

Senate Commerce Committee Nominee Questionnaire, 119th Congress

Instructions for the nominees: The Senate Committee on Commerce, Science, and Transportation (the "Committee") requests that you provide typed answers to each of the following questions. Do not leave any questions blank. Type "None" or "Not Applicable" if a question does not apply to you. Begin each section (*i.e.*, "A", "B", etc.) on a new sheet of paper. Electronically submit your completed questionnaire to the Committee in PDF format and ensure that sections A through E of the completed questionnaire are in a text searchable format and that any hyperlinks are active and can be clicked. Section F may be scanned for electronic submission and need not be searchable.

Incomplete questionnaires may delay the nomination process.

A. BIOGRAPHICAL INFORMATION AND QUALIFICATIONS

1. Name (Include any former names or nicknames used):

Michelle Albright Schultz (2003 to present)

Michelle Mummert Albright

2. Position to which nominated:

Member – Surface Transportation Board

3. Date of Nomination: September 10, 2025

4. Address (List current place of residence and office addresses):

[REDACTED]
[REDACTED]

5. Date and Place of Birth:

[REDACTED]

6. Provide the name, position, and place of employment for your spouse (if married) or domestic partner, and the names and ages of your children (including stepchildren and children by a previous marriage).

James D. Schultz (Separated, July 2021, Divorced, September 2025)
Executive Vice President, Global Legal and Public Policy
Scientific Games

[REDACTED]
[REDACTED]

7. List all college and graduate schools attended, whether or not you were granted a degree by the institution. Provide the name of the institution, the dates attended, the degree received, and the date of the degree.

Pennsylvania State University, BA English – 1990-1994
University of Manchester, Spring 1994 (Study abroad)
Widener University School of Law, JD – 1995-1998
University of Pennsylvania, MGA – 2006-2008

8. List all post-undergraduate employment, including the job title, name of employer, and inclusive dates of employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Hanover Concrete Company, Treasurer (8/98 – 12/99)
Superior Court of Pennsylvania – Law Clerk (1/00 – 6/00)
United States Bankruptcy Court – Law Clerk (7/00 – 1/02)
White and Williams LLP – Associate (1/02 – 8/06)
Southeastern Pennsylvania Transportation Authority (8/06 – 1/21)
 Manager, Legislative Affairs
 Director, Legislative Affairs
 Deputy General Counsel
Surface Transportation Board (1/21- Present)

Management positions include serving as the Treasurer of Hanover Concrete Co. 1/96 – 12/99); Director of Legislative Affairs (10/10-12/13); Deputy General Counsel (1/14 to 1/21); and Vice Chairman of the Surface Transportation Board (2/21-2/22, 1/25 to present).

9. Attach a copy of your resume.

Please see attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above after 18 years of age.

Not applicable.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution.

Passive Member – Tamarack Four LLC
I did not hold any other positions.

12. List all memberships you have had after 18 years of age or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization (You do not have to list your religious affiliation or membership in a religious house of worship or institution). Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or disability.

The Union League of Philadelphia. The club does not restrict membership on the basis of sex, race, color, religion, national origin, age, or handicap.

March 2015 – July 2021.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

No.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

Not applicable.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$200 or more for the past ten years.

2015

Pennsylvania Future Fund \$1000.00 (February)
Williams for Mayor \$1000.00 (March)
Keystone Alliance \$1000.00 (April)
Kevin Dougherty for Pennsylvania \$1000.00 (May)
Chris Christie for President \$2700.00 (December)

2016

Friends of Pat Toomey \$1000.00 (January)
Friends of Bill Shuster \$1000.00 (April)
Keystone Alliance \$1000.00 (April)
Friends of Pat Toomey \$1000.00 (May)
Friends of Alex Charlton \$1000.00 (October)
Friends of Alex Charlton \$1000.00 (November)

2017

Not applicable.

2018

Cozen O'Connor Pac \$3100.00 (Various dates – January through June)
Friends of Ken Lawrence \$500.00 (May)
Republican Party of Pennsylvania \$2810.05 (August)
McGarrigle for Senate \$500.00 (August)
Cozen O'Connor PAC \$3100.00 (October)

2019

Cozen O'Connor PAC \$400.00 (January)
Brian Fitzpatrick for Congress \$1000.00 (February)

2020-2025

Not applicable.

16. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Not applicable.

17. List all books, articles, columns, letters to the editor, Internet blog postings, or other publications you have authored, individually or with others. Include a link to each publication when possible. If a link is not available, provide a digital copy of the publication when available.

Not applicable.

18. List all speeches, panel discussions, and presentations (e.g., PowerPoint) that you have given on topics relevant to the position for which you have been nominated. Include a link to each publication when possible. If a link is not available, provide a digital copy of the speech or presentation when available.

Southwest Association of Rail Shippers (SWARS)
September 30, 2021 – Fort Worth, TX (Attached)

Association of Transportation Law Professionals Transportation Forum
(ATLP)
November 8, 2021 – Virtual (Panel Discussion – Not applicable)

Transportation Elevator & Grain Merchants Association 2022 Annual Meeting
(TEGMA)
January 27, 2022 – Phoenix, AZ (Panel Discussion – Not applicable)

Northeast Association of Rail Shippers (NEARS)
April 7, 2022 – Baltimore, MD (Attached)

Association of Transportation Law Professionals – Transportation Forum
(ATLP)
November 2, 2022– Washington, D.C. (Panel Discussion – Not applicable)

National Grain & Feed Association Annual Convention (NGFA)
March 21, 2023 – Palm Springs, CA (Attached)

Institute of Scrap Recycling Industries
April 19, 2023 – Nashville, TN (Q&A – Not applicable)

Wolfe Research-Global Transportation Conference
May 24, 2023 – New York, New York (Attached)

Association of Transportation Law Professionals Annual Conference (ATLP)
June 27, 2023 – Toronto, Canada (Q&A – Not applicable)

The Fertilizer Institute Conference – (TFI)
November 14, 2023 – New Orleans, LA (Panel Discussion – Not applicable)

Soybean & Grain Transportation Conference (SSGA)
March 14, 2024 – Toledo, OH (Attached)

American Petroleum Institute (API)
June 4, 2024 - Washington, DC (Q&A – Not applicable)

Association of Transportation Law Professionals Annual Conference
(ATLP)
June 24, 2024 – Denver, CO (Panel Discussion – Not applicable)

MEGA Supply Chain Societies of Delaware Valley Meeting
October 10, 2024 – Gwynedd Valley, PA (Attached)

Private Railcar Food and Beverage Association (PRFBA)
October 23, 2024 – Virtual (Attached)

RailTrends
November 14, 2023 – New York, New York (Attached)

Association of Transportation Law Professionals Transportation Forum
(ATLP)
December 5, 2024 – Washington, D.C. (Panel Discussion – Not applicable)

Northeast Association of Rail Shippers (NEARS)
September 19, 2025 – Groton, CT (Q&A – Not applicable)

19. List all public statements you have made during the past ten years, including statements in news articles and radio and podcasts and television appearances, which are on topics relevant to the position for which you have been nominated, including dates. Include a link to each statement when possible. If a link is not available, provide a digital copy of the statement when available.

Not applicable.

20. List all digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the full name of an “alias” or “handle”, including the complete URL and username with hyperlinks, you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

Linkedin: Michelle Schultz

[Linkedin.com/in/michelle-schultz-47801aa](https://www.linkedin.com/in/michelle-schultz-47801aa)

Facebook: Michelle Albright Schultz

www.facebook.com/michelle.a.schultz.5

[@michellealbrightschultz](https://www.facebook.com/michellealbrightschultz)

Instagram: Michelle Albright Schultz

[Michelleschultz7495](https://www.instagram.com/Michelleschultz7495)

X: [@mich_albright](https://twitter.com/mich_albright)

Tiktok: M S1295

[@user691737152](https://www.tiktok.com/@user691737152)

Wikipedia: Michelle A. Schultz

https://en.wikipedia.org/wiki/Michelle_A._Schultz

21. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date, committee, and subject matter of each testimony.

I testified before the Committee on Commerce, Science and Transportation of the United States Senate on April 11, 2018, regarding my nomination to the Surface Transportation Board.

I testified before the Committee on Transportation and Infrastructure of the House of Representatives, the Subcommittee on Railroads, Pipelines, and Hazardous Materials on May 12, 2022.

22. Given the current mission, major programs, and major operational objectives of the department/agency/commission/corporation to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

During my service on the Surface Transportation Board (“STB”) over the past five years, I have had the privilege of contributing to the Board’s critical work overseeing our nation’s freight rail network. In this role, I have participated in decisions and rulemakings addressing service reliability, competition, rate disputes, and regulatory compliance always recognizing the need to balance the needs of shippers, carriers, and the broader public. This work has allowed me to apply my legal training and transportation policy background on a national scale, helping to ensure a fair, transparent, and efficient regulatory environment.

Prior to my appointment, I worked for the Southeastern Pennsylvania Transportation Authority (“SEPTA”) for over 12 years. During that time, I became well versed in how railroads operate, how they interact with each other, and the challenges associated with those interactions. At SEPTA, I handled legislative, regulatory and compliance issues at the local, state and federal levels, including matters related to the construction and reconstruction of commuter rail lines. Earlier in my career, I served as a law clerk for both the Superior Court of Pennsylvania and the United States Bankruptcy Court for the Eastern District of Pennsylvania. Additionally, I was an attorney at a law firm in Philadelphia. My practice focused on creditor’s rights and commercial litigation.

I am seeking reappointment to the STB because I remain committed to serving the public through fair and balanced oversight of the nation’s freight rail network and other surface transportation. Our nation’s economy and communities depend on a strong, reliable network and I believe the

combination of my regulatory experience, legal expertise, and practical transportation knowledge enables me to continue contributing meaningfully to the Board's mission.

23. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency/commission/corporation has proper management and accounting controls, and what experience do you have in managing a large organization?

As a Member of the Surface Transportation Board, it will continue to be incumbent upon me and my colleagues to issue decisions in a timely manner. With regard to the financial business and management of the STB, I believe Members are responsible for ensuring that proper management and accounting controls are in place and functioning effectively by ensuring that agency expenditures comply with appropriations law and are used only for authorized purposes; by following Office of Management and Budget guidance; and by meeting all statutory and congressional reporting requirements.

The STB is annually audited by an independent audit firm, subject to the Department of Transportation's Office of Inspector General's oversight and in accordance with the Generally Accepted Government Auditing Standards. My responsibilities would also include continuing to implement the recommendations made by the independent audit firm.

24. What do you believe to be the top three challenges facing the department/agency/commission/corporation, and why?

I believe the top three challenges facing the agency are as follows:

Continued Reform of Agency Process

As part of Chairman Fuchs' broader initiative to enhance agency efficiency, transparency and accountability, I was asked by him to hold informal listening sessions with the practitioners who routinely appear before the Board. The goal of the sessions was to identify practical ways to streamline the Board's processes and procedures, particularly those impacting litigants and parties in matters before the Board.

Over several days, I met with around 20 practitioners who provided more than 100 specific ideas for process improvements. The insight that was provided was incredibly helpful and a perspective that could only be provided by those who were routinely filing matters before the Board. Following the review and feedback, I submitted five initial recommendations to Chairman Fuchs which focused on actionable steps to streamline procedures such as enhancing case management and reducing administrative burdens.

At this time, proactive steps have been taken to advance all five initiatives. I believe in the coming years, the Board should consider more of the ideas and implement them. While all of the suggestions address process reform, many of the suggestions would require rulemaking proceedings.

Concluding Regulatory and Adjudicatory Proceedings

In the past, the Surface Transportation Board has experienced a backlog on its docket. During the listening sessions I led in May 2025 with legal practitioners who routinely appear before the Board, a reoccurring comment was the impact that these delays have on stakeholders who have pending matters before the Board. Those stakeholders include Class I railroads, shippers, passenger rail operators, local governments, and landowners. These entities can face significant operational, financial and strategic consequences from delays in adjudicatory matters and rulemakings. In the past, some of these proceedings have languished for years due to backlogs. Delays force parties to incur ongoing legal, consulting, and compliance costs without resolution. They can also delay capital investments which stall growth and lead to costlier alternatives like increased reliance on trucking.

In January 2025, Chairman Fuchs began ongoing efforts to address case backlogs as a priority for the agency to promote transparency and accountability. Under his leadership, Chairman Fuchs has implemented a reorganization of the agency to streamline the internal review process of the Board. This effort, along with process reform, has led to the agency substantially increasing the speed of decisions. I believe it is incumbent upon the Board to continue prioritizing any outstanding matters as well as continuing to issue decisions in a timely manner.

Conducting Thorough Agency Analysis and Oversight

Stakeholders provided positive feedback following the May listening sessions. Many indicated that it was the first time the Board has asked for this kind of insight and constructive criticism. Based upon this feedback, the Board should consider offering bi-annual reviews to create a regular, transparent forum for stakeholders to assess the STB's processes and provide actionable feedback on areas for improvement. This initiative would enhance accountability by systematically evaluating the Board's performance and holding the STB accountable to its mission of accountability and fair regulation. Regular engagement would also ensure that diverse perspectives from small shippers to Class I railroads are incorporated, building upon the collaborative model of the 2025 listening sessions. Bi-annual reviews would establish a consistent feedback loop and would allow the STB to adapt to evolving industry needs and regulatory challenges.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts, such as a 401(k) or pension plan.

I have no existing financial arrangements or deferred compensation agreements or dealings with business associates, clients, or customers. I participate in Southeastern Pennsylvania Transportation Authority (SEPTA) Defined Contribution Plan. While I will continue to participate in this defined contribution plan, SEPTA ceased making contributions upon my separation. I also participate in SEPTA's defined benefit plan, where I will receive a defined pension starting at age 62. These are listed in Section E. 1.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association, or other organization during your appointment? If so, please explain.

