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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ELIMINATING REGULATORY
BARRIERS TO COMPETITION:
REVIEW OF PART 1144

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Docket No. EP 788

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

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Dated: April 24, 2026

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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 (“NPRM”) served in this proceeding on January 7, 2026 and in response to the Comments filed by interested parties on March 10, 2026. Nothing in the Comments submitted in this proceeding justifies deviating from the Board’s proposal to eliminate Part 1144.

SUMMARY

In its Opening Comments, WCTL expressed its support for the Board’s proposal, observing that it had participated actively in the 1985 proceeding before the ICC and emphasizing that it had strongly opposed the agency’s adoption of the anticompetitive conduct standard. Notwithstanding WCTL’s objections, the ICC adopted its new rules. As WCTL explained in its Comments, the ICC accompanied its issuance of the rules with expressions of enthusiasm and confidence that the regulations would promote competition and would amount to a “giant stride” forward in addressing competition in the industry. WCTL Comments at 3.

In its NPRM, the Board noted that the anticompetitive conduct requirement effectively has operated as a bar to relief. *Id.* at 4. The Board offered four separate bases for its proposal, each of which WCTL supported as a compelling justification for the NPRM:

(1) the fact that the rule is no longer acceptable to a broad section of the marketplace; (2) the fact that it makes little sense to continue to hold shippers to NITL's 1985 agreement with AAR that was rendered largely obsolete by subsequent statutory and regulatory changes; (3) the fact that removing part 1144 eliminates an unnecessarily high barrier to statutory relief; (4) the fact that the rail industry has changed substantially and that the problems of inefficient routes and insolvent railroads "are of far less concern today."

WCTL Comments at 4 (citing NPRM at 11-12).

In their comments, the Class I railroads offer varying general reactions to the Board's proposed repeal of Part 1144, ranging from the expressed absence of opposition, to the suggestion that the Board (at most) should revise rather than repeal its regulations. *See* BNSF Comments at 1 ("BNSF does not oppose the repeal of the CARs."); UP Comments at 1 ("Union Pacific does not oppose the Board's proposal to repeal 49 C.F.R. Part 1144."); CN Comments at 2 ("[I]f the Board finalizes the proposed repeal, the Board should establish certain background principles as early as reasonably possible."); CSX Comments at 1 ("CSX does not object in principle to the Board's removal of the current regulatory text"); NSR Comments at 1 ("NSR does not believe that rescission of the Part 1144 regulations is necessary."); CPKC Comments at 1 ("Any repeal of Part 1144 in favor of a case-by-case approach to developing the new standard would engender greater uncertainty.").

Significantly, however, the railroads go on to request clarifications that, in practice, effectively would re-establish the same sort of anticompetitive-conduct hurdle that the Board has proposed to remove. *See, e.g.*, NS Comments at 10 (“[R]ail carriers should remain free to argue, in individual adjudications, that the governing statutes require the anticompetitive conduct standard before relief may be granted.”); CPKC Comments at 6 (“Any clarification of the standard . . . should continue to require a showing of competitive harm that has caused concrete harm to a shipper in order for the Board’s intervention to be invoked.”); CSXT Comments at 3 (the STB should reaffirm that any repeal of Part 1144 “does not impact the statutory standards that would apply in any adjudication.”). In offering these proposals to undermine the Board’s action, the railroads seek to distort the NPRM’s stated purpose and to claim that Congress supposedly ratified the anticompetitive conduct standard. Certain of the railroads also present the threat that they would respond to the removal of the anticompetitive conduct standard by reducing investment in infrastructure.

The Board should reject each of these Class I efforts to interfere with the Board’s intended action.

REPLY COMMENTS

As the Board noted in the NPRM, “nothing in the plain language of 49 U.S.C. 11102 mandates that the Board prescribe a reciprocal switching agreement only when necessary to remedy or prevent an anticompetitive act.” NPRM at 10. Similarly, “[t]he same must be said for 49 U.S.C. 10705, which is cast in even more discretionary language.” *Id.*

It comes as no surprise, however, that the railroads would seek to maintain some if not all of the substantive and procedural advantages that Part 1144 has afforded them over the past four decades. WCTL respectfully submits that the Board should refrain from allowing the railroads to restore (indirectly) the very same anticompetitive-conduct barrier that the Board now proposes to eliminate.

