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March 14, 2019

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

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Re: EP 704 (Sub-No. 1), *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*

Dear Ms. Brown:

By this letter, the Association of American Railroads (“AAR”) hereby replies in support of the petition for waiver filed by the American Forest & Paper Association (“AFPA”) and the Institute of Scrap Recycling Industries (collectively, “Petitioners”). The AAR agrees that a waiver of the Board’s previous rules on ex parte communications in informal rulemaking proceedings for the limited purpose of permitting interested stakeholders to engage in meetings with Board members will enhance the Board’s ability to make an informed decision in this proceeding.

The AAR has made clear in filings in several other proceedings that the Board’s application of its previous regulations unnecessarily prohibited most communications with the Board and its staff in the informal rulemaking context. *See, e.g.,* AAR Comments, EP 739, *Ex Parte Communications in Informal Rulemaking Proceedings* (filed Nov. 1, 2017); AAR letter, EP 738, *Regulatory Reform Task Force* (filed Jun. 29, 2017); AAR Reply, EP 724 (Sub-No. 4), *U.S. Rail Service Issues – Performance Data Reporting* (filed Dec. 21, 2015). The Board’s revised rules are a marked improvement and now reflect the current state of administrative law and best practices among federal agencies. *See* Administrative Council of the United States, Recommendation 2014-4, *Ex Parte Communications in Informal Rulemaking* (adopted June 6, 2014). The revised rules will facilitate the flow of information in rulemaking proceedings and will lead to better informed decision making by the agency.

As such, the AAR concurs with Petitioners that allowing ex parte meetings in this proceeding would facilitate understanding and enable this proceeding to conclude expeditiously. *See* Petition at 6. Ex parte meetings would allow the new members of the Board to more quickly understand the history of this proceeding, consider the issues that have been raised, and ask

follow-up questions. The procedural safeguards proposed by Petitioners are reasonable and consistent with current Board rules and recent Board practice. *See* 49 C.F.R. §1102.2(g)(4); *Reciprocal Switching*, EP 711, slip op. at 29 (served Jul. 27, 2016).

AAR notes that Petitioners reprise their merits arguments in their petition. *See* Petition at 7. AAR does not believe that is necessary or appropriate, nor that a responsive summary of the railroads' position is likely to be helpful to the Board in considering the instant petition. Instead, we will simply refer the Board back to our previously-filed papers for our position and evidence that demonstrates why the instant exemptions should not be revoked. *See* AAR Opening Comments (filed Jul. 26, 2016); AAR Reply Comments (filed Aug. 26, 2016). Specifically, we would refer the Board to AAR's opposition to AFPA's attempt to impermissibly expand the scope of this proceeding to include exemptions for forest products. *See* AAR Comments at 42; *see also* AAR Reply at 21.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'K. D. Kirmayer', with a stylized flourish at the end.

Kathryn D. Kirmayer
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