BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of:	)	
	)	
SUPPLEMENTAL REPORT ON CAPACITY AND INFRASTRUCTURE INVESTMENT	)	STB Ex Parte No. 680 (Sub-No. 1)
	)	

REPLY COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE

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Dated: May 28, 2009

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SURFACE TRANSPORTATION BOARD

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REPLY COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE

The Western Coal Traffic League ("WCTL" or "League")[1] hereby submits the following reply comments in response to the Notice ("Notice") that the Surface Transportation Board ("STB" or "Board") served in the above-captioned proceeding on April 8, 2009, relating to the *Supplemental Report to the U.S. Surface Transportation Board on Capacity and Infrastructure Investment* ("*Supplemental Christensen Report*") prepared by Laurits R. Christensen Associates ("Christensen Associates") and released on April 8, 2009. Since the opening comments of WCTL and other shippers did not vary significantly, WCTL's reply comments will focus on the opening comments of the Association of American Railroads ("AAR").

[1]WCTL is a voluntary association, whose regular membership consists entirely of shippers of coal mined west of the Mississippi River that is transported by rail. WCTL members presently ship and receive in excess of 175 million tons of coal by rail each year. WCTL's members are: Ameren Energy Fuels and Services, Arizona Electric Power Cooperative, Inc., CLECO Corporation, Austin Energy (City of Austin, Texas), CPS Energy, Kansas City Power & Light Company, Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, Omaha Public Power District, Texas Municipal Power Agency, Western Farmers Electric Cooperative, Western Fuels Association, Inc., Wisconsin Public Service Corporation, and Xcel Energy.

WCTL and other shippers explained in their opening comments that the *Supplemental Christensen Report* substantially undermined the assertions previously disseminated by the AAR through the report prepared under its direction by Cambridge Systematics (the "Cambridge Report") regarding the railroad industry's claimed infrastructure and investment needs and in other statements by the AAR and its member railroads.[2]

In that regard, the AAR's opening comments are most interesting for what they do not say or do. In particular, the AAR's comments do not defend the traffic projections utilized in the report prepared by Cambridge Systematics (the "Cambridge Report") under the AAR's direction. Instead, the AAR explains (at 4) that it was required to use the traffic growth assumptions contained in the United States Department of Transportation's Freight Analysis Framework. However, the AAR never indicated any qualms about those assumptions.

The AAR's comments also do not defend the particular estimate of capacity expansion costs presented in the Cambridge Report, and instead claim (at 5) that the

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[2]WCTL's Opening Comments also contrasted the growth rates for railroad earnings in the AAR's 2008 cost of capital filing with both those for the general economy in the cost of capital filing and for railroad freight volume in the Freight Analysis Framework. Those comparisons were unduly conservative in two respects, as WCTL explained in its reply comments on the 2008 cost of capital. First, the AAR's cost of capital filing used lower earnings growth rates as of March 31, 2009, and not the higher growth rate projections that prevailed as of December 31, 2008. Second, the AAR witness Stangle used a general economy growth rate of 3.9%, rather than the 4.9% depicted in WCTL's comparison. WCTL's earlier comments thus understated the disparity between the growth rates in railroad earnings and those for the general economy and railroad traffic.

figure was only "an estimate." However, the AAR submitted the report in the Cost of Capital proceeding and also referenced it in its replacement cost revenue adequacy filing, obviously intending that the Board would rely upon the study as one with considerable credibility.

Nor does the AAR defend the specific methodology for identifying needed facility upgrades, which, as WCTL noted in its Opening Comments, is more appropriate for a highway system than a railroad system. Instead, the AAR suggests (at 4) that the approach utilized was meant to "be easily compared to an analysis of highway capacity that was already underway." However, that objective, such as it is, hardly establishes that modeling for a highway system (where individual users decide for themselves whether to enter the system and control their own actions) is appropriate for a railroad (where the railroad owner-operator exercises centralized control and decides which traffic moves where and when and can also specify what traffic does not move at a particular time).

While the AAR also purports to acknowledge (at 8) the importance of the *Supplemental Christensen Report's* emphasis on the role of chokepoints, especially interchanges, as compared to general track capacity, the AAR's comments then immediately note that "the focus of the [Cambridge Report] was, by design the performance of the network as a whole, not specific locations." The AAR thus minimizes the importance of chokepoints on the performance of the network as a whole, which is a key point of the *Supplemental Christensen Report*.

The AAR also notes (at 4) that the Cambridge Report was prepared in a short period of time, thus suggesting -- or further confirming -- that the analysis is not particularly reliable.

In short, the AAR comments pay the functional equivalent of lip service to the analysis and documentation presented in the *Supplemental Christensen Report*.

Beyond that, the AAR serves up what amounts to a series of self-serving and somewhat contradictory platitudes, *e.g.*, the economy requires adequate railroad freight transportation (at 2), railroads must maintain and expand their infrastructure (at 3, 8), forecasts are uncertain (at 3, 8), the recent downturn will only delay, but will not permanently negate, future growth in railroad freight volume (at 3, 8), railroads face the same challenges as most of their customers (at 6), overbuilding to meet short-term demand may not be prudent (at 6-7), and passenger traffic over shared facilities, and prioritization in general, must be effectively managed (at 7-8).

WCTL does not necessarily disagree with these statements, especially as to the need to strike an appropriate balance among competing objectives, but they ignore the fundamental conditions that distinguish railroads from the industries of most of their customers, namely, that the railroads are protected from competition for much of their business by barriers to entry and exit. Accordingly, while it may be unclear if railroads will meet a certain level of traffic in five, ten, or fifteen years, it is to be expected that the traffic will reach that level someday, and so the railroads face less prospect than most of their customers that investment will ultimately prove to be wasted or stranded or that business will be permanently lost to competitors. Morever, railroads are, again in contrast to most of their customers, in a position to seek to increase their margins and profits by rationing or withholding capacity, or creating the appearance of a capacity shortage. These qualities set the railroads apart from most of their customers, and they provide a compelling explanation why railroad capacity and infrastructure investment is too important a matter to be left to the sole province of the railroads, especially considering how they have managed the matter in recent years.

Accordingly, while WCTL looks forward to reviewing the new AAR-commissioned study being undertaken by Cambridge Systematics and hopes that it will represent a substantial improvement upon the original Cambridge Report, WCTL is not at all optimistic that it will fully reflect the lessons that should have been learned from the *Supplemental Christensen Report*.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

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