

2015 UPDATE

RAILTRENDS

**New York City
November 20, 2015**

Good morning. I'm Dan Elliott, Chairman of the Surface Transportation Board. I'm happy to be here this morning.

Today I'd like to give you a brief update on what's going on at the Surface Transportation Board and what some of my goals are for my second term.

One focus for me is improving accessibility of the Board's processes for all stakeholders. The obvious place to start is the Board's rate reasonableness case procedures. The rate case process is increasingly complicated, time consuming, and expensive – a view that I know is shared by many of the agency's stakeholders. During my first term, the Board initiated several reforms, including the adoption of rules that (1) clarified certain revenue allocation issues in large rate cases, (2) raised

the award caps for smaller rate cases, and (3) changed the interest rate for damage awards. And, I thought it was important to reduce the fees the Board charges for non-rate related complaints, which the Board did in 2011, lowering fees from \$20,600 to \$350.

I've also worked to turn the Board into more of a problem solver and not just an adjudicator. I grew the Board's alternative dispute resolution program, fostering the agency's use of mediation and broadening our arbitration rules. I bolstered the Rail Customer and Public Assistance program, which informally assists many smaller shippers that may not be in a position to bring a formal case at the Board. Staffed by industry analysts and attorneys, the office has resolved hundreds of transportation matters since the beginning of my term, and is cited by rail shippers and rail carriers alike as a tremendous success at the agency.

But, there is more to do to make sure that all of our stakeholders have a meaningful path to the Board. During my first term, the agency initiated an examination of whether agricultural shippers

have meaningful access to the Board's rate reasonableness process, and the Board held a two day public hearing in July to consider issues related to railroad revenue adequacy and issues regarding how the Board calculates the railroad industry's cost of equity capital. My goal is to improve access to the Board and complete these proceedings within a year. I'm interested in moving on all of these issues, but I do always need one more vote to do it.

During my first term I also engaged an independent firm to evaluate potential alternative rate regulation approaches, with the goal of reducing the time, cost, and complexity of rate cases. The engagement continues, and I look forward to hearing their conclusions. This is the time to consider new ideas, so that the Board has an effective regulatory process that makes sense today.

And I note that the Transportation Research Board of the National Academy of Sciences, or TRB, recently released a report with recommendations to Congress regarding improvements in the economic regulation of freight rail. TRB

presents many thought-provoking ideas with respect to the future of freight rail economic regulation, and I'm excited to see what changes may develop from their recommendations. At the Board, we are looking into how we might be able to take some of these ideas into account as we consider our own regulatory improvements.

At the same time, internally, I'm working on best practices and improving the Board's case management – not just for rate cases but for all cases. As an agency, we must always look for ways to be more efficient. It is simply good government to innovate and improve. I encourage STB employees and practitioners to suggest ways for us to do that, and we have gotten some good results already.

Specifically, last year, I started a process to examine best practices for the Board to use in adjudicating cases, starting with our most complex cases – rate reasonableness cases. As part of this process, I brought in experts to aid us in taking a close look at the Board's rate case procedures and to recommend things we can do to improve them. It's great to see the initiative I put in

place last year start to bear fruit, and I have every reason to believe this will lead to positive changes in the way the Board manages case workflow.

These efforts are ongoing, and we have arrived at a number of steps we can take to help cases run more smoothly. I'm not talking about whether to use SAC or another methodology. Rather, I'm talking about issues related to how our own employee teams coordinate with one another within a complex process. It takes a lot of people and hours to get big decisions out of the door and I want to make sure that we use our resources efficiently. We already have put into place several process improvements. For example: (1) we are making greater use of technical conferences with parties early so we can discuss evidentiary issues that come up in specific cases; (2) we are issuing evidentiary instructions following the technical conference so that we communicate clearly the Board's expectations with regard to evidence; (3) we are making internal management structure changes for rate cases; (4) we are improving coordination of staff working on a case; and, (5) we

are setting additional milestone markers within our internal workflow.

The improvements that we developed and are implementing for the rate case process will flow to other types of cases. There are long-term steps, some of which will depend on our agency budget going forward. The benefits of these process improvements should begin to take effect as the Board continues to adjudicate rate cases.

A third area of focus for me is making sure the Board gets the data it needs to properly monitor rail service. Last year, during the severe disruptions in service that affected the railroad industry from late 2013 through 2014, the Board began collection of railroad service data on a temporary basis. That effort was well-received, and stakeholders have expressed to me that the data collection has been extremely helpful to them as well. Currently, the Board is considering a proposed rule to establish a permanent collection of service data. As part of that effort, I recently introduced the idea of waiving the Board's ex parte rules for this rulemaking proceeding to allow informal

meetings between stakeholders and the Board's technical staff. The Board issued a decision putting this idea into effect on November 9th. We included measures to ensure public notice, fairness, and transparency, such as publishing meeting summaries on the Board's website. These informal meetings will allow open and candid conversations between STB staff and stakeholders regarding the highly technical data questions at issue in this proceeding. I believe that dialogue between stakeholders and STB technical staff will be especially valuable and efficient in these informal circumstances, without the formality of appearing before the Board Members.

We also continue to communicate regularly with the Class I railroads and shipper groups, making sure we're ready to assist in any way we can. We know how important it is to the Board's stakeholders to have access to this data for their own logistics and planning decisions. It is equally important for the Board to have the tools it needs for monitoring, staying on top of industry developments, and looking ahead.

As I'm sure many of you are aware, Congress recently extended the December 31 deadline for implementation of positive train control for three years, with a possible further extension of two years on a railroad by railroad basis. Safety is, of course, a paramount concern, and safety regulation is an area within the primary authority and expertise of other regulators and Congress. But the issue of PTC has the ability to impact rail service, so we'll continue to keep a close eye on it.

At the STB, here's what we're seeing in terms of how rail *transportation* is working these days. Overall, the networks are experiencing improved fluidity and more reliable and timely service, compared with this period one year ago. We are not hearing about supply-chain disruptions affecting large numbers of shippers, as we were a year ago. Many factors have contributed to these positive developments, including capacity expansion projects that are paying dividends. At the same time, we've seen softer demand for other commodities, in particular coal, which is down by about 10%, and this has freed up railroad resources. We will continue to monitor rail performance, going into the winter months.

In closing, I want to thank you for this opportunity to speak about the Board and its work. The Board will continue to conduct public outreach and hold hearings on significant matters and rulemaking proceedings, so that the Board and its staff can hear directly from our stakeholders. I would be happy to answer questions.

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