

## **Nomination Hearing Statement**

**May 6, 2015**

**Daniel R. Elliott, III**

### **Nominee to be Member of Surface Transportation Board**

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Chairman Thune, Ranking Member Nelson, members of the Committee, I would like to thank you for this opportunity to appear before you today. I had the privilege to serve as the Surface Transportation Board's Chairman from 2009 to 2014, and it is an honor to be nominated by the President to return to the Board for a second term.

Before I begin my remarks, I would like to thank Chairman Thune for your deep interest in freight rail issues both in South Dakota and throughout the Nation, including your sponsorship of The Surface Transportation Board Reauthorization Act of 2015 and your work with the Board on rail service issues. I would also like to thank Ranking Member Nelson, who I know has long been interested and involved in transportation issues. And I would like to thank my family for their support: my wife Nawara and my stepsons Bennett and Becker.

I feel so fortunate to have been Chairman of the Surface Transportation Board during what has been a critical period in the rail industry. And I do not use the word "critical" lightly. On the brink of financial ruin in the 1970s, the freight rail industry in 2013 originated more than 1.7 billion tons of freight. The commodities carried by rail are used to stock our pantries, heat our homes, supply our Nation's manufacturing sector and fulfill many other needs. And a host of passenger rail carriers – from Amtrak to local commuter railroads – utilize freight rail lines, thereby reducing congestion on the Nation's highways.

Recent changes in the freight rail traffic mix, some unanticipated by the railroads, caused well-documented stress on the rail system. Service quality for many rail shippers suffered, especially during 2014. The Board's role in such situations is key and, if confirmed, I will continue to make sure the agency keeps service quality for all shippers a focus. During my tenure, the agency undertook major steps to improve rail service. The Board held two major hearings in 2014 on service issues; issued orders related to fertilizer, agricultural and coal traffic; required rail carriers to submit extensive data on service performance on an interim basis; proposed rules that would require service performance data reporting on a permanent basis; and regularly coordinated with our counterparts in other parts of Federal and state government. I met with many carriers and shippers to resolve service issues, and I sent Board staff to the field in South Dakota, North Dakota, Minneapolis, and Montana to do the same. I firmly believe that the Board's even-handed efforts focused the rail industry on rectifying service issues, anticipating upcoming stress on the network, and communicating effectively with customers and stakeholders

on a real-time basis. If confirmed, I will press the Board to take all necessary action to promote a reliable rail network, including ensuring that the Board and other agencies, as well as shippers, have the data needed to properly assess rail service difficulties. Ultimately, I think we are in the midst of a necessary assessment of infrastructure demands that requires coordination among our Nation's rail carriers, their customers, local communities and policy makers. I am proud of the Board's ability to bring these diverse parties to the table. That sort of collaboration goes a long way toward ensuring that our efficient freight rail network continues to be the envy of the world.

The rail industry's growth also makes this an important period for a thorough examination of rail economic regulatory policy. Many of the agency's longstanding policies were adopted decades ago when the rail industry was struggling to stay alive. Now that the industry is both financially healthier and restructured with far fewer large railroads, I believe the Board should continue the process I started to examine its core policies to ensure that they fit today's modern rail industry and meet the goals that Congress laid out for the agency. Throughout this inquiry, the Board must fulfill the mandate we received from Congress - balancing the 15 Rail Transportation Policy factors in the Interstate Commerce Act in a manner that serves the public.

To this end, over the last 5 years, I led the Board to an ongoing review of competitive access, rate regulation, revenue adequacy, commodity exemptions and other core policies. The Board has initiated proceedings to examine these important issues so that it can make a determination as to whether any of its processes and policies should change, and if so, how. Board assessment of these issues does not necessarily mean that there *should* be a sea change in the way railroads are regulated. Rather, it means that we have to be confident that the manner in which the Federal government regulates rail rates and competition is the product of thoughtful decision-making that takes into account a modernized rail industry and sound economic policies.

The Board also has a continuing responsibility to make sure that our processes are fair, efficient and accessible. The Board's rate case process is complicated, time consuming and expensive – a view that I know is shared by the agencies' stakeholders. During my tenure, 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. In addition, in several recent complex rate cases, the Board developed a modified test for the threshold market dominance inquiry. I also thought that it was important to reduce the fees the Board charges for non-rate related complaints and the Board did just that in 2011, lowering fees from \$20,600 to \$350.

But there is more to do to make sure that all of our stakeholders have a meaningful path to the Board. During my tenure, the agency initiated an examination of whether agricultural shippers have true access to the Board's rate reasonableness process and also engaged an independent firm to study the wide variety of rate reasonableness methodologies used in other industries and throughout the world. This is the time to consider new ideas and invite our stakeholders to

participate in that process so that the Board has an effective regulatory process that makes sense today.

If confirmed, I also look forward to continuing reforms that increase the Board's ability to process cases efficiently and effectively. I know that shippers and railroads alike believe that it takes too long to adjudicate cases at the Board. I understand that concern and want to continue the hard work of serving the Board's stakeholders as quickly and transparently as possible. During my tenure, I restructured several Board departments to increase efficiency and accountability. After several years of budget uncertainty that impacted the agency's ability to hire on a large scale, I am pleased that in 2014 the Board hired 15 employees. These strategic hires will enhance the agency's ability to move cases more expeditiously. In 2014, I set up a program that allows the Board to use Administrative Law Judges from other agencies to resolve disputes related to discovery – thus freeing up Board staff to focus on the substantive aspects of cases. I was pleased to see that the first cases were assigned to an ALJ under that program just a few weeks ago. I also began an examination of how the Board processes the most complex cases – how teams from various offices are assigned, how they work together, how internal deadlines are established and monitored. The Board's FY 2016 budget request reflected the growth in resource demands for rate cases in particular. If confirmed, I commit to find innovative ways for the Board to improve its customer service and leverage the considerable staff talent we have.

Finally, I want to continue my work in turning the Board into more of a problem solver and not just an adjudicator. I grew the Board's alternative dispute resolution program, increasing the agency's use of mediation and broadening our arbitration rules. I bolstered the Rail Customer Public Assistance program, which helps many smaller shippers that may not be in a position to file a formal case at the Board. The program has resolved thousands 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.

Thank you again for the opportunity to appear before you. If confirmed, I look forward to rejoining the Board and working with my fellow Board Members and Board staff to continue the progress that we have made.