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Vernon A. Williams
Secretary
Surface Transp. Board
Washington DC 20423

208426

Re: Ex Parte No. 638, Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology

Dear Mr. Williams:

This letter is in regard to the petition for reconsideration, filed June 26, as supplemented by letter filed June 27, 2003, by The Burlington Northern and Santa Fe Railway Company (BNSF).

This party objects to the June 27 imposition of a filing fee upon BNSF. An imposition of any filing fee for a petition for rule-making would constitute a bad precedent for this proceeding, as well as for employees and employee organizations in other rule-making proceedings.

The Board's rules do not require fees for seeking reconsideration in rulemaking. See: Ex Parte No. 627, Market Dominance Determinations-- Produce and Geographic Competition, at 2 n.5 (served Jan. 24, 2000) (not printed); Regulations Governing Fees, 1 I.C.C.2d 60, 68 (1984).

The Board's most recent policy statement did not alter this long-standing rule with respect to rulemaking. Ex Parte No. 542 (Sub-No. 9), Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services-Policy Statement, 67 Fed. Reg. 65046 (Oct. 23, 2002).

To be sure, BNSF and the Board's staff may agree to the imposition of fees. It appears a similar arrangement to impose a \$7,600 filing fee for labor arbitration matters was found unreasonable despite lack of objection from carriers. See: Regulations Governing Fees for Service, 1 I.C.C.2d 179, 200-1; 1 I.C.C.2d 231; 1 I.C.C.2d 883, 884-86.

It is requested that the Board may wish to handle this fee matter as part of its decision on the BNSF petition.

Very truly yours,

Gordon P. MacDougall

Atty. for John D. Fitzgerald

cc: All parties