

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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MARKET DOMINANCE STREAMLINED  
APPROACH

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Docket No. EP 756

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**REPLY COMMENTS OF  
THE WESTERN COAL TRAFFIC LEAGUE**

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Dated: January 10, 2020

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The Western Coal Traffic League (“WCTL”) submits these Reply Comments in response to the Surface Transportation Board’s (“STB” or “Board”) notice of proposed rulemaking served in this proceeding on September 12, 2019.

(1) WCTL filed opening Comments in this proceeding on November 12, 2019 (“WCTL Comments”). In its Comments, WCTL suggested that large rate case coal shippers may be more likely to use the Board’s proposed streamlined market dominance procedures if (i) the Board eliminates its proposal to limit the availability of the streamlined procedures to cases where the shipment distance would exceed 500 highway miles, and (ii) the Board eliminates its proposed requirement that complainant shippers in large rate cases provide detailed market dominance disclosures at the outset of their cases.

(2) The Freight Rail Customer Alliance (“FRCA”) and the National Coal Transportation Association (“NCTA”) also submitted opening comments in this proceeding. They agree with WCTL that the over-500-mile criterion should not be used as a factor to determine the application of the Board’s proposed streamlined market dominance procedures in unit train coal rate cases. *See* Letter Comments of FRCA at 2;

Written Testimony on Behalf of NCTA at 2-3. As the Board’s predecessor, the Interstate Commerce Commission, succinctly put it: “[i]t is simply impractical to move [large] volume[s] of coal by truck.” *Metro Edison Co. v. Conrail*, 5 I.C.C.2d 385, 413 (1989). The Board should not adopt any length-of-movement factor to determine whether a shipper can invoke the Board’s proposed streamlined market dominance procedures.

(3) The Board should eliminate its proposed initial disclosure requirement in large rate cases. *See* WCTL Comments at 11-13. There is no need for shippers that invoke the Board’s proposed streamlined market dominance procedures to make initial disclosures in large rate cases, as relevant market dominance information can best be obtained in a timely manner via discovery and technical conferences. *Id.* The Board should also reject Union Pacific Railroad Company’s (“UP”) proposal to expand the scope of initial disclosures in large rate cases by adding open-ended “categories” of information dating back “five years” from the filing of the complaint. *See* Comments of UP at 7-8. The relevance and scope of market dominance information is best addressed in large rate cases on a case-by-case basis via normal large rate case discovery and technical conference procedures.

(4) The Board should also reject railroad-sponsored proposals<sup>1</sup> asking the Board to reconsider its decision banning its consideration of product and geographic

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<sup>1</sup> *See, e.g.,* Comments of the Association of American Railroads at 10, 12; Opening Comments of BNSF Railway Company at 11.

competition when making market dominance determinations<sup>2</sup> and its decision defining the relevant market for market dominance purposes in bottleneck cases as the origin and destination of the regulated bottleneck segment.<sup>3</sup> The Board wisely concluded years ago that its consideration of product and geographic competition resulted in a regulatory quagmire that created massive case delays<sup>4</sup> and that limiting its market dominance inquiry in bottleneck cases to the regulated transportation segment, among other things, avoided extensive case delays.<sup>5</sup>

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<sup>2</sup> *Mkt. Dominance Determinations – Prod. & Geographic Competition*, 3 S.T.B. 937, 938 (1998), *remanded sub nom. Ass’n of Am. R.Rs. v. STB*, 237 F.3d 676 (D.C. Cir. 2001), *aff’d on remand*, 5 S.T.B. 492 (2001) (“*Mkt. Dominance 2001*”), *corrected*, Ex Parte No. 627 (STB served Apr. 6, 2001), *aff’d sub nom. Ass’n of Am. R.Rs. v. STB*, 306 F.3d 1108 (D.C. Cir. 2002).

<sup>3</sup> *See Minn. Power, Inc. v. Duluth, Missabe & Iron Range Ry.*, 4 S.T.B. 288 (1999) (“*DMIR*”).

<sup>4</sup> *See Mkt. Dominance 2001*, 5 S.T.B. at 498 (“the complications and delays resulting from consideration of product and geographic competition are contrary to the Congressional directive . . . to resolve disputes expeditiously”).

<sup>5</sup> *See DMIR*, 4 S.T.B. at 292.

## **CONCLUSION**

WCTL respectfully requests that the Board take actions in this proceeding consistent with the views expressed by WCTL in its Comments and Reply Comments.

Respectfully submitted,

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