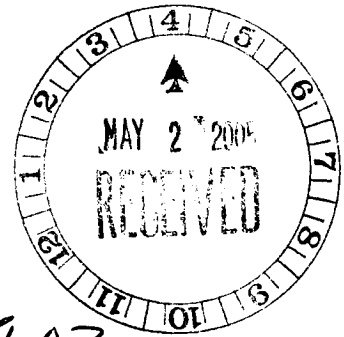




ASSOCIATION OF AMERICAN RAILROADS

Law Department

Louis P. Warchot
Senior Vice President Law
& General Counsel



213903

BY HAND DELIVERY

May 2, 2005

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

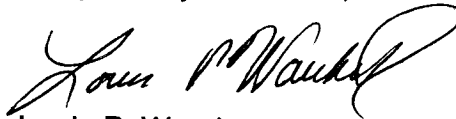
Re: Ex Parte No. 575, Review of Rail Access and Competition Issues

Dear Secretary Williams:

Enclosed for filing in this proceeding are an original and ten (10) copies of the Reply of the Railroad Industry Working Group to Renewed Petition of the Western Coal Traffic League for Rulemaking to Eliminate Unreasonable "Paper Barriers" to Interchange.

Please date-stamp the extra copy of the Reply and return the same via the messenger hand delivering it.

Respectfully submitted,



Louis P. Warchot

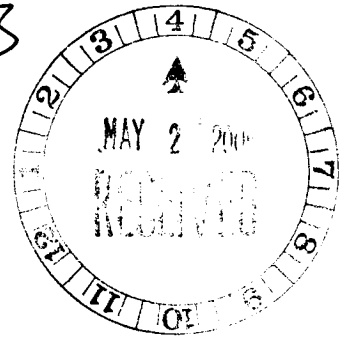
ENTERED
Office of Proceedings

MAY - 2 2005

Part of
Public Record

213903

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**



STB EX PARTE NO. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES

**REPLY OF THE RAILROAD INDUSTRY WORKING GROUP
TO RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE FOR
RULEMAKING TO ELIMINATE UNREASONABLE "PAPER BARRIERS" TO
INTERCHANGE**

**ENTERED
Office of Proceedings
MAY - 2 2005
Part of
Public Record**

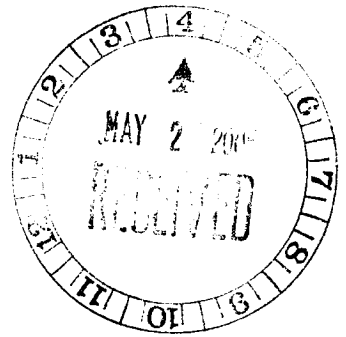
Louis P. Warchot
Association of American Railroads
50 F Street, N.W.
Washington, DC 20001
(202) 639-2502

Keith T. Borman
American Short Line & Regional Railroad
Association
50 F Street, N.W.
Washington, DC 20001
(202) 585-3448

Counsel for Rail Industry Working Group

Dated: May 2, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**



STB EX PARTE NO. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES

**REPLY OF THE RAILROAD INDUSTRY WORKING GROUP
TO RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE FOR
RULEMAKING TO ELIMINATE UNREASONABLE "PAPER BARRIERS" TO
INTERCHANGE**

The members of the Railroad Industry Working Group (RIWG)¹ file this Reply to the Renewed Petition of the Western Coal Transportation League for Rulemaking to Eliminate Unreasonable "Paper Barriers" to Interchange. The RIWG has a role in the private sector resolution of issues between parties to contractual limitations on interchange known as paper barriers and opposes the Petition. The RIWG is a committee of Class I and smaller railroad representatives formed to, in part, maintain and facilitate communications between Class I railroads and smaller railroads and to monitor activities under the Rail Industry Agreement (RIA) executed in 1998 by the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA). As further discussed below, a significant focus of the RIWG's efforts have been related to paper barriers.