No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have

been nominated. Explain how you will resolve each potential conflict of interest.

I was employed by the Southeastern Pennsylvania Transportation Authority from 2006 until 2021. Upon confirmation of my first term as a Member of the STB, I entered into an Ethics Agreement and agreed not to participate personally and substantially in any particular matter where SEPTA was a party for a period of one year after my resignation from SEPTA. This time period has now passed, and I do not have any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

I am not aware that I hold any financial interest that would raise a possible conflict of interest. However, in my Ethics Agreement, I have pledged that I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee, even if uncompensated; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

5. Identify any other potential conflicts of interest and explain how you will resolve each potential conflict of interest.

I do not have any other potential conflicts of interest.

6. Describe any activity during the past ten years, including the names of clients represented, in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I have not engaged in influencing the passage, defeat or modification of legislation during the past ten years.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, an Inspector General, professional association, disciplinary committee, or other professional group?
If yes:

- a. Provide the name of the court, agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, municipal, or foreign government entity, other than for a minor traffic offense?
If so, please explain.

No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain.

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain.

No.

5. Have you ever been accused, formally or informally, of sexual assault, sexual harassment, or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

It has been an extraordinary honor and privilege to serve on the Surface Transportation Board. I am profoundly grateful to President Trump for his nominations and trust in my ability to serve. I would also like to extend my sincere gratitude to the Senate Commerce Committee for their thoughtful consideration of my nomination. If granted the opportunity to continue, I am fully committed to supporting the stakeholders who depend on our nation's surface transportation system by delivering diligent and equitable oversight of the transportation network that is vital to our nation's economy and our communities.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency/commission/corporation complies with deadlines for information set by congressional committees, and that your department/agency/commission/corporation endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority?

Yes.

2. Will you ensure that your department/agency/commission/corporation does whatever it can to protect congressional witnesses and whistleblowers from reprisal for their testimony and disclosures?

Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee?

Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

E. FINANCIAL DATA & OTHER CONFIDENTIAL MATTERS (Will not be released to the public.)

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]	
[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	

F. AFFIDAVIT

Michelle A. Schulte being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Michelle A. Schulte
Signature of Nominee

Subscribed and sworn before me this 23 day of Oct, 2025.

Amy Robson
Notary Public

AMY R.A. ROBSON
Notary Public, State of New Jersey
Comm. # 2311784
My Commission Expires 2/27/2029

Michelle Albright Schultz



LinkedIn: [linkedin.com/in/michelle-schultz-47801aa](https://www.linkedin.com/in/michelle-schultz-47801aa)

Professional Summary

Experienced legal and regulatory professional with over two decades of expertise in transportation, legislative affairs, and government administration. A results-driven leader with extensive experience in regulatory oversight, legal counsel, and legislative advocacy. Skilled in navigating complex legal frameworks, developing strategic initiatives, and fostering stakeholder collaboration.

Professional Experience

Surface Transportation Board

Member

Washington, DC

January 2021 – Present

- Serve as a member of the independent federal agency overseeing economic regulation of freight railroads, intercity passenger rail service, and other modes of surface transportation.
- Contribute to policy formulation, regulatory decision-making, and industry oversight to ensure fluidity on the freight rail network.
- Collaborate with stakeholders, industry leaders, and federal agencies on transportation-related initiatives.

Southeastern Pennsylvania Transportation Authority (SEPTA)

Deputy General Counsel

Philadelphia, PA

2014 – 2021

- Directed legal strategy and provided counsel on matters including compliance, procurement, contracts, and litigation.
- Negotiated and drafted key agreements to support transportation operations and infrastructure projects.
- Ensured adherence to federal, state, and local regulatory requirements.
- Addressed safety citations issued by the Federal Railroad Administration on behalf of the Authority.
- Managed the expenses for the Office of General Counsel.
- Served on the Office of General Counsel Hiring Panels.
- Represented the Authority in matters before the Pennsylvania Public Utility Commission.
- Drafted requests for proposals for capital construction projects.
- Served as the lead attorney on the Elwyn to WaWa Regional Rail Service Restoration Project, which involved the restoration of 3.5 miles of existing track; replacement of catenary and signals; utility relocations; construction of a new station and a 600-car parking deck.

Director of Legislative Affairs

2010 – 2013

- Led SEPTA's legislative initiatives at the federal and state levels.
- Advocated for funding and policy priorities, securing resources for transportation projects.
- Established and maintained strong relationships with policymakers and industry stakeholders.
- Advocated on behalf of all providers of public transportation within Pennsylvania for various changes to pending legislation.
- Partnered with members of the bus manufacturing industry to develop a strategy for dealing with certain emissions standards established by the State of California and adopted by Pennsylvania.
- Assisted in drafting and provided advice and counsel on capital grant applications.

Manager, Legislative Affairs

2006 – 2010

- Managed day-to-day legislative advocacy efforts, including policy analysis and regulatory updates.
- Supported leadership in legislative strategy development and implementation.
- Monitored legislation, regulations, and provided summaries to the Director of Legislative Affairs.
- Handled state and federal constituent services.
- Trained newly hired constituent services personnel.

White and Williams LLP

Associate

Philadelphia, PA

2002 – 2006

- Specialized in commercial litigation, bankruptcy, and corporate legal matters.
- Litigated motions and adversary complaints for preference and fraudulent conveyance actions.
- Addressed coverage issues for major insurance carriers in bankruptcy cases resulting from mass tort litigation.
- Represented clients in complex legal disputes.

U.S. Bankruptcy Court for the Eastern District of Pennsylvania

Judicial Law Clerk

Philadelphia, PA

2000 – 2002

- Researched and drafted opinions and memoranda for all judges of the Eastern District of Pennsylvania.
- Conducted extensive legal research to assist the bench in making decisions on a variety of bankruptcy issues.

Superior Court of Pennsylvania

Judicial Law Clerk

Bala Cynwyd, PA

2000

- Prepared draft Superior Court opinions and bench memoranda.
- Conducted legal research on a variety of complex civil and criminal issues.

Education

Master of Government Administration

University of Pennsylvania | 2008

- Selected by Faculty to be the Commencement Speaker
- Awarded the Stephen B. Sweeney Award for Public Service

Juris Doctor

Widener University School of Law | 1998

- **Staff Writer**, *The Widener Law Forum*
- **Vice President**, Student Bar Association

Bachelor of Arts

Pennsylvania State University | 1994

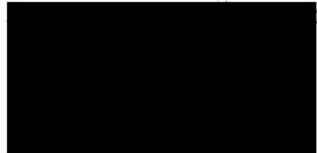
- Semester Abroad: *University of Manchester*
- Walt Disney World College Program

Bar Admissions

- Pennsylvania
- New Jersey

**Addendum to the questionnaire submitted
to the Senate Committee on Commerce, Science
and Transportation, 119th Congress by Michelle Albright Schultz.**

Upon further review, I have identified 17 additional submissions that are responsive to the Committee's questionnaire. They are as follows:

ess. It is:

A. Q11, In my Senate Questionnaire from my 2019 nomination I included the following:

- a. General Partner – Tamarack Four
- b. Officer (Treasurer) – Gettysburg Concrete Company

A. Q15, please include the following political contribution:

2016: \$1,000, Democratic Party Joshua Shapiro for Attorney General

A.16 – In the Senate Questionnaire I submitted for my 2019 nomination, I listed the Stephen B. Sweeney Award from the University of Pennsylvania for commitment to local government and public service. I did not include it in the submission to the 119th Congress because it was issued in 2010 which was outside of the ten year period. Q19, please include the following public statements made within the last ten years:

- a. 6/11/2025, Article, [*STB Looks to Streamline Operations*](#), Railway Age
- b. 6/1/2025, STB Press Release, [*STB Gathers More Than 100 Ideas From Legal Practitioners to Streamline Board Processes*](#)
- c. 5/1/2025, STB Press Release, [*Vice Chairman Michelle Schultz to Hold Listening Sessions on Legal Processes and Procedures*](#)
- d. 11/18/2024, Article, [*Railroads have turned the corner on service and resiliency, analysts say*](#), FreightWaves
- e. 12/3/2024, Article, [*STB misses its own deadline for issuing decision on CN's acquisition of Iowa Northern*](#), TrainsPro
- f. 5/10/2024, STB Press Release, [*STB Chairman Martin J. Oberman Retires*](#)
- g. 3/24/2023, Article, [*STB's Michelle Schultz addresses recent rail challenges*](#), World-Grain
- h. 8/15/2023, Article, [*STB decides against BNSF's request to stay coal order*](#), FreightWaves
- i. 9/14/2023, Article, [*Viewpoint: The market, not the regulators, should set freight rail prices*](#), FreightWaves
- j. 6/26/2023, Article, [*STB orders BNSF to send more coal trains to Montana mine*](#), FreightWaves
- k. 1/22/2021, STB Press Release, [*Surface Transportation Board Members Thank Ann Begeman, Congratulate Martin Oberman as Chairmanship Changes Hands*](#)
- l. 7/11/2019, Article, [*Senate Committee Approves STB Nominee Michelle Schultz*](#), Transport Topics

- m. 4/11/2018, Article, [Senate Considers Presidential Nominees for Surface Transportation Board](#), Transport Topics

[REDACTED]

- i. [REDACTED]
 - 1. [REDACTED]
 - 2. [REDACTED]
- ii. [REDACTED]
 - 1. [REDACTED]
 - 2. [REDACTED]

The undersigned certifies that the information contained in the public addendum is true and correct.

Signed Michelle L. Sw Date: 10-30-25

Thank you for the introduction. It's so great to be here with all of you this afternoon in New York.

When I look at what we are facing in the rail industry, I am reminded of a quote from Paulo Coelho, the author of the *Alchemist*:

“When we least expect it, life sets us a challenge to test our courage and willingness to change; at such a moment, there is no point in pretending that nothing has happened or in saying that we are not yet ready. The challenge will not wait.”

The last few years have brought unprecedented challenges to the nation's economy, our supply chain and the freight rail network. I am certain that everyone in this room has been following these challenges very closely. Supply chain disruptions have increased transportation costs for U.S. rail shippers in virtually every sector and industry. And while I know that unreliable service has cost rail shippers millions of dollars in lost profit, perhaps now just might be the time that these challenges are transformed into opportunities for change and for growth in the rail industry. Let me explain. _____

We all know that at the beginning of last year service was bad and getting worse. Velocity was down. _____ Terminal dwell and dwell at origin was up for some railroads by double digits. And trains holding due to crew issues were also substantially up. We heard from many stakeholders about just how bad the service had gotten. The National Grain and Feed Association recounted how one of its members had to spend \$3 million on secondary freight to keep animals fed, and another had to stop selling feed because a loaded train sat at origin for one week because of a lack of crew. In April, 2022, the Board held a two-day hearing on freight rail service challenges and heard from various industries and public officials including the Secretary of Transportation as well as executives from the Class I carriers. Not only did we hear in great detail about the extraordinary service disruptions, but also about the challenges associated with a rail labor shortage, which by the way, were pointed to by labor and the carriers themselves.

Immediately following the hearing, we issued an order requiring the reporting of service metrics and head counts. In the months that followed, we carefully monitored the bi-weekly reports and we started to see improvements across the network. During this time, Members of the Board met with the CEOs of the Class I carriers who shared their plans on service recovery and their plans to attract and retain rail labor during what we know was one of the tightest labor markets we have experienced in decades. Just a few weeks ago, the Board extended its temporary reporting period for all Class 1 carriers through the end of this year. And in that decision, the Board recognized that CSX met most of its service improvement targets and reduced CSX's reporting requirements.

As if the post-pandemic recovery did not present enough of a challenge, six months ago, the rail carriers and the unions were engaged in a labor dispute that posed a threat of bringing our freight rail network to a **grinding** halt. This would have cost our economy upwards of at least \$1 billion per day and could have driven prices even higher for many consumer goods. And while the Board had no role in the negotiations, many of us held our breath along with the rest of the nation, until early December when the President signed a bill that imposed a settlement between labor and the carriers.

During the months leading up to the settlement, we became aware that Union Pacific was planning to reduce the number of cars on their network. Let me take a minute to walk through the issue. In order to reduce the number of cars, UP reached out to the customers that they believed had an excess number of cars on their system. UP then asked those customers to remove a certain number of cars within seven days. If a customer could not achieve UP's goal, a congestion embargo would be put in place unless the customer sought a permit. By the first week of December 2022, UP had put more than 1000 embargos in place for the year, and there were 141 active embargoes, all due to congestion. By way of comparison, in 2017, UP had implemented only 27. So in the second week of December, the Board conducted a two-day hearing with UP regarding the substantial increase in their use of embargoes as a method of reducing rail traffic congestion. As of April, 2023, UP discontinued its Pipeline Inventory Management Program and reduced their use of congestion-related embargos by 50% compared to last year. And while I applaud UP in its reduction, in my view, it's not enough because I understand the extreme difficulties that being embargoed places on a shipper. They have to

assign manpower to deal with the issue, choose which shipments to reduce or delay, decide which receivers are going to be told that they aren't getting their shipment, and then try to move some traffic by truck, if they can. It just injects so much unnecessary difficulty and uncertainty as well as increased cost. And that's why I hope that UP's goal will be to achieve the industry standard.

At this point many of you may be wondering how do any of these circumstances lead to growth and transformation? Service disruptions? The threat of a national rail shutdown? Embargos? How could any of these circumstances lead to positive changes of any kind on the network?

