Testimony of

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Good morning, Chairs DeFazio and Payne, Ranking Members Graves and Crawford, and distinguished Members of the Committee and Subcommittee. As Chairman of the Surface Transportation Board and on behalf of my fellow Board members with me today, thank you for the opportunity to offer my views on agency reauthorization and answer any questions you may have. I will say at the outset that our five-member Board has evolved into an extraordinarily collegial and effective group which strives hard to act by consensus and generally has succeeded in doing so.

As you know, the STB is an independent federal agency charged by Congress with the economic oversight of the nation's interstate rail system. The Board was created in 1996 as the successor to the Interstate Commerce Commission. The Board was administratively aligned with the U.S. Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110, which established the Board as a fully independent agency on December 18, 2015. The economics of freight rail regulation affect the national transportation network and are vital to our nation's economy. For this and other reasons, Congress gave the STB sole jurisdiction over railroad rates, practices, and service. Congress also gave the STB sole jurisdiction over rail mergers and consolidations, abandonments of existing rail lines, and new rail line constructions, exempting them from federal antitrust laws and state and municipal laws.

Rail network reliability is essential to the Nation's economy and is my top priority as Chairman. The rail industry is now facing a "severe crisis" in service, as described by one Wall Street analyst, a description which in my view is all too accurate and which I will address momentarily.

I was designated Chairman by President Biden in January 2021, as our country was beginning to emerge from the depths of the COVID-19 pandemic. One of my first initiatives was to focus on the resilience of the freight railroad network with particular attention on congestion in the rail intermodal supply chain, which was affecting shippers not only at major ports, such as Los Angeles and Long Beach, CA, but also inland gateways such as Memphis, TN and Chicago, IL. I continued the practice of holding more frequent meetings of the Rail-Shipper Transportation Advisory Council (RSTAC)—which includes rail carriers and shippers, large and small, from across the country—to help inform the Board's intensive oversight work.

In May 2021, I wrote letters to the CEOs of the Class I railroads asking them to report on their preparedness to meet growing demand for rail service, as freight volumes rebounded as part of the Nation's larger economic recovery. In July 2021, I again wrote to the Class I railroads about protracted intermodal network congestion, and significant fees that railroads were imposing on their customers, largely due to circumstances beyond shippers' control. In response, the railroads provided assurances and expressed confidence they could handle freight volume as the economy continued its recovery. Nevertheless, in the second half of 2021, rail service was erratic and inadequate for many rail customers, albeit with different Class I railroads performing better or worse at different points in time.

Moving to the present day, the rail industry clearly is struggling to provide adequate and reliable rail service. Although the rail industry has been hit by many of the problems the pandemic has visited on all businesses, the railroads and their dedicated workers delivered for the public during the pandemic's earliest and most uncertain days. Yet, as the Nation's economy has recovered, recent Class I business practices have undermined industry preparedness and service reliability. In particular, over the last 6 years, the Class I railroads have cut their work force by 29%—a loss of 45,000 employees. With demand back, and against the backdrop of these significant labor cuts and other changes, railroads face major holes in their service, with loaded trains sitting for days for lack of crews, factories struggling to obtain needed raw materials or deliver their finished products, farmers straining to obtain adequate fertilizer at the beginning of planting season, food producers finding it difficult to obtain grain and feed for their livestock, and on and on.

The severity of the problem, and its impact on our Nation's food and fuel supplies, is distressing and has necessitated immediate Board action. Just two weeks ago, the Board held a two-day public hearing, Urgent Issues in Freight Rail Service, which revealed beyond any debate that rail service is unacceptably poor, with acute issues in many regions and with certain carriers. The testimony we heard was consistent with anecdotal reports we have steadily received in recent months and was further substantiated by the rail service performance metrics the Board collects on a weekly basis. It is clear the four largest U.S. Class I railroads' earlier assurances about having sufficient employees, locomotives, and railcars to meet service demand going forward were incorrect. Here, again, it is worth noting that not all Class I railroads have had the same problems and that rail users have stated that Class II and III railroads—the smaller railroads that typically have less market power than their larger, Class I railroad counterparts—have been more responsive to their customers despite facing many of the same external forces.

