

STB Chairman Daniel R. Elliott III
Remarks prepared for delivery
National Coal Transportation Association
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Good afternoon and thank you for inviting me to speak this morning.

First, let me explain a little about the Surface Transportation Board, since our name doesn't describe what it is exactly we do.

We used to be called the Interstate Commerce Commission, which everyone had at least heard of, but Congress abolished the Interstate Commerce Commission in 1996, divvying up its responsibilities. The STB was created and given responsibility for the economic regulation of the nation's freight railroads as well as jurisdiction over some pipeline, motor carrier and water carrier matters. And Congress more recently gave the Board oversight of Amtrak's on-time performance.

We don't handle safety or operational matters; those are the responsibility of the Federal Railroad Administration and the National Transportation Safety Board.

As railroads go, the bipartisan 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.

We are charged with making sure any changes in the railroad industry are in the public interest. And—this is the tricky part—we must balance the railroads' need for “adequate” revenues with shippers' needs for “reasonable” rates and service.

And, as many of you know, the Board is working on matters regarding coal dust. I know this is of vital interest. But until those decisions are released that's about all I can say about it.

I do want to acknowledge what everyone in here knows: It's tough out there. It is a time of economic uncertainty. Fewer trains are running on the nation's rail network and fewer employees are on the job. Thousands of locomotives and rail cars sit in storage, waiting for the economy to bounce back. And, as you know, transporting coal is a huge part of the rail industry's business.

I hope the economic recovery continues and strengthens. Meanwhile, let me point out a few cup-half-full developments. First, Warren Buffett recently purchased BNSF. 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 in them for the long haul, not just the next financial quarter.

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.

Second, on-time performance and speeds are up. Hopefully, the railroads will keep up their efficiency when business comes back. The last thing we want is that after spending billions and billions of dollars in stimulus funds, the railroads won't be ready. Railroads do the heavy lifting of the American economy and they must be in shape to quickly keep up with expanding commerce.

Coal exports continue to be a brightening star. Exports to Asia are up fivefold over last year, with one of the biggest problems being port capacity on our end. Let's hope this export trend continues.

We are all following the debate over cap-and-trade. But let's not forget that rail transportation is "green" transportation, using less fuel to move more goods and taking trucks off of our nation's already congested highways.

Back in Washington, I've got some heavy lifting of my own. Since I was appointed last August by President Obama, I've been working hard on reforming the agency. Congress is interested in some changes as well.

I've tried to increase openness and transparency at the Board, which will hopefully reduce some of the distrust of the STB, one of the few things that both shippers and railroads have in common.

I've begun a policy of holding oral arguments on important or controversial cases so that parties have a chance to talk face-to-face with me and other board members before we rule on their dispute. Stakeholders and the public have been allowed a peek into a process that has long been closed. You can even watch the oral arguments on the Internet if you're interested.

We're undertaking a major redesign of the Board's Web site, to make it more user-friendly and to allow the public to better monitor what we're up to. I promise you that everything that can be made public will.

I have an open-door policy to all stakeholders. I'll say yes to almost any meeting - which of course runs my office staff ragged. I think I'm the first STB chairman to visit and address Consumers United for Rail Equity, historically one of the agency's biggest critics. I've gone to Chicago twice to walk the tracks involved in the controversial Canadian National/EJ&E merger, speaking with community groups and elected leaders.

I've been on an ongoing "Grand Tour" of America's most beautiful chemical plants, ports and rail yards.

What I preach at every meeting and during every speech is something that I learned when I was a labor lawyer: An agreement between two parties is always better

than an order from a third. I encourage solutions that flow from productive conversations between two parties, not ones that are handed down in Washington.

Look, everyone is looking out for their own economic interests. I know that. But I see my role as encouraging greater cooperation -- and through it more harmony -- between railroads and shippers.

I'm trying to help however I can. I am reinventing the agency's dormant arbitration process. We've been actively settling disputes through formal mediations. And I've bolstered the staff of the Rail Customer and Public Assistance Program, which helps shippers informally settle disputes with their rail carrier.

I urge you to take advantage of the program. Not only is the price right -- free— but it is also effective. We've been reaching out to shipper groups to post links to the Rail Customer and Public Assistance Program on their Web sites. Please help spread the word.

Of course, there is always the recourse of filing a formal complaint with the STB. And even that we've made smoother, especially for small shippers. Today, shippers have more recourse to the Board than ever. We have established informal ways to settle disputes and have made filing and litigating small rate cases easier and cheaper.

One is for very small disputes of less than \$1 million. Under this process, we force the railroads to engage in mediation of the dispute before STB staff at the outset of the process. This alone has resulted in several quick settlements of the rate disputes. Then we quickly move forward with discovery and a quick decision from the Board.

The Board also created a second streamlined approach that offers more relief: up to \$5 million. Basically, it took the existing complex process and stripped it down to the bare bones. This permitted the agency to reduce the expense of litigating the case by 80% and cut the litigation time in half.

I know that bringing a rate case is a choice of last resort. Litigation is always expensive. It's always long. And it's outcome always uncertain. I encourage everyone to try to work out their differences without hiring expensive lawyers and consultants and filing lawsuits. But should you need us, the Board is here to provide you a neutral forum to bring your rate disputes and committed to an expedited and transparent decision.

We are also studying how to best update the Uniform Rail Costing System, which is the main computer model that we use to determine whether rates are fair. The problem is that some of the components of the model date back to the Roosevelt Administration. We have asked Congress for funds to figure out the best way to go about bringing the models up to date to account for such relatively recent developments such as unit trains carrying a single commodity as well as the increase in intermodal shipments.

Whatever we do, we must get this right.

We're also looking into the issues and costs of transporting hazardous materials. This is a big issue for both shippers and railroads and something that the Board will be looking at very closely this year. This is a very complex issue, involving public safety, liability and who will bear the cost of Positive Train Control. But, once again, I hope to see a stakeholder solution emerge.

As I mentioned earlier, Congress also has some ideas on changing how the STB operates.

The Senate Commerce Committee recently approved a bill that would expand the Board from three members to five and increase our responsibilities as part of an STB reauthorization bill. The House Transportation and Infrastructure Committee is also looking at reauthorizing legislation. And the House Judiciary Committee approved a bill that would remove the limited antitrust immunities provided to the railroads, which could

lead to railroads facing more challenges in federal court and allow the Justice Department to review mergers and acquisitions.

I wish I could tell you today how all this will shake out. What I can say is that we are working very closely with Congress and have provided all the information and expertise requested. And I promise that any congressionally mandated changes will be carried out smoothly and in a transparent fashion.

My goal is that the Surface Transportation Board is seen as an honest broker by shippers, railroads and Congress. We all share a common interest in preserving a national railroad system that serves our economy efficiently, fairly and cleanly.

Thank you again for your gracious invitation and I would be pleased to answer any questions.