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

RE: *Agrium Inc. and Agrium U.S., Inc. v. Canadian Pacific Railway Company*,  
STB Docket No. NOR 42145

Dear Ms. Brown:

Pursuant to 49 C.F.R. §1111.10(a), the parties in the above referenced proceeding have conferred regarding discovery and other procedural matters. Although the parties were able to reach general agreement on most issues, the parties were unable to reach agreement on whether the Board should refrain from adopting the procedural schedule until after it decides Defendant Canadian Pacific Railway Company's ("CP") Motion to Dismiss (which CP intends to file on or before July 1, 2015). Accordingly, CP submits this separate report.

On May 15, 2015, Agrium Inc. and Agrium U.S., Inc. ("Agrium") filed its complaint in this proceeding alleging that CP Tariff 8, Item 54, which governs liability, defense and indemnity obligations for rail transportation of Toxic by Inhalation (TIH) shipments on CP, constitutes an unreasonable practice under 49 U.S.C. § 10702(2). On June 4, 2015, CP filed its Answer denying, *inter alia*, that Agrium has stated a claim for violation of § 10702(2) or a claim on which relief should be granted.

As noted above, CP intends to file a Motion to Dismiss and requests that the Board refrain from adopting a procedural schedule in this proceeding unless and until CP's Motion to Dismiss is denied. Awaiting the outcome of CP's Motion to Dismiss may avoid unnecessary expenditure of resources on discovery and preparation of evidence, and is consistent with the Board's general practice in 49 U.S.C. § 10702(2) complaint proceedings. See e.g., *State of Montana v. BNSF Ry Co.*, STB Docket No. NOR 42124 (served Feb. 16, 2011); *Cargill, Inc. v. BNSF Ry. Co.*, STB Docket No. NOR 42120 (served Jan. 4, 2011). Should the Board deny CP's Motion to Dismiss, CP requests that the Board adopt the procedural schedule as set forth in Agrium's Attachment 1 to its separate report filed with the Board on June 23, 2015.

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Additionally, CP agrees that the application of the Board's expedited discovery provisions set forth at 49 C.F.R. §§ 1114.31(a)(1)-(4) in this proceeding would be appropriate. The parties have agreed to work together on an appropriate form of Protective Order to submit to the Board for approval.

Like Agrium, CP reserves its right to seek an amendment of the procedural schedule should it become necessary in order for CP to properly develop or present its case.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Rifkind". The signature is written in a cursive, flowing style.

David F. Rifkind  
John McCaffrey

Attorneys for Canadian Pacific Railway Company

cc: Peter A. Pfohl