

2.21.323

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC 20423**

In the Matter of:

**Review of Rail Access and Competition Issues -
Renewed Petition of The Western Coal Traffic
League**

STB Ex Parte No. 575

**REPLY COMMENTS OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

This document contains reply comments of Arkansas Electric Cooperative Corporation (AECC)¹ regarding the Board's planned reforms related to interchange commitments (a.k.a. "paper barriers") included in the sale or lease of rail assets, as described in the Board's Decision in this proceeding dated October 30, 2007. These reply comments respond to a proposition advanced in the comments submitted January 2, 2008 by the Association of American Railroads (AAR).

AAR suggests that the Board somehow has not done its homework regarding prospective changes in consummated transactions, and claims specifically that the Board "did not fully address the legal and practical consequences of reviewing or reopening past transactions." AAR then urges the Board to adopt "a strong presumption that existing interchange commitments are valid and legitimate (footnote omitted)."

AAR is basically seeking to fabricate an artificial constraint on the latitude held by the Board in a place where no such constraint exists. AAR's jawboning does not alter the Board's unambiguous authority under Section 722(c) to reopen, reconsider and/or

¹ AECC's interests in this proceeding were described in its comments dated March 8, 2006. In the interest of brevity, they are not repeated herein.

change a prior action on the basis of material error, new evidence, or substantially changed circumstances “ at any time on its own initiative”

In fact, the AAR position represents a complete perversion of this provision. AAR basically argues that even if there was an error, changed circumstances or new evidence, the Board should refrain from exercising the authority it plainly holds to alter past actions. AAR's basic thrust is that even if the Board believes a change in a prior action would be in the public interest, it should subvert the public interest because making such a change might disturb the private interests of the parties. AAR does not explain how the parties could have entered into their transaction without being aware of or taking into account the Board's role in promoting the public interest, and the Board's unfettered authority to change past actions in that pursuit. The Board has no mandate to permit the railroads to consolidate gains that it finds are contrary to the public interest, and no party to a rail transaction ever had a valid reason to believe that the Board would disregard errors, changed circumstances and/or new evidence in favor of a railroad's private interests. In this light, the Board should not be dissuaded by AAR's self-serving and ill-founded argument.

AECC appreciates the Board's continuing efforts to review and adapt its practices
in light of the changing circumstances of the rail industry

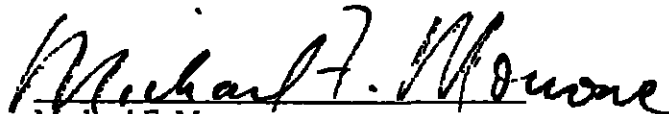
Respectfully submitted,

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