



Surface Transportation Board
Washington, D.C. 20423-0001

June 16, 2023

J. Frederick Miller, Jr.
Association of American Railroads
425 3rd St. SW
Washington, DC 20024

Dear Mr. Miller:

Thank you for your letter regarding the spring meeting of the Rail Energy and Transportation Advisory Committee (RETAC or Committee) held on April 26, 2023, at the Surface Transportation Board. I appreciate hearing your views related to discussions during the meeting.

The Board takes seriously the role RETAC plays in advising the Board and believes all Committee participants benefit from open and constructive discussions concerning the freight rail network. We always find it highly informative to hear directly from shippers and railroads about the challenges they face, and the ways in which they can work together to resolve them.

The Committee's objectives, as laid out in the RETAC charter, are broad. The Committee's "Objectives and Scope of Activities" are as follows:

The Committee shall, on a continuing basis, provide advice and guidance to the Board, and provide a forum for the discussion of emerging issues and concerns regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, biofuels (such as ethanol), and petroleum. (See Amended Charter of the Rail Energy Transportation Advisory Committee, Dec. 16, 2022, paragraph 3.a.).

During the spring meeting, which like all RETAC meetings was entirely public, participants raised numerous concerns related to the rail transportation of energy resources and the detrimental impacts of unreliable rail service and increased demurrage fees. While the charter identifies "energy resources" as the focus area of the Committee – and the Board intends for the transportation of energy resources to remain the primary focus of the Committee – the charter does not *prohibit* discussion of other topics relevant to rail transportation, as they relate to the broader freight rail network. Indeed, rail service, employment, safety policies, and financial markets were all discussed.

Moreover, as AAR and other rail interests constantly and accurately assert, the railroads are a "network," where performance in one area or with respect to one type of commodity almost always affects or is related to performance in other areas. Thus, discussion of performance of railroads across the network, as well as discussion of the above referenced topics have a direct

impact on freight rail reliability for energy companies and are at the heart of the issues RETAC is meant to advise. Indeed, it would be unwise for the Board to attempt to artificially limit or cut-off discussion by RETAC members. I have no intention of stifling a full and free discussion of rail service and the status of the freight rail network during RETAC meetings.

You assert that at the last meeting, “Some attendees used the meeting as an opportunity to advocate about matters currently pending before the Board.” As you and the meeting participants are aware, the Board members cannot participate in conversations concerning the merits of ongoing cases before the Board. In my view there was no inappropriate discussion about pending matters at the meeting.

As you also know, at any given moment, there are many stakeholders with matters pending before the Board. Of necessity and as appropriate, Board members nevertheless interact with all such parties about a wide variety of issues without discussing the merits of pending matters. This kind of interaction is essential for Board members to do our jobs. The general concern raised in your letter would prevent almost all discussion of rail service matters at RETAC and other meetings.

I value all voices on the Committee and will continue to encourage RETAC attendees to provide information relevant to the rail transportation of energy resources at future RETAC meetings.

Sincerely,

A handwritten signature in cursive script that reads "Martin J. Oberman".

Martin J. Oberman
Chairman