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March 20, 2020

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

**Re: Finance Docket No. 36369 Association of American Railroads – Petition for Declaratory Order**

Dear Ms. Brown:

The American Coal Council (ACC) supports the Petition for Declaratory Order filed by the Association of American Railroads (AAR) in Finance Docket No. 36369. We appreciate the Surface Transportation Board's (STB) February 19, 2020 Decision to institute a declaratory order proceeding to consider AAR's Petition, and we urge the STB to proceed expediently.

The ACC has represented the collective business interests of the American coal industry for 38 years. Our membership is made up of companies from throughout the coal supply chain. This includes coal suppliers, transportation companies and terminals, electric utilities and independent power producers, industrial coal consumers, and many industry support services providers. The coal supply chain has already been contending with the negative impacts of coal plant closures and declining domestic demand for coal. Regulatory certainty is important to retaining the remaining coal generation fleet, which in turn is important to a reliable and resilient electric grid.

As the AAR petition describes, a 2016 ruling by a federal court in Washington state has caused significant uncertainty for the rail shipment of coal and other commodities. The ruling leaves open the question of whether the Interstate Commerce Commission Termination Act (ICCTA) preempts the application of the Clean Water Act (CWA) to rail cars in transportation. Without a determination by the STB, the court decision could contravene decades of Environmental Protection Agency

(EPA) practice by requiring that rail cars loaded with a commodity obtain a CWA National Pollutant Discharge Elimination System (NPDES) permit. EPA has never required rail cars in transit to obtain a NPDES permit.

Requiring rail cars carrying a commodity to hold NPDES permits for every state they travel through would be extraordinarily burdensome for rail carriers and shippers and harmful to commerce. It would be a massive expansion of the CWA and NPDES permit program, and it would subject the interstate freight rail system to an unworkable patchwork of potentially conflicting EPA, state, and local permitting requirements. The coal industry is all too familiar with the barriers posed by duplicative, conflicting, and unnecessarily burdensome regulations.

Additionally, such a regulatory patchwork could increase the risk of misuse of the permitting process. Ultimately, if NPDES permitting is required and action is not taken to address wrongful actions by state or local authorities, unfair targeting of specific products or other aspects of rail transportation may occur.

The ICCTA expressly subjects rail transportation to the exclusive jurisdiction of the STB. ACC believes a declaratory order by the STB regarding the ICCTA preemption is justified and appropriate. We appreciate STB's role in the efficient movement of coal and other commodities vital to our nation's economy. Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink that reads "Betsy B. Monseu". The signature is written in a cursive, flowing style.

Betsy B. Monseu  
CEO, American Coal Council  
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Washington, DC 20004  
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Certificate of Service

I, Betsy B. Monseu, hereby certify that on March 20, 2020 a true and correct copy of the letter from the American Coal Council regarding the Petition for Declaratory Order in Finance Docket No. 36369 was served on all Parties of Record.

A handwritten signature in black ink that reads "Betsy B. Monseu". The signature is written in a cursive style with a large, stylized 'B' and 'M'.

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Betsy B. Monseu