

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

March 31, 2016

The Honorable Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E Street, Southwest
Washington, DC 20423

The Honorable Deb Miller
Vice Chairman
Surface Transportation Board
395 E Street, Southwest
Washington, DC 20423

The Honorable Ann D. Begeman
Board Member
Surface Transportation Board
395 E Street, Southwest
Washington, DC 20423

Dear Chairman Elliot, Vice Chairman Miller, and Member Begeman:

Thank you for your thoughtful response, dated March 4, 2016, to the Committee's bipartisan letter, and thank you for the monthly written updates on implementation of the Surface Transportation Board Reauthorization Act of 2015 (P.L. 114-110) (Reauthorization Act or Act). I have appreciated your timely actions thus far to implement the Act, and I was pleased to receive your commitment to meeting each deadline in the law. This letter provides views on select recent and forthcoming actions.

Board Member Communications. I welcomed the news of your first collaborative discussion pursuant to the new authority in the Reauthorization Act, particularly to advance the expeditious completion of the data collection rulemaking, *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4). As stated in my letter dated December 14, 2015, I frequently hear from constituents regarding the tremendous improvements in freight rail performance and the usefulness of the weekly metrics resulting from the Board's actions, and I look forward to the finalization of this important rule.

Unfinished Regulatory Proceedings. While the first quarterly report on unfinished regulatory proceedings was a helpful first step in increasing transparency, I ask you to consider enhancing the utility of future reports by including additional information on each of the outstanding proceedings. In particular, drawing upon the useful practices of other agencies, including the Department of Transportation, I request that you include the reason for initiating the action, any legal deadline, and the specific target dates for future actions, including completion. It also would be helpful to include an explanation for any delay from a previously reported schedule. These additions would greatly assist the Committee's oversight efforts and advance our shared goal of increased transparency.

Rate Cases. I appreciated your prompt actions initiating informal meetings for streamlining rail rate cases and publishing the revised rate review procedural schedule in stand-alone cost tests, and I look forward your forthcoming report on rate case review metrics. I note that the intervals within the new statutorily-required procedural schedule are conditional, so the completion of one step in the schedule triggers the start of another. The conditionality of the timeline is important for ensuring the most expeditious rate reviews feasible, and the implementing regulations should clearly include this feature.

As you know, the Reauthorization Act also requires a report to the relevant Congressional committees on the cost-effectiveness of large rate case methodologies and potential economically-sound alternative methodologies to streamline, expedite, and address the complexity of large rate cases. Your letter noted that the Board has hired a consultant to analyze current rate case decision-making processes and provide recommendations. In drafting your final report, I urge you to conduct an expansive survey of possible alternative methodologies, including those put forward in recent studies, and to evaluate their economic soundness. I also expect the Board to use appropriate alternative methodologies, when superior to the current iterations of the simplified stand-alone cost test and three-benchmark methods, to best fulfill the new statutory requirement to maintain one or more simplified methods for determining rate reasonableness when the stand-alone cost test is too costly. I appreciate the Board's commitment to keeping the Committee updated on progress in this area.

Investigative Authority and Revised Arbitration Procedures. I am pleased to see that the Board is making progress in developing rules to implement these two critical reforms and that it plans to finalize the new arbitration procedures ahead of the statutory deadline. I would greatly appreciate the inclusion of the target dates for the proposed rules on these matters within your monthly updates and their full incorporation into the unfinished regulatory proceedings report.

Informal and Formal Rail Service Complaints. As you fulfill the quarterly reporting requirement on service complaints, I ask that you include a brief description of the specific type of rail service issue underlying an informal complaint as well as a brief description of the guidance offered or action taken. In addition, I understand the agency receives a variety of complaints that are inextricably linked to rail service, such as car supply, that may not be categorized as "rail service issues" in its database. Given the intent of this provision to facilitate comprehensive monitoring of rail service issues and aid proactive engagement, I request that the quarterly report include such inextricably linked issues.

Criteria. As you know, section 16 of the Act included technical clarification that a carrier's capability to meet its present and future demand for rail service is relevant when considering revenue adequacy, echoing nearly identical language in the 1985 *Coal Rate Guidelines - Nationwide*. This language is intended to emphasize the importance of rail carrier investment in infrastructure to meet rail service needs, and it should not be misinterpreted to somehow require action inconsistent with Congressional intent. Drawing upon existing precedent, this section clearly does not require any change to the revenue adequacy determination framework. Indeed, the accompanying Committee report explicitly stated that the section "would not require any change to how the STB determines revenue adequacy" – the only instance in which the report explicitly states no action is required. Should an entity claim this language only implies that no immediate changes are required, please note that Congress is capable of requiring changes on a

longer timeline, and it did not do so in this case. I appreciate your continued adherence to the plain language of the statute and documented Congressional intent.

Thank you for your consideration of my requests and thank you in advance for your timely reply. Your continued partnership in promoting a competitive, efficient, and reliable national rail system is truly appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Thune". The signature is fluid and cursive, with a prominent loop at the beginning and a long, sweeping tail.

JOHN THUNE
Chairman