

Surface Transportation Board Chairman Daniel R. Elliott III
Speech to Washington Chapter of Transportation Research Forum
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Good afternoon and thank you for inviting me to speak today. For those in the room who don't work for the Surface Transportation Board, let me start by explaining exactly what it is we do.

The Board was established in 1996 after the Interstate Commerce Commission was abolished. The STB inherited some of the ICC's responsibilities, including freight railroad regulation as well as jurisdiction of some pipeline, motor carrier and water carrier matters. And Congress more recently gave the Board oversight of Amtrak's on-time performance.

As railroads go, the STB has sole jurisdiction over mergers and acquisitions, new rail lines and line abandonments. The Board also looks at service levels. And the Board is the final word on rates for captive shippers, who depend on rail as their sole means for transporting their goods.

The three-member STB is decisionally independent, like the Federal Communications Commission or the Federal Trade Commission. While the Department of Transportation provides us with certain administrative functions, we are a bipartisan independent agency.

Today, I come here at a time of uncertainty.

It is a time of economic uncertainty, with some signs of life in the railroad industry—have you heard of this guy named Warren Buffett?-- countered by the thousands of railcars still idled across the country.

As all of you know, Warren Buffett basically bought the Burlington Northern /Santa Fe Railroad. For those of us who can't go out and buy a railroad, the development means several things, all of them, I think, good.

First, he is a good corporate citizen, and that can only be good news for BNSF, its employees and its customers. He learns about industries and then invests them for the long haul, not just the next financial quarter.

Second, private investment in our nation's rail system is a good thing, not only for railroads but for shippers and the environment.

For those of us who remember the bad old days of disinvestment and the dismemberment of our rail network and large government bailouts, the fact that one of

the richest guys in the world has placed a large bet on the future of the industry and our economy is a good thing.

Since the deal was announced, we've been asked whether the STB would have jurisdiction over any aspects.

That is looking more and more remote. Under our rules for exploring mergers, it appears Berkshire Hathaway would certainly be considered a non-carrier, because Berkshire has said it will divest its non-controlling number of shares in the Union Pacific Railroad and Norfolk Southern Railways.

Buffett's investment comes at a time of regulatory uncertainty, which makes his investment all the more interesting. On Capitol Hill, the House Judiciary Committee in September passed a bill that would reduce the STB's exclusive jurisdiction on anti-trust matters, which could lead to railroads facing more challenges in federal court and allow the Justice Department to review mergers and acquisitions. On the other side of the Capitol, Senator Jay Rockefeller, chairman of the Commerce Committee, is working on a comprehensive STB reauthorization bill that is expected to be unveiled soon. We do not yet know the details of his proposal. If Congress is successful, it will be the first reauthorization of the STB since it was created in 1996.

At the Board, we must do our work in a way that makes sure any changes in the railroad industry would be in the public interest. And—this is the tricky part—we balance the railroads' need for “adequate” revenues with shippers' needs for “reasonable” rates and service.

Congress has long understood that we do not live in a perfect world. But that doesn't mean we can't try to create a better one.

While we all wait to see what Congress will come up with, I am moving forward with several projects to make the Board and its processes more transparent and more focused on settling disputes before they become formal proceedings.

For years, the Board's decision process operated sort of like this: Shippers and railroads paid lawyers lots of money to generate file cabinets worth of legal filings and briefs. They shipped it off to the STB. Then everyone waited silently, for months and months.

Then, one day, a decision would come down from above.

This has to change.

Last month, President Obama sent me a memo. As you might guess, memos from the President usually rise to the top of the in-box.

This one called on government leaders to “establish a system of transparency, public participation and collaboration.”

The President said, “Openness will strengthen our democracy and promote efficiency and effectiveness in Government. Transparency promotes accountability and provides information for citizens about what their Government is doing.”

To carry out the President’s call, I’ve begun to change the culture of the STB.

I’ve begun a policy of holding oral arguments so parties have a chance to talk face-to-face with me and other board members before we rule on their dispute. We have our second oral hearing next Monday.

And I plan to reinvent the STB’s rusty old Web site into a state-of-the-art information portal that will be user-friendly, interactive and explain what we do in English. And I promise you, everything that can be made public will.

I also hope to breathe some life into the arbitration process at the agency that has lain dormant and unused since it was created in the late 1990s. Finally, I plan on bolstering the agency’s successful Rail Customer and Public Assistance program, where disputes are informally settled.

And then there is URCS, otherwise known as the Uniform Rail Costing System.

If the STB was an organism, URCS would be its heart. It’s the methodology that allows us to develop ratios of revenues to a railroad’s variable costs, such as fuel and labor. We use variable costs to determine whether we have jurisdiction in rate disputes between railroads and their customers.

The problem is that URCS is, well, old. Does anyone in here drive a 1938 Packard? How about a DeSoto? Well, some of the key studies that make up the URCS system date to 1938.

Sure, we’ve changed the oil religiously, rotated the tires, occasionally swapped out old parts for new and added new features over the years. But the URCS system has not fully kept up with the times.

URCS has not accounted for the increasing insurance costs for transporting hazardous materials. It has not adapted to the increase in intermodal traffic, computerization and the increasing use of unit trains, which are whole trains that carry one type of cargo, like coal, from Point A to point B.

Challenges to the URCS methodology have come up repeatedly in rate disputes before the Board. Parties would spend a great deal of time and money challenging the URCS data. Then the Board issued a ruling saying they must use URCS as is.

That put the onus on the Board to make sure URCS is as accurate as possible. We have asked the public and the railroads how they think we should account for the increased costs of transporting haz-mats. The Board held a public hearing earlier this year asking for input on improving URCS system as a whole.

Smart men and women at the Board are studying this as we speak.

The Board has undertaken major initiatives to accomplish its goals. Not in a vacuum but rather in an open forum, a public hearing, advanced notice of proposed rulemaking, open discussion with stakeholders and academics, to flush out the flaws in URCS as it presently exists and to receive and evaluate alternatives.

Can the system be saved? Or maybe it is time for a heart transplant—moving to a new costing system that will more accurately measure the variable costs of moving goods by rail.

Whatever we do, we need to get this right.

Shippers and railroads need to know that they will be judged fairly when rate cases come before the Board. We owe it to the industry and to the thousands of shippers, big and small. While the URCS system uses data compiled from the big Class 1 railroads, smaller railroads and other parties use URCS data in cases involving trackage rights or abandonments.

This will not be simple, it will not be quick and it will not be cheap. But we owe the nation nothing less.

Thank you again and I'd be happy to take your questions.