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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

DEC 7 - 2011

Part of
Public Record

Ex Parte No. 712

IMPROVING REGULATION AND REGULATORY REVIEW

**THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE'S
REPLY TO PETITION FOR CLARIFICATION
OF THE ASSOCIATION OF AMERICAN RAILROADS**

The National Industrial Transportation League ("League") hereby submits its Reply to the Petition for Clarification ("Petition") of the Association of American Railroads ("AAR") filed on November 17, 2011 in this proceeding. In Ex Parte No. 712, the Board indicated that it is undertaking a comprehensive "review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems facing shippers and railroads," in response to a government-wide request from the President. Ex Parte No. 712, *Improving Regulations and Regulatory Review*, served October 12, 2011 ("Decision").

In the Decision, the Board broadly requested the transportation community to:

- specifically identify which of the Board's existing regulations or reporting requirements are ineffective, insufficient, or excessively burdensome, and explain why;
- propose which regulations should be modified, streamlined, expanded or repealed;
- provide evidentiary support to help the Board analyze the costs and benefits (both quantitative and qualitative) of any proposed changes; and
- suggest an appropriate timeframe for conducting the next retrospective review of the agency's regulations and reporting requirements.

Decision, p. 2.

In its Petition, the AAR asks the Board to "clarify" that this proceeding "will not address regulations that have been the subject of other recent *Ex Parte* proceedings," Petition p. 2. Specifically, in its Petition the AAR listed a dozen proceedings that the Board has undertaken over the past three years (beginning in January 2009) for which the Board should "clarify" that it does not intend that the parties address the regulations in the listed dockets. In support of its Petition, the AAR simply stated that it believes that the Board "did not intend to use this proceeding to revisit matters that it has recently addressed or that plainly remain on its agenda," and to clarify that parties should not resubmit prior comments to avoid a "wasteful duplication of effort." Petition, pp. 3-4.

The AAR's Motion should be denied. The AAR's Petition is unnecessary, would unduly narrow the Board's broad inquiry, and would deprive the Board of useful perspectives on the broad scope of its regulations.

I. STATEMENT OF INTEREST

The League is one of the oldest and largest national associations representing companies engaged in the transportation of goods in both domestic and international commerce. The League was founded in 1907, and currently has over 600 company members. These company members range from some of the largest users of the nation's and the world's transportation systems, to smaller companies engaged in the shipment and receipt of goods. The majority of the League's members include shippers and receivers of goods; however, third party intermediaries, logistics companies, and other entities engaged in the transportation of goods are also members of the League. The League's rail shippers are from a multitude of industries, including chemicals/petroleum, agricultural, forest products and paper, and steel, among others. Thus, the League has a very substantial interest in the issues presented by this proceeding.

II. THE AAR'S PETITION SHOULD BE DENIED

The AAR's Petition seeks to unduly narrow what the Board has outlined in its notice to be a broad inquiry into the effectiveness of the agency's regulations. The Board should not prejudge or restrict the comments that might be filed in this inquiry. Indeed, such an action is directly at odds with the expansive scope and purpose of the Board's Notice, and is inconsistent with the very nature of the President's request. Moreover, an attempt to denote exactly what are the "regulations at issue" in the many proceedings listed in the AAR's Petition, some of which were themselves extremely broad inquiries, could result in greater uncertainties, as the Board and the parties would need to decide the specific regulations that are fairly included or excluded from the scope of this proceeding.

The League believes that the Board is fully capable of determining how to allocate its own resources without prejudging the scope or merits of its own investigation. If the Board is concerned that some parties may simply resubmit prior comments filed in other dockets, the Board can simply advise parties that they should avoid over-burdening the record in this proceeding, and simply cross-reference and/or summarize prior filings so that the Board can understand the point without duplicating the record.

Moreover, restricting the scope of this proceeding, as requested by the AAR, would deprive the Board of fresh perspectives and ideas that may have developed since the Board received comments in those other proceedings. In particular, this proceeding provides an opportunity for parties to comment on the interrelationship of the issues raised in the proceedings identified by the AAR and the connections between various aspects of the Board's regulations. Putting a wide number of regulations and proceedings "off limits," as the AAR requests, would make it impossible for the parties to comment on the broad regulatory landscape: Parties could

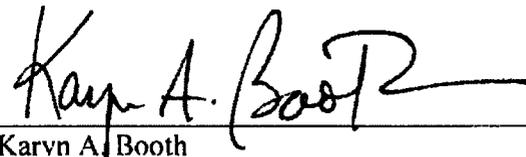
comment on the size and shape of some individual trees, but inexplicably would be required to ignore the nature, shape and extent of the forest.

The AAR's Petition should be denied.

Respectfully submitted,

The National Industrial Transportation League

By its Attorney

A handwritten signature in black ink that reads "Karyn A. Booth". The signature is written in a cursive style with a long horizontal flourish extending to the right.

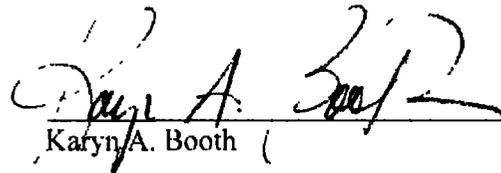
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December 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Reply to be served by regular mail, postage prepaid, this 7th day of December 2011, on:

Louis Warchot
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50 F Street, N.W.
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Karyn A. Booth