



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

September 3, 2015

The Honorable John Thune
Chairman, Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Thune:

Thank you for your letter dated August 28, 2015, concerning the Rail Safety Improvement Act of 2008 (RSIA). RSIA requires rail common carriers to install positive train control (PTC) on lines that carry passengers and toxic-by-inhalation hazardous materials by December 31, 2015. In your letter, you observe that railroads are not likely to meet that deadline, and you note that some railroads have indicated that they may curtail service absent an extension of the deadline. Given the likely disruptive effect that a curtailment of service could have on the economy, you requested that I respond to three questions. I will answer each in turn.

First, you ask what information we have sought or received from freight and passenger railroads on the actions they might take absent an extension. On July 13, I sent the Nation's largest freight railroads, as well as short line carriers, a "fall peak letter" requesting information about their ability to meet forecasted freight rail demand and any challenges they see for the upcoming season. Two carriers, CSX Transportation, Inc. (CSXT) and BNSF Railway Company (BNSF), stated in their response letters that they foresaw PTC compliance as a significant challenge. CSXT stated that the industry would not make the current year-end PTC installation deadline but indicated that it was "premature to anticipate what decisions might be necessary should an extension not pass." BNSF confirmed that it would not meet the deadline and offered the possibility that "neither passenger nor freight traffic would operate on BNSF lines that are required by federal law and regulation to have an interoperable PTC system" after the current deadline. Additionally, we have received information about the railroad industry's concern with the potential repercussions of the deadline from reviewing recent testimony before Congress.

The Board has also obtained information about the status of PTC compliance through informal meetings. These include discussions at Railroad-Shipper Transportation Advisory Council meetings and conversations that the Board's Office of Public Assistance, Government Affairs and Compliance has had with rail and shipper stakeholders. Based on these informal channels, it appears that some railroads are considering suspending all freight and passenger service on lines that are required to be RSIA-compliant if an extension is not authorized.

Second, you ask what would be the primary legal or economic factors that could cause freight and passenger railroads to consider suspending or reducing service. I understand that railroads are considering a broad array of legal and economic factors in deciding whether to suspend or curtail service if the PTC deadline is not extended. Without commenting on the merits of any particular concern, it would seem that the railroads would be considering how noncompliance would affect them in matters such as: insurance coverage; exposure to tort or other commercial liability; labor-relations issues; and potential civil penalty assessments by the Federal Railroad Administration (FRA)/USDOT. And I assume that railroads are also considering whether a railroad that has not implemented PTC may suspend or curtail service (in the event the PTC deadline is not extended) without violating its common carrier obligation and without incurring liability to its shippers. Additionally, railroads would likely consider competitive and commercial factors, such as relative market share and the likelihood of permanent loss of traffic, revenue, and goodwill.

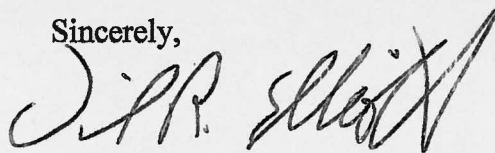
While many of the legal and economic factors identified above are not directly within the Board's jurisdiction, freight rail carriers do have a common carrier obligation to provide service pursuant to a reasonable request. The common carrier obligation includes service for hazardous materials such as the toxic-by-inhalation commodities that partly motivated RSIA's PTC requirement. At the same time, the common carrier obligation is not absolute, and railroads can lawfully suspend service for various reasons, including safety. Prior agency cases assessing the reasonableness of service embargos have been very fact-specific, examining the reasons for the service suspension, the length of the suspension, and the impacted traffic (among other factors). Sometimes the Board has found that a railroad's actions in initiating and maintaining an embargo were reasonable, but other times the agency has concluded that a carrier acted improperly by refusing to serve. Because prior safety-related curtailment-of-service cases often involved services that *complied with* comprehensive safety regimes administered by FRA (and the Pipeline and Hazardous Materials Safety Administration), a carrier-initiated curtailment of service due to a *failure* to comply with RSIA would present a case of first impression before the Board. I cannot predict the outcome of such a case. My expectation is that the views of the FRA, which has primary jurisdiction over rail safety in general and over implementing RSIA in particular, would be a critical consideration.

Third, you ask how the Board plans to proactively monitor and analyze potential service issues that could arise if the current statutory deadline is not extended. As I noted during my confirmation hearings, I will continue to ensure that service quality for all shippers remains a primary focus of the Board. I have been reaching out to railroads and to shippers, and I have directed our Office of Public Assistance, Government Affairs and Compliance (OPAGAC) to continue its outreach to freight and passenger railroads, shippers, and other stakeholders affected by issues related to PTC compliance. OPAGAC has held informal conversations with our stakeholders and will continue to do so in order to keep the Board abreast of developments and informed on the perspectives of the public. Indeed, the rail service problems that occurred in 2013-14 made clear that obtaining timely information is one of the keys to managing service issues. The STB has continued to collect and analyze rail service data, including Amtrak passenger service data, as part of the interim initiative we began in 2014. We also continue to make progress on a permanent data collection rulemaking. My staff speaks regularly with

railroads and shippers to hear about any potential service issues in real time. We will continue these efforts with regard to the impact of RSIA and other service issues, using a fair and balanced approach.

I recognize that PTC is an important tool to enhance the safety of the Nation's freight and passenger rail network, and that it needs to be deployed in a timely way. Following up on our success in working closely with your Committee to help resolve the service issues shippers faced in 2013-2014, I look forward to the important dialogue about the issues raised in your letter. Thank you for allowing me the opportunity to express my views. If you have further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "D.R. Elliott III". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Daniel R. Elliott III
Chairman

cc: Ann D. Begeman, Vice Chairman
Deb Miller, Commissioner