BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE 765

JOINT PETITION FOR RULEMAKING TO ESTABLISH A VOLUNTARY ARBITRATION PROGRAM FOR SMALL RATE DISPUTES

JOINT CARRIERS' RENEWED PETITION FOR STAY

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The NPRM in this proceeding proposed to allow a carrier to file its opt-in notice "at any time."[1] The Final Rule adopted a diametrically opposite approach, which required all seven Class I railroads to commit to five years in the arbitration program within 20 days of its effective date ("Opt-In Deadline").[2] If they do not, the program will be "inoperable" before it begins—the Board said that it "will not issue the notice commencing the new arbitration program" unless all Class I carriers opt in to the program during the "limited window" announced in the Final Rule.[3] Thus, a program that the Board believes would be "the better approach" for resolving small rate disputes would be defunct before it begins unless all seven Class I railroads opt in by February 23, 2023—regardless of whether appeals or petitions for reconsideration have been resolved by that date.[4]

Respectfully, the Board's decision to institute this Opt-In Deadline in the Final Rule is unlawful—the Board failed to give notice of its intent to impose this draconian measure; departed from contrary agency precedent without explanation; failed to provide legally sufficient justification for its action; and contradicted its own reasoning in the Final Rule that carriers needed to know the contents of the arbitration program before making a five-year commitment to it. This is one of the multiple issues presented in the petitions for reconsideration filed on January 24, 2023, and Joint Carriers hope that the Board will reconsider it. If the Board does

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[1] Notice of Proposed Rulemaking, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765, at 61 (STB served Nov. 15, 2021) ("NPRM") (proposed § 1108.23(a)(1)).

[2] *See* Final Rule, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765, at 7, 22 (STB served Dec. 19, 2022) ("Final Rule"); *id.*, App. A, § 1108.22(b)(3) ("Class I carriers must indicate whether they choose to voluntarily participate in the Small Rate Case Arbitration Program by twenty days after this rule becomes effective"). This provision of § 1108.22(b)(3) is referred to herein as the "Opt-In Deadline."

[3] *See id.* at 7.

[4] *Id.* at 11.

not, the Opt-In Deadline will be challenged on appeal for its inconsistency with basic principles of the Administrative Procedure Act ("APA").

But the Board's statement that the program will become "inoperable" because the Board "will not issue the notice commencing the new arbitration program" if it does not obtain universal opt-in before February 23 means that the harm caused by the Opt-In Deadline might not be repaired by a future decision by the Board or federal court that the Opt-In Deadline is invalid.[5] Taken at face value, the statement in the Final Rule that the arbitration program will be "inoperable" on February 24 if the Board does not receive seven unconditional opt-ins from the Class I railroads by February 23 would plainly constitute irreparable harm—*i.e.*, the permanent loss of a superior option for rate disputes that could benefit railroads, shippers, and the Board.[6] And this harm is not speculative. The Joint Carriers[7] are each evaluating the arbitration program independently, and they may come to different conclusions about whether they are willing to opt in to the program. But every Joint Carrier agrees that requiring Class I railroads to make their opt-in decisions when the final contours of the program are uncertain pending reconsideration and appeals makes any railroad's five-year commitment to the program far more difficult to support.

To be sure, Joint Carriers believe that a Board decision to reconsider the Opt-In Deadline could include a provision to reopen the time for carriers to opt-in. But the Board's statement that the program will be "inoperable" if all Class I carriers do

[5] *Id.* at 7.

[6] Indeed, the "inoperable" language suggests that the Board might claim that petitions for reconsideration and review would be moot if all seven Class I carriers do not join the program by the Opt-In Deadline.

