



ASSOCIATION OF
AMERICAN RAILROADS

Ian Jefferies

President and Chief Executive Officer

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Docket No. EP 755

Honorable Ann D. Begeman
Chairman
U.S. Surface Transportation Board
325 E Street, S.W.
Washington, DC 20423-0001

Honorable Patrick J. Fuchs
Vice-Chairman
U.S. Surface Transportation Board
325 E Street, S.W.
Washington, DC 20423-0001

Honorable Martin J. Oberman
Board Member
U.S. Surface Transportation Board
325 E Street, S.W.
Washington, DC 20423-0001

Dear Chairman Begeman, Vice-Chairman Fuchs, and Board Member Oberman:

The Association of American Railroads ("AAR") writes on the railroad industry's behalf to relay both its deep concerns regarding the Surface Transportation Board's *Final Offer Rate Review* ("FORR") Notice of Proposed Rulemaking ("NPRM") served on September 12, 2019, and its sincerest hopes that a more reasonable, beneficial approach to the challenge of small rate case reform remains within the grasp of our industry, our customers, and the Board. When AAR wrote to the Board in July, we expressed disappointment that several aspects of the staff's Rate Reform Task Force Report lacked factual, legal, and economic foundations. However, we also expressed the industry's belief that genuine improvements to the Board's rate reasonableness procedures were achievable. We are now in the position of making this very same point about the achievability of reform, but this time with the unfortunate backdrop of the FORR NPRM.

The FORR NPRM is an unsupportable departure from the market-based framework and body of precedent the Board has crafted over the course of nearly 35 years. After describing the dual goals of "constrain[ing] the cost and complexity of a rate reasonableness case" and "establish[ing] a new rate case procedure for smaller cases," the Board has now proposed an

arbitrary procedure in which the aim of calculating or even approximating a maximum reasonable rate is abandoned. Every two years, railroads could expect to face FORR challenges featuring unfairly insufficient time frames for carriers and millions of dollars in potential damages and revenue losses, all in the absence of standards by which rate reasonableness could actually be determined. As the AAR will describe in its more robust, formal comments, the industry has very real concerns that the FORR NPRM violates the Board's governing statute, implicates Constitutional issues of fundamental fairness and due process, fails to account for either of the rulemaking's cost or benefits, and misses the Board's express policy targets.

However, the industry continues to believe in the achievability of true small rate case reform that could benefit both shippers and carriers while also easing the administrative burden such cases could place on the Board. There is industry consensus on the substantial merit of a procedure for small cases that could ensure small shippers have access to the rate reasonableness process at an appropriate cost. The industry is prepared to support a rate reasonableness process that incorporates: a comparison group approach improved by bright-line criteria; streamlined case administration measures; a reasonable, summary screening for market dominance similar to the Board's proposal in *Market Dominance Streamlined Approach*, EP 756 (STB served September 12, 2019); measures to address the current limitations of the waybill sampling approach; and screening criteria ensuring small shippers have the use of this new, more accessible process.

The railroad industry will forcefully oppose the fundamentally flawed, arbitrary process proposed in the FORR NPRM. However, we remain committed to working with the Board and the small rate case review stakeholders in crafting a truly lower cost, less complex, and fair rate review process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Jefferies', with a long horizontal stroke extending to the right.

Ian Jefferies
President and CEO