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February 23, 2023

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

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

Re: EP 765, *Rulemaking to Establish Voluntary Arbitration for Small Rate Matters—Opt-in Comment*

Dear Ms. Brown:

I am writing on behalf of Canadian Pacific¹ (CP) in reference to the opt-in deadline established by the Board's Final Rule in this matter, served December 19, 2022, and effective February 3, 2023.²

The Board's Final Rule made clear that "[i]f not all Class 1 carriers participate" in the Small Rate Case Arbitration Program established by the Final Rule, the Program would become "inoperable." Final Rule at 7. With the filings by other Class 1s earlier today stating that they would not be opting into the Program by today's deadline, it would appear that, regrettably, the Small Rate Case Arbitration program established by the Final Rule has become "inoperable," rendering moot CP's decision regarding opting into it.

As stated in CP's letters to the Board of January 25, 2021 and January 2, 2023, CP continues to believe that a workable, reasonable, and accessible Alternative Dispute Resolution (ADR) program for small rate cases would be in the interests of all carriers, shippers, and the public. CP considers the Board's December 19 Final Rule a constructive step in the direction of implementing such a program, and while taking no position on the specific changes sought by several of the Joint Carriers in their Petitions for Reconsideration, CP hopes that the Program established by the Final Rule can be amended sufficiently that all Class 1s would choose to opt into the Program alongside CP so that such a Program can be implemented successfully.

We respectfully ask that the Board accept this letter as a comment by CP, and to include it in the record. Thank you.

¹ Canadian Pacific is a trade name under which Canadian Pacific Railway Company and its United States subsidiaries, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, Delaware and Hudson Railway Company, Inc., and Central Maine & Quebec Railway US Inc. operate.

² The Board's decision was published in the Federal Register on January 4, 2023 (88 Fed. Reg. 700), and became effective 30 days after such publication.

Sincerely,

/s/ Charles W. Webster

cc: Parties of Record