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June 17, 2026
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

REVIEW OF REPLIES TO REPLIES

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Ex Parte No. 790

COMMENTS OF FREIGHT RAIL CUSTOMER ALLIANCE

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Dated: June 17, 2026

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COMMENTS OF FREIGHT RAIL CUSTOMER ALLIANCE

The Freight Rail Customer Alliance (“FRCA”)¹ respectfully submits these comments in response to the advance notice of proposed rulemaking that the Surface Transportation Board (“Board” or “STB”) served in the above-captioned proceeding on May 18, 2026. The Board’s Notice seeks comments regarding whether to modify its regulations at 49 C.F.R. § 1104.13.

FRCA submits that the best, or the least bad, approach is to leave the existing rule unchanged. The existing rule fosters conciseness and efficiency in pleadings, and that efficiency benefits both parties and the Board. Formally allowing rebuttals will result in more pleadings and increase the burdens on the parties and the Board. Knowing that a rebuttal will always be allowed may encourage movants to be less forthcoming and complete in their initial motions, and respondents will be tempted to file surrebuttals, at least some of which will satisfy good cause requirements. The gains from allowing replies to replies may be illusory, but the losses will be very present.

¹ FRCA, www.railvoices.org, is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies, and their consumers. The mission of FRCA’s growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

The increased burdens from formally or regularly allowing replies to replies will fall disproportionately on those parties that lack resources, typically the smaller shipper when it comes to dealing with railroads. That reality provides another reason to retain the existing rule, even with the recognition that parties will continue to file replies-to-replies, only some of which will be permissible and meet the good cause standard.

A formal meet-and-confer requirement should not be adopted for similar reasons. In many, probably most, instances, the parties should and do confer, sometimes enabling motions not to be filed or narrowing the scope of the dispute. The Board's rulings can consider whether a party sought or refused to confer as part of the reasonableness of its position. But a formal procedural requirement to confer is likely to add burden, and may have the effect of encouraging more gamesmanship and brinksmanship, not less.

FRCA does not suggest that the existing regulation is perfect or that it works perfectly in all instances. But it does encourage efficiency and conciseness, and allows the Board to reach the correct determination, including in those instances where there is a need for further filings. Any change from the existing approach will entail trade-offs, particularly in the form of increased burdens for the Board and the parties. The benefits are uncertain and inherently speculative.

For the reasons stated, FRCA recommends that the Board retain the existing approach. Any exceptions should be clearly specified and adopted on a case-by-case basis.

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Respectfully submitted,

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