



Freight Rail Customer Alliance

December 17, 2019

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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001`

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December 19, 2019
Part of
Public Record

Re: FD 36369, Association of American Railroads – Petition for Declaratory Order

Dear Ms. Brown:

The Freight Rail Customer Alliance (“FRCA”) submits the following brief reply to the Petition for Declaratory Order (“Petition”) that the Association of American Railroads (“AAR”) filed with the Surface Transportation Board (“Board” or “STB”) in the above-captioned proceeding on November 27, 2019.

FRCA is an alliance of freight rail shippers impacted by continued unrestrained freight rail market dominance over rail-dependent shippers. FRCA represents large trade associations that in turn represent more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and their customers. FRCA represents many coal shippers that could be potentially affected by the application of the Clean Water Act (“CWA”) to the transportation of coal by rail in the manner described in the AAR’s Petition.

FRCA recognizes that application of the preemption under 49 U.S.C. § 10501(b) is typically both complicated and nuanced. FRCA is also unaware, at this time, of any efforts to extend the CWA to apply to movements of coal outside of the litigation described in the AAR’s Petition, which was settled some years ago. Nonetheless, such future efforts could increase the difficulty and expense of transporting coal by rail in the manner described by the AAR. There is also a risk that such efforts could be extended to apply to other products that FRCA members ship by rail that are capable of escaping from the confines of railcars.

Accordingly, FRCA asks that the Board give appropriate consideration to the AAR’s Petition, consistent with the agency’s other duties. In that regard, FRCA hopes that consideration of the AAR’s Petition does not detract from other important matters currently before the Board, particularly its proceedings considering demurrage and accessorial charges and the recommendations of the Rate Reform Task Force.

As required, the Parties of Record for this docket have been sent a copy of the document.

Respectfully submitted,

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Ms. Cynthia T. Brown
December 17, 2019
Page Two

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About FRCA

An umbrella membership organization, the Freight Rail Customer Alliance (FRCA) includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and their consumers. Through a growing coalition of industries and associations, the mission of FRCA is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices. www.railvoices.org
