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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX Parte No. 677 (Sub-No. 1)

**COMMON CARRIER OBLIGATION OF RAILROADS—TRANSPORTATION
OF HAZARDOUS MATERIALS**

**RESPONSE OF THE
ASSOCIATION OF AMERICAN RAILROADS TO REQUESTS FOR
EXTENSION OF TIME**

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June 13, 2008

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Pursuant to the Surface Transportation Board's Notice served June 4, 2008, the Board has scheduled a public hearing in the above case for July 16, 2008, and has requested that notices of intent to participate and written testimony be submitted by July 2, 2008. In response to the Notice, motions have been filed by the Edison Electric Institute (EEI), The Fertilizer Institute (TFI), Dow Chemical Company (Dow), The National Industrial Transportation League (NITL), and the Chlorine Institute (CI) requesting extensions of time for the filing of testimony and for rescheduling of the hearing. EEI has requested a one-week extension of time for the filing of comments and requests that the hearing be rescheduled for no earlier than the week of July 28, 2008. TFI, Dow, NITL, and CI have requested extending the procedural schedule for the hearing into September. Dow, TFI, and NITL have requested a 60 day extension for the hearing date into the week of September 15, 2008 and CI has requested a hearing date of September 24, 2008.

The Association of American Railroads (AAR) fully supports the Board's institution of the above proceeding and the scheduling of a public hearing relating to the rail transport of hazardous materials. The subject matter of the hearing is of overriding importance to the railroad industry. As the Board recognized in its Notice, it is the rail

industry's position that although rail is the safest mode of transportation for many of these materials, including toxic by inhalation hazards (TIH), the transportation of these materials as currently mandated under the railroads' common carrier obligation raises the specter of "bet the company" liability in case of an accident. The current situation from the railroad industry's perspective is untenable.

Because of the vital importance of the matter to the industry, AAR believes that the Board should act expeditiously to explore and take action on the issues identified in its Notice. However, the AAR is understanding of the fact that some parties may face conflicts in meeting the Board's current schedule or that some parties may desire some additional time to address the issues that the Board has noticed for hearing. Accordingly, the AAR would have no objection to a short extension of time if the Board wishes to consider accommodating such requests. However, the AAR believes that the hearing date should not be extended for more than two weeks, i.e., not beyond July 30, 2008.¹

With respect to the scheduling concerns that were raised in the request for extension, whenever the Board sets a hearing date, there will always be some parties with scheduling conflicts. During the summer months, the potential for conflicts increase as many vacation plans are set and difficult to change. After July 30, 2008, it will be difficult to find a date during the summer period that does not result in a greater number of conflicts, including for the AAR and its members, than would otherwise occur.

With respect to the concerns raised over the "complexity" of the issues in this proceeding, the AAR submits that all parties have been on notice as to the Board's interest in all aspects of the TIH transportation issue since the Board's February 22, 2008 Notice of

¹ The AAR also would have no objection if the Board decided to extend the July 2, 2008 date for filing written comments in the proceeding while retaining the July 16, 2008 hearing date.

Hearing in Ex Parte No. 677 raising the common carrier obligation to transport "hazardous materials, especially [TIH] commodities" as a concern. Moreover, the Board's interest in the issue was emphatically reiterated at its April 24-25 public hearing through the statements of individual Board members and testimony presented by the rail industry, as well as by representatives of TFI, EEI, and NITL. In this regard, it is noteworthy that EEI, representing substantial users (privately-owned electric utilities) of TIH products (anhydrous ammonia and radioactive materials), requests only a one-week extension of time to submit comments and less than a two week extension for the hearing date.

For the foregoing reasons, the AAR requests that: (1) if the Board wishes to consider any extension of the presently scheduled July 16, 2008 hearing date, that extension should be for a short period of time not to extend beyond July 30, 2008; and (2) the requests for an extension of the hearing date for 60 days or more should be denied.

Respectfully submitted,



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