[7] "Joint Carriers" are CSX Transportation, Inc. ("CSXT"), Norfolk Southern Railway Company ("NSR"), Union Pacific Railroad Company ("UP"), and the U.S. operating subsidiaries of Canadian National Railway Company (collectively, "CN").

not make five-year commitments by the Opt-In Deadline suggests that it does not agree. And if the Board indeed intends to carry through with the Final Rule's suggestion that the arbitration program will be abandoned if all seven Class I carriers do not opt in now, that abandonment of "the better approach" would be irreparable harm.[8]

Moreover, forcing railroads who have exercised legal avenues to challenge aspects of the Final Rule to make a premature choice about whether to make a five-year commitment to the existing program before knowing the outcome of those challenges is a harm that cannot be adequately repaired. A railroad that chooses to opt in to the program in hopes that it will be improved after reconsideration would be irreparably harmed if reconsideration is denied—for the railroad would thus be locked for five years into a program that it might not otherwise have joined. Conversely, a railroad that chooses not to opt in to the program pending reconsideration would be irreparably harmed if reconsideration is granted—for even if the program is improved such that the railroad would like to participate, the door to entering the program would be closed. Simply put, the Opt-In Deadline attempts to force each Class I railroad to make a premature choice while restricting their ability to change that choice in the future. Forcing a choice that cannot be revisited is irreparable harm.

Joint Carriers filed a timely petition for stay—which, under the Board's regulations, was due within 10 days of the Final Rule—asking the Board to stay the Opt-In Deadline.[9] The Board denied the Initial Petition for Stay on January 24,

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[8] Final Rule at 11.

[9] *See* Joint Carriers' Petition for Stay, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765 (filed Dec. 29, 2022) ("Initial Pet. for Stay"). The Initial Petition for Stay used the defined term of "Pre-Review Opt-In Requirement," *id.* at 1, but as that term apparently caused some confusion, Joint Carriers use the term "Opt-In Deadline" to describe the requirement of proposed § 1108.22(b)(3). *Cf.* Decision, *Joint Petition for Rulemaking to Establish a Voluntary*

2023, reasoning that it could not "make the requisite finding that the [Joint Carriers] are likely to prevail on the merits" because the petition did not "identify any merits-based argument for why the Board or a court would make a change to the program."[10] However, the Board's denial of the request for a stay was without prejudice, providing Joint Carriers the opportunity to "file a new petition for stay within 10 days of the filing of petitions for reconsideration."[11] That same day, NSR and UP jointly filed a petition for reconsideration of certain aspects of the Final Rule, including the Opt-In Deadline, and CSXT filed a petition for reconsideration of another aspect of the Final Rule.[12] As such, the Board now has before it multiple "merits-based argument[s]" regarding the arbitration program, and this rationale for denying the Initial Petition for Stay no longer applies.[13]

An arbitration program that the Board has found to be "a better approach" for handling small rate disputes should not be abandoned at the outset because of an artificial deadline that was plainly adopted in violation of the APA and which would effectively terminate the program for no public benefit. Joint Carriers respectfully renew their request that the Board stay the Opt-in Deadline until the resolution of reconsideration petitions and judicial review.

Arbitration Program for Small Rate Disputes, Docket No. EP 765, at 1 (STB served Jan. 24, 2023) ("Stay Decision") at 1 (incorrectly claiming that "Pre-Review Opt-In Requirement" was "not specifically define[d]" in the Initial Stay Petition).

[10] Stay Decision at 3.

[11] *Id*. at 6.

[12] NSR and UP Petition for Reconsideration, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765 (filed Jan. 24, 2023) ("NSR/UP Pet. for Recon."); CSX Transportation, Inc.'s Petition for Reconsideration, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765 (filed Jan. 24, 2023) ("CSX Pet. for Recon."). CSX's Petition for Reconsideration joined the NSR/UP Petition for Reconsideration in full.

[13] Stay Decision at 3, 11.

ARGUMENT

The Board "may issue an appropriate order, such as a stay, when necessary to prevent irreparable harm."[14] The party seeking a stay must show that "(1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be enjoined, (2) it will suffer irreparable harm in the absence of a stay, (3) other interested parties will not be substantially harmed by a stay, and (4) the public interest supports the granting of the stay."[15] Application of these factors is "not mechanical"[16]; rather, the Board should consider the factors flexibly in a balance of the equities.[17] For the reasons that follow, Joint Carriers have satisfied each of the conditions for a stay of the Opt-in Deadline.