Last year, I met with each of the Class I CEOs but two conversations in the latter part of the year stood out from all the others. Those were the meetings that I had with CEO Joe Hinrichs of CSX and CEO Alan Shaw of Norfolk Southern. As some of the other CEO's acknowledged, service was improving but was still not where they wanted it to be. But here's how these two meetings differed – both Joe and Alan talked about how they wanted to focus more on resiliency, taking a more customer-centric focus. It was also important to them to capture more freight volumes from truck and to improve their relationship with their employees. But perhaps most surprising to me, they were no longer going to focus exclusively on operating ratio and instead they talked about their goal to pivot toward growth. At the conclusion of both meetings, I found myself surprisingly in agreement with their goals and I hoped they would be successful – success in all of these areas would mean that these carriers would greatly improve in their ability to deliver predictable, reliable service to their customers and afford their customers the ability to ship more volume by rail instead of truck.

But at the same time, I also had to wonder, was this just a message that was being delivered behind closed doors to a regulator that they knew had been receiving a high number of complaints about rail service? Haven't the Carriers made promises of improved service in the past while at the same time promising their investors that they would reach an even lower operating ratio by reducing expenses – which often means cutting headcounts? How was this time any different?

Here, they were saying the opposite. They would not be identifying an OR goal and would be focusing on “resiliency” by actually increasing headcounts and improving retention. I

would also say that what made this message different is that it was not just delivered to me but was also delivered publicly and directly to their investors. And what everyone knows is that resiliency is not just good for shippers, it's also good for the carriers as we watched this play out during the pandemic. There's a saying that comes to mind—luck is what happens when preparation meets opportunity. In order to take advantage of the surge in demand, grow their volumes, and provide predictable service, carriers needed to be prepared for it, and they were not.

And while no one could have predicted the pandemic or the national labor shortage that followed, what this experience has now shown is resiliency matters. _____ And the Carriers are making positive changes. Headcounts are increasing. According to our Office of Economics, total employment for the carriers is up by over 5% from last – with two Carriers - CSX and CPKC, now having reached pre-pandemic headcounts. And in recent weeks, all 6 of the Class I's have reached agreements awarding sick leave to some of their employees. I believe these agreements will further improve the quality of life for employees and most likely lead to a higher rate of retention and better resiliency.

And just to give some more credit where it's due, let me talk for a moment about CN which held its investor day just a little over three weeks ago. Like Norfolk Southern and CSX, CN is focused on growth, customer service and resiliency. CEO Tracy Robinson and COO Ed Harris stated that CN is focused on the “right operating model” and that “the Plan is Sacred.” CN is committed to starting their trains on time, improving velocity and retaining its work force. CN went so far as to say “that they are done cutting heads and that the way railroads make money is to keep things moving.” Although CN was questioned extensively about its plans to increase capital expenditures, it is my hope that CN will be successful in its new operating model. If they are – they might better match the needs of shippers who routinely tell me that they want to ship more volume by rail.

One of the other reasons I am optimistic about the near future in the rail industry is the promise of what improved technology could do to benefit railroad-shipper relationships as well. When I first joined the Board two years ago, I was talking to a fellow Board Member and I was absolutely blown away to learn that you cannot track railcars as well as you can track an Amazon package. And today, I am still not sure about what is holding the industry back. But I do believe

technology that would provide transparency might resolve a lot of the issues that rail customers are complaining about.

In my meetings with shippers, there are three main complaints that I hear about. First, they would like to ship more volume by rail. Second, they would like to have better communication with their Carriers about delayed shipments and the location of their rail cars. And third, and by far the most frequent complaint I hear about is the lack of predictable service. I think improved technology and better transparency on the network could give shippers at least part of what they are asking for—more knowledge about where their shipments are and when they will arrive.

Now I would like to spend a minute talking about the important and often difficult issue of regulation. The Surface Transportation Board is directed by Congress to follow the principles set forth in the Rail Transportation Policy enacted by Congress. While some of these principles are often viewed as competing, one such principle to quote “is to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required.” End quote. I call attention to this policy in particular because the plain words of the statute require the Board to implement regulations “when they are required.” I believe when “regulations are required” is a viewpoint that differs greatly. To me, the role of the Board is to determine two things: whether there are issues that rise to the level of the need for regulatory action and whether the issue can be solved by regulation. In order to make that determination, the Board must consider both the principles of the Rail Transportation Policy as well as carefully consider any potential unintended consequences of the proposed regulatory solution. After input and comment from the industry, the Board must then consider whether the benefits of the proposed regulatory solution will outweigh any unintended harm.

If CSX, Norfolk Southern, and CN are successful in achieving their goals, they could accomplish more to improve service than any regulation that is implemented by the Board. At the end of the day, what shippers deserve is dependable service that is delivered with a customer-centric focus. And while opinions may differ, my own view is that the Carriers themselves will do a much better job of voluntarily achieving this goal across their networks than perhaps any changes that can be put into place through regulation. This is not to say that there

are not circumstances that warrant regulation. It is just to say that in my view, the Carriers are in the best position to make operational decisions on how to meet the needs of their customers. And while regulations may correct certain issues, at the end of the day, only the Carriers themselves can deliver a good service product that meets the needs of their customers.

And so, again, it is my sincere hope that CSX, Norfolk Southern, and CN can successfully achieve the goals they've outlined not just for the sake of their customers but for the industry as a whole. If they are successful, this could result in higher headcounts, the ability to meet more of their customers' needs as well as better fluidity on the network. And most importantly, if CSX, Norfolk Southern, and CN are successful, perhaps this would inspire some other Carriers to pivot toward growth as well. Improving the freight rail network and shipping more volume of freight by rail will not only better meet the needs of the carrier's customers, it will improve the nation's economy and reduce costs for every U.S. consumer.

I believe these remain challenging times on the freight rail network but I can't help but be optimistic about the future. There are a lot of opportunities for rail service to improve. Rail carriers, at least some of them, are showing that they have the courage and willingness to change their operating models with a goal to improve service, become more reliable, and grow volumes. The winds, I think, are shifting, and so I think we might see in these difficult times the beginnings of a great and much needed transformation in the rail industry.

I look forward to our continued conversation and thank all of you for your continued interest in the state of the freight rail network.

I. Introduction

First, I want to thank the sponsors of the Mega Meeting for having me speak tonight: the Institute for Supply Management, the Southeastern Pennsylvania Alliance Chapter of ASCM, the Council of Supply Chain Management Professionals, the Traffic Clubs of Philadelphia and the Lehigh Valley, and the Warehousing Education and Research Council. Also, in particular, I want to thank Paul Delp of Lansdale Warehouse Company for reaching out to me and asking me to speak. Paul served on the STB's Railroad Shipper Transportation Advisory Council for 6 years. Paul – thank you for your service and for your willingness to share your insight with the Members of the Board.

Before I begin, I want to get a couple of preliminary items out of the way: First, nothing that I say tonight represents the views of the Surface Transportation Board or any of the other members. And second, I am unfortunately prohibited from discussing any pending proceedings before the Board or matters that are currently in litigation or on appeal.

With that out of the way, can I just say, what a time to be giving this speech. I feel like the supply chain is often an afterthought—something that just works, and when it's working, people don't think about how the journey their new car, or stove, or whatever else is that they purchased, got to them. Which port did it come in through? Was it put on a truck, or shipped by rail? Who made those decisions? That is, of course, until the something goes wrong. And it is never good when the supply chain is in the news, is it? When it is, it's never because of how smoothly things are moving.

And speaking of times when the supply chain is in the news -as you all know, earlier this month we had a brief longshoreman strike on the East and Gulf Coasts. That certainly affected traffic flows here, but it also affected traffic flows on the West Coast. Union Pacific said that its container volumes were up 40% year over year in September as shippers diverted traffic in anticipation of the strike. BNSF also noted increase in volumes and both railroads had contingency plans in place to deal with the increase in traffic. I am extremely grateful that the strike has ended and the ports are back on line—with regard to this region, in August, I had the opportunity to tour the Port of Philadelphia and was hosted by Dominic O'Brien. During the

tour, I was able to hear and experience first hand how vital the Port is to this region and its economic growth. It affects which companies locate here and who does business here. For example, Ikea, after encountering delays at the Port of New York and New Jersey, decided to run everything through Philadelphia. To turn this back to rail, good rail service at the Port means that containers can move efficiently and reliably which gives the Port the ability to move more goods. Growth in rail capacity enables growth at the Port and ultimately leads to economic growth for the Greater Philadelphia region.

And so now, I would take a moment to talk about the role of the Surface Transportation Board in the economy, including a little bit of background on the Board for anyone who isn't familiar with us. I'd also like to highlight a few recent issues that the Board has dealt with, including the hearing on growth in the freight rail industry we held just last month. And I'd like to talk about what I see as the current outlook for the Board, as well as for rail service generally. In a room full of supply chain professionals, I know that all of you know even better than I do how interconnected the supply chain is. As I said before, I do not speak for the Board, and I don't speak for my colleagues on the Board. But I hope that you'll gain insight from hearing at least one Member's thoughts on the role of the Board in the supply chain and how the growth of freight rail is a rising tide that lifts all boats.

II. The Role of the Board

And so what is the role of the Board? The Surface Transportation Board was created in 1996 to take over many of the functions of the Interstate Commerce Commission. It is an independent agency, and although we have several areas of responsibility, our primary role involves economic regulation of the freight rail industry. We hear cases brought by shippers challenging rates, and we have jurisdiction over railroad practices and service. We also review rail mergers, rail construction, and abandonment of railroads. In some regards the rail industry has been deregulated, but there is still a place and a need for regulation since many shippers do not have options when it comes to which railroad they use or whether they can use another mode of transportation at all. I am a big believer in competition, and so I want competition and the market to drive railroads' business decisions, not government regulations. But where there is a

market failure or there is insufficient competition, that is the core area of where the Board should regulate.

In a sense, our role is often as a backstop. When the rail network is not working, there can be significant consequences, both for the network as a whole and for an individual shipper. In either situation, the effects can reverberate from the shipper to the receiver, and to other consumers. And so while it is always my hope that railroads run their networks efficiently and provide good service to shippers, there are times when challenges occur and the Board is called upon to intervene.

III. Recent Board Issues

And now I would like to turn to some recent Board issues. The STB is a small agency, but a busy one. And while I have not agreed with all of the Board's actions over the last few years, I think that overall we have had a positive impact on our small part of the supply chain. First, in 2022, rail service had reached a crisis point. The Board held a hearing and imposed new temporary reporting requirements related to service and employment levels. They say sunshine is the best disinfectant, and I think that requiring the Big Four railroads—Union Pacific, BNSF, CSX, and Norfolk Southern—to identify service and employment targets and regularly report metrics played a small part in helping to end that crisis. Today, while there are still pockets of difficulties, as there always are, the rail network is running fluidly. As noted by one of the panelists at the recent growth hearing, not only are volumes up this year, but train speeds are up, and dwell is down. In short, more freight is moving while service continues to improve.

CPKC MERGER:

One of the most significant transactions that has ever been handled by the Board took place just last year when the Board approved the largest rail merger between Canadian Pacific and Kansas City Southern to become CPKC. The merger created the first railroad to span the United States, Canada, and Mexico, and the Board found that the merger would enhance competition and support the growth of the freight rail network.

RECIPROCAL SWITCHING:

And earlier this year, the Board created a new rule which had been under consideration for quite some time. This rule was EP 711 and commonly referred to as reciprocal switching. Reciprocal switching gives certain shippers in terminal areas who have access to a single railroad the opportunity to get rail service from an alternate railroad. If the shipper's host railroad falls below certain metrics, the shipper then has the opportunity to come to the Board to seek a reciprocal switch.

IV. The Growth Hearing, the State of the Rail Network, and Importance of Freight Rail

And that brings me to September's hearing on growth in the freight rail industry. Not to put too fine a point on it, but a healthy and growing freight rail industry benefits everyone—even if you ship nothing by rail, and a lot of shippers do have the choice to ship by truck instead. But moving shipments from truck to rail benefits everyone. Rail is cheaper. It is better for the environment. It takes trucks off the road, which decreases wear and tear on public infrastructure and even saves lives.

While several parties at the growth hearing had valid criticisms for past or current practices of the railroads, something that I must underscore is that the United States freight rail network remains the best in the world. It is a phenomenal resource, even when it's not running optimally. This benefits the supply chain, which can take advantage of the private investments that railroads have made into the network, and it benefits the economy, as it offers a fuel-efficient, cost-efficient option for shippers to move their goods. But despite the clear benefits of rail, many shippers who could ship by rail choose to ship by truck. The hearing got into several reasons for this preference for truck, but two big issues from shippers was a lack of reliability and communication from the railroads.

Shippers often see rail as less reliable than truck, and it is easier to figure out where a truck is and when it will arrive at its destination than it is with a railcar. Both of these are valid points, and issues that the Class I railroads can and must address. And it really gets to what my

chief concern always is in my role—rail service. Poor service impacts shippers and it impacts the national economy. But I have said, and I will say it again, regulations cannot provide good service. Carriers are the only ones with that power. So I want to give railroads room to run and operate the way that they want. They should be able to innovate, shift resources, and do what they think is best for their business. The same is true for shippers. And carriers, like shippers, are in the best position to know what resources they need to compete and perform well.

That being said, we've seen what happens when service suffers, and that is that, understandably, there are calls for increased regulation of the rail industry. And I will be the first to say, increased regulation is not something I want, and it is not something that Congress wanted when it created the Board. The Surface Transportation Board is directed to follow the principles set forth in the Rail Transportation Policy enacted by Congress. While some of these principles are often viewed as competing, one such principle is to quote "minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required." I call attention to this policy in particular because the plain words of the statute require the Board to implement regulations "when they are required." I believe when "regulations are required" is a viewpoint that differs greatly. To me, the role of the Board is to determine two things: whether there are issues that rise to the level of the need for regulatory action and whether the issue can be solved by regulation. In order to make that determination, the Board must consider both the principles of the Rail Transportation Policy as well as carefully consider any potential unintended consequences of the proposed regulatory solution. After input and comment from the industry, the Board must then consider whether the benefits of the proposed regulatory solution will outweigh any unintended harm.