Having provided a reasoned explanation for its intended change, the Board is entitled to repeal part 1144 and instead to “consider the prescription of through routes and reciprocal switching agreements on a case-by-case basis under the applicable statutory standards.” *Id.*; *see also id.* at 11 (“The Board is choosing to restore its discretion here to the full extent provided by statute in order to better effectuate Congressional intent.”).

A. The Board is Free to Change its Regulations

As the Board observed in its NPRM, the agency is “free to change” an existing regulation or policy so long as it “provides a reasoned explanation for the change.” NPRM at 10 (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016)). Consistent with the *Encino Motorcars* standard, the Board has “display[ed] an awareness that it is changing its position.” 579 U.S. at 221.

To that end, the Board’s NRPM extensively manifests the Board’s recognition that its 1980s-era regulation has frustrated the ability of shippers to obtain relief, has led to a situation in which shippers have declined even to seek relief, and is no longer appropriate given changes in the railroad industry over the past forty years. *See, e.g.*, NPRM at 12 (“Continuing to rigidly narrow the Board’s statutory discretion, by regulation, to

prescribe reciprocal switching and through routes only when the carrier has taken steps to abuse its market power is no longer warranted.”).

**B. NS is Wrong to Argue that the Board Only
Proposed to Increase its Procedural Flexibility**

In an apparent effort to limit the effect of the Board’s action, NS concocts an imaginary purpose for the Board’s NPRM, alleging that the Board views its action solely as a procedural measure. NS Comments at 2 (“The Board appears to be seeking more procedural flexibility in adjudications.”) *Id.* at 2. NS adds that it is “concerned that some of the proffered justifications – especially insofar as they purport to justify a *substantive reinterpretation of the statute* – may not fully support the proposed rescission.” *Id.* at 2 (emphasis added). On the basis of these expressed concerns, NS suggest that “[i]f the Board proceeds with rescission, it should clarify that the rescission is *targeted only at providing procedural flexibility in how the standards are applied rather than prejudicing or foreclosing any substantive interpretation* of the law and should develop a more robust record on issues relating to through routes and through rate before taking any regulatory action.” *Id.* (emphasis added).

There is no basis for reading the NRPM in the profoundly narrow manner that NS posits. To the contrary, the Board emphasizes in the NPRM that (1) the substantive proof standard that the ICC adopted in 1985 goes beyond what the statute requires and (2) has hindered the availability of relief in circumstances in which the Board believes such relief to be at least potentially appropriate. No fair reading of the NPRM suggests that the Board issued its decision merely so that it could apply the same anticompetitive conduct

standard on a case-by-case basis rather than continuing to maintain the standard as part of its regulations. NS's "procedural-flexibility" interpretation of the NPRM has no foundation.

C. There is No Basis for NS's Contention that Thirty Years without a Request for Relief Proves the Absence of Any Need for Regulatory Assistance

In the NPRM, the Board observed that "[i]n the 40 years since its adoption, part 1144 has been rarely invoked, and the agency has never issued a prescription under its framework." NPRM at 7. In justifying its proposed elimination of part 1144, the Board added that the "'dearth of cases' under part 1144 continues to suggest (strongly) that the anticompetitive conduct requirement within part 1144 effectively operates as a bar to relief." *Id.* at 12; *id.* ("And shippers continue to complain that the anticompetitive conduct requirement presents an 'insuperable barrier' to promoting competition.").

In its Comments, however, NS characterizes the absence of requests for relief in a positive manner, speculating that "[t]he more plausible inference to draw from the infrequent invocation of Part 1144 is that the market is functioning as intended." *Id.* at 3. "The absence of frequent resort to such relief therefore reflects successful regulatory design, not the imposition of an undue barrier to relief." *Id.* at 3. Other than offering the simple assurance that regulated entities "conform their conduct" to avoid triggering "regulatory regimes," NS fails to offer any support for its effort to cast the absence of activity as validation of an invariably successful market.

