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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 768

**PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS**

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO
PETITIONERS' MOTION FOR LEAVE TO FILE RESPONSE**

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Union Pacific Railroad Company takes no position on Petitioners' September 10, 2021, motion for leave to file a brief that purports to rebut certain arguments made by Union Pacific and others. However, if the Board grants the motion, it should reject Petitioners' claim that the agency has construed 49 U.S.C. § 11122(a) as allowing it to adopt rules regulating the terms of railroads' use of freight cars, other than the compensation to be paid, "in numerous decisions after 1978." Brief at 6. None of the cases that Petitioners cite involved the adoption of rules regulating terms other than compensation. Of course, even if the agency had exceeded its statutory authority in the past, it would not be justified in repeating the mistake.

Respectfully submitted,

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