At the end of the day, what shippers deserve is dependable service that is delivered with a customer-centric focus. And while opinions may differ, my own view is that the Carriers themselves will do a much better job of voluntarily achieving this goal across their networks than perhaps any changes that can be put into place through regulation. This is not to say that there are not circumstances that warrant regulation. It is just to say that in my view, the Carriers are in the best position to make operational decisions on how to meet the needs of their customers. They can make improvements faster and without the negative consequences of increased

regulation, and so, ideally, they will continue to improve and make increased regulation by the Board unnecessary.

But I think the freight rail industry is poised to move forward, and the Philadelphia region is already seeing the benefits. The rail industry is starting to turn a little bit and become more customer oriented, seeking to grow its volumes rather than focus on increasing prices or cutting costs. The East Coast's two major railroads, CSX and Norfolk Southern, are two of the railroads that are really leading the charge in terms of changing the way they do business. Both railroads are focusing on resiliency and customer service. I think their quick actions after the Key Bridge collapse in Baltimore are evidence of that. When I asked CSX and NS about their response to the Key Bridge collapse at the recent growth hearing, let me tell you what they said. The CEO of CSX, Joe Heinrichs said that two things really helped—first, operations and sales within CSX worked well together to come up with solutions quickly. But he also said that it was the improved relationship with labor that allowed CSX to go to the union and the next day get approval to transfer employees. Without sufficient employees, and without a strong working relationship between labor and management, these types of quick actions are just not going to happen. And Ed Elkins from NS talked about the importance of fluidity and having capacity for resiliency that you can apply when things go wrong because there's always something that is going to go wrong. Ed also talked about the importance of trust with employees, customers, and even the ship operators. He indicated that things are going to go wrong, and the true test is how well the railroad is able to bounce back to normal operations. As both of these railroads serve Philadelphia, including the Port of Philadelphia, the benefits to the region are clear if CSX and NS are able to continue to improve service and their resiliency.

And while there is certainly room for improvement in the rail industry, there is also a lot to be optimistic about. Carriers are creating new partnerships with trucking companies to provide service that is more competitive with truck, such as BNSF's Quantum service in partnership with J.B. Hunt. Norfolk Southern has created a new department seeking to fuel customer growth and make rail easier to use, and it is working more closely with short lines to improve interchange. These are just a couple of examples of how the Class I railroads are changing their operations in order to drive growth. And I would be remiss if I did not mention

the railroads efforts over the past couple of years to enter into paid sick leave agreements with their labor unions, which help retain and attract employees, because you can't have growth without employees. I hope to see more of approaches like these in the future, because I think that rail has a bright future, especially if carriers provide the type of reliable service that their customers deserve.

V. Rail Customer and Public Assistance Program

Before I close, I have to plug the Board's Rail Customer and Public Assistance Program. You can find information about the program on the Board's website under the "Resources" tab. If you're a shipper and are having service issues or some other issue that you think the Board can help with, they are a great first call. Agency staff who work in the program are highly knowledgeable, and they can help with anything from giving you some information over the phone to informal mediation. And if you are having an issue and would just like to talk to someone, they will not reveal your identity to the railroad or other party without your consent. Again, it's informal, so they can't give you any binding guidance, but they are able to solve a lot of issues quicker, on an informal basis, before the issue ever gets to the Board itself.

VI. Closing

In closing, I would like to reiterate that the United States has the most extensive freight rail network in the world. The value of that resource cannot be overstated, and freight railroads are vital to shippers and the U.S. economy. 40% of long-distance freight in the U.S. moves by rail. At the end of the day, what I care about is service. While the Board should do what it can to ensure the fluidity of the network, the Board cannot provide service through regulation. Only the carriers can do that. So if the network is running smoothly and carriers are meeting the needs of shippers by providing reliable service, that makes my job a whole lot easier, and it avoids the negative consequences of additional regulations, which, while well-intentioned, can instead stifle the same growth in the rail industry that we all want to see.

Thank you all for the opportunity to be here tonight and for the important role that all of you serve in keeping our supply chain and the nation's economy moving.

Good afternoon, everyone. It's great to be here, and thank you for giving me the opportunity to update you on what's going on at the Board. Before I begin, I'd like to have someone else come up here with me. [Gabe Meyer is here today representing the Board's Rail Customer and Public Assistance Program, and I just want Gabe to introduce himself, so you can put a face to the name, and he'll tell you a little bit about the program and where you can find him if you'd like to discuss anything.]

FIRST YEAR AT THE BOARD.

When I joined the Board, I knew the issues pending before the Board were complex and challenging. What I didn't know was just *how* complex and *how* challenging they are. And so I am grateful to have the opportunity to serve with such a great group of people and to serve at time when it is permissible to speak with a fellow Board Member about pending issues.

But really, I find our conversations to be invaluable—especially when they involve issues where I am not in agreement with a fellow Member. Having the opportunity to speak with another Member provides me with the “why” behind their position and allows me to have a better understanding of their opposing view. In some instances, I have even been enlightened to the point of agreeing with their position, and on limited occasions, I know that sharing my view has been persuasive as well.

I would also be remiss if I did not point out the invaluable role that the Board's career professionals have also had in my transition as well the help they have given to me with my learning curve. My observation is that the Board is very fortunate to have a small but highly talented group of professionals whose dedication to their work is evident in everything they do. In my short time on the Board, there has not been a question that they have not been able to answer off the top of their heads, and I believe the quality of our decisions speak for themselves. Lastly, I would like to take a moment to recognize the important role that my attorney advisor, Mike Small, has had in my time as a Board member.

IMPORTANCE OF HEARING FROM STAKEHOLDERS.

I've been a member of the STB for a little over a year now, and I've had the opportunity to meet with many different groups, including railroads, shipper groups, and individual shippers. I have made these meetings a priority, because, and let me stress this, these meetings are extremely important to me. It's one thing to read a brief or a comment that sets forth a problem that stakeholders are having, and another thing entirely to hear from you directly and have you explain

to me in conversation what you are experiencing in the field. I can't emphasize enough how helpful these meetings are to me—to have the opportunity to ask questions and to hear your perspectives. And so, at least for me, as long as we are not discussing a pending matter, if anyone here today wants to present a challenge, explain it, and describe what you think the solution is, my door is wide open. Even if the Board is hearing completely different proposals from other stakeholders, I still want your suggestions, because you're the industry experts. More input can only make the Board's decisions better.

ROLE AT THE BOARD AND REGULATORY PERSPECTIVE.

Each of us Board Members brings difference strengths and backgrounds to the Board, which play a role in how each of us reaches our decisions. In my meetings with stakeholders, I have often been asked about my views, my leanings, or how I make decisions. Just to give you a sense about my perspective: I try to approach issues first from a question of, "What did Congress ask the Board to do?" I look at statutes, and legislative intent, and especially the Rail Transportation Policy set out by Congress. Now, I don't know how many of you have looked at the Rail Transportation Policy, but it sets out fifteen often-competing policy priorities to guide the Board's decisions. The Rail Transportation Policy, or RTP as we call it, directs the Board to minimize the need for federal regulatory control—but also requires the Board not to minimize it too much, and to still provide some regulatory control. Where there isn't effective competition, the RTP asks us to make sure rates aren't too high—but we should also make sure they aren't too low either. Congress carved a narrow path for the Board to walk, and shippers and railroads are often pitted against each other on either side.

And yet, even though railroads and shippers are often at odds, in the long run, shippers, railroads, and the Board are, I think, in agreement. In one meeting I had with a shipper, they talked at some length about recurring problems with missed switches. But during that same conversation, the shipper emphasized the importance of a strong freight rail network, and how important it was for the shipping community that railroads are healthy. Even though shippers and railroads agree on this in principle, there is strong disagreement on how best to maintain and improve the health and strength of our freight rail network. But when I make decisions, and when I meet with stakeholders, the health and strength of the freight rail network is always my ultimate goal.

IMPORTANCE OF PROCEEDING WITH CAUTION.

I guess if I could sum up my regulatory perspective in a word, it would be “cautious.” I’ve learned a few lessons both during the pandemic and during my time at the Board about how interconnected things are, how supply chain issues affect us all, and how many intersecting problems there are right now in the supply chain. In my meetings with stakeholders, both on the railroad and shipper sides, I’ve had a lot of productive and enlightening discussions about the issues affecting the rail network, and I cannot thank enough the people and organizations I’ve met with for lending me their expertise as I try to stay informed about the state of the network. I really see that as one of the most important aspects of my job, because whenever the Board considers regulatory action, I do not take this responsibility lightly, nor do I want us to do so in a vacuum.

Over just the past year, I think one of the words that I heard most was “shortage.” Chassis shortage. Rail labor shortage. Driver shortage. Warehouse labor shortage. Container shortage. Lumber shortage. Semiconductor shortage. I think the only thing that was not in shortage was consumer demand, but even that shifted. From my conversations, it sounds like the port and intermodal issues are likely to be with us for some time.

As I hear about all of these problems, I try to focus on two things. First, what can the Board do to help? I say *can* because at least some of the issues that are affecting the network may originate elsewhere along the supply chain, and therefore it’s simply not an area where the Board has any power to regulate. Not only should the Board try to regulate within its area of expertise, but it should also regulate within its statutory mandate.

Second, what *should* the Board do to help? Part of the issue with regulations is that once they are on the books, it is very difficult to remove them. And as the Board looks to solve issues that we see in the network, I want to ensure that the solutions we impose match the problems that we are trying to solve. If a problem is temporary, the solution should be temporary. And if a problem can be resolved by the market, we should first see if the market will provide that solution. However—and I think this is clear from the pending Board proceedings—the Board will take action when it believes it is in the best interest of the rail network as a whole.

On that point, I’d like to express my deep concern regarding issues raised in recent letters to the Board from the National Grain and Feed Association, Senator Shelley Moore Capito of West Virginia, Secretary of Agriculture Tom Vilsack, and SMART-TD. The NGFA letter alleges widespread service issues affecting grain shippers and receivers, including NGFA members unable to purchase grain because they have loaded trains waiting to be moved out by the railroad, mills

being shut down due to running out of grain, and livestock producers having difficulty keeping their animals fed. Senator Capito's letter alleges that railcar shortages have resulted in coal shipment cancellations or delays. The Board takes these matters seriously, and we are looking at how to move forward to learn more about the issues shippers are experiencing and what the Board can and should do to address the issues raised. It is my hope that the Board, shippers, and railroads can work together to resolve these service issues.

OVERVIEW OF DOCKET.

It is an incredibly busy time right now at the Board. As you may be aware, there are several high profile matters that are currently pending—all of which I, unfortunately, cannot discuss with you because we are not permitted to discuss pending proceedings. But I can give you a broad overview of what the Board is working on.

MERGERS.

First, of course, the Board has two large mergers pending before it, one of which is a major merger of two Class I railroads. It is the first time in 20 years that the Board has reviewed a merger of that size. The first involves CSX's acquisition of Pan Am Railways, which would extend CSX's network in New England. The Board held a two-day hearing in January, and, by statute, our decision on the merger will be issued later this month. The second involves Canadian Pacific's acquisition of Kansas City Southern, which would create a single railroad that extends from Canada, through the U.S., and into Mexico. We are squarely in the middle of the procedural schedule in that proceeding, although the procedural schedule is currently suspended pending the resolution of a data inconsistency, and for more information on that, I would direct you to our March 16th decision.

RULEMAKINGS.

The Board has several rulemaking proceedings before it right now, some initiated by the Board, and some initiated by stakeholders. I'm not going to go through all of them, but to highlight a few:

- We have a rulemaking proceeding in which the Board has proposed new reciprocal switching regulations. The Board held a hearing in the proceeding last month, and we are having meetings with stakeholders for the next two weeks.

- We have a rulemaking proceeding to consider a new procedure for challenging the reasonableness of rates in smaller cases, in which the Board would decide a case by selecting either the shipper's or the railroad's final offer.
- There's another proposal from several Class I railroads to create an arbitration program to resolve small rate disputes. Reply comments regarding the arbitration proposal and the Board's proposed final offer rate review program are due by April 15th.
- The Board has a proposal pending to revoke the class exemptions for certain commodities.
- We have a proceeding in which we invited comments regarding first-mile/last-mile service, and whether there are additional metrics that the Board should be looking at to assess that service.
- Finally, we also have a proposal from several organizations to create regulations authorizing private railcar owners to assess, essentially, demurrage charges when a Class I railroad holds on to a private railcar beyond a reasonable time. Last week, the Board issued a decision asking for comments on the proposal, and for comments on several questions that the Board had. Initial comments on that are due by the end of June.

OTHER CASES.

I'd say that's a pretty full plate, but beyond the mergers and rulemakings, the Board has other cases before it that could have large effects on the industry or the network. For example, we have a proceeding raising questions about the nature of railroads' common carrier obligations. We have another proceeding regarding whether Amtrak can start service between New Orleans and Mobile, and we are smack in the middle of a hearing in that case right now.

PUBLIC COMMENTS ARE CRUCIAL.

Clearly, the issues before the Board are wide-ranging, and in several proceedings, any action that we take could have large effects on the industry or the network. As we consider multiple high-profile and consequential rulemakings, difficulties continue to plague many parts of the supply chain, both here and abroad. I do not want to impose a more-or-less permanent solution

to what turns out to be a temporary problem. I wouldn't want to saddle either shippers or railroads with regulations that turn out to be unnecessary.

