ASSOCIATION OF
AMERICAN RAILROADS

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May 28, 2009

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: STB Ex Parte No. 680 (Sub-No. 1), Supplemental Report on Capacity and Infrastructure Investment

Dear Secretary Quinlan:

Pursuant to the order of the Board served April 8, 2009, attached are the Reply Comments of the Association of American Railroads for filing in the above proceeding.

Respectfully submitted,

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 680 (Sub-No. 1)

SUPPLEMENTAL REPORT ON CAPACITY AND INFRASTRUCTURE INVESTMENT

REPLY COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

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SURFACE TRANSPORTATION BOARD

Ex Parte No. 680 (Sub-No. 1)

SUPPLEMENTAL REPORT ON CAPACITY AND INFRASTRUCTURE INVESTMENT

REPLY COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

Pursuant to the Board's April 8, 2009 order in this proceeding, the initial comments of the Association of American Railroads ("AAR") were filed on May, 8, 2009. The AAR's reply comments are set forth below.

The AAR reiterates the analysis set forth in its initial comments pertaining to the general findings and limitations of the *Christensen Capacity Report.* Notwithstanding the assertions of various commenters, the *Report* itself does not dispute the need for substantial capital investment by the railroad industry over the coming years if the industry is to sustain the current rail system and to grow it to meet future traffic needs.

The commenters' speculation as to whether future network capacity constraints are more likely to arise from growth in a particular type of traffic (e.g., intermodal) rather than another type of traffic (e.g., coal) is beside the point. Whether current and future rail capacity constraints arise from increased coal traffic, grain traffic, intermodal or any other type of traffic (including passenger traffic, which has been the focus of increasing amounts of policy attention in recent months) is not the relevant issue. The critical point is that if this nation is to grow and prosper, it must have a rail system adequate to handle *all* types of traffic suitable for efficient movement by rail to support *all* the nation's industrial, service and international trade needs. [1]

As the AAR noted in its initial comments, no one can know for sure what traffic levels will be next year, much less 30 years from now. Still, it is clear that rail capacity will have to increase as the economy expands — a point that holds true whether traffic increases 40 percent, 55 percent, or any other number by some specific date. The railroads are committed to meeting these increased capacity needs primarily through private capital.

Policymakers at the Board, in Congress, and elsewhere have critical roles to play in helping to ensure that rail capacity is adequate for whatever the level of demand actually occurs, and the AAR would urge that policy decisions should support an environment that allows for and supports the investment in infrastructure needed to provide the current and future freight transportation capacity the nation requires. In that regard, policy decisions should be based upon realistic — and not the lowest possible — growth forecasts in order to minimize the risk of severe adverse consequences on the national rail network.

Moreover, it is important to not unduly minimize the reality of rail capacity constraints. Neither U.S. freight railroads nor the Cambridge Systematics report[2]

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[1] Notwithstanding the assertions of various coal shippers, the rail industry does not seek to make needed future infrastructure capacity investments at the expense of coal shippers. Under the Board's existing rate regulations, a shipper of one type of commodity (e.g., coal) is neither expected nor permitted to cross-subsidize other shippers. Each shipper is expected to pay its own way but only for the facilities and services it actually needs and uses. See, e.g., *Coal Rate Guidelines, Nationwide*, 1 I.C.C. 2d 520 (1985), *aff'd sub nom., Consolidated rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987); Ex Parte No. 646 (Sub-No.1), *Simplified Standards for Rail Rate Cases*, 2007 WL 2493509 (September 5, 2007).

[2] *National Rail Freight Infrastructure Capacity and Investment Study,*" September 2007

discussed in the *Christensen Capacity Report* have claimed that capacity constraints envelop all parts of the U.S. rail network or that they are present at all traffic levels. However, to essentially deny that rail capacity constraints exist, or to attribute those that do exist to poor management, does not comport with reality.[3]

Finally, several commenters seem to believe that positive train control ("PTC") will lead to significant productivity and capacity gains for freight railroads. That enthusiasm is premature. PTC is an emerging technology that will require multi-billion dollar investments. Moreover, once fully developed, the effects of its implementation on rail capacity—either positive or negative—are not known at this time.

Respectfully Submitted,

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[3] See, e.g., testimony in Ex Parte No. 671 on rail infrastructure and capacity requirements.