



ASSOCIATION OF
AMERICAN RAILROADS

Law Department

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December 16, 2013

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

Re: STB Docket No. FD 35582, *Rail-Term Corp.* – *Petition for Declaratory Order*

Dear Ms. Brown:

Attached please find the Association of American Railroads' petition to intervene and request for an opportunity for public comments in the above captioned proceeding.

Respectfully submitted,

Louis P. Warchot
*Counsel for the Association of
American Railroads*

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 35582

RAIL-TERM CORP. –
PETITION FOR DECLARATORY ORDER

PETITION TO INTERVENE AND REQUEST FOR
AN OPPORTUNITY FOR PUBLIC COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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December 16, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 35582

RAIL-TERM CORP. –
PETITION FOR DECLARATORY ORDER

PETITION TO INTERVENE AND REQUEST FOR
AN OPPORTUNITY FOR PUBLIC COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

On November 19, 2013, the Surface Transportation Board (“Board”) issued a decision in this proceeding, with Vice Chairman Begeman dissenting, that found that Rail-Term Corp. (“Rail-Term”) was “a rail carrier performing rail transportation services that are subject to the jurisdiction of the Board.” Slip op. at 13. For the first time, the Board concluded that a company providing dispatching services to rail carriers, but not performing any other transportation activities and not holding itself out to the public to do so, was itself a rail carrier as defined by 49 U.S.C. § 10102(5). This finding was in spite of a long list of agency precedent that has concluded that the performance of dispatching services and other functions would not make an entity a rail carrier. *See, e.g., N.J. Transit Corp.–Acquis. Exempt. –Norfolk S. Ry.*, FD 35638, slip op. at 5 (STB served Mar. 27, 2013) (assumption of maintenance and dispatching control does not cause an entity to become a rail carrier); *Mass. Dep’t of Transp.—Acquis. Exemption—Certain Assets of CSX Transport.*, FD 35312, slip op. at 6 (STB served May 3, 2010) (an entity may “assume responsibility for maintaining the line and dispatching freight operations” without becoming a rail carrier); *Fla. Dep’t of Transp. –Acquis. Exemption—Certain Assets of CSX*

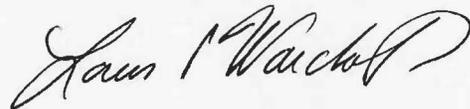
Transp., Inc., FD 35110, slip op. at 4 (STB served June 22, 2011) (entity acquiring dispatching responsibility did not become a rail carrier where there was a “legitimate business justification” for transfer of dispatching responsibility); *Md. Transit Admin.—Pet. for Dec. Order*, FD 34975 (STB served Sep. 19, 2008); *Metro Reg’l Transit Auth.—Acquis. Exemption—CSX Transp., Inc.*, FD 33838, slip op. at 3 (STB served Oct. 10, 2003) (entity acquiring responsibility for dispatching did not become a rail carrier where it “has not conducted freight operations on these segments and will not hold itself out as willing or able to do so.”); *Los Angeles City Transp. Comm’n—Pet. for Exemption—Acquis. from Union Pac. R.R.*, FD 32374, slip op. at 3 (STB served July 23, 1996); and *Am. Train Dispatchers Ass’n v. Chicago & Nw. Transp. Co.*, 360 I.C.C. 457, 461-62 (1979), *aff’d sub nom. Am. Train Dispatchers Ass’n v. ICC*, 671 F.2d 580 (D.C. Cir. 1982).

The Association of American Railroads (“AAR”) is a trade association whose membership includes freight railroads that operate 82 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. The AAR and its freight railroad members have a strong interest in ensuring that the Board asserts its jurisdiction consistent with the Interstate Commerce Act, as amended, and not disrupt the administration of other laws that regulate the railroad industry.

Rail-Term has sought reconsideration of the Board’s decision by filing a petition on December 13, 2013. The Board’s decision creates substantial uncertainty and could have wide-ranging implications to the railroad industry. Long standing agency precedent created an understanding by the industry and its suppliers of what sorts of activities would cause an entity to be subject to the full panoply of regulatory requirements that Board jurisdiction. The November 19, 2013 decision has created substantial uncertainty as to what activities will cause an entity to be deemed a rail carrier.

As such, the AAR hereby seeks leave to intervene as a party in this proceeding pursuant to 49 C.F.R. § 1112.4 to support Rail-Term's petition. The AAR also asks that the Board establish a procedural schedule to allow interested parties to file comments on the issues created by the Board's decision. Such an approach would allow a more complete record that details the potential impacts of the Board's decision, and would not unduly broaden the issues under consideration by the Board or unduly delay the Board's consideration of Rail-Term's petition for reconsideration in view of the potential impacts. Moreover, seeking public comments would be consistent with other proceedings with the potential for significant effects on industry stakeholders. *See, e.g., Union Pacific Railroad Company – Petition for Declaratory Order*, FD 35504 (STB served December 12, 2011). The AAR is prepared to file written comments consistent with an order of the Board establishing a procedural schedule in this proceeding.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, Alyssa M. Johnson, hereby certify that on this 16th day of December 2013, I served by first-class mail, a copy of the Association of American Railroads' petition on the parties of record at the addresses below:

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