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October 24, 2006

The Honorable Vernon A. Williams
Secretary
Attn: STB Ex Parte No. 646
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Dear Secretary Williams:

Re: STB Ex Parte No 646 (Sub-No 1)

I am William A. McCurdy, Jr. I currently serve as Logistics and Commerce Counsel for E. I. du Pont de Nemours and Company (DuPont). I have held this position for more than twenty five years and have, during that time, provided legal and business counsel to DuPont's transportation and energy procurement functions.

E. I. DuPont de Nemours and Company is a global science and technology company engaged in the manufacture, sale and distribution of chemicals, crop protection products, paints, textiles, resins, plastics and related materials.

DuPont currently spends about one point four billion dollars (\$1,400,000,000) on its transportation and distribution function worldwide. In the United States it leases or owns over fifty two hundred (5,200) rail cars (down from over 8,500 in the early 1990's) and expends more than one hundred and twenty million dollars (\$120,000,000) on rail services. This last figure is less than half of the amount spent by DuPont for rail services in the early 1990's. Since 1990 DuPont has been forced, due to increasing global competition and rising costs within the United States, to divest several businesses and/or shift much of its production from United States facilities to facilities located overseas in

order to remain competitive in the global marketplace. This has contributed significantly to the diminished spend in rail services. Transportation costs, rate predictability and service reliability have played a role in these decisions to shift production outside of the United States.

DuPont welcomes and applauds the Surface Transportation Board's (STB) efforts to create new Simplified Standards and processes for challenging rates offered and charged by a railroad. The STB's efforts reflect the Board's acknowledgement of two of the stated Congressional purposes set forth in the Interstate Commerce Commission Termination Act of 1995, i.e. - "... (6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and attract capital: ... and (15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part" (i.e. before the Board).

Unfortunately DuPont does not believe that the proposed rules, in their current state, will accomplish either the Congressional or STB's goal of creating an effective, efficient, timely and balanced process for resolving excessive rate disputes and establishing the "reasonable rates" needed to support and promote a robust United States economy.

DuPont currently moves cargo by rail in over 2300 lanes within the United States. Of these movements, DuPont estimates that 60 percent of the moves contain rates that exceed 180% of the incumbent railroad's variable cost. DuPont is also captive at 35 of its 35 active rail shipping locations. Yet despite paying what it believes to be excessive rates for the movement of a substantial percentage of its rail based cargo, DuPont has not brought a rate case against a railroad before the STB or its predecessor, the Interstate Commerce Commission, in the last twenty five (25) years.

DuPont has not brought such a case due to the excessive cost (average cost per case), time involved (average time), and likely result (no decisions favorable to shippers during the tenure of the STB) under the Constrained Market Pricing (CMP) or Full Stand Alone Railroad (Full SAC) methodology. DuPont does not believe that the proposed new rules will not change this calculus.

Based upon its past experience and current shipping levels, DuPont does not believe that the proposed Small Rate Case process will be useful to it or the majority of other captive shippers. DuPont's experience is that rate levels charged captive customers, especially captive chemical customers, when combined with the large volumes shipped, render the proposed new rules impotent as a solution for seeking relief from excessive rail rates. The value of the lanes challenged would be too great to seek relief via either the Small Case - Three Bench-Mark method or the medium, Simplified SAC method. The proposed jurisdictional limits, DuPont believes, would prevent it and most of its US based chemical competitors from utilizing the proposed new rules to seek relief from excessive rail rates

Further, even if DuPont could utilize the proposed new rules, DuPont does not believe, given the past history of the ICC and STB, that the decision making process would provide the timely response or favorable result necessary to enable DuPont to quote rates and prices for many of the products the market demands. Should DuPont not receive a timely response from the STB on its rate requests, it would be forced to utilize the higher rates initially quoted by the railroads to ensure that the transport and distribution of its products occurred. Since DuPont does not enjoy the same monopoly or position that US railroads currently enjoy, the higher rates will increase the price of DuPont's offerings from its US plants and make many of them non-competitive. This, in turn, will reduce DuPont's US sales and exports, damage the US economy and cause further erosion of DuPont's US manufacturing facilities.

In lieu of the current proposal, DuPont would suggest that either: 1) "Baseball Type Mediation" before an STB appointed mediator of the railroad price offering as compared to the shipper suggested rate be utilized in cases where agreement cannot be reached or 2) that a maximum rate ceiling of 250 per cent (250%) of variable cost be established subject to a showing of special circumstances by either the carrier and/or shipper before a STB appointed mediator. These methods, although not as detailed or complex as the methods previously used or discussed, have the advantage of speed, low cost and equitable treatment for both sides.

DuPont, its fellow US chemical producers and the United States economy must have a equitable, timely and reasonably balanced process for establishing fair and equitable rail rates in the face of the monopoly power currently enjoyed by the US railroads at most chemical facilities. In the absence of such a process, the US chemical industry will continue to face erosion of its US manufacturing base, an increase in the current trade imbalance in chemicals and related products (which has arisen in the last eight years), and an even greater loss of US manufacturing jobs.

DuPont applauds the STB for addressing this issue. However, DuPont does not believe that the proposed rules will provide a workable solution to remedy the excess rates currently quoted by railroads to captive shippers.

Very truly yours,

William A. McCurdy, Jr.
William A. McCurdy, Jr.
Logistics and Commerce Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24th day of October, 2006, served a copy of the foregoing Comments on all parties of record, by first-class mail, postage prepaid.

William A. McCurdy, Jr.
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