

RAILTRENDS

**New York City
November 17, 2016**

Good afternoon, I'm Dan Elliott, Chairman of the Surface Transportation Board. I appreciate the invitation from RailTrends to be here. It's been a very busy year at the Board, and I'm happy to have the opportunity to talk to you about what we've been doing over the past year.

The past year has been a noteworthy one—on December 18, 2015, the STB Reauthorization Act of 2015 was enacted. In doing so, the agency was reauthorized for the first time since its inception 20 years ago.

One of the many changes made by the Act was to alter the Board's membership. The Act increases the Board's membership from three to five Board Members, and we currently have two vacant seats. Additionally, as a result of last week's election, the Board is looking at a change in leadership

in the coming year. The agency looks forward to welcoming the new Members when they arrive, and I will work to make the transition as smooth as possible.

Another significant change made by the Reauthorization Act has to do with the Board's independence. Prior to the Act, the Board was administratively aligned with the U.S. Department of Transportation. That meant, although the Board was decisionally independent ever since its creation, we received a variety of administrative support from DOT. The Reauthorization Act separated the Board from DOT entirely, making the Board a wholly independent agency.

Among other changes, the Reauthorization Act also:

- Directs the Board to adjust its existing voluntary arbitration process, including increases in the maximum damage awards;
- Gives the Board authority to initiate investigations;

- 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; and
- Allows a majority of Board Members to meet in private to discuss agency matters, subject to certain requirements.

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 has been one of implementation. We are making great progress in all of the major actions that the Board is undertaking to execute these enhanced responsibilities. 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.

On September 30, 2016, the Board adopted final rules to amend our procedures for the arbitration of disputes before the Board to

conform to the statutory requirements in Section 13 of the Reauthorization Act. That decision expands our rules to encompass rate proceedings and raises the cap on damages to \$25 million in rate matters and \$2 million in practice disputes. With these new rules, I am hopeful that stakeholders will consider using Board arbitration as a means of resolving disputes.

The Board also has a pending rulemaking to address Section 12 of the Reauthorization Act, which gave our agency new power to investigate nationally or regionally significant railroad issues on our own initiative. On May 16, 2016, we issued a notice of proposed rulemaking to establish procedures for these investigations. In fashioning our rules, we are working to ensure that we have incorporated appropriate protections for due process, separation of fact-finding versus adjudication and, very importantly, timely resolution of cases. In determining what changes we need to make in the final rules, we are taking into account the valuable input that stakeholders provided through their comments and replies. With our new authority, the Board is better equipped than it has been in the past to explore and

resolve significant railroad issues, such as the service problems that emerged in late 2013 and lasted through 2014. My plan is to issue final rules regarding investigations in December, and we are on track to do so.

Section 11 of the Act instructed us to look for ways to expedite rate cases by examining procedures available in court litigation. In preparing for this proceeding, we held informal meetings with attorneys, consultants, and stakeholders that have the most experience with these cases. On June 15, the Board released an advance notice of proposed rulemaking to implement this element of the Reauthorization Act. We proposed several measures, such as standardizing discovery requests and evidentiary submissions, limiting the scope of certain filings, and enhanced technical meetings between the parties and STB staff. The ANPRM raises numerous topics and suggests methods to expedite rate reasonableness cases, especially standalone cost rate (SAC) cases. We are carefully considering the input provided in the comments and replies in formulating our next steps.

In conjunction with our efforts to expedite our rate reasonableness cases, the Board in September released the InterVISTAS study to the public. In 2014, the Board hired independent outside experts InterVISTAS to look at our current SAC methodology and our other rate reasonableness methodologies. We asked them to, among other things, look for alternative methodologies to the SAC test that exist or could be developed and that are superior to SAC or that could be used to reduce the time, complexity, and expense historically involved in rate cases. Last month, we held an economic roundtable where InterVISTAS presented its conclusions and findings, and other distinguished independent economists, as well as the Board's economists, engaged in a lively discussion regarding the conclusions and issues presented in the InterVISTAS study. My hope is that the study and the roundtable can act as a springboard for further discussion and proposals for the Board's rate reasonableness methodologies.

Separately, to improve efficiency in our SAC processes, in 2014 I convened a study team consisting of Board staff and an outside contractor. That team analyzed our internal rate reasonableness

processes at the time of the study, and it resulted in a June 2015 report which provides a number of recommendations on how to improve the quality of the Board's internal processes. In the interest of transparency, I recently released that report to the public. The agency expects to release SAC processing guidelines in the near term that implement many of the June 2015 report's recommendations in order to ensure that the Board continues to produce quality rate decisions in a timely fashion.

Outside of Reauthorization, the Board is also engaged in a number of other proceedings, both adjudicatory and regulatory. One of my focuses this term as Chairman has been to proceed on regulatory matters and address issues that have remained open before the agency. And the Board has done so, both moving ahead with and concluding a number of proceedings.

For example, the Board updated its Uniform System of Accounts to be more consistent with Generally Accepted Accounting Principles. The Board also recently concluded a number of proceedings after determining that no action was

warranted, such as a review of the Board's multi-stage discounted cash flow model in determining the cost of capital.

The Board has also acted by exploring a number of important issues that have been raised before the agency. For example, the Board has long been considering the effectiveness of our rate reasonableness methodologies, especially with respect to small shippers. The Board issued an advance notice of proposed rulemaking in August, Expanding Access to Rate Relief, which considers a possible new rate reasonableness methodology meant to be streamlined and accessible to all shippers with small disputes. This is the first time in a decade that the agency has put forward a new rate case methodology.

During this past year, the Board also acted on a long-standing proceeding on reciprocal switching when it issued a proposal to revise our regulations in an attempt to breathe life into a statutory remedy that was enacted by Congress, but which has been virtually dormant due to precedent established by our predecessor, the Interstate Commerce Commission. The proposed rules mirror the language of the statute, which allows

us to grant reciprocal switching only when it is practicable and in the public interest or necessary for competitive rail service.

The Board also has acted on a pending rulemaking which proposes to revoke certain commodity exemptions which were adopted by the agency almost 25 years ago, when it was still the ICC. In doing so, the Board's proposal would allow shippers of these commodities to bring a formal case before the Board without first going through another process to deal with the exemption. 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.

As you can see, the Board has been incredibly productive this past year, and I am cognizant of the number of issues that have been placed before our stakeholders. I can assure you that we are considering all of these issues and proposals together, as balanced regulation is of the utmost importance in every action the Board takes. Given the election, I will be focusing much of the remainder of my time as Chairman towards transition

activities. It is important to me that transition happens as seamlessly as possible. This means target dates that I previously have set for proceedings, rulemakings, and other actions, may be slowed down going forward.

Of course, I will keep stakeholders informed of any changes through our monthly and quarterly Reauthorization Act reports. I encourage our stakeholders to find out more about our regulatory proceedings, service complaints, and other information about the Reauthorization Act on our website. We have a specific link to disseminate information about the Act and our progress in meeting its requirements, including copies of various reports required by the Act that we have submitted to our Congressional oversight committees.

Thank you again for this opportunity to speak about the Board and its work over the past year. I would be pleased to answer any questions.