Because regulations are often in place for many years and come with associated costs, I believe it is incumbent upon the Board to proceed cautiously with any action that could have an effect on the rail network. One way the Board can proceed with caution is to make sure that the Board seeks input from the very people who best know the network—the stakeholders. If there's one thing I've learned in the dozens and dozens of meetings I've had with shippers and railroads and other organizations, it's how much I don't know. I both value and depend upon the insight and experience from people like the ones in this room who are literally on the network on daily basis, to tell me what works and what doesn't and how we could make it better. So, if there is something that the Board is doing that sounds like a good idea or bad idea, I hope you'll tell us what you think.

And with that, I'd be happy to take any questions if you have any.

Thank you for the introduction. It's so great to be here with all of you this afternoon in Palm Springs.

When I look at what we are facing in the rail industry, I am reminded of a quote from Winston Churchill:

“The pessimist sees the difficulty in every opportunity. The optimist sees the opportunity in every difficulty.”

The last few years have brought unprecedented challenges to the nation's economy, our supply chain and the freight rail network. I know that almost everyone in this room has first-hand experience with these challenges – in fact, I've had the opportunity to speak with some of you directly. And while I know that unreliable service has cost rail shippers millions of dollars in lost profit, perhaps now just might be the time that these challenges are transformed into opportunities for change and for growth in the rail industry. Let me explain. _____

We all know that at the beginning of last year service was bad and getting worse. Velocity was down. _____ Terminal dwell and dwell at origin was up for some railroads by double digits. And trains holding due to crew issues were also substantially up. We heard from many stakeholders about just how bad the service had gotten. This organization recounted how one member had to spend \$3 million on secondary freight to keep animals fed, and another had to stop selling feed because a loaded train sat at origin for one week because of a lack of crew. Then in April, 2022, the Board held a two-day hearing on freight rail service challenges and heard from various industries and public officials including your President Michael Seyfert, the

Secretary of Transportation as well as executives from the Class I carriers. Not only did we hear in great detail about the extraordinary service disruptions, but also about the challenges associated with a rail labor shortage, which by the way, were pointed to by labor and the carriers themselves.

Immediately following the hearing, we issued an order requiring the reporting of service metrics and head counts. In the months that followed, we carefully monitored the bi-weekly reports and I am happy to say that we have started to see improvements across the network. We are also seeing a reduction in service complaints. During this time, Members of the Board met with the CEOs of the Class I carriers who shared their plans on service recovery and their plans to attract and retain rail labor during what we know was one of the tightest labor markets we have experienced in decades.

As if the post-pandemic recovery did not present enough of a challenge, six months ago, the rail carriers and the unions were engaged in a labor dispute that posed a threat of bringing our freight rail network to a **grinding** halt. This would have cost our economy upwards of at least \$1 billion per day and could have driven prices even higher for many consumer goods. And while the Board had no role in the negotiations, many of us held our breath along with the rest of the nation, until early December when the President signed a bill that imposed a settlement between labor and the carriers.

During the months leading up to the settlement, we became aware that Union Pacific was planning to reduce the number of cars on their network. Let me take a minute to walk through the issue. In order to reduce the number of cars, UP reached out to the customers that they believed had an excess number of cars on their system. UP then asked those customers to remove a certain number of cars within seven days. If a customer could not achieve UP's goal, a

congestion embargo would be put in place unless the customer sought a permit. By the first week of December 2022, UP had put more than 1000 embargos in place for the year, and there were 141 active embargoes, all due to congestion. By way of comparison, in 2017, UP had implemented only 27. So in the second week of December, the Board conducted a two-day hearing with UP regarding the substantial increase in their use of embargoes as a method of reducing rail traffic congestion. As of now, UP made several changes to their Inventory Management Program and has reduced congestion-related embargos by cutting them in half. Most recently, I've been told that if UP continues at their current pace, they'll be able to reduce their use of embargoes by 70% compared to last year. And while I applaud UP in its reduction, in my view, it's not enough because I understand the extreme difficulties that being embargoed places on a shipper. You've got to assign manpower to deal with the issue, choose which shipments to reduce or delay, decide which receivers are going to be told that they aren't getting their shipment, and then try to move some traffic by truck, if you can. It just injects so much unnecessary difficulty and uncertainty as well as increased cost. And that's why I hope that UP's goal will be to achieve the industry standard.

At this point many of you may be wondering how do any of these circumstances lead to growth and transformation? Service disruptions? The threat of a national rail shutdown? Embargos? How could any of these circumstances lead to positive changes of any kind on the network?

Last year, I met with each of the Class I CEOs but two conversations in the latter part of the year stood out from all the others. Those were the meetings that I had with CEO Joe Hinrichs of CSX and CEO Alan Shaw of Norfolk Southern. As some of the other CEO's

acknowledged, service was improving but was still not where they wanted it to be. But here's how these two meetings differed – both Joe and Alan talked about how they wanted to focus more on resiliency, taking a more customer-centric focus. It was also important to them capture more freight volumes from truck and to improve their relationship with their employees. But perhaps most surprising to me, they were no longer going to focus exclusively on operating ratio and instead they talked about their goal to pivot toward growth. At the conclusion of both meetings, I found myself surprisingly in agreement with their goals and I hoped they would be successful for reasons I am sure many of you would agree with – success in all of these areas would mean that these carriers would greatly improve in their ability to deliver predictable, reliable service to their customers and afford their customers the ability to ship more volume by rail instead of truck.

But at the same time, I also had to wonder, was this just a message that was being delivered behind closed doors to a regulator that they knew had been receiving a high number of complaints about rail service? Haven't the Carriers made promises of improved service in the past while at the same time promising their investors that they would reach an even lower operating ratio by reducing expenses – which often means cutting headcounts? How was this time any different?

Here, they were saying the opposite. They would not be identifying an OR goal and would be focusing on “resiliency” by actually increasing headcounts and improving retention. I would also say that what made this message different is that it was not just delivered to me but was also delivered publicly and directly to their investors. For CSX, it was presented during their Quarterly Earnings call in mid-January while Norfolk Southern's took place during its investor day in early December. And what everyone in this room knows is that resiliency is not

just good for shippers, it's also good for the carriers as we watched this play out during the pandemic. There's a saying that comes to mind—luck is what happens when preparation meets opportunity. In order to take advantage of the surge in demand, grow their volumes, and provide predictable service, carriers needed to be prepared for it, and they were not.

And while no one could have predicted the pandemic or the national labor shortage that followed, what this experience has now shown is resiliency matters. _____ And the Carriers are making positive changes. Headcounts **are** increasing. According to our Office of Economics, total employment for the carriers is up by over 5% from last year. And in recent weeks, 5 of the 7 Class I's have reached agreements awarding sick leave, that I believe will further improve the quality of life for employees and most likely lead to a higher rate of employee retention and better resiliency.

And just to give some more credit where it's due, let me again talk for a moment about UP. They have not been doing great over the past year, but I do think they are coming to the realization that something must change. Just last week, I learned that they recently finished up a pilot program for employee scheduling, with the goal of providing employees with certainty on when they would be working, and when they would have days off. Something which I believe everyone can see the value in. Being able to schedule time off in advance is something that rail labor has been asking for. And I don't know if UP will expand the program or try it elsewhere, but I have to give them credit for trying. For recognizing that their employees are dissatisfied and for trying something new to improve their quality of life. By the way, this will also have the likely benefit of improving service for shippers. During the pilot program, UP said there were fewer, unscheduled employee call outs.

In terms of challenges to the rail industry, there is none more widely known than the unfortunate derailment in East Palestine, Ohio. As a result of the derailment, the Department of Transportation has reintroduced proposed rail safety regulations; Members of Congress introduced the Railway Safety Act of 2023; NS announced a six-point plan to immediately improve safety; and the Association of American Railroads reported on immediate steps the Class I railroads are taking to prevent similar accidents in the future.

It goes without saying that no one wants derailments to happen. The FRA is the primary agency responsible for safety regulation in the rail industry, but while the Board doesn't regulate safety per se, we certainly consider safety when we act, and it is something that all of us—regulators, carriers, and shippers should be concerned about. And it is my hope that once the NTSB issues its final report, we can see what lessons can be learned and what can be done in the future to try to prevent an accident like this one from ever happening again.

Let me now turn back to an area that **is** under the Board's purview—service. One of the other reasons I am optimistic about the near future in the rail industry is the promise of what improved technology could do to benefit railroad-shipper relationships as well. When I first joined the Board two years ago, I was talking to a fellow Board Member and I was absolutely blown away to learn that you cannot track railcars as well as you can track an Amazon package. And today, I am still not sure about what is holding the industry back. But I do believe technology that would provide transparency might resolve a lot of the issues that rail customers are complaining about.

In my meetings with shippers, there are three main complaints that I hear about. First, they would like to ship more volume by rail. Second, they would like to have better communication with their Carriers about delayed shipments and the location of their rail cars.

And third, and by far the most frequent complaint I hear about is the lack of predictable service. I think improved technology and better transparency on the network could give shippers at least part of what they are asking for—more knowledge about where their shipments are and when they will arrive.

Now I would like to spend a minute talking about the important and often difficult issue of regulation. The Surface Transportation Board is directed by Congress to follow the principles set forth in the Rail Transportation Policy enacted by Congress. While some of these principles are often viewed as competing, one such principle to quote “is to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required.” End quote. I call attention to this policy in particular because the plain words of the statute require the Board to implement regulations “when they are required.” I believe when “regulations are required” is a viewpoint that differs greatly. To me, the role of the Board is to determine two things: whether there are issues that rise to the level of the need for regulatory action and whether the issue can be solved by regulation. In order to make that determination, the Board must consider both the principles of the Rail Transportation Policy as well as carefully consider any potential unintended consequences of the proposed regulatory solution. After input and comment from the industry, the Board must then consider whether the benefits of the proposed regulatory solution will outweigh any unintended harm.

If CSX and Norfolk Southern are successful in achieving their goals, they could accomplish more to improve service than any regulation that is implemented by the Board. At the end of the day, what shippers deserve is dependable service that is delivered with a customer-centric focus. And while opinions may differ, my own view is that the Carriers

themselves will do a much better job of voluntarily achieving this goal across their networks than perhaps any changes that can be put into place through regulation. This is not to say that there are not circumstances that warrant regulation. It is just to say that in my view, the Carriers are in the best position to make operational decisions on how to meet the needs of their customers. And while regulations may correct certain issues, at the end of the day, only the Carriers themselves can deliver a good service product that meets the needs of their customers.

And so, again, it is my sincere hope that CSX and Norfolk Southern can successfully achieve the goals they've outlined not just for the sake of their customers but for the industry as a whole. Carriers seem to be under intense pressure from short term investors to focus on cost cutting and to reduce their operating ratios. A pivot to growth would most likely result in the loss of some short-term investors in exchange for higher profitability in the long term. If they are successful, this could result in higher headcounts, the ability to meet more of their customers' needs as well as better fluidity on the network. And most importantly, if CSX and Norfolk Southern are successful, perhaps this would inspire some other Carriers to pivot toward growth as well. In the meantime, I would still like to hear from you and get your perspective on how things are going on the network. I know that you are the industry experts and I very much value your perspective and I know my colleagues do as well.

These are difficult times, yet like Winston Churchill, I too see opportunity in every difficulty and can't help but be optimistic about the future. There are a lot of opportunities for rail service to improve. Rail carriers, at least some of them, see opportunities to improve service, become more reliable, and grow volumes. The winds, I think, are shifting, and so I think we might see in these difficult times the beginnings of a great and much needed transformation in the rail industry.

I look forward to our continued conversation and thank all of you for the contributions you make to continuing to improve the freight rail network. And with that I welcome any questions you might have for me this afternoon.

I. Introduction

Good afternoon, and thank you for inviting me to speak today.

A couple of preliminary items to get out of the way: Nothing that I say tonight represents the views of the Surface Transportation Board or any of the other members. And I am somewhat constrained in what I can say about matters pending either before the Board or in litigation on appeal.

With that out of the way, can I just say, what a time to be giving this speech. I feel like the supply chain is often an afterthought—something that just works, and when it's working, people don't think about how the journey their new car, or stove, or whatever else got to them. Which port did it come in through? Was it put on a truck, or shipped by rail and put back on a truck again? Who made those decisions? That is, of course, until the something goes wrong. And it is never good when the supply chain is in the news, is it? Not much reporting going on about how the freight network is moving fluidly.

As you all know, earlier this month we had a longshoreman strike on the East and Gulf Coasts. That certainly affected traffic flows on the East Coast, but it also affected traffic flows on the West Coast. Union Pacific said that its container volumes were up 40% year over year in September as shippers diverted traffic in anticipation of the strike. BNSF also noted the increase in volumes in anticipation of the strike, and both railroads had contingency plans in place to deal with the increase in traffic. I am extremely grateful that the strike has ended and the ports are back on line, but it was just another reminder of how interconnected the freight network is.

Ann helpfully provided me with a few of the issues that you all are interested in, and while there are some that I either can't or shouldn't talk about, I'll address what I can.

II. Background

But first, a little bit about my background for those of you who don't know me. Prior to working at the Board, I worked for 14 years with the Southeastern Pennsylvania Transportation Authority, the commuter railroad that serves the Philadelphia area. My most recent role with SEPTA was deputy general counsel, and in that role I represented the agency before the FRA and the Pennsylvania Public Utility Commission; served as lead counsel on a major railroad reconstruction project; and served as lead counsel on real estate transactions and contract negotiations. Prior to that role, I served as the Director of Legislative Affairs for SEPTA, leading a team to advocate for SEPTA at the local, state, and federal level, and reviewing legislation and regulations at all levels to determine their impact on SEPTA.