I. JOINT CARRIERS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR CHALLENGES TO THE OPT-IN DEADLINE.

Challenges to the Opt-In Deadline are likely to succeed via either reconsideration or judicial appeal.[18] As described in the NSR/UP Petition for Reconsideration, this is so for four reasons.

First, the Opt-In Deadline violates the APA's notice requirements. It is well-established that an agency's final rule must be a "logical outgrowth" of the related notice of proposed rulemaking.[19] Here, the Board's decision to impose the Opt-In

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[14] Decision, *Total Petrochemicals & Ref., USA, Inc. v. CSX Transp., Inc.*, Docket No. NOR 42121, slip op. at 2 (STB served Jan. 2, 2014); 49 U.S.C. § 1321(b)(4).

[15] *Id.* (citations omitted).

[16] *Id.*

[17] *See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843–44 (D.C. Cir. 1977) (necessary showing on any factor "is governed by the balance of equities as revealed through an examination of the other three factors").

[18] *See supra* note 12.

[19] *CSX Transp. v. STB*, 584 F.3d 1076, 1079 (D.C. Cir. 2009); *see Council Tree Commc'ns, Inc. v. FCC*, 619 F.3d 235, 250 (3d Cir. 2010) ("While an agency may promulgate final rules that differ from the proposed rule, a final rule is a logical outgrowth of a proposed rule only if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment

Deadline in the Final Rule is not protected by the "logical outgrowth" doctrine because it was a "brand new rule," and "something [cannot be] a logical outgrowth of nothing."[20] In particular, the NPRM proposed to allow a carrier to file its opt-in notice "at any time" and never suggested that the Board was considering an alternative to this proposal, nor requested any comments on this particular aspect of the program.[21] Then, in the Final Rule, the Board veered from its proposed requirement that opt-in could occur "at any time" to the *exact inverse*[22]—"a limited window" of "20 days from the effective date of these regulations … to decide whether to participate in the new arbitration program" (with the penalty for not doing so that "the program [will become] inoperable").[23]

The Final Rule's creation of the Opt-In Deadline therefore violates the notice-and-comment obligations of the APA: "[O]ur cases finding that a rule was not a logical outgrowth have … involved situations where the proposed rule *gave no indication that the agency was considering a different approach, and the final rule revealed that the agency had completely changed its position.*"[24] And "mere

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period." (internal quotation marks, brackets, and citations omitted) (quoting *Int'l Union, United Mine Workers v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259–60 (D.C. Cir. 2005)); *accord Mid Continent Nail Corp. v. United States*, 846 F.3d 1364, 1374 (Fed. Cir. 2017) (articulating same standard).

[20] *Council Tree Commc'ns*, 619 F.3d at 250; *accord Kooritsky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994).

[21] NPRM at 61 (proposed § 1108.23(a)(1)).

[22] *Env't Integrity Project v. EPA*, 425 F.3d 992, 998 (D.C. Cir. 2005) ("Whatever a 'logical outgrowth' of this proposal may include, it certainly does not include the Agency's decision to repudiate its proposed interpretation and adopt its inverse. We therefore hold EPA's final rule violated the APA's notice-and-comment requirements."); *accord CSX Transp.*, 584 F.3d at 1081.

[23] Final Rule at 7.

[24] *CSX Transp.,* 584 F.3d at 1081 (emphasis added).

mention" of an aspect of the proposed rule is not sufficient to "g[i]ve notice that the [aspect] might change."[25]

Where, as here, the NPRM "nowhere even hinted that the Board might consider" taking the action it ultimately took (*i.e.*, the Opt-In Deadline), there was "no way that commenters … could have anticipated" that the Opt-In Deadline was a potential option "open for consideration."[26] This is further supported by the fact that no commenters mentioned anything about an opt-in deadline for participating in the program.[27] The Opt-In Deadline was a brand new rule, and "[t]he logical outgrowth doctrine does not extend to a final rule that is a brand new rule, since something is not a logical outgrowth of nothing."[28]

Second, the Opt-In Deadline is an unexplained departure from agency precedent. The Board's existing pt. 1108 arbitration program allows carriers to opt

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[25] *Id.* at 1802.

