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February 9, 2021

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

ENTERED
Office of Proceedings
February 9, 2021
Part of
Public Record

Re: *EP 766, Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations*, Reply
to Notice of Workpaper Filing

Dear Ms. Brown:

The American Chemistry Council, Corn Refiners Association, The Fertilizer Institute, The Chlorine Institute, American Fuel & Petrochemical Manufacturers, and National Grain and Feed Association urge the Surface Transportation Board to terminate this proceeding for Joint Carriers'¹ failure to comply with the Board's December 30, 2020 order directing them to place the workpapers underlying their revenue-adequacy proposal in the record. This failure has also led the Western Coal Traffic League to file a February 5, 2021 letter seeking termination of this proceeding.

In response to the Board's order, Joint Carriers filed a notice stating they would submit workpapers with data from only 2019, despite basing their proposal on fourteen years of data. Joint Carriers explained that they are unable to secure licenses from their data suppliers for data preceding 2019. In other words, if the Board or any other participant wants to see more than 1/14 of Joint Carriers' workpapers, they must pay for it. But it is the Joint Carriers who have chosen to rely upon that data, not other participants.

The Board should not ignore this failure to comply with its order. Openness and transparency should be hallmarks of the Board's rulemaking process. These principles foster rules that are legally and substantively sound. Moving forward with this rulemaking proceeding based on a sliver of purportedly supporting data is inconsistent with these principles and will cast a shadow on any resulting rule. The Board should reject this and similarly flawed approaches to rulemaking by refusing to consider any rule based on analysis that is unsupported in the record.

¹ Joint Carriers are Union Pacific Railroad Company, Norfolk Southern Railway Company, and the U.S. rail operating affiliates of Canadian National Railway Company.

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The “evidence-based decision-making” that Joint Carriers have asked the Board to apply in this proceeding requires evidence. Since Joint Carriers are unable to provide that evidence, we respectfully request that the Board terminate this proceeding.

Respectfully submitted,

/s/ Jason D. Tutrone

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