

EXPEDITED ACTION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket FD 35981

244139

ENTERED
Office of Proceedings
August 18, 2017
Part of
Public Record

PETITION FOR DECLARATORY ORDER – FINCH PAPER LLC

**JOINT MOTION TO DISMISS PETITION FOR
DECLARATORY ORDER WITH PREJUDICE**

Finch Paper LLC (“Finch”) and Delaware and Hudson Railway Company d/b/a Canadian Pacific (“CP”) hereby file this joint motion to dismiss with prejudice the Petition for Declaratory Order filed by Finch in this proceeding. In support of their joint request, Finch and CP state as follows:

1. On December 7, 2015, Finch filed a Petition for Declaratory Order in this proceeding which submitted to the Board a number of issues within the Board’s particular expertise that were referred to it by the United States District Court for the Northern District of New York in case number 1:15-CV-417, *Delaware and Hudson Railway Company v. Finch Paper LLC* (“District Court Litigation”) By Decision served February 11, 2016, the Board instituted this declaratory order proceeding to review the referred issues.

2. On July 14, 2017, CP and Finch filed a Joint Motion to Hold Procedural Schedule in Abeyance due to the fact that they had reached a settlement agreement in principle. They further informed the Board that they needed some additional time to formally document the parties’ settlement agreement. The Director of the Office of Proceedings granted the joint

motion on July 14, 2017, and further ordered the parties to submit a status report on or before August 14, 2017.

3. On August 10, 2017, the parties submitted a Status Report that informed the Board they had executed a Settlement and Release Agreement that resolved all of the issues referred to the Board in this declaratory order proceeding, and accordingly would result in Finch seeking dismissal of its petition for declaratory order with CP's concurrence in the near future.

4. The parties further stated that, pursuant to the Settlement and Release Agreement, dismissal of the declaratory order petition would be followed in due course by a request to dismiss the District Court Litigation.

WHEREFORE, the parties having executed a Settlement and Release Agreement that resolves all of the issues before the Board in this declaratory order proceeding, they respectfully request that the Board grant this Joint Motion to Dismiss Petition for Declaratory Order with Prejudice.

DELAWARE and HUDSON RAILWAY
COMPANY d/b/a Canadian Pacific

FINCH PAPER LLC

/s/ David F. Rifkind
David F. Rifkind
Matthew Smilowitz
Stinson Leonard Street LLP
1775 Pennsylvania Avenue N.W., Suite 800
Washington, DC 20006
Telephone: (202) 785-9100
Facsimile: (202) 785-9163
david.rifkind@stinson.com
matthew.smilowitz@stinson.com

/s/ Thomas W. Wilcox
Thomas W. Wilcox
Brendan Collins
GKG Law P.C.
1055 Thomas Jefferson Street, N.W.
Suite 500
Washington, DC 20007
(202) 342-5248
twilcox@gkglaw.com
bcollins@gkglaw.com

Dated: August 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2017, a copy of the foregoing Joint Motion to Dismiss Petition for Declaratory Order with Prejudice was served by first class mail, postage pre-paid, to:

The Honorable H. Peter Young
Federal Energy Regulatory Commission
Office of Administrative Law Judges
888 First Street, N.E.
Washington, DC 20426

/s/ Thomas W. Wilcox
Thomas W. Wilcox