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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

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Part of Public Record

RE: *Ex Parte No. 727, Petition of Norfolk Southern Railway Company to Institute a Rulemaking Proceeding to Address Abuses of Board Processes*

Dear Ms. Brown:

Canadian Pacific Railway Company, Soo Line Railroad Company, Delaware and Hudson Railway Company, Inc., and Dakota, Minnesota & Eastern Railroad Corporation (collectively "CP") write in support of Norfolk Southern Railway Company's ("NS") above-referenced Petition for Rulemaking.

The Board, as a federal agency, has responsibility to protect and preserve the integrity of its procedures and decisions. Requiring the parties that appear before it to comply with its rules and ethical standards ensures orderly and efficient consideration of issues while enabling the Board to meet statutory and regulatory deadlines. It also helps ensure that private and public resources are not wasted on disputes that have no basis in law or fact. Thus, when a person chronically disregards and/or abuses the Board's rules, it is incumbent on the Board to take appropriate steps.

Board action to address abuses of its processes is fully consistent with, if not implicitly mandated by, the Rail Transportation Policy (RTP). 49 U.S.C. § 10101. In the RTP, Congress established, in relevant part, that,

In regulating the railroad industry, it is the policy of the United States Government--

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;...

(7) to reduce regulatory barriers to entry into and exit from the industry;...and...

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

Id. The Board and the ICC before it have taken significant steps to implement the RTP mandate to reduce the regulatory burden while ensuring fair and expeditious decisions and handling of proceedings. These steps include establishing class exemptions for transactions that do not require detailed regulatory scrutiny. However, when a carrier seeking to utilize a class exemption must respond to the repeated and unmeritorious filings of a vexatious litigant, the burden can be substantial and the goals of the RTP are undermined.

CP speaks from experience. Delaware & Hudson Railway Company (D&H) is currently seeking to discontinue trackage rights under the 2 year-out-of-service class exemption. See STB Docket No. AB 156-27(x). James Riffin, who is neither a shipper nor a carrier and has no cognizable interest in the discontinuance proceeding, has submitted more than twenty filings in the docket thus far. Many of those filings are unauthorized, untimely, have little or no basis in law or fact, and are otherwise facially defective. Nevertheless, these filings have required D&H to expend considerable time and resources to respond, which constitutes an unnecessary regulatory burden on D&H.

In addition to burdening the carrier, such vexatious filings consume Board resources. The need to address such filings undoubtedly impacts the Board's ability to provide expeditious handling both of the docket in which the filings are made and of the Board's other dockets.

For these reasons, CP supports the initiation of a rulemaking proceeding to consider NS's proposal to establish procedures that will protect the Board and its stakeholders from vexatious filers.

Respectfully Submitted,



David F. Rifkind

Attorney for Canadian Pacific Railway Company,
Soo Line Railroad Company, Delaware and Hudson
Railway Company, Inc., and Dakota, Minnesota &
Eastern Railroad Corporation