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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Room 1034
Washington, D.C. 20423-0001

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

Dear Ms. Brown:

Delaware and Hudson Railway Company d/b/a CP Rail ("CP") hereby replies to the Petition for Declaratory Order filed in the above-captioned proceeding by Finch Paper LLC ("Finch"). This matter is on referral to the Board from the United States District Court for the Northern District of New York (see Exhibit 1 to Finch Petition) in a demurrage collection action involving CP and Finch. CP does not object to the institution of a declaratory order proceeding in order to provide the district court with the requested guidance in the case before it.

As background, this proceeding arises out of CP's efforts to collect approximately \$1.3 million in demurrage charges. The vast majority of the charges at issue were incurred by Finch over a several month period in 2014, when portions of Finch's receiving tracks, including tracks used to receive TIH railcars, were taken out-of-service due to safety defects. While these tracks were under repair, Finch used the CP trackage to stage Finch-bound loaded cars, especially TIH cars, exceeding the free time allowed under the applicable tariffs and incurred demurrage charges which Finch has refused to pay.

In response to CP's Complaint, Finch asserted as affirmative defenses and counterclaims various alleged breaches of ICCTA. These allegations are the basis for the Court's referral of six issues to the STB. See Exhibit 1 to Finch's Petition, at 21. As to each of the referred issues, CP denies that its rules and practices violate the ICCTA and denies the underlying allegations. Specifically, CP denies that [1] its switching frequency violates the common carrier obligation set forth in 49 U.S.C. § 11101; [2] it failed to provide scheduled switching service or any allegedly missed switches constitute a violation of the common carrier obligation; [3] the unpaid demurrage charges at issue arose in whole or in part from any fault, breach of the common carrier obligation, or any alleged action or inaction by CP; [4] the unpaid demurrage charges at issue include charges assessed on cars for delay

between constructive and actual placement where the delay was due to the fault of CP; [5] its Tariff #2 applicable to railcars carrying ammonia is unreasonable under either 49 U.S.C. §§ 10746 or 10702; [6] or its Tariff #2 and its rules and practices in applying the terms of that tariff to Finch are inconsistent with the language and policy goals of 49 U.S.C. §§ 10702 and 10746.

CP objects to the procedural schedule proposed by Finch as overly generous in two respects. First, Finch's proposed four months of discovery is more than the three months STB typically allows in such proceedings. See e.g., *Teck Metals – Petition for Declaratory Order—Practices of Wheeling & Lake Erie Railway Co.*, STB Docket No. 35324 (served January 22, 2010). CP believes that three months should be a sufficient amount of time to conduct discovery in this demurrage case. Second, Finch proposes 30 days to prepare its rebuttal filing which is also more than STB typically allows in such proceedings. See *id.* CP believes that 15 days is an appropriate amount of time for Finch to prepare rebuttal. Accordingly, CP requests that the Board adopt the following procedural schedule where "D" is the service date of the Board's decision commencing a declaratory order proceeding in this docket:

Close of Discovery	D + 90 days
Finch's Opening Statement	D + 120 days
CP's Reply Statement	D + 150 days
Finch's Rebuttal Statement	D + 165 days

Respectfully submitted,


David F. Rifkind

And

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Counsel for Delaware and Hudson Railway Company

cc: Tom Wilcox

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