Railroads, rail users, rail labor, and rail experts all attribute the current service disruptions principally to a shortage of labor. To understand the cause of that shortage one must first take into account the Class I railroads' actions in significantly cutting their labor forces in the years leading up to the pandemic. Then, in the spring of 2020, in response to a precipitous decline in economic activity that immediately followed the onset of the pandemic, the same railroads cut their already reduced labor forces even more, by as much as an additional 20%. They made these cuts despite the fact that neither they nor anyone else could have known at that time how long this unprecedented pandemic would last and when the economy would begin to recover, requiring the railroads to again be fully staffed. Nor could they have been confident that the laid-off workers would promptly return if asked to do so.

Keep in mind that the workers dismissed by the Class I railroads are highly skilled and held positions that require lengthy training. Replacing them is difficult and requires months of rigorous training before they can actually begin the work of moving trains. Since June 2020, as the demand for freight rail service quickly rebounded, the railroads have not been able to achieve a commensurate and appropriate increase in work force levels. Many of the previously laid-off workers had found other careers and never returned to the railroads. And, as explained at our recent hearing, the Class I railroads have found it difficult to recruit and train new employees. The railroads have noted broader economic trends in the labor market, while rail labor has reported the particular difficulty in the rail industry directly caused by increased job uncertainty, worsened working conditions, and insufficient incentives.

Given the challenges the railroads now recount regarding hiring and retaining employees, and the aforementioned difficulty in remedying the labor shortage problem quickly, I am not optimistic about significant improvement in rail service in the near term. The Board does not prescribe particular industry-wide labor levels, nor does it manage railroad labor agreements. However, I provide this information to explain what is driving a critical aspect of the Board's oversight responsibilities—service—and why the Board is taking additional steps that I will describe in a moment.

What has become clear over the past few years, and more acutely over the past few months, is that the railroad industry cannot thrive and fulfill its critical role supporting the Nation's economy without some **redundancy**—that is, the railroads must maintain a workforce and equipment, particularly locomotives, at a level which provides an essential cushion to meet all the variable, but not unforeseeable, contingencies which have been known to afflict the rail industry since its inception nearly 200 years ago. Railroads must always be ready to nimbly respond to and work around events such as the recent spate of polar vortexes, forest fires, floods, international emergencies, and, yes, the pandemic. Railroads must maintain a buffer to protect their operations against external shocks, and if they fail to do so, then ultimately, they will suffer—but even worse, their customers and the public will suffer more. What could not be more clear is that, at present—and for the past several years—the major railroads do not have sufficient redundancy to keep pace with rapid shifts in demand.

Partly in response to the growing problems with rail service reported to the Board, shortly before the rail service hearing two weeks ago, the Board issued a proposed rule to improve its process to provide relief in times of emergency and to ease the burden on rail users seeking such relief. As a follow-up to our rail service hearing, where we heard from Secretary of Transportation Pete Buttigieg and Deputy Secretary of Agriculture Jewel H. Bronaugh, in addition to representatives of many rail shippers and rail labor as well as the railroads, last week we issued an order aimed at focusing the industry's attention on the urgent need to restore reliable service by the Class I railroads as rapidly as possible. That order does the following, among other things:

- Requires the four largest U.S. Class I railroads to submit service recovery plans and bi-weekly service progress reports for a period of six months with detailed steps they are taking to restore adequate levels of service;
- Requires all Class I railroads to submit weekly performance data and monthly employment data for a period of six months; and
- Requires the four largest U.S. Class I railroads to participate in individual bi-weekly conference calls with Board staff to provide an update on progress made to improve rail service for a period of three months.

Importantly, this action requires six-month service targets, more detailed geographic data, and new customer-centric reliability metrics that will give the Board and its stakeholders heightened visibility into the extent and location of the acute service issues and labor and equipment shortages that are currently negatively affecting the rail industry. This information, which supplements the service data all Class I carriers already provide, will also help drive industry-wide transparency, accountability, and service improvement.

The Board is also considering several additional mechanisms that would help enhance rail service. While the Board's recent actions have included temporary reporting on first-mile / last-mile service issues related to the urgent service problems, and other crucial measures of whether shippers received their freight when expected, the Board is considering using its authority to permanently collect more detailed information on service reliability and has been considering comments recently filed on this topic from interested parties. In addition, this past March, the Board held a public hearing to consider updating its reciprocal switching regulations. Reciprocal switching is an arrangement whereby an incumbent carrier transports a shipper's traffic to an interchange point, where, for a fee, it switches the rail cars over to a competing carrier to enable the competing carrier to offer its own single-line service. In my view, reciprocal switching is a potential avenue for improving rail service by enhancing competition and is an area where I personally hope the Board will be able to act before this year is out.

