



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

mjwarren@sidley.com
+1 202 736 8996

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June 19, 2017

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Office of Proceedings
June 19, 2017
Part of
Public Record

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

Re: Ex Parte No. 664 (Sub-No. 2), *Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model In Determining the Railroad Industry's Cost of Equity Capital*

Dear Ms. Brown:

The Association of American Railroads submits this letter in opposition to the June 14, 2017 “Motion for Leave and Response to Reply for Second Petition for Reconsideration” (“Motion”) filed by the Western Coal Traffic League (“WCTL”). WCTL’s Motion asks the Board for leave to submit yet another round of substantive argument in this long-running proceeding. 49 C.F.R. § 1104.13(c) forbids such replies to replies, and the Board only waives that rule “[w]hen good cause is shown, or when additional information is necessary to develop a more complete record.”¹ But WCTL does not even attempt to demonstrate that there is good cause for the Board to waive its rules and accept WCTL’s additional filing—WCTL instead simply launches into its argument.

The Board’s rule against replies to replies “promotes quicker Board action” by limiting parties to “one round of pleadings each.”² When litigants violate that rule without good cause, they increase the costs and burden of litigation for other

¹ *Waterloo Ry. Co.—Adverse Abandonment—Lines of Bangor & Aroostook R.R. Co. and Van Buren Bridge Co. in Aroostock Cty., ME*, STB Docket No. AB-124 (Sub-No. 2), at 3 (served May 6, 2003).

² *Beaufort R.R. Co.—Modified Rail Certificate*, STB Fin. Docket No. 34943, at 5 (served July 21, 2009)

Cynthia T. Brown

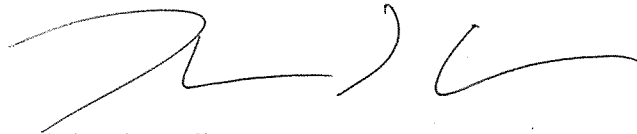
June 19, 2017

Page 2

parties. This is particularly true when (as with WCTL's Motion) a party's unsupported motion for leave to submit an additional pleading includes the entire substantive argument that it wishes to add to the record, thus forcing other parties to decide whether to address that substantive argument without knowing whether the Board would grant leave to supplement the record. And unjustified departures from the "one round of pleadings each" rule make it harder for the Board to decide issues in an expedited and efficient way. At a time when the Board is commendably focusing upon procedural steps that it can take to expedite Board proceedings, it should not overlook the important role that enforcing its current procedural rules can play in reducing the costs of litigation and the time required to process cases.

While there are situations where the Board may find good cause to accept replies to replies, parties seeking to submit those filings have an obligation to present persuasive evidence of why the Board has good cause to waive the standard rule disallowing those filings. Submissions like WCTL's that fail to provide any cause for the Board to accept them—let alone good cause—should not be considered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew J. Warren', with a stylized flourish at the end.

Matthew J. Warren
*Counsel for Association of American
Railroads*

cc: Service list