When the RIA was signed in 1998, it established a Senior Policy Committee of Class I and smaller railroad representatives to, in part, provide oversight review and recommendations regarding the relationship between the large and small railroads and the

¹ RIWG voting members are listed on Appendix 1.

interpretation and implementation of the RIA. It was to be comprised of railroad chief executive officers and meet semi-annually. By 2000, the Senior Policy Committee had concluded that monitoring activities under the RIA and progressing the RIA objectives of better Class I/smaller railroad relationships and a stronger rail network required an ongoing commitment of rail industry personnel involved with Class I/small railroad issues. Accordingly, it formed the RIWG. In 2004, the RIWG's role was expressly incorporated into the RIA by an Amendment executed by the AAR and the ASLRRA in September 2004. (A description of the membership of the RIWG, its procedures, and its purpose as set forth in the above-referenced Amendment are attached as Appendix 2.)

With respect to paper barriers, the RIA had established principles to guide rail carrier activities with the objective of ensuring that rail shippers had continued opportunities to ship new traffic by rail (e.g., where the Class I railroad with the paper barrier was unable or unwilling to handle such traffic). The RIA, in essence, provided that a paper barrier would be waived if such action were necessary to accomplish that objective.

One of the objectives of the RIWG was to go beyond anecdotal statements and assess how the paper barrier provisions – as well as the rest of the RIA's provisions – were actually working. It was assumed that paper barrier waivers should be handled between the carriers involved in the context of their regular day-to-day commercial and operating activities. However, in an attempt to ascertain the scope of paper barrier activity that had given rise to concerns in 1998 when the RIA was signed, the RIWG established a process, communicated to smaller railroad members through ASLRRA publications, where smaller railroads were encouraged to submit formally documented

requests for waivers of paper barriers – as well as requests for any other relief under the RIA – to the applicable Class I railroad. The Class I railroads would keep a record of the requests and their disposition and report the activities, in the aggregate, monthly to the RIWG.

The RIWG's experience under this process indicates that there is a relatively small number of paper barrier issues that have arisen between Class I and smaller railroads. For example, the Class I railroads have reported that since 2002 to date, there have been only approximately 55 requests submitted by smaller railroads for relief under the provisions of the RIA (both for paper barrier waivers as well as for all other types of relief available under the RIA); and in that period, approximately 45 requests for waiver or other relief had been granted. In most of the remaining cases, it was either determined that the RIA does not apply to the facts involved or the matter was resolved in some other manner.

Moreover, smaller railroad members were also encouraged, again through ASLRRA communications, to present any concerns that they may have had over paper barriers directly to one of the smaller railroad representatives on the RIWG. The RIWG representative was available to explain RIA provisions and, consistent with maintaining the confidentiality of individual railroad commercial arrangements, to address the issue with the full RIWG as a general matter or with respect to the specific circumstances. The relatively small number of requests for relief under provisions of the RIA (approximately 55 since 2002) is consistent with the level of inquiries or concerns expressed to smaller railroad representatives on the RIWG. Also, with respect to the types of concerns

brought before the RIWG, those concerns have generally focused on the definition of “New Traffic” under the RIA.

While the RIWG does not act as a mediating body in bilateral disagreements², the RIWG does take into account concerns raised by both large and small carriers as to the application and implementation of paper barrier provisions and attempts to reflect those concerns through the development of consensual interpretations of RIA provisions. In response to the concerns over the definition of “New Traffic” in the RIA, the RIWG drafted and incorporated three expansive new definitions of what constitutes “New Traffic” into the above-referenced Amendment to the RIA. These detailed provisions are meant to give both greater certainty and more opportunity for new business to short lines affected by paper barriers while maintaining the “benefit of the bargain” which Class I railroads relied upon in their decisions to forego abandonment and instead spin off light density lines to short line operators.

Moreover, under the provisions of the Amendment, the RIWG has replaced the Senior Policy Committee and will now also have the authority to make binding interpretations regarding paper barrier provisions of the RIA. This new authority over time should provide both short lines and Class I railroads even more certainty as they seek to expand business on their networks.

