time allowed for discovery and the time allowed for development of the evidentiary record;
- Allows a majority of Board Members to meet in private to discuss agency matters, subject to certain requirements; and

- Gives the Board authority to initiate investigations.

As with our existing authorities, the Board's ability to effectively exercise the new authorities provided by the Reauthorization Act will depend in part on the resources available to us and the funding we receive from Congress.

The Reauthorization Act provides for two additional Board Members, as I mentioned. As with any Board Member, they will have to be appointed by the President of the United States and confirmed by the Senate. I know from my own re-nomination process that it can take a while and that it's not always predictable. But the agency looks forward to welcoming the new Members whenever they arrive.

At the Board, fulfillment of all requirements of the Reauthorization Act is well underway. The Act gives us enhanced authorities, and this first year after reauthorization will be one of implementation. We are making great progress in all of the major actions that the Board is undertaking to execute these enhanced responsibilities. In weeks and months ahead,

you will see changes to our arbitration program and progress towards establishing rules for our new investigatory authority. The Board intends to begin rulemakings on both arbitration and investigations within this quarter.

We continue to hold Board Member meetings using the new collaborative discussion authority established by the Act. For example, in March, the Board and staff members discussed modifying the agency's existing arbitration rules consistent with the requirements of the Reauthorization Act. And earlier this month, I held a meeting to discuss possible regulations for our new investigative authority.

On March 9, 2016, the Board issued rules adjusting the procedural timelines for large rate cases to implement the timing required in the Act. We are also considering ideas on how to further change our stand-alone cost rate process to meet this timeline, and on March 15, we announced that we would have informal meetings with practitioners, consultants, and other stakeholders to get their input on this subject. We've been having these meetings in April which have been very productive

and well-received, and we will initiate a proceeding by June 15, consistent with the Reauthorization Act.

We've also posted to our website and submitted to Congress the first quarter's round of reports required by the Act. We recently issued:

- the first quarterly report on rate case review metrics;
- the first quarterly report on formal and informal service complaints;
- the second quarterly report on unfinished regulatory proceedings; and
- monthly status reports showing the Board's progress in implementing the key initiatives of the Act.

Rail industry stakeholders have waited 20 years for the Board to be reauthorized, and there is no doubt that freight rail transportation will benefit from the thoughtful provisions of this

law. Behind this reauthorization is a message of transparency and increased efficiency. That is what I will deliver to the public.

Another significant issue for the Board recently has been possible railroad mergers between the Class I carriers. By statute, railroad mergers and acquisitions may only take place if they receive the Board's approval. Based on that authority, any merger that is proposed will be subject to rigorous administrative review before the Board, under rules the agency adopted in 2001. On March 2, we received a petition for declaratory order related to voting trust structures for a proposed merger of Canadian Pacific and Norfolk Southern. That petition was withdrawn on April 11, so the Board ended the proceeding recently. But much of our time in the first quarter of 2016 was focused on merger issues, and we are well prepared for any future proposed transactions that may come our way.

I'd also like to highlight some of my goals 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 reasonableness 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. 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, as well as a proceeding regarding the Board's reciprocal switching rules and proceedings related to railroad revenue adequacy and related issues. My goal is to improve access to the Board and complete these proceedings within a year. I'm working hard to build a consensus of the Board so that my timelines can be met.

One recent example of these efforts was the Board's March 23 proposal to revoke certain commodity exemptions. The agency adopted these commodity exemptions almost 25 years ago, when it was still the ICC. As long as there's a commodity exemption, a shipper of that commodity can't bring a formal case before the Board unless it goes through another process first to deal with the exemption. But if the Board completely

revokes a commodity exemption, as it's proposing to do, shippers of those commodities can bring a formal case to the Board just like anyone else.

The commodities included in this proposal are (1) crushed or broken stone or rip rap (which is a type of loose stone used to maintain surface stability); (2) hydraulic cement; and (3) primary iron or steel products, iron or steel scrap, wastes, or tailings, and coke produced from coal. But the Board also invited interested parties to file comments regarding the possible revocation of other commodity exemptions, which should address any marketplace changes like the ones the Board relied on for the three commodities in the current proposal.

This is the first time the Board has ever proposed complete revocation of commodity exemptions. In proposing revocation, the Board recognized the significant changes in the rail industry over recent decades. I would note that if you read all the way through the Board's decision, you can see the kind of time and effort it took to get consensus even on a common sense reform like this one, which improves shippers' access to the Board's

processes. But I kept going, because I am committed to ensuring that stakeholders have a meaningful path to the Board. I will continue to work towards that goal.

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.

And I note that in June 2015, the Transportation Research Board of the National Academy of Sciences, or TRB, released a report with recommendations to Congress regarding improvements in the economic regulation of freight rail. TRB presents many thought-provoking ideas with respect to the future of freight rail economic regulation, and I'm excited to see what changes may develop from their recommendations. At the Board, we are looking into how we might be able to take some of these ideas into account as we consider our own regulatory improvements.

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.

Specifically, 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 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 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 discuss evidentiary issues that come up in specific cases; (2) we are issuing evidentiary instructions following the technical conference so that we communicate clearly the Board's expectations with regard to evidence; (3) we are making internal management structure changes for rate cases; (4) we are improving coordination of staff working on a case; and, (5) 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. These are long-term steps, some of which will depend on our agency budget going forward. The benefits of these process improvements should begin to take effect as the Board continues to adjudicate rate cases.

A third area of focus for me is making sure the Board gets the data it needs to properly monitor rail service. 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, and I hope to get something out on that in the very near future.

We also continue to communicate regularly with the Class I railroads and shipper groups, making sure we're ready to assist in any way we can. 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.

At the STB, here's what we're seeing in terms of how rail transportation is working these days. Overall, the networks are

experiencing improved fluidity and more reliable and timely service, compared with the late 2013-2014 period. We are not hearing about supply-chain disruptions affecting large numbers of shippers. Many factors have contributed to these positive developments, including capacity expansion projects that are paying dividends. At the same time, we've seen softer demand for other commodities, in particular coal, which is down significantly, and this has freed up railroad resources. We will continue our careful monitoring of rail performance.

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. I would be happy to answer questions.

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