

after an answer to a complaint is filed.” 49 C.F.R. § 1111.10(a). As called for by the Rules, the parties discussed procedural and discovery matters by telephone on February 6, 2017.

3. One matter discussed by the parties was the need for a protective order to govern the exchange and use of confidential and highly confidential information in this proceeding.² The parties agreed to consult on an appropriate protective order and do not anticipate that this will be a contentious issue. One or both of the parties will file a motion proposing a protective order.

4. The Board’s Rules also provide that “[w]ithin 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.” 49 C.F.R. § 1111.10(a).

5. The parties request that the Board adopt the proposed procedural schedule set forth in *Attachment 1*. The proposed schedule calls for a 90-day discovery period, followed by evidentiary filings to be completed over the next 150 days. The parties agree that if the discovery period is extended, then all deadlines will be shifted forward in order to preserve the time allotted for the opening statement, the reply statement, and the rebuttal statement. This schedule is consistent with the procedural

² The parties recognize that the confidentiality of the mediation process agreed to by the parties and ordered by the Board in this proceeding will not be governed by a general protective order, but instead by the Administrative Dispute Resolution Act of 1995 (5 U.S.C. § 574), 49 C.F.R. § 1109.3(d), and by the Board mandated Agreement to Mediate. See 49 C.F.R. § 1109.3(d).

schedules adopted in recent unreasonable practice cases.³ The parties reserve the right to ask the Board to amend the schedule if it becomes necessary in order for either party to properly develop or present its case to the Board.

WHEREFORE, for the reasons set forth above, CF and CN jointly request that the Board accept this report on the parties' conference and that the Board issue an order adopting the procedural schedule set forth in *Attachment 1*.

Respectfully submitted,

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Dated: February 13, 2017

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³ See, e.g., *Agrium Inc. v. Canadian Pacific Ry. Co.*, NOR 42145 (STB served Sept. 15, 2015) at 3; *Cargill, Inc. v. BNSF Ry. Co.*, NOR 42120 (STB served Jan. 4, 2011) at 6-7.

**PROPOSED PROCEDURAL SCHEDULE
FOR STB DOCKET NO. 42151**

Day	Event
0	Board Serves Procedural Schedule; Discovery Begins
0+90	Discovery Ends*
0+150	CF Opening Statement
0+210	CN Reply Statement
0+240	CF Rebuttal Statement

* If the Discovery period is extended, all deadlines will be extended by the same number of days in order to preserve the time allotted to prepare the Opening Statement, the Reply Statement, and the Rebuttal Statement.

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of February, 2017, caused a copy of the foregoing filing to be served by U.S. Mail, postage prepaid or by more expedited means upon all counsel of record.

/s/ Katherine F. Waring
Katherine F. Waring
An Attorney for Complainant