

Before The
United States Senate
Committee on Commerce, Science, and Transportation

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On Reappointment

Testimony of
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My name is Francis P. Mulvey, and I am currently a Member of the Surface Transportation Board. Thank you, Mr. Chairman, Ranking Member Stevens, and members of this Committee for holding this hearing. I would like to thank Senate Majority Leader Reid for his recommendation, and President Bush for renominating me. I would also like to thank my wife, Petra Mulvey; my chief of staff, Jamie Rennert; and my executive assistant, Judy Leader.

I have not appeared before this Committee since my appointment to the Board in 2004, although twice last Fall I testified, both orally and in writing, before the House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, concerning issues before the Board.

I have been a Member of the STB since June 2004. Before I joined the Board, I held a variety of government positions, both on the Hill and at various federal and state agencies. Throughout my career of nearly 40 years, I have been intimately involved in transportation economics and regulation.

As a Member of the STB, I have applied my experience in economics and public policy. I have found the work both challenging and rewarding, and I believe I have made a real contribution to a balanced regulatory approach. I have not always been in the majority – for example, I wish the Board had gone farther in addressing the competitive impacts of so-called “paper barriers” – but I believe that, overall, the agency since I arrived has made significant strides in fairly addressing the needs of all stakeholders in its decisions in general, and on rail competition and service matters in particular.

We have held hearings on a number of specific action items, as well as on items of broader interest such as the state of the rail infrastructure. Through our open, public processes, we have issued several significant decisions. To identify just a few: we have required that the fuel surcharges levied by the railroads be pegged to actual fuel usage; we have streamlined the large rate case process and revamped the procedures for small rate cases to make it easier for small shippers to gain relief; we have been aggressive in

doing our part to see that entities handling municipal solid waste are not able to inappropriately evade regulation (although again dissenting from the majority, I would have defined preemption more narrowly in the “New England Transrail” case); and we have made substantial headway in redefining how we calculate the railroad industry’s cost of capital.

I believe there are issues that will require our particular attention over the next few years. In addition to the “paper barriers” issue, more generally I am concerned about the state of competition in the railroad industry and the Board’s merger review process. I am concerned about what might happen if hedge fund investment in the railroad industry were to escalate and such a fund attempted to buy a carrier and divest the carrier’s assets to the detriment of the shipping public. Given the recent boom in traffic, I am concerned about investment in infrastructure, and I think we will need to look at different ways of encouraging investment in the railroad plant.

And I think the Board has to be nimble in adjusting to changing circumstances. For example, although I do not envision a return to the pre-Staggers days of heavy-handed regulation, it may be that the agency should take a look at its existing broad exemptions from regulation to see if they are all still warranted. Things change, and many of these exemptions were sought and granted in the 1980’s when the transportation landscape was

quite different from what it is today. We ought to be sure exemptions that were justified back then are still appropriate today. I will also be particularly focused on ensuring that the Board makes full use of its investigatory and enforcement powers to prevent abuse of our processes. And, I am interested in scrutinizing our information gathering and data analysis of the rail industry, to ensure the integrity and accuracy of our Uniform Railroad Costing System, rate cases and other decisions.

I believe that my record as a Member of the STB demonstrates my commitment to advancing the public interest. I look forward to continuing to serve the public in that capacity. If confirmed, I also look forward to continuing to work with the Committee, other Members of Congress, and all other interested parties as we tackle the many important transportation issues that confront us.

Thank you for the opportunity to testify today. I will be happy to answer any questions you may have.