Earlier in my career, I was in private practice with a focus on bankruptcy law and commercial litigation, and I served as a law clerk for the U.S. Bankruptcy Court for the Eastern District of Pennsylvania and a law clerk for the late Vincent A. Cirillo, President Judge Emeritus of the Superior Court of Pennsylvania.

III. Issues of Interest

So that's a little bit about me and my background, which in case it is not clear, did not include freight rail. That is just one of the many reasons I appreciate PRFBA and its members for being such vocal participants in Board proceedings—most recently with Dave Burchett's testimony at last month's growth hearing—and for always being available to meet with the Board. Your input is vital, and I always appreciate hearing from you about issues on the network and what you see as possible solutions. Even when there is disagreement, you help us to see every side of the issue, and I think that makes our decisions better.

A. Two-Two Split and Priorities as a Republican Member

I was asked about my thoughts on operating under a 2-2 split Board, which we have been since May, and about my priorities and objectives as a Republican Board Member. First things first, even though there is a 2-2 split, I feel very comfortable saying that I and all of my colleagues, regardless of affiliation, are always concerned about service. We have an election coming up, and, eventually, I would expect that 2-2 split to resolve one way or another, and whoever is Chairman under the next president will at some point have a majority. But the four of us will remain on the Board for some time, so regardless of the election, I do not expect our focus on service to change.

As for my priorities, I would say the timeliness of Board decisions is a priority. And please know, this is not a criticism of Board staff, or Board leadership. Since I joined the Board, it seems like we have not had a second to breathe, bouncing between crises, big cases, and complex rulemakings. We had the service crisis, the CSX-Pan Am merger, days-long hearing in the Amtrak Gulf Coast matter, Canadian Pacific's merger with Kansas City Southern, and major rulemakings including arbitration, final offer rate review, emergency service regulations, and reciprocal switching.

I think now is the right time to deal with the many issues that are already on the Board's plate. We have several petitions for rulemaking pending and a number of cases awaiting decision. And I think it is incumbent on the Board to decide those cases in a timely fashion. The Board is a small agency with a limited bandwidth, and I think there needs to be a recognition, both from the me and my colleagues as well as outside stakeholders, that there are tradeoffs. When we focus on one thing, that often means taking our focus off something else. Couple that with decisions where Congress has mandated that we issue a decision within a certain number of days, and I think it is clear that the Board must be judicious in its use of resources.

B. Expectations for Reciprocal Switching; applying it to contract and exempt traffic.

I mentioned reciprocal switching a moment ago, and I know that is an issue that is very much on your minds. I am restricted in what I can say since that remains on appeal. Regarding Board support for legislation, I think that is really a question for the Chairman, and that issue, along with the related question of whether the Board will be advancing a reauthorization proposal, are two areas where the election may play a role in what direction the Board goes. Not

only might we have a new chairman, we will be dealing with a new administration and a new Congress, so we will have to see where we are at that point.

C. Does the Board have authority to address contracts?

I was asked whether the Board has authority to address contracts. I think the statute, Section 10709, is pretty clear that Board authority over contracts is greatly restricted. But in case this issue comes before the Board in the future, I'm going to have to decline to speak further on that.

D. Clarifying the Common Carrier Obligation.

Another question you raised was about clarifying the common carrier obligation. That is a big one. I have some complex thoughts on that one. I mean, on the one hand, I am a big, big proponent of clarity in Board decisions. That is always something I strive for, and I think something the Board should strive for. Clarity makes our orders clearer, and it helps reduce litigation and disagreement in the future over what a given Board decision means. That being said, right now the Board decides alleged violations of the common carrier obligation on a case by case basis, and that fact specific approach, while slow, has its benefits. The most obvious one is that the Board can really tailor the remedy, if one is needed, to the facts at hand.

My worry about clarifying the common carrier obligation in a broader way is the possibility of unintended consequences, sweeping conduct or service failures that, while unfortunate, should not be classified as violating the common carrier obligation.

So I guess I should say that while I prefer the case-by-case approach, any clarification of the common carrier obligation must be done carefully, with ample opportunity for input from stakeholders. I would not want to set forth a clearer standard and have that be the wrong standard.

E. Continued service concerns.

I was also asked to address general, continued service concerns, which I think is a good opportunity to talk about September's hearing on growth in the freight rail industry. Not to put too fine a point on it, but a healthy and growing freight rail industry benefits everyone—even if you ship nothing by rail, and a lot of shippers do have the choice to ship by truck instead. But moving shipments from truck to rail benefits everyone. Rail is cheaper. It is better for the environment. It takes trucks off the road, which decreases wear and tear on public infrastructure and even saves lives.

While several parties at the growth hearing had valid criticisms for past or current practices of the railroads, something that I must underscore is that the United States freight rail network remains the best in the world. It is a phenomenal resource, even when it's not running optimally. This benefits the supply chain, which can take advantage of the private investments that railroads have made into the network, and it benefits the economy, as it offers a fuel-efficient, cost-efficient option for shippers to move their goods. But despite the clear benefits of

rail, many shippers who could ship by rail choose to ship by truck. The hearing got into several reasons for this preference for truck, but two big issues from shippers was a lack of reliability and communication from the railroads.

Shippers often see rail as less reliable than truck, and it is easier to figure out where a truck is and when it will arrive at its destination than it is with a railcar. Both of these are valid points, and issues that the Class I railroads can and must address. And it really gets to what my chief concern always is as a regulator—service. Poor service impacts shippers and it impacts the national economy. But I have said, and I will say it again, regulations cannot provide good service. Carriers are the only ones with that power. So I want to give railroads room to run and operate the way that they want. They should be able to innovate, shift resources, and do what they think is best for their business. The same is true for shippers. And carriers, like shippers, are in the best position to know what resources they need to compete and perform well.

At the end of the day, what shippers deserve is dependable service that is delivered with a customer-centric focus. And while opinions may differ, my own view is that the Carriers themselves will do a much better job of voluntarily achieving this goal across their networks than perhaps any changes that can be put into place through regulation. This is not to say that there are not circumstances that warrant regulation. It is just to say that in my view, the Carriers are in the best position to make operational decisions on how to meet the needs of their customers. They can make improvements faster and without the negative consequences of increased regulation, and so, ideally, they will continue to improve and make increased regulation by the Board unnecessary.

But I think the freight rail industry is poised to move forward. The rail industry is starting to turn a little bit and become more customer oriented, seeking to grow its volumes rather than focus on increasing prices or cutting costs. CSX and Norfolk Southern are two of the railroads that are really leading the charge in terms of changing the way they do business. Both railroads are focusing on resiliency and customer service. I think their quick actions after the Key Bridge collapse in Baltimore are evidence of that. When I asked CSX and NS about their response to the Key Bridge collapse at the growth hearing, in case you didn't attend or watch their testimony, let me tell you what they said. Joe Hinrichs said that two things really helped—first, operations and sales within CSX worked well together to come up with solutions quickly. But he also said, and I think this is part of resiliency, that it was the improved relationship with labor that allowed CSX to quickly reroute trains from Baltimore to Newport News, because CSX was able to go to the union and the next day get approval to transfer employees to provide that new service. Without sufficient employees, and without a strong working relationship between labor and management, that is just not going to happen. And Ed Elkins from NS talked about the importance of fluidity and having capacity for resiliency that you can apply when things go wrong because there's always something going wrong somewhere. Ed also talked about the importance of trust with employees, customers, and even the ship operators, that NS would be able to deliver on what they said they were going to do. Things are going to go wrong, and the true test is how well the railroad is able to bounce back to normal operations.

There is certainly room for improvement in the rail industry, but there is also a lot to be optimistic about. Carriers are creating new partnerships with trucking companies to provide

service that is more competitive with truck, such as BNSF's Quantum service in partnership with J.B. Hunt. Norfolk Southern has created a new department seeking to fuel customer growth and make rail easier to use, and it is working more closely with short lines to improve interchange. These are just a couple of examples of how the Class I railroads are changing their operations in order to drive growth. And I would be remiss if I did not mention the railroads efforts over the past couple of years to enter into paid sick leave agreements with their labor unions, which help retain and attract employees, because you can't have growth without employees. Are things perfect? No. But I think when we see these innovations, we are seeing carriers *trying* to be responsive to shippers needs and to grow their networks by providing a better service product. I hope to see more of approaches like these in the future, because I think that rail has a bright future, especially if carriers provide the type of reliable service that their customers deserve.

IV. Rail Customer and Public Assistance Program

Before I close, I have to plug the Board's Rail Customer and Public Assistance Program. You can find information about the program on the Board's website under the "Resources" tab. If you're a shipper and are having service issues or some other issue that you think the Board can help with, they are a great first call. Agency staff who work in the program are highly knowledgeable, and they can help with anything from giving you some information over the phone to informal mediation. And if you are having an issue and would just like to talk to someone, they will not reveal your identity to the railroad or other party without your consent. Again, it's informal, so they can't give you any binding guidance, but they are able to solve a lot of issues quicker, on an informal basis, before the issue ever gets to the Board itself.

I'm happy to take any questions you might have.

Good afternoon! It is truly an honor to be here with all of the leaders of the rail industry as well as my colleagues – Vice Chairman Hedlund and Member Fuchs. I would like to take a moment to thank Tony Hatch for inviting us. Having the opportunity to be in this room and to hear the views of so many of the industry leaders is invaluable. I would also like to say that I am very appreciative of the opportunity to share some of my views as a Member of the Surface Transportation Board.

Since I started at the Board in January 2021, it has not been the smoothest time for the rail industry. As everyone in this room knows, the pandemic was a world event that had unforeseen effects on the supply chain. And the recovery for U.S. railroads, as well as for almost every other industry in the nation, was a difficult one. Since the recovery, carriers have had to contend with numerous events affecting trade flows—foreign conflicts, the Key Bridge collapse, rail negotiations, last month's port strike, foreign embargoes and I am sure I'm leaving things out. But I think what we've seen is that carriers have, in fact, become more resilient at dealing with both expected and unexpected disruptions. This is not the same rail industry that we had post-pandemic.

Carriers have taken active steps to improve their businesses and, in doing so, strengthen the supply chain. I'd like to commend the railroads, first and foremost, on improvements they have made in their relationships with labor through paid leave agreements and efforts to improve work life balance. Carriers have also invested billions of dollars in capital improvements over the past couple of years, despite volumes being down. And they have invested in new technologies that can increase the efficiency and safety of their operations. Investment in the network and expansion of capacity is going to pay dividends as volumes return. But I think the most monumental, positive change I have seen in the rail industry, is the acknowledgment over the past couple years that carriers need to improve their service product to become competitive with truck. We've seen a greater emphasis on service, and we've seen carriers become more customer-centric. They have offered new service products, improved communication with customers, and even partnered with truck to offer faster, more on-time service. Changes like these, which improve the reliability of the rail network and the strength of the supply chain overall, make my job as a regulator a lot easier.

I have also been giving thought to the Board's role in the supply chain, and what we as a Board can do to strengthen the network. I think one of those ways is through federal preemption.

Regulations have costs, and preemption prevents carriers from being subject to a patchwork of regulations, which not only increase compliance costs for carriers but would also be detrimental to rail service for shippers.

In addition to preemption, another way the Board can strengthen the network is to manage our docket more efficiently. Part of our role is to administer decisions in a timely fashion, and we can do better on that. Please note, this is not a criticism of Board staff or my colleagues. Since I joined the Board, the demand on the docket has been extraordinarily high, both with cases filed with the Board and with discretionary matters that the Board has taken up. Those have contributed to longer time periods to issue decisions, and there has been little if any time to review our internal processes. Going forward, the Board should make it a priority to look into our internal processes and streamline them so that we can issue decisions in a more timely manner.

I am cognizant that lengthy decisional timelines increase litigation and other costs, and they also inject uncertainty into industry decisions. The question becomes not “what will the Board decide,” but “when, or if, will the Board decide it.” And I would like the Board, myself included, to keep in mind that delayed decisions increase costs for railroads and shippers alike and even hinder investments. When parties come to the Board, it is because they have an issue that they were not able to solve themselves. The Board is not their first choice, and nobody enjoys unnecessary litigation... except maybe the attorneys. But, once a matter is before us, we have a duty, sometimes statutory and sometimes simply as a matter of good government, to decide the matter efficiently.

I think it’s also important for the Board to continue to engage with stakeholders. We already do that, whether at the staff level through OPAGAC, or at the Board level, our through our advisory committees. Maintaining those lines of communication with carriers, shippers, and industry groups is important and even in my short time on the Board I have seen those lines of communication resolve issues before becoming a multi-year case. My apologies to the lawyers on those missed legal fees. But in all seriousness, communicating with stakeholders ensures that the Board has context and perspective when considering whether to take regulatory action, and I think that is very important for the members and the Board as a whole.

In closing, I’d like to address a question that has been asked of me—what is the long-term role of the Board? I think the week-to-week or month-to-month role of the Board may vary,

but ultimately, it is to ensure the fluidity of the network. Sometimes, this means stepping in, where carriers or shippers bring disagreements to the Board. Other times, it could mean stepping back and allowing carriers to innovate and invest in each of their networks. Either way, the Board should always be guided by the long-term, sustainable health and growth of the network, and I think the Board, or any agency for that matter, should be wary of actions that could operate to hinder that growth absent extremely compelling reasons.

Thank you all for the opportunity to talk with you this afternoon and for the important role that you serve in keeping the freight rail network and nation's economy moving

Good morning, it's great to be here with all of you in Toledo. Before I begin, I would like to thank your Executive Director, Eric Wenberg for inviting me to your conference. These conferences always provide wonderful opportunities to talk with the folks who are out there and interacting with the freight rail network on a daily basis and it is from these informal conversations that I often learn the most. So, thank you Eric as well as those that I had an opportunity to meet last evening.