[26] *Id.*; *accord Mid Continent Nail Corp.*, 846 F.3d at 1376 (concluding that final rule violated notice requirements of APA because the "agency made no mention" of aspect of final rule in its NPRM, the "notice ... contain[ed] nothing, not the merest hint, to suggest that the [agency] might [adopt that aspect of the final rule]" and the notice "offered no clues" to a "nonexpert reader ... of what was to come" (internal quotation marks omitted) (quoting *Kooritsky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994)); *Env't Integrity Project*, 425 F.3d at 998 ("If the APA's notice requirements mean anything, they require that a reasonable commenter must be able to trust an agency's representations about which particular aspects of its proposal are open for consideration.").

[27] *See Mid Continent Nail Corp.*, 846 F.3d at 1376 ("Like the notice at issue in *Kooritsky*, [the notice] gave no indication that [the agency] was contemplating a potential change [to the issue] ... Nor did commentators responding to [the notice] perceive the agency to be raising the issue … or suggest … repeal or revision [of the issue] themselves. We therefore have no doubt that [the agency's action in the final rule with regard to the issue] … was not a logical outgrowth of [the notice] ..." (internal footnote omitted)). Even if there had been a comment on the issue (which there was not), an agency "cannot bootstrap notice from a comment." *Env't Integrity Project*, 425 F.3d at 997.

[28] *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449, n.23 (3rd Cir. 2011) (internal quotation marks and citation omitted).

in at any time.[29] Although that program was adopted in 2013, carriers are still able to opt in to that program. While the existing arbitration program has some shortcomings that were criticized in the rulemaking record, neither the Board in the NPRM nor any commenter suggested that the fact that railroads can opt in at any time is a flaw in that program.

Third, there is not a sufficient justification for the Opt-In Deadline. The Board attempts to base it on the need "[t]o avoid confusion,"[30] but forcing carriers to commit to a program before its final contours are clear creates confusion rather than solving it. The Final Rule also referenced a need for "certainty for all stakeholders within a reasonable amount of time as to whether and when the new arbitration program will commence."[31] But that justification fails to take into account the existing opt-in process in the other arbitration program. In addition, no party sought a limited opt-in requirement or suggested there was any uncertainty to remedy.[32]

Fourth, the Opt-In Deadline creates an illogical internal inconsistency. The Final Rule demands that Class I carriers decide whether to participate prior to knowing whether and what changes to the Final Rule may occur on reconsideration and/or appeal. This is inconsistent with the Board's statement that it would not require carriers to decide whether "to commit to participate in the arbitration

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[29] 49 C.F.R. § 1108.3(a) ("Any rail carrier, shipper, or other party eligible to bring or defend disputes before the Board may at any time voluntarily choose to opt in to the Board's arbitration program").

[30] Final Rule at 21.

[31] *Id.* at 22.

[32] *See Am. Med. Ass'n v. United States*, 887 F.2d 760, 767–68 (7th Cir. 1989) (emphasizing that a change from the proposed rule in the final rule should be a result of "the public's reaction [that] persuades the agency that its initial regulatory suggestions were flawed" and reasoning that "numerous criticisms" of the proposed rule justified the change between final and proposed rule); *Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991) (stating that even "comments by members of the public would not in themselves constitute adequate notice," as notice necessarily "must come … from the agency").

program before knowing the content of the final rule being adopted."[33] It also negates the right to agency reconsideration provided by Board regulations and appellate review provided by Congress.[34] Under the Final Rule, carriers would be required to opt in before the reconsideration process will be completed and before the judicial review process will be completed.