Thus, the RIWG believes that it provides an effective private sector facility under the RIA to address any paper barrier issues that may presently arise and to provide all necessary and appropriate direction and assistance in the future. The members of the RIWG believe that its record supports the contention of both the AAR and the ASLRRA

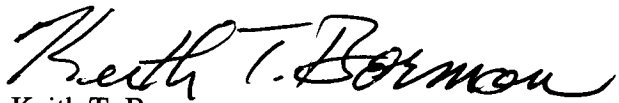
² The AAR and the ASLRRA do have a confidential non-binding mediation process available for disputes between parties involving paper barriers. As reported to the RIWG, there have been three instances where the parties have voluntarily used this process.

that no new rulemaking on the topic of paper barriers is needed, and the Renewed
Petition of the Western Coal Traffic League should be denied.

Respectfully submitted,



Louis P. Warchot
Association of American Railroads
50 F Street, N.W.
Washington, DC 20001
(202) 639-2502



Keith T. Borman
American Short Line & Regional Railroad
Association
50 F Street, N.W.
Washington, DC 20001
(202) 585-3448

Counsel for Rail Industry Working Group

Dated: May 2, 2005

APPENDIX 1

Rail Industry Working Group Voting Members

Douglas A. Banks
Eugene H. Blabey, II
Thomas A. Collard
David C. Eyermann
Sandy K. Franger
Leonard M. Kellermann
John Kraemer
Brad K. LaFevers
Reilly McCarren
Michael J. Ogborn
Cynthia Pratt
Mark Schmidt
Robert Smit
Warren C. Wilson

The Kansas City Southern Railway
Livonia, Avon & Lakeville Railroad Corp.
Southern Railroad Company of New Jersey
Dallas, Garland & Northeastern Railroad
RailAmerica Operations Support Group, Inc.
CSX Transportation, Inc.
Norfolk Southern Corporation
Heart of Georgia Railroad, Inc.
Arkansas & Missouri Railroad
OmniTRAX
Canadian Pacific Railway Limited
BNSF Railway Company[
Canadian National Railway Company
Union Pacific Railroad Company

VII. RAIL INDUSTRY WORKING GROUP

(a) A joint "Rail Industry Working Group" ("RIWG") shall be created to address all policy aspects and issues relating to the application and effects of this Agreement. It shall also provide a forum for the discussion of opportunities and concerns relating to issues between the Large Railroads and Small Railroads and to assure that the expectations of this Agreement are attained by having the terms of this Agreement consistently interpreted and applied throughout the railroad industry. The RIWG shall be comprised of Large Railroad managers who are responsible for the development of business with the Small Railroads and of Small Railroad operators who have first-hand knowledge of relevant rail transportation problems, issues, and opportunities. It shall consist of 16 members. There shall be one member designated from each of the seven Large railroad subscribers to this Agreement, seven members from Small Railroads who are subscribers to this Agreement (to be designated by the ASLRRRA), and one member each from the AAR and the ASLRRRA. (The AAR and ASLRRRA representatives shall be non-voting members.)

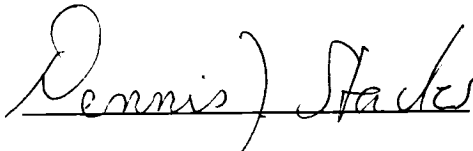
(b) The RIWG shall meet at least quarterly and, in addition, at any time upon the request of any member of the RIWG or upon notification from a party of its intent to withdraw from the Agreement pursuant to Section VIII(b). RIWG members may participate in meetings either in person or by conference call. Counsel from the AAR and/or the ASLRRRA shall attend RIWG meetings. Unless an objection is raised by any member, technical and other issue-specific experts and advisors may be invited to attend portions of RIWG meetings relevant to their respective interests.

(c) The RIWG may, from time to time, issue opinions or interpretations regarding the provisions of this Agreement. Any such opinion or interpretation must be in writing and by unanimous vote of the RIWG.

(d) The RIWG shall not, in any circumstance, have authority to set rates or charges or reach any agreement respecting rate-related matters.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all Parties of Record by first class mail or more expedited means of service on this 2nd day of May, 2005.


Dennis J. Starks