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July 5, 2018

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

Re: EP 558 (Sub-No. 21), *Railroad Cost of Capital – 2017*; EP 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 ("AAR") submits this letter in opposition to the June 14, 2018 "Petition for Leave to Submit Surreply and Surreply" filed by the Western Coal Traffic League ("WCTL"). Much like WCTL's "Motion for Leave and Response to Reply to Second Petition for Reconsideration" filed by WCTL in EP 664 (Sub-No. 2) exactly one year previously on June 14, 2017, WCTL's current petition asks the Board for leave to submit yet more counsel argument in WCTL's long-running effort to undermine the Board's established cost-of-capital methodology. The Board should reject WCTL's filing.

The Board's rules at 49 C.F.R. § 1104.13(c) forbid 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." *Waterloo Ry. Co.-Adverse Abandonment-Lines of Bangor & Aroostook R.R. Co. and Van Buren Bridge Co. in Aroostook Cty., ME*, AB-124 (Sub-No. 2), at 3 (STB served May 6, 2003). Again this year, WCTL fails to demonstrate that there is good cause or any need for the Board to waive its rules and accept WCTL's additional argument. In this year's cost-of-capital proceeding, the AAR filed evidence that followed the Board's instructions to calculate the railroad industry's cost of capital. WCTL replied, conceding that the AAR had followed the Board's established procedures, yet continued to attack the use of the Morningstar/Ibbotson Multi-Stage Discounted Cash Flow Model as part of the cost-of-equity component of the cost of capital. To avoid the Board's clear admonitions that the annual cost of capital proceeding is not the proper forum to raise methodological issues, WCTL also sought to reopen the EP 664 (Sub-No. 2) proceeding, despite the fact that the Board had twice ruled against reconsidering its decision not to alter the methodology. Nonetheless, the AAR responded to the

points raised in the WCTL filing in the AAR rebuttal submission contemplated by the Board's procedural schedule.

The Board should reject WCTL's naked attempt to abrogate the Board's procedural schedule and have the last word. WCTL's petition is exactly the sort of filing that leads to unnecessarily protracted litigation before the Board. When a party's unsupported motion for leave to submit an additional pleading includes the entire substantive argument that the party wishes to add to the record, the other parties to the proceeding must decide whether to address that substantive argument without knowing whether the Board will grant leave to supplement the record. The AAR will not do so here, in large part because of the substantial time and energy that the Board has already expended in explaining its rationale for its cost-of-equity methodology. Indeed, the AAR is reluctantly filing this limited response only out of concern that the Board could misinterpret silence to WCTL's improper filing as tacit acceptance of any of the points raised in the petition.

While there are some situations where the Board may find good cause to accept replies to replies, submissions like WCTL's that reiterate rejected arguments and that do not support counsel's arguments on technical issues with substantive evidence should not be considered. *See 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*, EP 664 (Sub-No. 2), slip op. at 1 & n. 2 (STB served Apr. 28, 2017).

Respectfully submitted,



Timothy J. Strafford
Counsel for the Association
of American Railroads

cc: Parties of Record