

August 8, 2016

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VIA E-FILING

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

ENTERED
Office of Proceedings
August 8, 2016
Part of
Public Record

Re: Docket No. FD 35981, Finch Paper LLC - Petition for Declaratory Order

Dear Ms. Brown:

On August 3, 2016, Finch Paper LLC ("Finch") filed a letter in response to the July 21, 2016 Reply filed by Delaware and Hudson Railway Company d/b/a Canadian Pacific ("CP") to Finch's Motion to Compel Discovery. CP objects to Finch's letter which constitutes an impermissible reply to a reply. 49 CFR § 1104.13(c) ("A reply to a reply is not permitted."). Finch asks the Board to make an exception on the erroneous grounds that Finch's "letter will assist the Board in compiling a full record."¹ Finch's letter, however, does not add to the record – it distorts it – and it presents no new evidence, and no argument, that Finch did not or could not have presented in its Motion to Compel.

Finch's letter instead rehashes prior arguments and makes inaccurate and incomplete representations regarding discovery. For example, in an effort to excuse *waiting months* to file its Motion to Compel after CP unequivocally objected to the document requests and interrogatories at issue, Finch curiously refers to documents that CP produced in response to other discovery requests. Finch further falsely implies that these documents demonstrate insufficient crews and equipment to provide adequate service to Finch. Rather, these documents, as well as all other evidence produced in discovery, show that CP has provided Finch highly consistent and reliable 3 day-a-week service with few crew or equipment issues, and in no way justify allowing Finch to continue to engage in a fishing expedition through overly broad and unduly burdensome requests seeking irrelevant information.

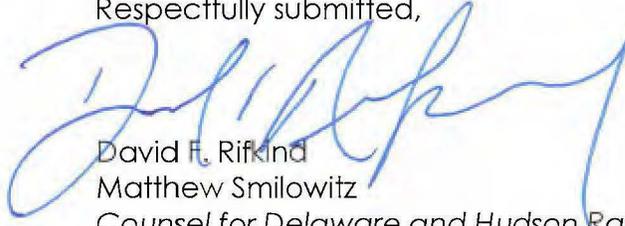
Furthermore, as noted in CP's Reply, the information Finch now purports to seek would require CP to conduct a costly and burdensome special study, further delaying resolution of this proceeding, and ultimately the federal court case. Moreover, and without conceding its relevance, Finch has had more than ample opportunity to attempt to find any support for its

¹ The case cited by Finch actually demonstrates why Finch's reply to a reply is unwarranted. In *City of Alexandria, VA.-Pet. for Declaratory Order, FD 35157*, slip op. at 2 (STB Served Nov. 6, 2008), the Board allowed a reply to a reply where the other party did not object to its filing and where the party seeking to file the reply was "unaware" of a tariff referenced in the other party's reply until it had been filed. Neither scenario is present here.

far-afield arguments -- including discovery conducted since filing its Motion to Compel where Finch deposed CP's local trainmaster for nearly seven hours.

Similarly, Finch's assertion that it is not engaging in delay simply because it has not formally sought to extend the procedural schedule feigns ignorance of the reality of filing a belated motion to compel as discovery was set to close. Discovery is now closed and providing any of the unwarranted relief requested in Finch's Motion to Compel would by definition reopen discovery and cause delay. Indeed, the STB Rules require a party to seek to compel discovery in a timely manner to prevent the exact situation that has arisen here. Accordingly, Finch's request to accept its letter into the record, like its untimely Motion to Compel, should be denied so that this case, and the federal court case, may proceed towards resolution.

Respectfully submitted,



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Company d/b/a Canadian Pacific*

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