Given the nature of the existing part 1144 regulation and its heightened burden relative to the language of the governing statute, WCTL submits that the Board's

interpretation of the absence of petition activity is fully justified. There is no basis for concluding that NS's speculation constitutes the more logical interpretation (or constitutes the *only* logical interpretation) of the complete absence of regulatory activity under part 1144.

**D. CSXT is Wrong to Argue that Congress Has
Ratified the Anticompetitive Conduct Standard**

In its Comments, CSXT argues that Congress has ratified the anticompetitive conduct standard through its reenactment of the relevant statutory provisions. CSXT Comments at 7 n.13 (“There is significant legislative evidence that Congress approved and ratified the anticompetitive conduct standard”); CSXT Appendix at 2 (“If there were any doubt about the faithfulness of the ICC’s interpretation of Congress’s intent when it adopted the anticompetitive conduct standard, this ratification by Congress removed that doubt.”). CSXT adds that “[t]he doctrine of legislative ratification has three elements: (1) Congress reenacted the statute without change; (2) Congress was made aware of the administrative interpretation; and (3) there is an ‘affirmative indication’ that the re-enactment was intended to ratify the interpretation.” *Id.* (quoting *AAR v. ICC*, 564 F.2d 486, 493-94 (D.C. Cir. 1977)). CSXT’s analysis fails to justify any finding as to Congressional ratification.

Most notably, CSXT’s claim of an affirmative indication that Congress intended to ratify the ICC’s prior interpretation lacks validity. In support of this claim, CSXT cites two portions of the 1995 Senate Report and two portions of the 1995 Conference Report. Each cited excerpt is vague at best, none makes reference to the ICC’s prior regulations,

and none warrants any conclusion that the Board must continue to limit its discretion by adhering to the part 1144 standard. For example, the cited materials refer to prior requests for “further legislative changes,” and they refer to transferring jurisdiction “under existing standards” (without discussing any difference between statutory and regulatory standards).

In any event, CSXT cannot use the legislative ratification doctrine to over-ride the plain statutory text. That is, “[w]here the law is plain, subsequent reenactment does not constitute an adoption of a previous administrative construction.” *Brown v. Gardner*, 513 U.S. 115, 121 (1994); *accord Est. of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 478 (1992) (An “administrative interpretation followed by congressional reenactment cannot overcome the plain language of a statute.”).

The plain language of the subject statutes does not require a showing of anticompetitive conduct, and nothing in CSXT’s cited materials supports the view that the Board lacks the authority to repeal part 1144.

E. The Railroads’ Infrastructure-Related Threats are Unavailing

Facing the prospect of a change in the Board regulations, certain of the railroads purport to threaten the Board with the prospect of reduced railroad investment in their systems. *See, e.g.*, CSXT at 3 (“Removing the Part 1144 regulations creates uncertainty, which undermines that reliance interest and has a negative impact on incentives for future investments.”); *id.* at 4-5 (“[I]f the prospect of future volumes becomes less certain, as it would be if the customer could force access to another carrier without a required showing of inadequate service or wrongful conduct by CSX, it is hard to justify those investments

and the resulting stranded assets.”); NS Comments at 12 (“Depending on the substantive standard, rail carriers may need to take a more conservative approach to investments to account for the potential for changing traffic flows and traffic volumes.”).

As the Board is well aware, the financial position of the Class I railroad industry is extremely favorable. In fact, the financial health of the industry has driven railroad operating ratios down to remarkably low levels. In the present context, the Board need not refrain from repealing Part 1144 in response to the threat that certain Class I carriers would prefer to preserve their ability to use monopoly power to extract all possible profits from the shippers that they serve. There is abundant reason to conclude that railroads will continue to invest in their systems when those investments have proven to be exceptionally profitable. The possibility that some shippers could obtain some of the relief that Title 49 contemplates is not a basis for maintaining what operates as an outright bar to shipper relief.

CONCLUSION

WCTL respectfully requests that the Board finalize and implement its proposed elimination of part 1144.

Respectfully submitted,

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