



Office of the Chairman

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

March 28, 2011

The Honorable Al Franken
United States Senate
Washington, DC 20510

Dear Senator Franken:

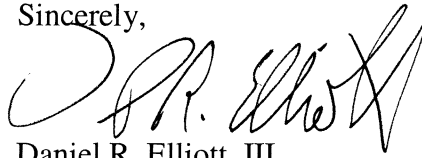
Thank you for your recent letter regarding the Surface Transportation Board's treatment of acquisition premiums and how that treatment might affect the Board's ability to regulate the Class I rail carriers effectively. Class I rail carriers are required to submit to the Board annual financial data, including costing and revenue data, for the previous year by March 31. These data are often referred to as the rail carriers' "R-1 data." The R-1 data generally value the carriers' assets based on the original cost or "book value" of those assets, depreciated over time.

As you noted, Berkshire Hathaway acquired BNSF Railway last year and paid substantially more than the depreciated book value for those rail assets. The Board had no formal merger oversight of the transaction. Because Berkshire Hathaway paid more than the book value, however, the Board's regulations currently in place require BNSF to adjust the book value in the R-1 data to reflect the fair market value of those assets. That is because, since the late 1980s, the agency has required railroads to follow purchase accounting principles, in accordance with Generally Accepted Accounting Principles (GAAP). The stated objective of the regulations requiring adherence to GAAP was to ensure that the railroads use the most accurate information about fair market value in reporting on their rail assets.

I understand your concerns that our accounting regulations not be manipulated to permit an investor to pay an inflated price for railroad assets, and then try to pass that inflated cost back to captive shippers in the form of higher transportation rates. I likewise appreciate the concern of the effect that purchase accounting may have on our other regulatory policies, such as the determination of revenue adequacy. When the agency adopted purchase accounting, it advised the industry that it will not automatically accept the sale price of rail assets as a substitute for book value, and that use of acquisition costs for regulatory purposes might not be appropriate if an acquisition price were inflated or depressed by government action or policy. Accordingly, when BNSF submits its R-1 data to the Board, our in-house auditor will review the information for compliance with GAAP and agency precedent. If the Board determines that the R-1 data does not comport with GAAP, or that the acquisition price has been inflated and does not accurately reflect the fair market value of these assets, the Board will take appropriate action.

Thank you for your interest in the Surface Transportation Board. I will be sure to keep you updated on this issue. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D.R. Elliott, III". The signature is fluid and cursive, with a large initial "D" and "R" and a stylized "Elliott".

Daniel R. Elliott, III
Chairman