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The Honorable Martin Oberman
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
February 23, 2023
Part of
Public Record

RE: Ex Parte No. 765 — Notice of BNSF Railway Company’s Consent to Participate in the Small Rate Case Arbitration Program

Dear Mr. Chairman:

Pursuant to 49 CFR § 1108.23(a), BNSF Railway Company (“BNSF”) respectfully notifies the Board of BNSF’s consent to participate in the Small Rate Case Arbitration Program (“Arbitration Program”) as it is currently constituted in the Final Rule,¹ should the program go into effect upon the consent of all Class I railroads on or before the deadline established in the Board’s December 19, 2022 decision. As BNSF previously noted in this proceeding, BNSF is an outspoken advocate of arbitration and believes an industrywide Arbitration Program is a far better path forward than the deeply flawed Final Offer Rate Review (FORR) process to address the needs of shippers with smaller rate disputes that may be less suited for the Board’s existing rate case procedures.

BNSF also agrees to extend the timelines set forth in 49 USC § 11708(e) for any arbitrations initiated under 49 CFR Part 1128 Subpart B and likewise agrees to the appointment of arbitrators that may not be on the STB-maintained roster of arbitrations established under 49 CFR § 1108.6(b).

Sincerely,

Tamara Middleton
Vice President and General Counsel

¹ BNSF recognizes the Final Rule is currently subject to a Petition for Reconsideration in this proceeding as well as a judicial proceeding pending in the United States Court of Appeals for the Seventh Circuit. Should either proceeding result in changes to the Arbitration Program, BNSF reserves our right to evaluate our participation in light of any such changes.