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VIA E-FILING

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Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

ENTERED
Office of Proceedings
July 19, 2012
Part of
Public Record

Re: *STB Ex Parte No. 699, Assessment of
Mediation and Arbitration Procedures*

NOTICE OF INTENT TO PARTICIPATE

Dear Ms. Brown:

Pursuant to the Board's decision served on June 28, 2012 in the above-referenced proceeding ("Decision"), this letter constitutes the notice of the Western Coal Traffic League ("WCTL") to participate in the Board's public hearing scheduled for August 2, 2012.

Participating for WCTL at the hearing will be Stephanie M. Archuleta, one of its counsel. WCTL requests that it be allotted 5 minutes to address the Board.

As requested in the Board's decision, a summary of WCTL's intended testimony is attached.

Respectfully submitted,



Stephanie M. Archuleta
An Attorney for the
Western Coal Traffic League

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

ASSESSMENT OF MEDIATION AND)	STB Ex Parte No. 699
ARBITRATION PROCEDURES)	
)	
)	

**SUMMARY OF INTENDED TESTIMONY OF THE
WESTERN COAL TRAFFIC LEAGUE**

The Western Coal Traffic League (“WCTL” or “League”) believes that the Board’s proposed Notice of Proposed Rulemaking (“NPRM”) is a serious effort to encourage alternative dispute resolution (“ADR”) of discrete disputes brought before the Board, and address concerns about the availability and use of ADR, including those expressed by Chairman Elliott, who has described the Board’s arbitration process as “moribund.”¹

WCTL supports continuing Board efforts to promote ADR and private sector resolution of stakeholder disputes, although it continues to stress that ADR should not be viewed as a “catch-all” cure to resolving shipper complaints or the underlying substantive problems facing shippers in obtaining agency relief. There is still a vital need for the STB as the expert agency appointed by Congress to resolve disputes in a timely manner and advance policies to protect railroad consumers against carrier transgressions.

In the earlier, pre-NPRM stages of this proceeding, WCTL cautioned the Board to ensure that any new or expanded ADR programs adequately protect a shipper’s statutory right to bring complaints before the Board, while avoiding the establishment of

¹ See Testimony of Daniel R. Elliott III, Before the U.S. Senate Committee on Commerce, Science, and Transportation, Hearing on the Federal Role in National Rail Policy (Sept. 15, 2010) at 7-8.

procedures that could lead to complex, costly, and uncertain litigation, or unduly delay proceedings. WCTL believes that the Board's proposed NPRM rules generally satisfy these concerns. The proposed NPRM rules should not unduly harm or prejudice the rights of WCTL members in seeking resolution of complaints, and they might provide new opportunities for expedited resolution of smaller, discrete disputes brought before the Board.

In WCTL's Opening and Reply Comments filed in this proceeding, WCTL provided comments on specific aspects of the Board's proposed NPRM mediation and arbitration rules where it believes improvements or clarification are necessary. WCTL respectfully requests that the Board favorably consider these comments when finalizing its rules.

The participating railroad parties in this proceeding reserve the weight of their criticism to the proposed NPRM arbitration procedures, and in particular, the Board's proposed "opt-out" procedures. The railroads' concerns in large part appear overstated and off-base. The Board's proposed rules provide carriers with full discretion to opt-out on an annual basis, and thus the program remains voluntary for individual railroads. Additionally, many of the railroads' suggested changes are unwarranted and unnecessary, and would likely only serve to ensure that Board-sponsored arbitration will continue to be an elusive potential option to resolve disputes outside of the Board's formal complaint processes.

WCTL appreciates the opportunity to participate in this proceeding and the Board's consideration of its comments.

Summary Dated: July 19, 2012