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January 8, 2007

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423-0001

Re: **Docket No. 42052**
Union Pacific Railroad Company -- Petition for Declaratory
Order -- Unilaterally Imposed Interchange Charges

Dear Secretary Williams:

Indiana Harbor Belt Railroad Company ("IHB") opposes the letter request of Union Pacific Railroad Company ("UP") dated December 19, 2006 to dismiss this proceeding without prejudice.

It is not the case -- as UP claims without elaboration -- that the issues in this matter as they relate to IHB "have been resolved by negotiations or by changed circumstances." Indeed, UP and IHB have not had meaningful discussions toward a resolution of this matter, and UP has never discussed a proposed dismissal with IHB. The IHB tariff challenged by UP remains in effect, its validity and function remain critical to the operation of the Chicago terminal, and the disputed tariff amounts with UP are substantial. The relevant issues have been fully and exhaustively briefed for six years, and the only "changed circumstance" is administrative delay resulting in an unsuccessful effort by the Board to engage the Association of American Railroads ("AAR") in this matter. Dismissal at this stage would be unwarranted and unfair.

In its initial petition for declaratory order, UP explained that litigation had been initiated or threatened against UP by other carriers with interchange delay tariffs, and that "[l]itigation is also likely as to the IHB charges." UP Petition, February 11, 2000, at 14. UP went on to contend that "the issues should properly be addressed by the Board, and not by the courts. IHB expressly concurred in the need for and initiation of a declaratory order proceeding. IHB Reply to Petition to Declaratory Order, March 4, 2000 at 1, 3 ("The Board should institute the requested declaratory order proceeding and confirm the lawful and reasonable nature of the assailed tariff. . . . "IHB agrees to the institution of a declaratory order proceeding herein, and

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respectfully requests that such proceeding be handled on an expedited basis."); see Decision served June 13, 2000, at 3 ("Respondents concur that a declaratory order is warranted . . .").

Indeed, at UP's behest a federal court dismissed the collection action brought against UP by one of the other respondents for interchange delay tariff charges, finding the matter to be within the exclusive jurisdiction of the STB. UP April 26, 2000 letter filing, attaching City of Tacoma, Tacoma Public Utilities v. Union Pacific Railroad Company, No. C00-5054FDB (W.D. Wash., April 20, 2000); see June 2000 Decision at 3, n.1. Carriers such as IHB are thus currently unable to file civil collection actions for the tariff charges at issue, and would need to return directly to the Board to "subsequently rais[e] the underlying issues in an individual proceeding" if the current declaratory order proceeding is dismissed. UP December 19th letter at 1. And since IHB obviously could not file an administrative complaint at the Board against its own tariff, that proceeding would be a declaratory order case just like this one, involving the identical threshold issue of whether interchange delay tariffs like IHB's are lawful and likely the identical evidence and arguments that were submitted in this case six years ago.

As in federal courts, voluntary dismissal is at the discretion of the agency and should not be granted where the interests of other parties would be prejudiced. See Fed. R. Civil P. 41(a)(2); Trinidad Railway, Inc. -- Abandonment Exemption -- In Las Animas County, CO, Docket No. AB-573X (STB served December 12, 2001) at 5, n.8 ("But there is no unqualified right to withdraw a request for abandonment authority or exemption. . . . [P]arties to abandonment litigation [] acquire certain rights, and [] it is within the agency's discretion to protect such rights by denying a request for withdrawal of abandonment authority."). Voluntary dismissal is particularly unwarranted late in the stages of a proceeding, when the issues have been joined and the matter submitted to the decision-maker. Here, the matter has been completely briefed for years, and the duplicate proceeding that would follow at the Board would involve the exact same issues.

The Board could of course grant voluntary dismissal with prejudice, precluding UP from further challenging the underlying lawfulness of IHB's tariff. UP has not indicated any willingness to do so.

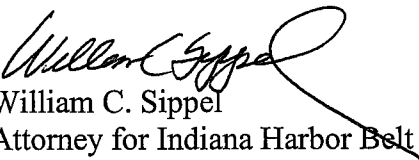
Beyond that, UP provides no description of the "changed circumstances" that purportedly support voluntary dismissal without prejudice. As indicated above, there are no such changed circumstances with respect to IHB, other than the long time since the matter was referred to the AAR to provide the input solicited by the Board. UP's request for voluntary dismissal should be denied, and the Board should proceed to decision in this long-delayed and important matter.

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Copies of this letter have been served by overnight delivery on UP and by first class, postage prepaid, on all other parties of record in this proceeding.

Respectfully submitted,


William C. Sippel
Attorney for Indiana Harbor Belt
Railroad Company

WCS:tjl

cc: Parties of Record