

STB Chairman Daniel R. Elliott III
Remarks prepared for delivery
Association of Transportation Law Professionals
June 28, 2010

Good afternoon and thank you for inviting me to speak.

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, but Congress abolished the Interstate Commerce Commission in 1996, divvying up its responsibilities.

As you know, the STB was created and given responsibility for the economic regulation of the nation's freight railroads. We don't handle safety or operational matters; those are the responsibility of the Federal Railroad Administration and the National Transportation Safety Board.

We have sole jurisdiction over mergers and acquisitions, new rail lines and line abandonments. Recently, Congress gave the Board oversight of Amtrak's on-time performance. The Board also looks at railroad service levels and has some jurisdiction over some pipeline, motor carrier and water carrier matters.

Also, as you know, the Board is the final word on railroad rates for captive shippers, who depend on rail as their sole means for transporting their goods.

In carrying out our mission we must balance the railroads' need for "adequate" revenues with shippers' needs for "reasonable" rates and service.

Easier said than done.

Because our work is so specific and requires such deep knowledge of the economics of rail transportation, Congress has carved out a special place in federal law for the STB.

The Board is comprised of more than 150 experts including economists, lawyers, environmental specialists, analysts and even an anthropologist. They have hundreds of years of collective experience in this very specific -- some would say arcane—world of economic regulation of railroads.

Since the STB was created in 1996, it has operated like a court. We have cases, dockets, we issue decisions etc. You file a complaint, the experts analyze it, Board members vote on it and out comes a decision -- months, and sometimes years, later.

Since 1996, the STB has issued 2,772 full Board decisions.

But we are struggling with many of the same core issues as we were 14 years ago.

It is time for a new direction.

As a former practitioner before the Board and as its chairman for the past 11 months, I've been giving this a great deal of thought. If there is anything I learned when I was a labor lawyer it is this: An agreement between two parties is always better than an order from a third.

I see my role as encouraging greater cooperation -- and through it more harmony -
- between railroads and shippers.

That is why it is time to move the Board philosophically away from the “court” model and toward a “problem-solving” model.

Instead of using our tremendous human resources to push cases along the assembly line, why don’t we use our expertise to solve disputes before they result in formal case filings?

That is what I will be trying to do during my remaining time as chairman.

And we have already made some significant steps.

I’ve bolstered the staff of the Rail Customer and Public Assistance Program, which helps shippers informally settle disputes with their rail carrier. The number of disputes handled by this program has jumped from 93 in 2007 to 1,450 last year.

Also, we have had some tremendous successes with formal mediation efforts. Mediation this year between a large chemical shipper and a Class 1 railroad led to the settling of four rate cases that would have taken years and tens of millions of dollars to litigate.

We’ve also been working to mediate a dispute between a railroad and a Northeastern state over a proposed abandonment. In past years it would have just gone through the formal process, but instead we have tried mightily to work out a solution acceptable to both sides.

The Board is especially well-suited to successfully mediate disputes because we have the experts on staff who understand the issues backwards and frontwards, making each side feel comfortable.

I plan to dramatically increase the Board’s mediation efforts over the coming years.

I am also reinventing the agency's long-dormant arbitration process. Since it was established a dozen years ago, nobody has used it.

Nobody.

We are looking into why it hasn't worked and how we can make it a key part of the agency's mission in the future.

All of these efforts of alternative dispute resolution do not mean that the formal process is going away.

Should shippers and railroads need us, the Board will always be here to provide a neutral forum to bring rate and other disputes and is committed to expedited and transparent decisions.

But bringing a rate or other case should be a choice of last resort. Litigation is always expensive. It's always long. And it's outcome always uncertain.

Another priority of mine is increasing transparency and openness at the Board. In my travels and conversations I've been surprised at the level of distrust of the STB.

Sunshine is part of the cure.

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.

For example, the Board has scheduled a public hearing on the issue of who should pay for the environmental and operational costs of coal dust.

In addition, last week we kicked off a major redesign of the Board's website, 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've gone to Chicago three times to walk the tracks involved in the controversial Canadian National/EJ&E merger, speaking with community groups and elected leaders. And the Board has remained vigilant in making sure all of the environmental and other conditions imposed on the merger are followed.

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.

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

When I am in Washington, I've tried to address some long-standing issues.

The Board is looking into the issues regarding the costs of transporting hazardous materials. This is a big issue for both shippers and railroads and something that we will be looking at very closely this year. We recently created a toxic by inhalation hazards federal advisory committee.

This is a very complex issue, involving liability and who will bear the cost of it. But, once again, I hope to see a stakeholder solution emerge.

We've also recently completed a report on options for updating our Uniform Rail Costing System, which is used by the Board in rate and other cases.

The system, known as URCS, is the methodology that allows the STB to determine a railroad's variable costs of providing rail transportation service.

The Board uses variable costs to determine whether it has jurisdiction in rate disputes between railroads and their customers and if rates in question are reasonable.

The Board recommended upgrading computer software and modifying the existing system to account for the many changes in the railroad industry that have occurred since URCS was first adopted in 1989.

The suggested improvements would make URCS more reliable and more reflective of today's railroad industry.

Moreover, there's been a lot of discussion at this conference – and everywhere else I've been -- about possible legislative changes in the offing.

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.

Earlier this year, 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.

While there are still serious disagreements over rates and service , I think we can all agree that shipping goods by rail is environmentally and economically beneficial to our nation.

The freight train, which helped win the Civil War in the 19th Century, can help America tackle our environmental challenges in the 21st Century.

At the Board, we aim to be part of the solution. We want you to join us in working toward that goal in a way that is fair to all the players.

If we all work together, we can do this.

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