

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
September 10, 2025
Part of
Public Record

STB Docket No. WB 25-33

**REPLY OF THE ASSOCIATION OF AMERICAN RAILROADS TO
ACC'S MOTION FOR LEAVE TO FILE A SURREPLY**

The Association of American Railroads ("AAR") replies in opposition to the Motion for Leave to File a Surreply ("Motion"), filed by Thompson Hine LLP, on behalf of itself and Escalation Consultants, Inc. (collectively "Requestors"), as outside counsel and consultants for the American Chemistry Council ("ACC").¹ As ACC concedes, the rules of the Surface Transportation Board ("Board") "prohibit a reply to a reply."² "While the Board has in the past often accepted replies to replies, such filings are prohibited under the Board's regulations."³ And, as Chairman Fuchs has indicated, "the Board should more strictly enforce the existing regulatory prohibition against replies to replies 'to ensure fulsome initial filings, reduce burden on parties, and better use agency resources.'"⁴

Previously, the Board has permitted a surreply "when it will contribute to the just determination of the issues presented, does not prejudice any party, and will not unduly

¹ See ACC, Motion for Leave to File a Surreply, Request for Waybill Data, STB Docket No. WB25-33 (Aug. 21, 2025) ("Motion").

² Motion at 2; see also 49 C.F.R. § 1104.13 (c) ("A reply to a reply is not permitted.").

³ Sunflower State Industrial Railway, LLC--Petition for Declaratory Order, STB Docket No. FD 36714, at 2 n.3 (STB served Mar. 28, 2025).

⁴ Id. (quoting Norfolk S. Corp.—Acquis. of Control—Norfolk & Portsmouth Belt Line R.R., FD 36836, at 10 (STB served Mar. 14, 2025) (Chairman Fuchs, concurring)).

prolong the proceeding.”⁵ However, those circumstances are not present here. First, ACC’s proposed surreply does nothing more than repeat, refine, and/or expand upon arguments already made in ACC’s initial filing—all under the guise of correcting AAR’s “mischaracterization” of ACC’s request of waybill data.⁶ The grant of a “reply to a reply” should occur only in rare and exceptional circumstances where there is a new fact that obviously could not have been presented earlier. However, ACC offers no persuasive reason why it could not have presented all arguments in favor of its petition at the outset, so the surreply smacks of procedural gamesmanship.

Second, ACC claims that permitting their surreply would “not prejudice any party.”⁷ This is false. The proposed surreply reiterates and expands on previous arguments and facts without an opportunity for AAR to respond. Preventing this imbalance is precisely the reason why STB regulations prohibit a “reply to a reply.”⁸ The Board should enforce its rule to discourage such behavior.

Finally, permitting the filing of ACC’s surreply would necessarily extend the time for the Board to reach its determination on ACC’s Petition.⁹ In other words, ACC assumes that neither AAR nor any other interested party would seek or be granted an opportunity to respond to ACC’s new and expanded arguments. In the event the Board grants ACC’s Motion, AAR requests that the Board also permit it to submit additional or refined arguments. Other

⁵ Motion at 2.

⁶ Id.

⁷ Id.

⁸ 49 C.F.R. §1104.13(c).

⁹ Justice would require the Board to consider the counterarguments made by AAR in this Reply, in response to ACC’s arguments.

interested parties may seek leave to file in opposition to ACC's newly refined arguments, as well. But as 49 C.F.R. §1104.13(c) makes plain, a petitioner is not entitled to file a reply brief to respond to the opposition and expand on its initial arguments. Instead, the Board's procedural rules are intended to foster a prompt resolution and encourage those involved in a proceeding to present their arguments fully in their initial filing. ACC should not be permitted to flout explicit regulations.

AAR has previously urged the Board to enforce its procedural rules, in the interests of fairness and efficiency to all involved.¹⁰ Because the standards for granting the Motion here have not been met, the Board should refuse to permit ACC's proposed surreply.

CONCLUSION

Based on the foregoing, the Board should deny ACC's Motion for Leave to File a Surreply. Further, the Board should deny ACC's request for waybill data for the reasons outlined in the Board's July 22, 2025 decision and AAR's June 30, 2025 and August 11, 2025 filings.

¹⁰ See, e.g., AAR, Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No 1) (Oct. 21, 2016), at 2 ("[A]ny incompleteness [of the record] is due entirely to [movant's] failure to file all supporting evidence with its opening comment (or with its reply). . . . Allowing Movants' belated filing not only would be contrary to the rules, it would be prejudicial to AAR and all of the other participants who complied with the Board's rules and who will not have an opportunity to respond substantively to Movants' . . . filing.").

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "K. Kirmayer", is positioned below the closing phrase.

Kathryn D. Kirmayer
J. Frederick Miller Jr.
Amber L. McDonald
Association of American Railroads
425 Third Street, SW, Suite 1000
Washington, DC 20024

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