

BEFORE THE SURFACE TRANSPORTATION BOARD

**EX PARTE NO. 752
ASSOCIATION OF AMERICAN RAILROADS
PETITION FOR RULEMAKING**

**REPLY ON BEHALF OF
NATIONAL COAL TRANSPORTATION ASSOCIATION**

National Coal Transportation Association (NCTA) respectfully submits the following as its written comments in response to the Association of American Railroads (AAR) Petition for Rulemaking served by the Surface Transportation Board (“STB” or “Board”) in its decision on November 4, 2019.

1. 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 have a continuing interest in the direct and ancillary costs of operating and maintaining a modern fleet of railcars to transport coal. NCTA members are also 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. NCTA members are also very concerned about the fair treatment of shippers in any rulemaking process or proceedings of the Board.

2. On March 14, 2019 the AAR filed a petition to institute a rulemaking to adopt procedural rules that would require the Board to perform a cost-benefit analysis (CBA) in certain Board rulemaking proceedings that would set certain data requirements. In its decision served on November 4, 2019, the Board has solicited information to assist the Board's evaluation of whether and how particular cost-benefit analysis approaches might be formally integrated into its rulemaking process.

3. NCTA understands that the Board is not denying or granting the AAR petition at this time and is aware that the information the Board has solicited is needed to support the Board's analysis in this proceeding. NCTA will not be able to respond to the various technical approaches to the CBA application requested by the Board. However, NCTA wishes to state for the record its position that this petition should be denied, and also state its support and alignment with the comments of the "Joint Shippers Reply Filing – EP 752" submitted April 4, 2019, many of whose members are also NCTA members.

4. NCTA has participated in and commented on several of the recent rulemaking proceedings of the Board. NCTA is concerned that any effort to incorporate CBA into all of the Board's rules will impede long-overdue regulatory reform efforts that are currently underway such as those related to demurrage and accessorial rules and

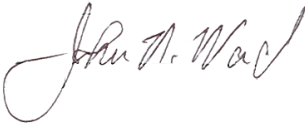
charges, demurrage billing requirements, the rate review process and various outdated rules and procedures that may prevent shippers from accessing competitive rail service.

5. NCTA supports the use of CBA in appropriate rulemaking proceedings that are useful to the Board. However, the Board is a small agency that lacks the resources to conduct CBA on all complex regulatory subjects within its jurisdiction. The Board may not have adequate staffing or budget to undergo CBA for all of its rulemaking proceedings. NCTA is concerned that the AAR may be proposing the use of CBA in all of the Board's rulemakings in order to delay the important pending rulemaking proceedings of the Board.

6. The Board should not delay pending proceedings as it considers how to conduct CBA and acquire the necessary resources. NCTA believes that the AAR's proposed rules will also increase costs for the Board by adding more procedural tasks that otherwise would not be required in notice and comment rulemaking. NCTA aligns with the Joint Shipper comments that state the Board's current regulatory practices are adequate and that CBA does not guarantee better rulemaking. It is in the interest of NCTA member shippers and consumers that the Board should deny the Petition filed by the AAR.

7. NCTA wishes to thank Chairman Ann Begeman, Vice Chairman Martin Oberman and Member Patrick Fuchs for their attention and consideration to these important issues. We look forward to the Board's further recommendations and decision in this process.

Respectfully submitted,

A handwritten signature in cursive script that reads "John N. Ward". The signature is written in black ink and is positioned below the text "Respectfully submitted,".

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Submitted: January 31, 2020