Just in case anyone here isn't familiar with what the Surface Transportation Board does, I wanted to begin this morning with a brief overview and highlight some of the Board's recent matters as well as a couple of pending items.

BOARD OVERVIEW

The Board is an independent federal agency tasked with the economic regulation of various modes of surface transportation. However, our primary area of responsibility is freight railroads. We hear cases brought by shippers challenging rates, and we have jurisdiction over railroad practices and service. We also review rail mergers, rail construction, and abandonment of railroads. Although the rail industry has been deregulated in many ways, there is still a place and a need for regulation since many shippers do not have options when it comes to which railroad, they use or whether they can use another mode of transportation at all. I am a big believer in competition, and so I want competition and the market to drive railroads' business decisions, not government regulations. But where there is a market failure or there is insufficient competition, that is the area I think the Board should regulate.

RECENT MATTERS FOR THE BOARD

I'd like to take a moment to talk about the recent matters that have kept the Board very busy over the last couple of years. In early 2022, it was clear that there was a service crisis in the rail industry. Velocity was down. Terminal dwell and dwell at origin were up for some railroads by double digits. And trains holding due to crew issues were also up substantially. We heard from many stakeholders about just how bad the service had gotten. The National Grain and Feed Association recounted how one of its members had to spend \$3 million on secondary freight to keep animals fed, and another had to stop selling feed when a loaded train sat at origin for one week because of a lack of crew. In April 2022, the Board held a two-day hearing on freight rail

service challenges and heard from various industries and public officials including the Secretary of Transportation as well as executives from the Class 1 carriers. Not only did we hear in great detail about the extraordinary service disruptions, but also about the challenges associated with a rail labor shortage, which by the way, were pointed to by labor and the carriers themselves.

Immediately following the hearing, we issued an order requiring the reporting of service metrics and head counts. In the months that followed, we carefully monitored the bi-weekly reports and we started to see improvements across the network. We also saw a reduction in service complaints. And Members of the Board met with the CEOs of the Class 1 carriers who shared their plans on service recovery and their plans to attract and retain rail labor during what we now know was one of the tightest labor markets we have experienced in decades.

As if the post-pandemic recovery did not present enough of a challenge, 2022 also saw the rail carriers and the unions engaged in a labor dispute that posed a threat of bringing our freight rail network to a **grinding** halt. This would have cost our economy upwards of at least \$1 billion per day and could have driven prices even higher for many consumer goods. And while the Board had no role in the negotiations, many of us held our breath along with the rest of the nation, until early December when the President signed a bill that imposed a settlement between labor and the carriers.

Also in 2022, the Board conducted an 11-day-long hearing regarding restarting Amtrak service on the Gulf Coast. That proceeding is now in abeyance pending settlement, but the Board recently held an additional hearing in the matter to inquire about the status of the settlement discussions.

And, of course, no discussion of the Board's recent activities would be complete without mentioning the merger between two Class 1 railroads, Canadian Pacific and Kansas City Southern. The Board approved that merger, subject to a number of conditions, in March of last year after review of an extensive record. That decision is currently on appeal.

ON THE BOARD'S AGENDA RIGHT NOW

That brings me to a couple of things on the Board's agenda right now. In January 2024, the Board extended part of our temporary reporting requirements for carriers that arose out of the service crisis hearing that I mentioned earlier. Ultimately, the Board required carriers to report certain service and employment metrics through the end of 2024. Again, because there is a

petition for reconsideration pending, I can only speak about this case in a limited fashion. The Board extended the employment reporting requirements while discontinuing reporting on service metrics. Through the end of the year, railroads will have to report monthly on headcounts, and a few railroads will also have to provide additional information about trainee classes and hiring goals.

Another priority for the Board, which will come as no surprise to anyone who has heard Chairman Oberman speak is reciprocal switching. Last fall, the Board issued a notice of proposed rulemaking and requested comment on many issues contained within. In short, this proposed rule would establish standardized metrics. If carriers provide service that falls below the metrics, certain shippers who are served by a single carrier in terminal areas would be eligible to receive service from an alternative carrier. The comments and replies are in, and the Board is considering them. Again, because this is pending, I am not able to talk about this proceeding in any greater detail but what I can say is it is something that the Board is very focused on.

THE STATE OF THE RAIL NETWORK

I would also like to talk for a moment about the state of the rail network today. But first, I will need to talk about where we were by way of comparison.

At the beginning of the pandemic, volume on the rail network dropped to astonishingly low levels. Faced with extraordinary uncertainty, the rail carriers, like the airlines and many other industries, responded by furloughing employees. Once volume returned, the carriers expected that they could bring their employees back. What they experienced was, they could not. I find it hard to fault them for that given the unprecedented nature of the pandemic and how it affected economies and industries across the globe. But that lack of employees contributed to the service crisis. Since then, railroads have increased their headcounts. In January 2024, headcounts were up by 9% from their lowest point during the service crisis in 2022 while Train and Engine employment has risen 15% during that same time. And service has improved. While there are still pockets of service challenges on the network, I am hearing a lot fewer complaints from shippers now than I was in 2022 or even since last year. The biggest concern I hear from shippers now is this: service is fine, but volumes are down. How will the railroads perform when volumes return? And yes, volumes are down and have been down for some time. Last

quarter, carloadings for the Big 4 railroads were over 12% lower than they were in the fourth quarter of 2021. That is a big reason that the Board extended railroad reporting of employment metrics through the end of the year, so that we have that extra visibility into headcounts when volumes do return. Because when they do, Carriers will need to have resiliency in their work force to meet that increased demand.

And so, as a regulator, what I care about most is service. Poor service impacts shippers and it impacts the nation's economy. But as I have said before, regulations cannot provide shippers with a good service product. Only the Carriers themselves can do that. And I believe they should be able to innovate, shift resources, and do what they think is best for their business. The same is true for shippers. And carriers, like shippers, are in the best position to know what resources they need to compete and to perform well.

GOOD SERVICE AVOIDS INCREASED REGULATION

That being said, we've seen what happens when service suffers, and that is that there are calls for increased regulation of the rail industry. And I will be the first to say, increased regulation is not something that I believe is in the best interest of the network, and it is not something that Congress wanted when it created the Board. The Surface Transportation Board is directed to follow the principles set forth in the Rail Transportation Policy enacted by Congress. While some of these principles are often viewed as competing, one such principle is to "minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required." I call attention to this policy because the plain words of the statute require the Board to implement regulations "when they are required." Shippers, Carriers and Members of the Board all hold different views on when "regulations are required." To me, the role of the Board is to determine two things: whether there are issues that rise to the level of the need for regulatory action **and** whether the issue can be solved by regulation. In order to make that determination, the Board must consider both the principles of the Rail Transportation Policy as well as carefully consider any potential unintended consequences of the proposed regulatory solution. After input and comment from the industry, the Board must then consider whether the benefits of the proposed regulatory solution will outweigh any unintended harm.

At the end of the day, what shippers deserve is dependable service that is delivered with a customer-centric focus. And while opinions may differ, my own view is that the Carriers themselves will do a much better job of voluntarily achieving this goal across their networks than perhaps any changes that can be put into place through regulation. While I believe there are circumstances that warrant regulation, I also believe the Carriers are in the best position to make operational decisions on how to meet the needs of their customers.

THE ROLE OF SHIPPERS

And I know that so far, I've had a lot to say about the carriers, but it goes without saying that everyone in this room knows that shippers serve a vital role to the freight rail network as well. Carriers can't do their job well without open and effective communication with shippers. So I have to commend all of you for being out there interacting with your carriers on a frequent basis, because the carriers can't really know what they are doing well, or poorly, without your feedback. Certainly, there are times when the Board is asked to get involved when there is either a breakdown in communication or a dispute between a shipper and a railroad. But generally speaking, those cases are and should be the exception, not the rule. Service is doing pretty well right now, and while volumes are down, I don't think that is the only reason things are moving. I believe another big reason has to be the continuous conversations between you and your rail carriers, and for that I thank you.

NEW PARTNERSHIPS AND INVESTMENTS

While I know there is concern from shippers about the future, I think there are also reasons to be optimistic as carriers pursue new partnerships and invest in their networks. Just to name a few recent examples, there is BNSF's new partnership with J.B. Hunt and GMXT to provide faster intermodal service to and from Mexico, as well as BNSF and J.B. Hunt's Quantum service that aims for 95% on-time performance. Another example is last year's merger between Canadian Pacific and Kansas City Southern and UP, CN, and GMXT launched a new intermodal service last year connecting Canada, the U.S., and Mexico.

Additionally, the railroads are investing in infrastructure to not only maintain but also modernize their networks. Norfolk Southern invested \$1 billion in infrastructure in 2023, while in 2024, CSX plans to spend \$2.5 billion, UP plans to spend \$3.4 billion, and BNSF plans to spend \$3.9 billion. And I would be remiss if I did not mention the railroads efforts over the past

year or so to enter into paid sick leave agreements with their labor unions – agreements which may help to both retain and attract employees to the rail industry. It is my hope that I continue to see even more approaches like these going forward because I believe that rail has a bright future, especially if carriers provide the type of reliable service that their customers deserve.

RAIL CUSTOMER AND PUBLIC ASSISTANCE PROGRAM

Before I close, I would like to mention the Board's Rail Customer and Public Assistance Program in the event that there is anyone in the room who may not be aware of this resource. You can find information about the program on the Board's website. If you are having service issues or some other issue that you think the Board can help with, they are a great first call. Agency staff who work in the program are highly knowledgeable, and they can help with anything from giving you some information over the phone to informal mediation. And if you are having an issue and would just like to talk to someone, they will not reveal your identity to the railroad or other party without your consent. Again, it's informal, so they can't give you any binding guidance, but they have successfully resolved countless issues on an informal basis without those issues having to ever get to the Board itself.

CLOSING

I would like to close by highlighting that despite the challenges the industry has faced during the last few years, that the United States has the most extensive freight rail network in the world. And the value of this resource cannot be overstated. Approximately 40% of long-distance freight in the U.S. moves by rail which is why our national freight rail network plays an indispensable role in delivering goods to American families and businesses. Perhaps even more significantly, the U.S. Department of Transportation estimates the total number of U.S. Freight shipments will have increased by 30% between 2018 and 2040. This means that reliable and predictable service on the network will only become even more vital to linking businesses to each other within the United States and to businesses abroad as well. Which is why, at the end of the day, what I care about most is predictable and reliable rail service which in my view, cannot be achieved through regulation but can only be provided by the carriers themselves.

And so again, I would like to thank all of you for the contributions you make to the freight rail network, the nation's supply chain, and the nation's economy. I encourage each of

you to keep communicating with your carriers and when necessary, with the Board. Thank you so much for your time and I look forward to your questions.

Good morning, everyone. It's great to be here and thank you for giving me the opportunity to give you this regulatory update.

BACKGROUND

Just to tell you a little more about my background, prior to working at the Board, I worked for 14 years with the Southeastern Pennsylvania Transportation Authority, the commuter railroad that serves the Philadelphia area. My most recent role with SEPTA was deputy general counsel, and in that role, I represented the agency before the FRA and the Pennsylvania Public Utility Commission; served as lead counsel on a major railroad reconstruction project; and served as lead counsel on real estate transactions and contract negotiations. Prior to that role, I served as the Director of Legislative Affairs for SEPTA, leading a team to advocate for SEPTA at the local, state, and federal level, and reviewing legislation and regulations at all levels to determine their impact on SEPTA.

Earlier in my career, I was in private practice with a focus on bankruptcy law and commercial litigation, and I served as a law clerk for the U.S. Bankruptcy Court for the Eastern District of Pennsylvania and a law clerk for the late Vincent A. Cirillo, President Judge Emeritus of the Superior Court of Pennsylvania.

INTRODUCTION

Thank you for the warm introduction. It is wonderful to be here and to have the opportunity to meet with all of you. Chairman Oberman was invited to be your guest speaker today, and I know he would have liked to have attended himself if he could have. Just as an aside, are there any Dallas Cowboys fans in the room? I flew in from Philadelphia yesterday and

I am an Eagles fan. I am hoping to have a better performance today than the Eagles had on Monday night against the Cowboys—or you will really wish Marty could have been here today.

TRANSITION TO THE BOARD.

I have had an opportunity to meet with numerous stakeholders since I joined the Board. I am often asked about my transition to the Board so I thought I would take a moment to talk about it. I joined the Board on January 11, 2021. When I joined the Board, I knew the issues pending before the Board were complex and challenging. What I didn't know was just *how* complex and *how* challenging they are. I know I have so very much to learn and believe that I will continue to learn every day until the last day of my term a little under 5 years from now.

What I also quickly observed was how welcoming and helpful all my fellow Board Members were and how much smoother my transition was because of Patrick, Marty, and Ann. And Robert, who was sworn in just a few days prior to me, was in constant contact with me as we navigated the transition together. This frequent communication has continued with all my colleagues on both a personal and professional basis, and I am grateful to have the opportunity to serve with such a great group of people and to serve at time when it is permissible to speak with a fellow Board Member about pending issues. I find these conversations to be invaluable—especially when they involve issues where I am not in agreement with a fellow Member. Having the opportunity to speak with another Member provides me with the “why” behind their position and allows me to have a better understanding of their opposing view. In some instances, I have even been enlightened to the point of agreeing with their position and on limited occasions, I know that sharing my view has been persuasive as well.

I would also be remiss if I did not point out the invaluable role that the Board's career professionals have had in my transition, as well as the help they have given to me with my

learning curve. My observation is that the Board is very fortunate to have a small but highly talented group of professionals whose dedication to their work is evident in everything they do. In my short time on the Board, there has not been a question that they have not been able to answer off the top of their heads, and I believe the quality of our decisions speak for themselves. Lastly, I would like to take a moment to recognize the important role that my attorney advisor, Mike Small, has had in my transition. Mike unfortunately could not be here today. Mike has truly been an incredible resource to me, and I cannot imagine having made this transition without him. I am hoping that he is not participating via Zoom today and is taking a well-deserved break from listening to me.