In the Stay Decision, the Board argued that Joint Carriers had not demonstrated overwhelming likelihood of success on the merits because they had not yet detailed the merits of any reconsideration petitions or appeals that might be filed that.[35] The Stay Decision's logic here ignores the structure of the Board's regulations—which require petitions for stay to be filed *prior* to the filing of petitions for reconsideration and appellate briefs. Moreover, the Stay Decision's analysis ignores that the key question for a stay petition is likelihood of success on the merits of the challenge *to the portion of the decision for which a stay is sought*. Regardless, the point is moot, because two petitions for reconsideration have now been filed, detailing multiple substantive issues that, if granted by the agency or a court, *would* result in changes to the arbitration program.[36] The suggestion in the Stay Decision that there might not be any substantive proposed changes to the Final Rule was therefore incorrect.

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[33] Final Rule at 21.

[34] 49 C.F.R. § 1110.10; 28 U.S.C. § 2321; 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."); *Darby v. Cisneros*, 509 U.S. 137, 146 (1993) ("the text of the APA leaves little doubt that . . . '[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, *is entitled to judicial review thereof*.' 5 U.S.C. § 702 (emphasis added).").

[35] Stay Decision at 4 ("any judicial appeal or administrative petition for reconsideration based solely on the due date of the opt-in would be meaningless because there would be no reason to adjust the deadline if the arbitration program would not otherwise change").

[36] CSX Pet. for Recon.; NSR/UP Pet. for Recon.

The other grounds in the Stay Decision for not finding likelihood of success on the merits are not relevant to that question. Whether the Joint Carriers understand the contents of the proposed program or whether an appellate decision would result in vacatur have nothing to do with whether the Opt-In Deadline was lawful. For the reasons outlined above, it was not, and Joint Carriers have an overwhelming likelihood of success of demonstrating this fact on reconsideration or, if necessary, on appeal.

II. JOINT CARRIERS WILL SUFFER IRREPARABLE HARM IF THE OPT-IN DEADLINE IS NOT STAYED.

Joint Carriers will suffer irreparable harm if a stay is not granted. The Board has, on the one hand, emphasized the many benefits of its new arbitration program.[37] But on the other hand, in a misguided effort to coerce opt-ins, it set a ticking clock that effectively ensures that those benefits will never be realized. As noted above, the Board has stated that the arbitration program will be "inoperable" on February 24 if not all Class I railroads opt in by February 23. If the Board intends to carry through with the Final Rule's suggestion that the arbitration program will be abandoned if all seven Class I carriers do not opt in, that abandonment of "the better approach" would be irreparable harm.[38]

That permanent loss of a superior option for rate disputes that could benefit railroads, shippers, and the Board is not speculative. As Joint Carriers noted above, the uncertainty about the final contours of the final arbitration program pending reconsideration and appeals is a factor that discourages railroads from making a five-year commitment to the program at this time. At this time, it is not

[37] Final Rule at 11 ("congressional policy in favor of arbitration"); *id.* (the "program would further the rail transportation policy of 49 U.S.C. § 10101"); *id.* at 12 (program would create "a more accessible avenue of potential relief to shippers with small rate disputes").

[38] *Id.* at 11.

certain what the final program will look like. The Board could make all of the changes proposed on reconsideration, some of them, or none of them. And it could make changes in response to the reconsideration petitions (and any forthcoming replies to those petitions) that are different from those requested in the petitions that have been filed. And under the terms of the Final Rule, railroads who opt in have a limited ability to withdraw from the program after reconsideration is decided. They have no option to leave if the Board denies reconsideration, and any changes made on reconsideration will only allow an exit if the Board deems them "material."

Forcing a railroad to make an uninformed choice before the parameters of the program have been settled creates irreparable harm. With an impending February 23 deadline to opt in to the program, carriers will be required to make an uninformed choice. The program may get better, worse, or stay the same as its progresses through the reconsideration and appellate process. If it gets worse, that may be a material change that permits the railroad to withdraw. But if it gets better—or stays the same—there is no mechanism for a railroad to then change its decision and opt in to the program. Nor could a railroad opt in now and withdraw later if the program is not improved through reconsideration. Thus, the calculus facing a carrier is to either opt in to the program now, and be bound into the program for five years, in the hopes it will improve later, or decline the invitation and hope the Board will offer a second opportunity to opt in to the program later.

