

JOINT TESTIMONY OF  
CHAIRMAN ANN BEGEMAN AND VICE CHAIRMAN MARTIN OBERMAN  
SURFACE TRANSPORTATION BOARD

BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS  
“Examining the Surface Transportation Board’s Role  
in Ensuring a Robust Passenger Rail System”

Good morning, Chairman DeFazio, Ranking Member Graves, Subcommittee Chairman Lipinski, Subcommittee Ranking Member Crawford, and other members of the Committee. Thank you for inviting Vice Chairman Martin Oberman and me to appear today virtually. We appreciate your interest in the Surface Transportation Board’s work and welcome this opportunity to discuss our jurisdiction and role in ensuring a robust passenger rail system. We would also like to give the Committee an update on all of the Board’s important work.

As you know, the Board’s jurisdiction over intercity passenger rail carriers is narrower than its jurisdiction over freight rail carriers. The Board’s authority over rail transportation is derived from 49 U.S.C. § 10501, which gives the Board jurisdiction over transportation by rail carriers between a place in a state and a place in another state, and between a place in a state and another place in the same state, as long as that intrastate transportation is carried out “as part of the interstate rail network.”

In general, intercity passenger rail operations are subject to Board jurisdiction when they provide rail service between two states. An example is DesertXpress (also known as Brightline West), which has proposed building a high-speed rail line between Southern California and Las Vegas, Nevada.

There are also intercity passenger rail projects, such as California High Speed Rail, that operate within a single state but nevertheless fall within the Board’s jurisdiction because of their extensive links to the interstate rail network. Among other things, California High Speed’s through-ticketing arrangements and shared stations with Amtrak brought that project under the Board’s jurisdiction. More recently, the Board considered whether it has jurisdiction over Texas Central’s proposed high-speed rail line project between Dallas and Houston. Initially, in July 2016, the Board found that it did not have jurisdiction over the project, as proposed at the time, because the proposed line would neither have been part of nor sufficiently connected to the interstate rail network. However, in July 2020, the Board granted a petition to reopen filed by Texas

Central. In light of evidence presented on reopening showing a clearly defined through-ticketing arrangement with Amtrak and a transfer service that would facilitate the practical and continuous movement of passengers in interstate commerce, the Board found that the proposed line would be part of the interstate rail network and therefore subject to the Board's jurisdiction.

In contrast, an intercity passenger rail service that operates within a single state and does not connect with an interstate passenger rail carrier normally falls outside the Board's jurisdiction. For example, the Board found that the All Aboard Florida service—a 230-mile rail line between Miami and Orlando—was not within its jurisdiction due to its lack of connectivity to the national network. Other examples of such operations include tourist and excursion trains, which typically operate within a single state and do not interchange passengers with interstate carriers.

Although some private businesses provide regulated intercity passenger rail operations, most passenger rail service is provided by Amtrak, which is statutorily excluded from many of the Board's regulatory requirements applicable to freight carriers. However, with the enactment of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) and the Fixing America's Surface Transportation Act of 2015 (FAST Act), the Board assumed additional Amtrak oversight responsibilities, including the authority to institute investigatory action under certain circumstances and, if appropriate, to award relief and identify reasonable measures to improve performance on passenger rail routes. Lengthy litigation over the constitutionality of the PRIIA provision directing the Federal Railroad Administration (FRA) and Amtrak to establish on-time performance metrics and standards has prevented the Board from fully utilizing this authority before now. After the constitutional issues were finally resolved last year, the FRA issued a notice of proposed rulemaking pertaining to its new on-time performance and service metrics and standards. Once the rule has been finalized, the Board should be able to exercise its investigative authority under PRIIA.

The Board generally does not have jurisdiction over public passenger transportation provided by local governments, which includes commuter rail passenger transportation and services, such as trolley, subway, and light rail lines. Commuter rail transportation is understood to mean short-haul passenger rail transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations. Under PRIIA, the Board is authorized to mediate disputes involving commuter rail providers seeking access to freight railroad tracks and services. The Board also has certain limited jurisdiction over matters involving commuter services, including establishing appropriate

compensation paid by commuter rail providers to Amtrak for use of certain facilities if the parties cannot reach agreement among themselves.

The Board is currently handling several pending matters involving passenger and commuter services. One is a petition filed by Amtrak regarding the continued use by Metra of Chicago Union Station. In this case, the Board required Amtrak to continue to provide access to Metra on an interim basis while the parties participate in Board-sponsored mediation. Similarly, in a petition filed by the Southeastern Pennsylvania Transportation Authority (SEPTA) to determine compensation for the use of certain Amtrak passenger rail stations and parking facilities, the Board required Amtrak to continue to provide access to the stations and facilities on an interim basis while granting a joint motion to hold the proceeding in abeyance while the parties continue negotiations. In another matter, the Board issued interim findings and guidance to Amtrak and subsidiaries of the Canadian National Railway and initiated Board-sponsored mediation in an effort to establish reasonable terms and compensation for Amtrak's use of the rail facilities and services. The Board is also considering a request by DesertXpress regarding the authorized construction of a high-speed rail line between Southern California and Las Vegas, Nevada. As these proceedings are pending matters, we cannot comment further.

