

BEFORE THE SURFACE TRANSPORTATION BOARD

EX PARTE NO. 756

MARKET DOMINANCE STREAMLINED APPROACH

**WRITTEN TESTIMONY ON BEHALF OF
NATIONAL COAL TRANSPORTATION ASSOCIATION**

National Coal Transportation Association (NCTA) respectfully submits the following as its written testimony in response to the Notice of Proposed Rulemaking (“Notice”) that the Surface Transportation Board (“STB” or “Board”) served in the above mentioned proceeding on September 12, 2019.

1. The NCTA is a national organization consisting of electric utilities, coal producers, and entities that have an interest in the production and transportation of coal for the purposes of generating electricity. This group includes entities that produce, repair, and manage all facets of railcar components parts and systems, and also those entities that provide services and products for various operations and environmental compliance requirements at the power plant site. NCTA members are very interested in the fair treatment of shippers regarding the total cost of service, including the cost of building and maintaining the shipper’s facilities. Transportation rates are often a large component of the total cost of service and impact not only the utilities who pay these costs, but the entire supply chain including coal producers, rail car vendors and service providers. If rates become cost prohibitive for the utility and their customers, the impact

is felt through the entire supply chain if less coal is shipped and fewer services provided due to the impact of higher transportation rates for the coal shipper.

2. NCTA appreciates that the Board has responded to the Rate Reform Task Force Report with this Notice in an effort to make the process of seeking rate relief less burdensome and expensive for shippers. The impact of unrestrained freight rail market dominance is keenly felt by coal shippers, many of who are rail-dependent. Additionally, those shippers who are captive often do not have the resources to pursue rate relief through the current processes to which they are entitled by statute due to the time and expense involved in obtaining legal representation and expert witnesses.

3. The Market Dominance Streamlined Approach intends to simplify the process for a case brought by a shipper by limiting, or “streamlining” the evidence to six “prima facie” factors that must exist in order to demonstrate market dominance:

1. The movement has an R/VC ratio of 180% or greater (exceeds the jurisdictional threshold)
2. The movement would exceed 500 highway miles between origin and destination
3. There is no intramodal competition
4. There is no barge competition
5. The complainant has used truck for 10% or fewer of its movements subject to the rate at issue over a five-year period
6. The complainant has no practical build-out alternative due to physical, regulatory, financial, or other issues (or combination of issues).

4. While these factors may be appropriate for other types of shippers, NCTA recommends that greater flexibility be provided for large volume, heavy weight commodities such as coal, particularly with respect to the factors linked to potential competition from trucks. An average coal unit train of 130 cars carrying 117 tons of coal

each equates to 15,210 tons per shipment. This type of volume is, on its face, non-competitive with truck shipping. Requiring evaluation of trucking-related factors for coal shippers is unnecessarily burdensome.

5. With regard to factor number two: “The movement would exceed 500 highway miles between origin and destination,” NCTA recommends that STB establish a lower mileage threshold for high volume, heavy commodities, such as the 200 mile distance noted by agricultural shippers and referenced in STB’s proposal.

6. With regard to factor number five: “The complainant has used truck for 10% or fewer of its movements subject to the rate at issue over a five-year period,” NCTA recommends that STB establish a higher percentage threshold for high volume, heavy commodities such as coal. As written, the 10% of volume requirement could be disqualifying for shippers who may have been forced to resort to truck traffic because of higher rates or other mitigating circumstances beyond a shipper’s control. A higher threshold such as 20% should be considered as an alternative measure to allow more flexibility.

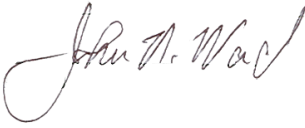
7. NCTA also notes that while a shipper is limited within the framework of what it must show as evidence, there is no restriction of what the defendant can contest in its fifty pages or so of reply evidence. The complainant must then respond within another limited scope of fifty pages, but the defendant could require more proof than a complainant can provide within that limited scope. NCTA requests that restrictions also be placed on the amount of information that a defendant can request in its response to a complainant. The need for consideration for reciprocity is again being

strongly requested as noted in other comments NCTA has provided to the Board in response to the recent proposed Notices.

8. NCTA is encouraged that the STB has recognized the need for swift and affordable resolution to rate disputes. The opportunity to present evidence and have a rate complaint considered without a protracted legal process requiring expensive expert witnesses and legal counsel is much appreciated. NCTA's members continue to struggle with financial difficulties, including competing energy market forces and public policy headwinds, while the rail carriers continue to show financial prosperity. We believe it is imperative that the coal industry continue to supply a stable, reliable and cost effective fuel supply to consumers worldwide. We also firmly believe that the STB must ensure there is fairness and reciprocity of risk and rewards between carriers and coal shippers in all of its rules and processes. NCTA respectfully requests that the STB consider the above recommendations in making timely and cost-accessible rate relief more readily available to all shipper groups including coal.

9. NCTA joins in the comments of the Western Coal Traffic League and Freight Rail Customer Alliance, many of whose members are also NCTA members. NCTA thanks Chairman Ann Begeman and the members of the Surface Transportation Board for their attention and consideration to these important issues. We look forward to the Board's further recommendations and decisions in this process.

Respectfully submitted,

A handwritten signature in black ink, reading "John N. Ward". The signature is written in a cursive style with a large, looping initial "J".

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