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January 20, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Chief Counsel
January 20, 2026
Part of
Public Record

Re: EP 334 (Sub-No. 8A), *Joint Pet. for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss*; Letter concerning AAR Reply

Dear Chief of Case Administration:

On behalf of the Railway Supply Institute (RSI), I submit this letter to correct several material mischaracterizations of law and fact in the Association of American Railroads' (AAR) reply of December 30, 2025. This correction is necessary to ensure the Board has a clear and accurate record.

1. AAR misstates the Board's role: 49 C.F.R. § 1033.1(c)(2) does not limit the Board's independent 49 U.S.C. § 10706 oversight.

AAR's argument that 49 C.F.R. § 1033.1(c)(2) limits the Board's car-hire role to adjudicating abuse of Rule 25's arbitration process¹ conflates two distinct legal frameworks. Section 1033.1(c)(2) governs individual car-hire disputes. It does not—and cannot—constrain the Board's independent statutory authority under 49 U.S.C. § 10706(c) to review Rule 25 and “change the conditions of approval or terminate it when necessary to comply with the public interest” and further the Rail Transportation Policy (RTP). This proceeding involves an exercise of that broader § 10706 authority² under which the Board assesses whether Rule 25's antitrust immunity remains consistent with the RTP and the public interest.

2. AAR's re-regulation narrative is inaccurate.

AAR wrongly accuses RSI of seeking re-regulation through revocation of antitrust immunity for Rule 25 under § 10706.³ This charge ignores both the history of this proceeding and the substance of RSI's proposal. Historically, the original petitioners, who championed the shift from prescription to Rule 25, never sought antitrust immunity for it, arguing that § 10706 did not apply or, alternatively, that the ICC should grant an exemption.⁴ Far from seeking re-regulation, RSI's position is its opposite: to maintain bilateral negotiation and the arbitration backstop, while correcting a biased default rate that tethers outcomes to artificially low historical market bottoms.⁵ This targeted reform furthers both the ICC's original premise that Rule 25 would approximate effective-market outcomes and the RTP's emphasis on competition, moving Rule 25 further from prescription, not closer to it.

¹ (AAR Reply 4 (filed Dec. 30, 2025).) AAR overlooks that Rule 25 is not solely about arbitration, despite being called the “Arbitration Rule.” It also establishes a negotiation process and the role of default rates.

² (RSI Pet. 9.)

³ (AAR Reply 5.)

⁴ *Review of Car Hire Regulation*, 1992 ICC LEXIS at *22-24.

⁵ (RSI Position, Ex. 1 at 22-24.)

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3. AAR’s effort to narrow RSI’s participation concerns to its outside counsel contradicts the record.

AAR attempts to dismiss RSI’s process concerns by limiting them to RSI’s outside counsel and contending that “RSI members fully participated.”⁶ The record shows otherwise. AAR barred not only RSI’s counsel but also its outside economist and Sandersville Railroad’s outside counsel from closed data sessions and, ultimately, from all TAG meetings at the critical stage when the TAG formulated its recommendation. By denying RSI access to the Railinc datasets that drove the TAG’s deliberations and excluding RSI’s counsel and economist—who were uniquely positioned to synthesize member input and evaluate the data—AAR deprived RSI’s members of their collective voice in the abeyance-directed TAG process. Further, by excluding Sandersville’s counsel, who was the lead counsel for the original petitioners, AAR silenced the only participant with first-hand experience developing Rule 25’s framework and the advocacy that led to the ICC approval.

4. AAR’s admissibility theory conflicts with the abeyance order’s purpose

AAR’s argument for admitting TAG statements ignores the fundamental purpose of the Board’s abeyance order: to facilitate a private process aimed at resolving RSI’s concerns.⁷ The Board directed the parties to seek a solution that “could impact or resolve the concerns RSI raises” and to “inform the Board of the results”⁸—not to create an evidentiary record from negotiating positions. Treating settlement-style communications as adverse proof would chill candid engagement in such discussions and pollute the record with statements reflecting a desire to compromise, not a conviction on the merits.⁹ Such an outcome would directly frustrate the abeyance order’s purpose.

Conclusion

In sum, AAR’s misstatements of law, the factual record, and RSI’s position underscore the critical need for Board review of Rule 25’s approval.

Very truly yours,

/s/ Jason D. Tutrone

Jason D. Tutrone

⁶ (AAR Reply 3.)

⁷ *Joint Pet. for Exemption of Arbitration Rule (Abeyance Order)*, EP 334 (Sub-No. 8A), slip op. at 2 (STB served Apr. 9, 2025).

⁸ *Id.*

⁹ For similar reasons, Federal Rule of Evidence 408 deems all statements made in compromise discussions inadmissible for proving the validity of a claim. It does not distinguish between public and confidential statements.



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Certificate of Service

I certify that I have this day served copies of this petition upon all parties of record in this proceeding by e-mail.

/s/Jason D. Tutrone
Jason D. Tutrone

Dated: January 20, 2026
