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February 23, 2023

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

Re: *Joint Petition for Rulemaking To Establish A Voluntary Arbitration Program For Small Rate Disputes*, Docket No. EP 765

Dear Ms. Brown:

The Small Rate Case Arbitration Program (“Arbitration Program”) promulgated by the Surface Transportation Board (“STB”) in Docket No. EP 765 requires carriers to opt in to the Arbitration Program within 20 days of the rule’s effective date, February 23, 2023.

Norfolk Southern is a strong advocate for alternative dispute resolution for small rate disputes. An expedited and streamlined process for resolving small rate disputes benefits both Norfolk Southern and its customers by affording the possibility of relief while guarding against expense and uncertainty associated with lengthy regulatory litigation. Customers’ desire for a better process than currently exists is precisely why Norfolk Southern supports the creation of an alternative dispute resolution program for small rate disputes.

The critical features of a workable alternative dispute resolution process are speed, confidentiality, and a fair and neutral arbitrator. As history has demonstrated, rate disputes that cannot be resolved through commercial negotiations are rare. But when they arise, an expeditious and efficient process reduces litigation costs associated with lengthy battles between lawyers and experts, permitting a quick resolution of the controversy without fracturing the commercial relationship. Confidentiality, in turn, encourages broad participation by carriers and customers alike and creates an environment conducive to achieving settlements and stipulations of legal and factual issues between the parties. Confidentiality also reduces formality, which contributes to the overall efficiency of the proceeding with processes that streamline the submission of evidence, reducing overall time and costs for all the participants. Finally, the selection of neutral arbitrators is key to instilling confidence in both sides that the process is administered fairly.

Although we do not agree with all aspects of the program that the Board ultimately adopted, Norfolk Southern has evaluated the final rule carefully and in good faith. Ultimately, we decided to pursue reconsideration of those elements which impact the company's willingness to opt in to the program or which jeopardize the existence of the program itself. As explained in its petition, Norfolk Southern is concerned that certain provisions of the adopted program will encourage excessive litigation, undermine confidence in the arbitration panel, and discourage participation in the program. Because the Board denied the stay request, today's opt-in deadline remains in effect, despite the important issues raised in the pending petition for reconsideration.

For decades, the STB, railroads, and customers have struggled to craft a workable alternative dispute resolution program for small rate disputes. Norfolk Southern strongly believes that such a program is within our collective grasp. Indeed, for these last three years, the Board and the industry have labored tirelessly to create a fair, just, and rational arbitration program. Norfolk Southern wants the rate arbitration program to succeed. The adopted voluntary program has the potential to provide customers with a reliable and reasonable way to pursue rate relief through alternative dispute resolution. Norfolk Southern stands ready to opt into the program upon the resolution of the issues raised by the parties on reconsideration.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jason M. Morris". The signature is written in a cursive, flowing style.

Jason M. Morris
Vice President, Law

cc: Parties of Record