

Ranking Member John Thune
Questions for the Record
Nomination of Ms. Debra Miller to be
Member of the Surface Transportation Board
Senate Committee on Commerce, Science, and Transportation
Hearing on November 21, 2013

- 1) Kansas is a rural, heavily agricultural state, and one strongly dependent on freight rail transportation. What were some of the major rail initiatives you advanced or participated in during your time as the state's transportation secretary? What lessons have you learned that you will bring to your position at the STB, if confirmed?

During my tenure as the Secretary of Transportation for the state of Kansas, I worked on a number of significant rail initiatives. Notably, I was an active participant in the Kansas Department of Transportation's (KDOT's) creation of rail port authorities. These authorities were given taxing power and, with the revenue that they raised, the ability to purchase rail lines for preservation of rail service. An example of the success of this initiative was the establishment of the Mid-States Port Authority, a rail authority made up of 14 counties. Established in 1981, it eventually purchased 400 miles of track. After it was created, I continued to work aggressively to secure Federal and state loans and guarantees that were needed to fund Mid-States' rail service and maintain operations. I am proud to say that Mid-States provided consistent and steady rail service to the northern tier of Kansas for nearly 30 years, a service that was important to shippers and local communities alike, before finally selling its lines to Rail America in 2009.

While Director of Planning at KDOT, the agency also actively participated in the numerous rail merger proceedings before the STB in the 1980's and early 1990's. The focus of KDOT's participation was on representing the interests of shippers and local communities.

I also led KDOT in the establishment and implementation of the Kansas State Rail Service Improvement Fund, a program that makes loans and grants to port authorities and railroads to maintain and improve service. As Secretary, I personally and aggressively defended the continuance of this program before the state legislature. During my tenure, KDOT also supported and participated in the development of several Transportation Investment Generating Economic Recovery (TIGER) grant applications for shortline railroad improvement to the U.S. Department of Transportation, including an application which was approved.

I learned many valuable lessons while Secretary of KDOT. In terms of rail transportation, I learned the vital importance that rail plays to agricultural producers and small manufacturing companies, as well as the surrounding communities. In a rural state like Kansas, rail service is often the only viable means

of transportation. But I also learned how precarious rail service is – once it is lost, it is not likely to be restored. Accordingly, it is important not to take rail service for granted and take the steps necessary to prevent it from being lost.

- 2) Several federal transportation authorities, such as the NTSB and the FAA, have independent investigative authority, which allows them to investigate matters under their jurisdiction without the necessity of a formal complaint. The STB, however, does not have this authority. Would you favor Congress granting such independent investigative authority to the STB? If so, are there any limits you would consider appropriate to constrain such authority, such as limiting it to especially significant matters?

As I understand it, there are already ways for stakeholders that have concerns or complaints to raise them with the STB. For relatively small filing fees, parties can file formal complaints, petitions in which they seek a legal determination from the Board, or petitions for rulemaking. The STB also has a free customer assistance program that can help shippers resolve service disputes with railroads.

However, should Congress choose to grant the STB independent investigative authority, I believe that such authority should be limited to railroad service practices with industry-wide implications. Investigative authority should be limited in this manner because many individual railroad service disputes may not rise to a level of significance that would justify the expenditure of limited Board resources on own-motion investigations. And giving the Board investigative authority for rates could overwhelm the agency while not substantially reducing the burden on private parties, as parties would still have to develop substantial factual records. Investigative authority would be best limited to cases of industry-wide service disputes because those are the situations where the Board could have the most impact without creating enormous logistical challenges.

- 3) To what extent do the total resources devoted to conducting a rate reasonableness case—by shippers, by carriers, and even by the Surface Transportation Board itself—concern you?

It has been explained to me that a rate reasonableness case generates a significant amount of litigation costs for the parties (both railroads and shippers) and man-hours for the STB staff. Any time that a regulatory process becomes that sizeable, it is a cause for concern. I also understand that the STB has taken a number of initiatives over the last several years to improve its large-case procedures and to streamline its rate reasonableness methodologies. If confirmed, I would be interested in exploring whether those initiatives have gone far enough and whether there are additional steps that my fellow Board Members and I can take to reduce resource requirements for the parties and the Board itself.

- 4) Would you favor regular reports by the Board to the two Congressional committees of jurisdiction, showing which cases have been open for more than six months?

As the former head of large public agency, I believe that it is wise to err on the side of accountability and transparency, and regular reporting requirements are a good way of achieving that. Accordingly, I would support regular reports to the appropriate Congressional committees.

Whether that means a report of cases pending more than six months or some different threshold, I cannot say. As for other parameters of a reporting requirement (the level of detail, the frequency), I would simply note that any reporting requirement should be adopted with the aim of improving accountability and transparency and not simply for the sake of creating a reporting requirement – otherwise, the exercise becomes meaningless. In addition, I believe it would be counterproductive if the reporting requirement itself were so burdensome that it required the Board to shift significant resources away from processing cases.