While freight rail matters comprise the bulk of work before the Board, we take our passenger rail work very seriously, keeping informed of the latest issues and maintaining positive working relationships with Amtrak, FRA, and other passenger rail stakeholders.

Speaking of the Board's freight rail work, we have many important issues on that front, in particular, reform of rate review procedures, oversight of rail demurrage and accessorial charges, and monitoring rail service during the pandemic.

The Board is actively working to reduce the cost, complexity, and duration of rate reasonableness cases, particularly for smaller disputes. In 2018, the Board established the Rate Reform Task Force so that our stakeholders could share their views and offer constructive suggestions to improve our rate review processes and make them more accessible. Based on the report from the Task Force, which was issued in April 2019, the Board has adopted a rule creating a streamlined process for pleading market dominance; held a two-day public hearing on revenue adequacy issues; amended its Waybill Sample data collection regulations to provide a more robust dataset for decision-making and analyses; and proposed a new procedure for challenging the reasonableness of railroad rates in smaller cases, called "Final Offer Rate Review" (FORR).

To allow for additional stakeholder input in the FORR rulemaking proceeding, in May 2020, the Board waived its general prohibition on ex parte communications to permit post-comment period discussions with outside parties, including railroad and shipper interests, about the FORR proposal and possible supplements or alternatives to it, including the potential use of voluntary arbitration to resolve smaller rate disputes. Summaries of these meetings are posted on the Board's website. This rulemaking proceeding is ongoing and remains one of the Board's top priorities.

The Board also remains focused on Class I railroad demurrage and accessorial charges. In late 2018, when some Class I carriers announced plans to implement new rules related to demurrage and accessorial charges, the Board requested that Class I railroads report their revenues on a quarterly basis starting with 2018. In May 2019, we held a two-day public oversight hearing on this issue. Since that hearing, the Board has taken several important actions, including:

- Issuing a policy statement on principles the Board will apply in evaluating the reasonableness of demurrage and accessorial charges;
- Proposing rules to enhance the transparency and clarity of demurrage invoices;
- Clarifying certain regulatory exemptions and revoking others in order to ensure that the Board can exercise oversight over the reasonableness of demurrage and accessorial charges; and
- Issuing a final rule that permits warehousemen and shippers to specify which party should be billed for demurrage.

Finally, we would like to highlight the Board's on-going monitoring of rail service across the freight rail network. Since March, we have focused much attention on the disruptive impact of Covid-19 on rail service. During the initial phase of the pandemic, as many state and local jurisdictions implemented lockdowns, the Board engaged in daily and weekly communications with key railroad and shipper stakeholders to discuss the reliability of the freight rail network, especially in critical supply chains. These communications included weekly (now bi-weekly) conference calls with the Railroad-Shipper Transportation Advisory Council (RSTAC) and daily (later weekly) calls, hosted by FRA, with the Class I's and representatives of the short lines and Amtrak. The Board was also in frequent contact with senior management at the Class I railroads.

In April, the Board issued a statement in support of rail service to provide informal guidance to state and local governments in implementing public health and safety measures in response to COVID-19 that might negatively impact freight rail operations, such as travel and lodging restrictions that could impair railroad crew and

maintenance operations. The Board also monitored the imposition of railroad embargoes related to COVID-19.

As shippers ramped up production, we requested information from each Class I railroad about its plans to meet the increased rail service demand, including the availability of employee and equipment resources and enhanced railroad communication with shipper and other stakeholders. In August, the Board and the FRA reemphasized in a letter to all Class I railroads the importance of safe, dependable rail service as the nation works to restore jobs and promote economic recovery. All of these communications can be found on our website.

Finally, the Board's Rail Customer and Public Assistance (RCPA) office continues its frequent and regular communications with shipper and railroad stakeholders, including holding monthly calls with all Class I railroads to monitor rail service and operational developments. RCPA is available to assist interested stakeholders and the public by answering questions pertaining to Board regulations and procedures and facilitating informal private-sector dispute resolution of rail operational and service-related issues and other matters wherever possible. They can be reached at 202-245-0238 or [RCPA@stb.gov](mailto:RCPA@stb.gov).

Again, we thank the Committee for the opportunity to testify before you today. We look forward to answering any questions that you have for us.