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VIA E-MAIL: rule-comments@sec.gov

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: Shareholder Proposals Relating to the Election of Directors – File Number S7-17-07 (Release No. 34-56161)
Shareholder Proposals – File Number S7-16-07(Release No. 34-56160)

Dear Ms. Morris:

This letter is submitted by Burlington Northern Santa Fe Corporation, which is engaged primarily in the freight rail transportation business. Our principal operating subsidiary operates one of the largest North American rail networks, with about 32,000 route miles in 28 states and two Canadian provinces.

We appreciate this opportunity to provide our views on the two proposals referenced above.

We support the amendment of Rule 14a-8(i)(8) to adopt the "director election exclusion" as proposed in Release No. 34-56161

We believe that the Securities and Exchange Commission (the "Commission") is correct in issuing its interpretation and proposing rule amendments to clarify its longstanding position that company proxy statements are not the appropriate medium for shareholders to nominate directors. Historically, in administering Rule 14a-8(i)(8), the Commission's staff has long made clear, with respect to board of directors elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in board elections (Exchange Act Release No. 34-12598 (July 7, 1976)). The clarification proposed by Release No. 34-56161 will preserve a carefully constructed regulatory framework designed to promote full and accurate disclosure. The key to this framework is that shareholders seeking to nominate their own directors must do so in their own (rather than the company's) proxy materials, subject to a regulatory scheme governing contested proxy solicitations. In this way, all of a company's shareholders will have an opportunity to make informed decisions in voting for directors in contested situations. To allow shareholders to include their nominees in company proxy materials would result in contested elections of directors, but without a separate proxy solicitation by the shareholders and without the disclosures required by the Commission's rules governing election contests, and leading potentially to shareholder misrepresentations that might otherwise be subject to Rule 14a-9 liability.

Given the uncertainty about the appropriate application of the director election exclusion created by the *AFSCME v. AIG* decision, it is important that the SEC act to provide additional guidance to shareholders and issuers. It is important that both the shareholder and the company have a more clear view of the types of shareholder proposals that present subjects which properly should be included in a company's proxy materials. In light of the Commission's long-standing interpretation, the staff should once again grant no-action relief to companies allowing them to exclude access bylaw proposals under Rule 14a-8(i)(8) even absent further Commission action. Doing so would be consistent with the Second Circuit's decision in *AFSCME v. AIG* and would avoid the disruption and expense of litigation by companies and their shareholders. We believe that clearly drawn guidance in this area would also benefit the SEC staff as it considers and responds to no-action requests.

We oppose the Commission's alternative shareholder proxy access rule as proposed in Release No. 34-56160

Enabling shareholders to include in company proxy materials their proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors, or so-called access bylaw proposals, will likely have a number of harmful effects. It could lead to the election of "special interest directors" who will disrupt boardroom dynamics and harm the board's decision-making process. The end result will be to jeopardize long-term shareholder value by compromising the board's ability to act in the long-term best interests of the company and all shareholders. In addition, permitting access bylaw proposals could turn every director election into a contest and discourage qualified, independent directors from serving on boards. Such election contests would appeal to special interest groups whose director nominees might primarily seek to promote particular interests or constituencies rather than the interests of the company as a whole. It would also increase the costs of director elections and shift the costs of proposing nominees from particular shareholders to companies and ultimately, to all shareholders.

Allowing access bylaw proposals is unnecessary given the sweeping changes in the corporate governance landscape that have occurred in recent years. Changes in the governance landscape have also transformed the director election process and will continue to do so. The rights of shareholders to elect directors have been strengthened as evidenced by the adoption of majority voting in director elections by our company and many others. Shareholders have the ability to recommend director candidates to a company's nominating/corporate governance committee, and shareholders have benefited from increased transparency about the director nominations process. Robust communication procedures have enabled shareholders to engage in dialogue with boards about matters related to director candidates and the director election process generally. In addition, shareholders have always had the ability to undertake their own solicitation of other shareholders to elect directors. The Commission's recently adopted "e-proxy" rules will likely reduce the costs of such an undertaking. Thus, a fundamental shift in the Commission's longstanding position on proxy access is particularly inappropriate and unnecessary at this time given all of these changes.

We support raising the eligibility thresholds for shareholder proposals and for the resubmission of proposals to reduce the time and resources that companies and the Commission expend on proposals

In order to avoid what some have called the "tyranny of the 100 share shareholder with a deep commitment to a particular issue" (see transcript of the Commission's May 7, 2007 Roundtable at 196), the Commission should toughen the requirements on including nonbinding shareholder proposals in company proxy statements. Today, our company and our shareholders, and other companies and their shareholders, as well as the Commission and its staff, spend substantial time, effort and other resources on proposals that are not of widespread interest to a company's shareholders, that cover topics the company has already addressed or that have little to do with matters of economic significance to shareholders and the company. To help address this issue, the eligibility threshold for submitting proposals should be increased. The threshold has not been revised since 1998 and has been rendered relatively meaningless given increased investments by shareholders. The resubmission thresholds are currently too low and allow for resubmission of proposals that haven't generated much interest in shareholders and accordingly should be increased to ensure that there is sufficient shareholder interest in using the Company's time, resources and money on the proposal. The Commission should eliminate the "significant social policy" exception to Rule 14a-8(i)(7) as there is no basis for it in state law and the Commission staff has interpreted this exception in an inconsistent manner. The Commission should review its staff's application of the "substantially implemented" exclusion contained in Rule 14a-8(i)(10). The purpose of the exclusion should be whether a company has implemented the essential objective of the proposal in a manner it believes to be in the best interests of the company's shareholders. If so, the issue should not be an appropriate subject for a shareholder proposal. These changes are appropriate given the recent developments cited by the Commission which have significantly enhanced, and will continue to enhance, opportunities for collaborative discussion among shareholders, boards and management.

In summary and for the reasons set forth above, we believe that the Commission can best preserve and enhance the director election and shareholder proposal processes for the benefit of all shareholders by maintaining the existing framework for director nominations and amending its rules to reduce the time and resources spent on non-binding shareholder proposals, and not by allowing access bylaw proposals to be included in a company's proxy materials. Taken together, these actions will benefit companies and all their shareholders.

Thank you for considering our views on this subject. We would be happy to discuss our comments or any other matters that you believe would be helpful.

Very truly yours,

James H. Gallegos

JHG/tmm