To be sure, Joint Carriers believe that the Board or a court has the ability to reverse and correct unlawful agency action.[39] It is for that very reason that "expectations are not settled . . . until the agency's decision has moved through the

[39] *United Gas Improvement Co. v. Callery Props.*, 382 U.S. 223, 229 (1965) ("[the] agency, like a court, can undo what is wrongfully done by virtue of its order"); *Iowa Power & Light Co. v. United States*, 712 F.2d 1292, 1294–97 (8th Cir. 1983) (holding that the ICC could retroactively impose higher tariff to correct legal error).

entire administrative process and judicial review is complete."[40] Here, the Board could decide on reconsideration to remove the Opt-In Deadline, which would allow carriers to join the program in the future. However, it is not clear that the Board agrees, given its statements both in the Final Rule and in the Stay Decision that the arbitration program "will not become operable" unless all seven Class I carriers opt in before the Opt-In Deadline.[41]

Forcing railroads to make a premature and uninformed choice about whether to commit to a five-year stint in arbitration and threatening to terminate the program if they do not join the program are each irreparable harms that directly flow from the legally indefensible decision to impose the Opt-In Deadline in the Final Rule. This heavy-handed attempt to force railroads to lock themselves into a five-year arbitration program while key aspects of the program are being challenged is a harm to railroads that the agency cannot fully remedy on reconsideration and that a reviewing court cannot remedy on appeal. Given the plain legal error in creating this deadline without the notice required by law, a stay is warranted.

III. A STAY OF THE OPT-IN DEADLINE WOULD NOT HARM OTHER INTERESTED PARTIES AND WOULD SERVE THE PUBLIC INTEREST.

The Stay Decision asserts that "[a] stay would … harm shippers and the public by depriving them of the arbitration program benefits."[42] But this has matters precisely backwards. Joint Carriers seek a stay for a short period—until the resolution of reconsideration and judicial review—*in order to preserve the program and its benefits*. While Joint Carriers are making independent decisions about the program—and while each is still considering its options—the uncertainty

[40] *West Tex. Utils. Co. v. BNSF Ry. Co.*, Docket No. 41191, at 5 (STB served June 27, 2003).
[41] Final Rule at 71 (proposed § 1108.22(b)); Stay Decision at 1.
[42] *Id.* at 6.

about the final contours of the program discourages railroads from opting in before that uncertainty is resolved. If the Board is concerned by the potential harm from delayed implementation of the arbitration program, it should be far more concerned about the fact that the Opt-In Deadline would deprive shippers and the public of those benefits *forever*.

A stay of the Opt-In Deadline benefits the public interest by ensuring that the arbitration program is preserved pending appeal and reconsideration.[43] The arbitration program adopted by the Board in the Final Rule has the potential to be a long-awaited, lawful, and efficient tool for resolving smaller rate disputes in an expedited and cost-effective manner. No party benefits from an unreasonably short opt-in period that risks the future of the entire program. Indeed, the public interest is harmed when an agency is able to avoid the wasteful expenditure of public resources and declines to act.

Therefore, the Board should stay the Pre-Review Opt-In Requirement to preserve the arbitration program while its final shape is being determined by agency reconsideration and judicial appeal.

CONCLUSION

For the reasons stated herein, Joint Carriers respectfully request that the Board grant this Renewed Petition for Stay and stay the Final Rule's requirement that Class I railroads commit to the Arbitration Program within 20 days of its

[43] Although shipper associations did not object to issuance of a stay pending reconsideration, Joint Carriers request that the stay continue until judicial review is also completed, in accordance with the Board's point that it "do[es] not distinguish between administrative and judicial appeals" when issuing a stay. *Id.* at 6.

effective date (the Opt-In Deadline) and continue such a stay until the latter of final resolution of all petitions for reconsideration and judicial appeals of the Final Rule.

Respectfully submitted,

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Dated: February 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February 2023, a copy of the foregoing Renewed Petition for Stay was served by email or first-class mail on the service list for Docket No. EP 765.

/s/ Raymond A. Atkins
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