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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423



Re: Docket No. 42060 (Sub-No. 1)
North America Freight Car Association v. The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

This communication is a request for Board action on a pending motion to dismiss the complaint and pending reply in opposition, and for resumption of the processing of this case on a consolidated record with Docket No. 42060, North America Freight Car Association -- Protest and Petition for Investigation -- Tariff Publications of The Burlington Northern and Santa Fe Railway Company ("Docket No. 42060").

This case was commenced by a Complaint filed on August 29, 2001 by North America Freight Car Association ("NAFCA"). On October 5, 2001 Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF") filed a Motion to Dismiss, to which NAFCA and other parties in support of NAFCA replied on November 5, 2001. The Board has not acted on the Motion to Dismiss and has issued no orders in this case.

The Complaint challenges storage and demurrage charges of BNSF, initially published to take effect on July 1, 2001, that apply when empty private freight cars are held on BNSF tracks prior to placement for loading. To the extent the Complaint challenges BNSF rules applicable to private tank cars, the Complaint will be rendered moot if the Board investigates and sets aside, in Docket No. 42060, storage charge rules of BNSF applicable to tank cars that are claimed in that case to violate the provisions of Ex Parte No. 328, Investigation of Tank Car Allowance System, 3 I.C.C. 196 (1986) ("Ex Parte 328"). Should the Board determine in Docket 42060 that the BNSF tank car storage rules are not subject to Ex Parte 328, those rules should then be considered in this complaint. As explained in a Petition filed contemporaneously in Docket No. 42060, the issues in this case and in Docket No. 42060 are closely intertwined.

¹ The American Chemistry Council ("ACC") and the National Industrial Transportation League ("NITL") have notified the Board that they intend to participate in this proceeding in support of the Complaint. ACC and NITL join in this letter.

In Docket No. 42060, the Board issued a Decision on October 18, 2001 (the "October 18 Decision") ordering that case held in abeyance while negotiations took place. Those negotiations, to the extent involving BNSF, concluded in May 2002. The Board is being asked contemporaneously to permit Docket No. 42060 to go forward.

Although the Board has provided no reason for not acting in this case, we assume that the Board has deferred a ruling on the BNSF Motion to Dismiss in order to await the outcome of negotiations in Docket No. 42060. Otherwise, the delay would appear to be contradictory to the directive of Congress that the Board "provide for the expeditious handling and resolution of all proceedings required or permitted to be brought" before it. See 49 U.S.C. § 10101(15). With negotiations in Docket No. 42060 concluded, there is no reason for further delay by the Board in disposing of the BNSF Motion to Dismiss in this case. Shippers who furnish private cars for loading on BNSF will not be able to determine their obligations or rights until the issues in both cases are resolved.

The undersigned parties accordingly urge the Board to address BNSF's Motion to Dismiss and the Reply. Assuming the Complaint is not dismissed, we further request that this case be assigned for handling on a consolidated record with Docket No. 42060 for the reasons set forth in the contemporaneous Petition being filed in that docket, and on the same procedural schedule as proposed in that Petition.

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Respectfully submitted,
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cc: All Parties