The Board has also recently advanced two proposed rulemakings to address the reasonableness of rates. The first, which proposes use of a streamlined final offer procedure, would utilize the Board's existing authority to create simplified and expedited methods for determining rate reasonableness in those cases where a more fulsome presentation is too costly, given the value of the case. The second, which proposes use of an expedited arbitration procedure, would utilize the Board's existing authority to establish a voluntary and binding arbitration process. The record in both of those proceedings closed last month and it is my intention that the Board will act on these two proposals by this fall. My hope is that adoption of either such procedure will add more balance to the Board's regulations, thereby helping shippers lacking effective competition to receive reasonable rates and negotiate adequate service.

As you can see, the Board has a number of tools in its existing statutory arsenal to enhance rail service. To be sure, and to be fair to some of my colleagues on the Board, not everyone agrees on the exact scope of that authority or on certain proposed regulations, and at least some of the proposals outlined have been challenged, including by the rail industry. However, while the problems facing the rail industry today are significant, in my view, the Board can use its existing authority to mitigate those problems in a meaningful way.

While much of the Board's work involves freight railroads, the STB's involvement with passenger rail matters is extremely important and continues to expand. The Board has undertaken significant steps to establish a passenger rail program as required in the Infrastructure Investment and Jobs Act, including by planning the creation of a passenger rail office and identifying the key personnel with the requisite skills and expertise needed to staff that office. In addition, the Board has entered into an interagency agreement with DOT's Volpe National Transportation Center for several data tools, including an analytic tool for handling the Federal Railroad Administration's quarterly metrics publications. I am confident in the Board's preparedness to meet its responsibility to enforce on-time passenger rail performance, and I can tell you that the agency stands ready to expeditiously handle any on-time performance cases that are filed, to fully analyze the quarterly data provided to us by FRA, and to determine whether any Board-initiated investigations may be necessary.

In addition, the Board also has responsibility to approve construction of certain new passenger rail projects that provide rail service between two states or intrastate passenger rail service that is carried out as part of the interstate rail network. We have found jurisdiction over several projects since 2007, including high-speed projects. The Board also has statutory authority to order a freight railroad to allow the operation of additional Amtrak trains over its line. We are currently completing the first proceeding brought to us by Amtrak under this provision requesting access to freight lines along the Gulf Coast. Because this is a pending proceeding, I am precluded from commenting on this matter.

As noted, my fellow Board members and I have found RSTAC an absolutely invaluable resource for information on rail and shipper issues, especially during periods of strained service like that being experienced now. Indeed, at the height of the pandemic, the Board met with RSTAC weekly to hear updates from the carriers and from shippers on how the pandemic was affecting their operations. To expand the voices on this vital informational resource, we recommend adding three additional seats to RSTAC: one each for rail car lessors, labor, and port representatives. We also suggest updating the RSTAC enacting legislation to clarify that all five

Board members are members of RSTAC. Congress passed that legislation at a time when the Board consisted of three members and the statute currently refers to that smaller figure. Lastly, the Board has initiated efforts to create a committee under the Federal Advisory Committee Act (FACA) to advise it on passenger rail issues. I understand, however, that creating a new committee under FACA is not a fast-moving or easy process, so we would suggest amending FACA to make the process more user-friendly.

In my view, the Board presently has sufficient appropriations to properly carry out its mission. For each of its work force vacancies, the Board either is in the process of selecting an applicant, has issued a hiring announcement, or has initiated internal steps to fill the position. I have placed a priority on the Board's office directors hiring the employees they need to handle all that is before the Board, and we are well on our way to doing that. In addition, as I mentioned earlier, the Board is in the process of establishing a passenger rail office and expects to be adding up to ten additional staff to ensure it successfully fulfills its important passenger rail responsibilities. While we can currently absorb at least some of those employees under our budget, with those additional employees, all of the things currently before the Board, and all of the items on which I would like to take action, it is probable that we will step up our budgetary asks in the coming years to meet our staffing needs.

Thank you and I appreciate your support for the STB and the surface transportation network.