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May 20, 2002

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

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Re: STB Docket No. 42060, North America Freight Car Association -- Protest and Petition for Investigation -- Tariff Publications of The Burlington Northern and Santa Fe Railway Company, and related cases.

NOR-42064-205453

Dear Secretary Williams:

In a decision served October 18, 2001 ("October 18 Decision"), the Board ordered that the captioned proceedings be held in abeyance while the parties and any other interested individuals and organizations negotiate concerning the storage and diversion issues raised relating to the 1986 Agreement prescribed in Investigation of Tank Car Systems, 3 I.C.C. 2nd 196 (1986). The parties were directed to provide written progress reports on the negotiations. Several such reports have been filed with the Board jointly on behalf of all interested parties.

During the course of the negotiations, the Railway Progress Institute Committee on Tank Cars ("RPI"), Petitioner in Docket No. 42061 (involving actions of The Burlington Northern and Santa Fe Railway Company) and Docket No. 42063 (involving actions of Union Pacific Railroad Company), and The Chlorine Institute, Inc. ("TCI"), Petitioner in Docket No. 42062 (likewise involving Union Pacific), have either resolved their concerns through negotiations with the carriers or have determined to pursue their interests through means other than proceedings before the Board.¹

At present, the active proceedings and parties are: in Docket No. 42060, North America Freight Car Association ("NAFCA"), as Petitioner, and National Industrial Transportation League ("NITL") and E. I. du Pont de Nemours and Company ("Du-

¹ By Decision served March 20, 2002, the Board granted the Petition of RPI to dismiss, without prejudice, its protest and petition in Docket No. 42061, and discontinued that proceeding. The same order granted the request of TCI to withdraw its notice of intent to participate in Docket No. 42060. By Decision served April 12, 2002, the Board granted the request of TCI to withdraw its protest and petition in Docket No. 42062 and discontinued that proceeding. By Decision served May 15, 2002 in Docket No. 42063, the Board, acting at RPI's request, dismissed that case without prejudice. The U.S. Clay Producers Traffic Association ("USCPTA") and BNSF are filing a joint statement on May 20, 2002, accompanied by USCPTA's Notice of Settlement.

Pont") as Intervenors; and in Docket No. 42064, DuPont as Petitioner, with NITL and NAFCA as Intervenors. NAFCA has taken the lead in negotiating with BNSF in Docket No. 42060, and DuPont has taken the lead in negotiating with Union Pacific in Docket No. 42064.

It appears that the negotiations in Docket No. 42060 have gone as far as they can go. Reflecting an agreement reached with RPI, BNSF, effective April 1, 2002, cancelled those private car storage provisions applicable to cars awaiting cleaning, repair, or other similar services and reverted to the provisions of Ex Parte No. 328 for the manner of handling such cars. Effective April 1, 2002, BNSF made certain other changes to its tank car diversion and storage charges as initially published on July 1, 2001. These changes, available for review in BNSF Storage Book 6005 on its website, in part reflect negotiations between parties and in part reflect decisions of BNSF that do not represent negotiated solutions.² BNSF has declined to make any such changes retroactive to July 1, 2001, has declined to place a fixed term on the changes, and has reserved the right to make further storage or diversion changes through tariff publications. BNSF has indicated that it will not oppose a request by Petitioners in Docket No. 42060 to withdraw their protest without prejudice, and BNSF has reiterated its willingness to undertake negotiations with individual BNSF customers. But it has indicated clearly that it regards negotiations in Docket No. 42060 as being concluded.

DuPont and UP have concluded that further negotiations in Docket No. 42064 will not produce an industry-wide resolution of the issues involved. Under the circumstances, DuPont has decided to address its own situation in negotiations with UP.

The non-carrier parties in Docket No. 42060 do not regard the changes made by BNSF to its private car storage regime as having resolved many of the important issues that prompted the investigation requests initially, and would like the Board to resume consideration of that case.³ In its Decision of November 20, 2001, and in subsequent decisions, the Board has stated that the time for filing petitions for reconsideration or clarification of the October 18 Decision is extended to 20 days after the end of the negotiations ordered by that Decision. The negotiations in Docket No. 42060 have concluded, and the non-carrier parties are prepared to proceed. However, from the language of the Board's Decision, it is unclear whether the Board intends the 20-day period for filing petitions for reconsideration to begin if negotiations have not been concluded fully in all pending cases, and whether the 20 days is triggered only upon an order of the Board declaring negotiations at an end or by some other event. The non-carrier parties accordingly seek clarification from the Board as to the commencement of the 20-day period for filing petitions for reconsideration.

² The BNSF changes include allowing one free diversion of an empty tank car, one storage charge credit for an empty private car (other than a hopper car used for grain or grain products) if that car next receives a BNSF revenue line-haul, and variable storage charges (instead of a uniform \$25 per car/day) of \$10, \$15, or \$25 depending on the geographic location of the car.

³ NAFCA and NITL do not believe that this is the appropriate time or place to argue their views on the merits.

In Docket No. 42064, the parties seek an additional extension of 30 days to complete negotiations. NAFTA and NITL wish to advise the Board, however, that they are prepared to proceed in Docket No. 42060 without further delays attributable to Docket No. 42064.

Respectfully submitted,

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