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August 3, 2016

By E-Filing

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

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

Dear Ms. Brown:

Finch Paper, LLC (“Finch”) hereby requests that the Surface Transportation Board accept into the record of this proceeding this brief response to the Reply to Motion to Compel Discovery filed by Delaware and Hudson Railway Company d/b/a Canadian Pacific (“CP”) in this case on July 21, 2016. CP incorrectly states that Finch’s motion is untimely, “essentially a request to reopen discovery,” and filed for purposes of delaying the resolution of this case. Reply at 4. First, the motion is not untimely. While CP counsel raised certain objections to some of Finch’s discovery in the meet and confer sessions with counsel, CP’s document production was ongoing, and it was still producing documents as late as June 30, 2016. Finch’s motion was filed after receipt and review of that material. Thus, Finch was diligent in filing its motion to compel in the face of CP’s refusal to comply with its discovery obligations.

Further, the documents produced by CP confirm that the discovery sought through the motion is not merely a ruse to delay resolution of the case, but instead discovery going to the heart of Finch’s claims. For example, despite CP’s bland assertion that discovery regarding Canadian Pacific Railway’s decision to reduce the number of employees and locomotives

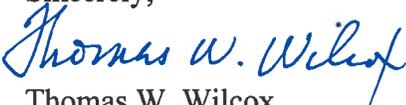
GKG Law, P.C.

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servicing its customers, including Finch, is “beside the point,”¹ CP’s own documents show that it conceded it had insufficient crews to service Finch during the relevant time period. Numerous documents produced in discovery reveal that switches to Finch were delayed or canceled due to CP’s crews running out of time or because there were no crews available to provide the service. Thus, CP’s assertion that the reduction in the number of the railroad’s employees and locomotives had no bearing on its inability to provide switches to Finch is demonstrably incorrect.

Finally, Finch’s motion cannot be considered a request to “reopen discovery,” because it merely seeks an order compelling CP to produce information that was sought by Finch within the period for discovery established by the procedural schedule, and it was filed well before the July 25 discovery deadline in any event. Further, the motion was not filed for the purpose of delaying this proceeding for the simple reason that Finch did not accompany the motion with a request to extend the procedural schedule in this case.

The information contained in this letter will assist the Board in compiling a full record. Finch, therefore, respectfully requests that it be accepted for filing in this docket. City of Alexandria, Va.—Pet. for Declaratory Order, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing reply to reply “(i)n the interest of compiling a full record”).

Sincerely,

Thomas W. Wilcox
Attorney for Finch Paper LLC

cc: All parties on the service list established for this proceeding

¹ See CP Reply to Motion to Compel Discovery at p. 9,