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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: EP 724 (Sub-No. 5), *Petition for Rulemaking to Amend 49 C.F.R. Part 1250*

Dear Ms. Brown:

Pursuant to the Notice of Proposed Rulemaking served in the above docketed proceeding on September 30, 2019, the Association of American Railroads ("AAR") respectfully submits this reply to comments filed by the American Chemistry Council ("ACC") and American Fuel & Petrochemical Manufacturers ("AFPM").

AAR has participated extensively in this proceeding, which is the result of a petition for rulemaking filed by ACC. ACC's petition originally asked the Board to: (1) impose a new category for all chemical and plastics traffic (STCC 28) to the cars held for more than 48 hours report under 49 C.F.R. §1250.2(a)(6); (2) require all Class I, terminal and switching railroads operating in Chicago to report weekly average terminal dwell time, measured in hours; and (3) require railroads operating in New Orleans, East St. Louis, and Memphis (collectively, "Mississippi Gateways") to jointly report average daily car volumes for specific yards, average daily number of trains held for delivery (sorted by carrier), and terminal dwell time.¹ AAR opposed the petition in comments filed on January 28, 2019, because ACC did not demonstrate that their requested custom reporting would provide public benefits that would justify the additional costs it would impose on railroads.

The Board gave ACC ample opportunity to justify its requests. A decision served on April 5, 2019 directed ACC to provide "specific examples of shippers' experiences

¹ ACC withdrew its request for item 2 after AAR pointed out that rail carriers already reported weekly average terminal dwell in hours for 11 individual Chicago yards and an average of the group.

using performance data” already reported and “to explain how the additional data that it proposes to be reported would materially enhance shippers’ business and supply chain decision-making with reference to specific scenarios or real-world circumstances.” ACC was also asked to quantify the value of the reporting. Further, ACC was directed to explain “why the existing performance data reported pursuant to § 1250.2(a)(2) are insufficient indicators as to rail performance across the network, including at the Mississippi Gateways.”

Despite a second bite at the apple, ACC failed to demonstrate that its requested reporting would have public benefits tied to the Board’s regulatory authority that would justify the expense and burden that reporting would place on carriers. Specifically, ACC could not justify its request for joint reporting of metrics from the Mississippi Gateways. AAR detailed in its own comments filed on May 6, 2019, the unique circumstances that caused the railroads that operate in Chicago to undertake significant coordination efforts at great time and expense. It was this effort, driven by business needs stemming from the complexity of Chicago operations, that allowed joint reporting of Chicago data. In contrast, AAR explained that operations in the Mississippi Gateways do not come close to the complexity associated with Chicago, nor are any of those Gateways as central to the national rail network. Moreover, Memphis, East St. Louis, and New Orleans do not have comparable commuter rail service to Chicago.

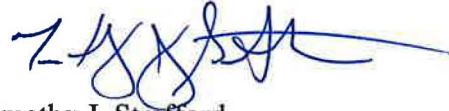
ACC now writes that the “Board should remain open to Mississippi Gateway reporting.” ACC Comments at 6. ACC continues to claim that such data would allow shippers to “spot gateway congestion, identify uncongested gateways, and pursue routing through them.” ACC Comments at 7. But throughout this proceeding and the related sub-dockets, AAR has explained that the utility of railroad service data is limited to identifying changes and trends; the data is necessarily backward looking and cannot be reliably used to understand causality, to predict the future, to compare rail performance across different commodities or time periods, or to compare railroads. *See, e.g.*, AAR NPRM Reply, EP 724 (Sub-No. 4) (filed April 29, 2015).

AFPM goes further than ACC and “urges the Board to reconsider this decision.” AFPM Comments at 5. But AFPM fails to even address, let alone meet, the Board’s standards for reconsideration. A party seeking reconsidering of a final Board decision must demonstrate material error or identify new evidence or substantially changed circumstances that would materially affect the case. *See* 49 U.S.C. § 722(c); 49 C.F.R. § 1115.3(b). The Board has explained that a party alleging material error must do more than simply make a general allegation; it must substantiate its claim of material error. *See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.*, FD 35081, slip op. at 4 (STB served May 7, 2009). New evidence must be newly available and reconsideration will not be granted if the pertinent evidence was available before the agency’s decision but was not timely raised. *See Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 667 (9th Cir. 1989). AFPM simply cites to general information about the railroads that operate in the

EP 724 (Sub-No. 5)
January 6, 2020
Page 3

Mississippi Gateways and petrochemical facilities in the Gulf Coast. As such, the Board should summarily reject AFPM's request for reconsideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'T. Strafford', with a long horizontal flourish extending to the right.

Timothy J. Strafford
Counsel for the Association
of American Railroads