IMPORTANCE OF HEARING FROM STAKEHOLDERS

In my short time at the Board, I've had the opportunity to meet with many different groups, including railroads, shipper groups, and individual shippers. I have made these meetings a priority because, and let me stress this, these meetings are extremely important to me. It's one thing to read a brief or a comment that sets forth a problem that stakeholders are having, and another thing entirely to hear from you directly and have you explain to me in conversation what you are experiencing in the field. I can't emphasize enough how helpful these meetings are to me—to have the opportunity to ask questions and to hear your perspectives. And so, at least for me, as long as we are not discussing a pending matter, if SWARS or anyone here today wants to present a challenge, explain it, and describe what you think the solution is, my door is wide open. Even if the Board is hearing completely different proposals from other stakeholders, I still want your suggestions, because you're the industry experts. More input can only make the Board's decisions better. Right now, I've been at the Board for about eight months, and to say that

there's a high learning curve is an understatement. But as I gain more experience in this role, I can only imagine that these meetings will become even more helpful.

ROLE AT THE BOARD AND REGULATORY PERSPECTIVE.

As you all know, I am just one of the five members of the Board. We all bring different strengths and backgrounds to the Board, which play a role in how each of us reaches our decisions. In my meetings with stakeholders, I have often been asked about my views, my leanings, or how I make decisions. Just to give you a sense about my perspective: I try to approach issues first from a question of, "What did Congress ask the Board to do?" I look at statutes, and legislative intent, and especially the Rail Transportation Policy set out by Congress. Now, I don't know how many of you have looked at the Rail Transportation Policy, but it sets out fifteen often-competing policy priorities to guide the Board's decisions. The Rail Transportation Policy, or RTP as we call it, directs the Board to minimize the need for federal regulatory control—but also requires the Board not to minimize it too much, and to still provide some regulatory control. Where there isn't effective competition, the RTP asks us to make sure rates aren't too high—but we should also make sure they aren't too low either. Congress carved a narrow path for the Board to walk, and shippers and railroads are often pitted against each other on either side.

And yet, even though railroads and shippers are often at odds, in the long run, shippers, railroads, and the Board are, I think, in agreement. In one meeting I had with a shipper, they talked at some length about recurring problems with missed switches. But during that same conversation, the shipper emphasized the importance of a strong freight rail network, and how important it was for the shipping community that railroads are healthy. Even though shippers

and railroads agree on this in principle, there is strong disagreement on how best to maintain and improve the health and strength of our freight rail network. But when I make decisions, and when I meet with stakeholders, the health and strength of freight rail network is always my ultimate goal.

COMING SOON—DEMURRAGE TRANSPARENCY MEASURES.

With regard to recent decisions, I know that all of you are focused on the various aspects of your industry so you might not be familiar with the Board's recent decisions. I'd like to take a moment to give a brief overview of one recent decision and expand a bit on my views, because the decision will be effective this coming Wednesday, October 6th.

In April, the Board issued a final rule in the Demurrage Billing Requirements proceeding. The final rule outlines several transparency measures for Class I carriers when they are billing shippers for demurrage charges and creates minimum standards for what railroads must tell shippers on or with any demurrage invoice. Among the items that railroads must provide are the original ETA of each car, the receipt of each car at the last interchange with the invoicing carrier, and the actual placement of each car.

While I know that transparency doesn't solve every problem, it can solve some and, at the very least, make clear where the points of disagreement are for demurrage charges. It is my hope that this rule makes the circumstances surrounding any demurrage charge more transparent to shippers so that they have a better ability to determine the reasonableness of individual charges.

In that regard, I also believe that this rule may be beneficial for the railroads themselves. By giving shippers greater clarity into demurrage charges, shippers may find it less necessary to inquire about certain charges. And when they do have a need to contact a railroad about a

charge, ensuring that shippers and railroads are coming to the issue with the same information may help to prevent some disputes and resolve others more quickly and easily.

However, I recognize that this is not the end of the process. After the rule becomes effective in October, I ask you and your members to please let me know how things are going, either through your conversations with OPAGAC or by getting in touch with me directly. Even now, before the rule is effective, questions are forming in my mind: Have you seen changes in demurrage practices? Have you seen improvements? Did the Board's decision create unforeseen new issues? Is the additional information that you're getting from the railroads helpful? Is there any other information related to demurrage that would be helpful?

GOALS AS A BOARD MEMBER.

This ties in with a couple of my goals as a Board member. The first of these is that I want to make sure that I do not decide these issues and then remain cloistered away in DC, unaware of the effect of our decisions on railroads and shippers. I want to be responsive to your concerns. But the Board necessarily is somewhat removed from the effect of our decisions. We aren't a shipper, and we aren't a railroad, so the Board very much relies on you, our stakeholders, to be its eyes and ears out there to tell us how things are going on the ground. And so, *especially* in situations like a pending proceeding where the rules prohibit me from meeting with you, I would like to request that when you file comments and pleadings, to get into specifics as much as you possibly can. Provide photos, diagrams, metrics, whatever you can. Really explain the situations and difficulties you're having so that I can step into your shoes and see things from your perspective. If some rule is going to have a detrimental effect on your business, please be sure to tell us, but as much as you can, please show us and provide supporting data when possible.

Another goal I have is to help ensure that Board decisions, to the extent possible, provide clarity, not just to the individual parties before us, but to the broader community of stakeholders as well. Depending on the case, our decisions can have far-reaching effects. I want to make sure that when we decide an issue that sets out or clarifies a policy, or applies precedent to a new situation, that we set out the principles for our decision in such a way that members of the freight rail community can read a decision and get a good sense of how the Board will decide a similar case in the future.

OVERVIEW OF DOCKET.

It is an incredibly busy time right now at the Board. As you are aware, there are several high-profile matters—all of which I, unfortunately, cannot discuss with you because we are not permitted to discuss pending proceedings. I would like to give you a quick overview of what the Board is working on, but first, I'd like to take a moment to discuss the President's Executive Order, which I've been asked about recently, and how the executive order impacts the Board.

COMMENTS REGARDING EXECUTIVE ORDER ON COMPETITION.

As you are all aware, the executive order expressed concerns about consolidation in industries, and the effects of consolidation on competition. It highlighted the effects of consolidation not only on consumers, in terms of pricing, service, and choice, but also on some producers, who may encounter concentrated market power as they try to sell their goods.

While most of the executive order did not touch on the rail industry, the concerns about consolidation and pricing, and the desire to foster competition, are already reflected in the rail transportation policy, which is set forth by Congress, and the Board is directed to follow that policy when making many of its decisions.

The rail transportation policy establishes the policy of the U.S. government, and the Board, to allow competition and demand to establish reasonable rates, and to ensure that there is effective competition. In the absence of competition, where rates are too high, Congress directed us to maintain reasonable rates. If predatory pricing and practices exist, or there are undue concentrations of market power, the Board, through our decisions and rulemakings, is tasked with prohibiting those.

In other words, the driving forces and the concerns expressed in the President's executive order are consistent with the policies set forth within the Rail Transportation Policy. Therefore, concerns about competition, pricing, and market power will continue to inform the Board's decisions, as Congress intended.

And just as a last note, the Board is an independent agency, which means that we are ultimately guided by the RTP and our governing statutes. As the RTP certainly acknowledges, regulatory action is not always helpful in fostering competition, and further, imposing regulations will often have long-term impacts. So whenever the Board proceeds with regulatory action, we need to be as certain as possible that our proposed regulations will achieve our desired outcome, and try to avoid situations where unintended, undesirable consequences outweigh the benefits of regulation.

MERGERS.

Now, moving on to the Board's docket: First, of course, the Board has two large mergers pending before it, one of which is a major merger of two Class I railroads. It is the first time in 20 years that the Board has reviewed a merger of that size. The first involves CSX's acquisition of Pan Am Railways, which would extend CSX's network in New England. The second involves Canadian Pacific's acquisition of Kansas City Southern, which would create a single

railroad that extends from Canada, through the U.S., and into Mexico. For each of these mergers, the Board will be going through a transparent, public process, to ensure that concerns from all stakeholders are taken into account.

RULEMAKINGS.

The Board has several rulemaking proceedings before it right now, some initiated by the Board, and some initiated by stakeholders. I'm not going to go through all of them, but to highlight a few:

- We have a petition from several Class I railroads asking us to change how we determine whether Class I rail carriers are revenue adequate on an annual basis, in which they argue for a standard that would benchmark revenue adequacy to the S&P 500.
- We have a rulemaking proceeding to consider a new procedure for challenging the reasonableness of rates in smaller cases, in which the Board would decide a case by selecting either the shipper's or the railroad's final offer.
- There's another proposal from several Class I railroads to create an arbitration program to resolve small rate disputes.
- And we also have a proposal from several organizations to create regulations authorizing private railcar owners to assess, essentially, demurrage charges when a Class I railroad holds on to a private railcar beyond a reasonable time.

That brings me to one proceeding that I particularly wanted to highlight, because the Board is currently seeking public comment on an important issue.

FIRST-MILE LAST-MILE.

A few weeks ago, we issued a decision asking for comments about issues related to first-mile last-mile rail service metrics. In my meetings with shippers and shipper organization, this is an issue that has been raised repeatedly. During these meetings, shippers have presented their challenges with first-mile, last-mile. While I would not be able to summarize those challenges, the challenges seem to vary by shipper. Our recent decision asks for, broadly, four types of information.

First, what issues are you having? How does the issue effect your operations? What remedies are available to you right now? Second, are there additional metrics that you think would be helpful for the Board to collect, and how would those metrics benefit you? Third, what data do Class I carriers currently track? And fourth, what are the trade-offs for any suggestions?

If you are having issues with first-mile last-mile service, I would like to hear about it. If you have an idea for information and metrics that you believe the Board should collect and which would be helpful to clarifying the challenges associated with First Mile Last Mile, I hope you will include it in your comments.

In my view, and I'd ask that you keep this in mind as you consider your comments, the most important question the Board is asking in the First-Mile Last-Mile proceeding is this: What problem are we trying to solve? Your comments will be essential for the Board to understand the scope of the problem.

PUBLIC COMMENTS ARE CRUCIAL.

Clearly, the issues before the Board are wide-ranging, and in several proceedings, any action that we take could have large effects on the industry or the network. Because these regulations are often in place for many years and come with associated costs, I believe it is

incumbent upon the Board to proceed cautiously with any action that could have an effect on the rail network. One way the Board can proceed with caution is to make sure that the Board seeks input from the very people who best know the network—the stakeholders. If there's one thing I've learned in the 70-or-so meetings I've had with shippers and railroads and other organizations, it's how much I don't know. I both value and depend upon the insight and experience from people like the ones in this room who are literally on the network on daily basis, to tell me what works and what doesn't and how we could make it better. So, if there is something that the Board is doing that sounds like a good idea or bad idea, I hope you will submit detailed comments.

IMPORTANCE OF PROCEEDING WITH CAUTION.

I've learned a few lessons both during the pandemic and during my time at the Board about how interconnected things are, how supply chain issues affect us all, and how many intersecting problems there are right now in the supply chain. In my meetings with stakeholders, both on the railroad and shipper sides, I've had a lot of productive and enlightening discussions about the issues affecting the rail network right now, and I cannot thank enough the people and organizations I've met with for lending me their expertise as I try to stay informed about the state of the network. I really see that as one of the most important aspects of my job, because whenever the Board considers regulatory action, I do not take this responsibility lightly, nor do I want us to do so in a vacuum.

If I could sum up one takeaway from those meetings, it's that there are many potential issues affecting the network right now. Issues that stakeholders have raised to me include: chassis shortages; a shortage of railroad labor; truck driver shortages; and warehouse labor shortages. We've seen shifts in consumer demand, a lumber shortage, and now a continuing

semiconductor shortage. And from my conversations, it sounds like the port and intermodal issues are likely to be with us for some time.

As I hear about all of these problems, I try to focus on two things. First, what can the Board do to help? I say *can* because at least some of the issues that are affecting the network may originate elsewhere along the supply chain, and therefore it's simply not an area where the Board has any power to regulate. Not only should the Board try to regulate within its area of expertise, but it should also regulate within its statutory mandate.

Second, what *should* the Board do to help? Part of the issue with regulations is that once they are on the books, it is very difficult to remove them. And as the Board looks to solve issues that we see in the network, I want to ensure that the problems that we are trying to solve are not temporary issues, or issues that may be resolved by the market. I do not want to impose a more-or-less permanent solution to what turns out to be a temporary problem. I wouldn't want to saddle either shippers or railroads with regulations that turn out to be unnecessary.

And this just further underscores the importance of hearing from you when we do propose regulations or ask for input, as in the First Mile Last Mile docket. Wherever possible, I'd like to rely on data before the Board creates a new rule, and it is from you and your companies that we are going to get a lot of that data. So, if anyone has first-mile last-mile issues, or you think that some additional metrics would help the Board to determine what actions are necessary, please send us your comments. The docket number is EP 767. Comments are due by December 17th. Replies are due by February 17th. It would be great for the Board, and for other stakeholders, to hear your thoughts.

CLOSING.

As I said earlier, my door is always open, even if right now, that door is mostly a digital one. I am certainly available to meet through Teams or Zoom, but I'm hoping to get out and visit some of you to see your operations firsthand. That way, when I'm back in the office, I'll have a better, real-world picture of how things operate. Thanks so much for your time, and I'd be glad to answer some questions if you have any.