

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 35582

RAIL-TERM CORP. –
PETITION FOR DECLARATORY ORDER

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PETITION TO INTERVENE AND REQUEST FOR
AN OPPORTUNITY FOR PUBLIC COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

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The American Short Line and Regional Railroad Association ("ASLRRA") files this Petition seeking leave to intervene in support of the Petition for Reconsideration filed by Rail-Term Corp. ("Rail-Term") of the Board's decision served November 19, 2013 ("the *November Decision*") finding Rail-Term a "rail carrier."

ASLRRA is a national trade association whose 959 member companies consist of 513 Class II and Class III railroads as well as 446 suppliers and contactors to the railroad industry. As the Board knows, these small, mostly locally based railroads frequently provide the "last mile" transportation on many rail movements. They provide thousands of customers and many rural communities with their only freight rail service. On behalf of its members ASLRRA participates in Board proceedings that involve issues of industry significance, particularly those that directly affect Class II and Class III railroads.

The Board's *November Decision* raises such issues. Many small Class III carriers do not have the resources to provide such services as dispatching and rely on companies like Rail-Term to provide those services. The finding by the Board in this case, if sustained, could mean that these small carriers that depend on contractors such as Rail-Term to provide certain services could not afford those services or would have to find scarce resources to internally provide them thus sacrificing other day to day essential operating and safety services. The net result of the action of the Board in this case could drive many small carriers under, leaving shippers without access to railroads to move their products.

The Board's *November Decision* creates substantial uncertainty and could have wide-ranging implications to the short line segment of the railroad industry. Were the Board to apply the it as precedent in other contractor cases, a wide range of entities providing services to the industry such as rail car and locomotive maintenance and repair, track maintenance, environmental and wreck clean up, signal maintenance, communications and "IT" support could be required to obtain entry, exit, and merger authority and even regarding prices and service. Such a precedent would be contrary to the definition of "rail carrier" as well as common sense. Additionally, such a ruling could subject these contractors to other laws that apply to common carrier railroads such as the Railway Labor Act and the Federal Employers Liability Act.

Further, there is no evidence to indicate that Congress ever intended for the Board to expand its jurisdiction to address the issue of carrier employee benefit coverage. ASLRRA believes the Board should leave to Congress the issue of whether railroad contractors should or should not be subject to coverage under laws such as the Railroad Retirement and Railroad Unemployment Insurance Acts, the Railway Labor Act, and the Federal Employers Liability Act.

For these reasons ASLRRA seeks leave to intervene as a party in this proceeding pursuant to 49 C.F.R. § 1112.4 in support of Rail-Term's petition. ASLRRA also joins other potential interveners in requesting that the Board establish a procedural schedule to allow interested parties to file more comprehensive comments on the issues raised by the *November Decision*. Allowing comments would be consistent with other proceedings where potential severe consequences to parties and non parties alike are present. *See, e.g., Union Pacific Railroad Company – Petition for Declaratory Order*, FD 35504 (STB served December 12, 2011).

Respectfully Submitted,

A handwritten signature in black ink that reads "Keith T. Borman". The signature is written in a cursive, flowing style.

Keith T. Borman
Vice President and General Counsel
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Counsel for the American Short Line and Regional Railroad Association

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2013 I have caused to be served on all parties of record the foregoing PETITION TO INTERVENE AND REQUEST FOR AN OPPORTUNITY FOR PUBLIC COMMENTS OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION.

A handwritten signature in cursive script that reads "Keith T. Borman". The signature is written in dark ink and is positioned above a horizontal line.

Keith T. Borman