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November 26, 2019
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

HEARING ON REVENUE ADEQUACY	)	Ex Parte No. 761
	)	
	)	

RAILROAD REVENUE ADEQUACY	)	Ex Parte No. 722
	)	
	)	

**WRITTEN TESTIMONY OF
OLIN CORPORATION**

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Dated: November 26, 2019

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Chairman Begeman, Vice Chairman Fuchs, and Board Member Oberman, my name is Frank Chirumbole. I am the Vice President, Integrated Supply Chain for Olin Corporation (“Olin”). Olin appreciates the Surface Transportation Board (“STB” or “Board”) affording it the opportunity to participate in this important proceeding. Olin urges the Board to implement a meaningful constraint on the revenue demands of market dominant railroads from captive shippers as part of the Board’s overall effort to reform and streamline its rate review processes. To that end, Olin provides its views on the revenue adequacy recommendations from the Board’s Rate Reform Task Force (“Task Force”),¹ as requested by the Board’s September 12, 2019 notice (“Notice”) in this proceeding.

¹ See Task Force Report to the STB at 32-41 (Apr. 25, 2019) (“Report”).

INTRODUCTION AND SUMMARY

Olin supports the Board's efforts to develop simple, practical, and effective constraints on railroad pricing that restore the balance between railroads and shippers in determining the lawfulness of rates, including heightened constraints on revenue adequate railroads. As Olin explained recently in its comments to the Board in *Final Offer Rate Review*, such streamlining initiatives are important to further the national transportation policy goals of providing for the expeditious handling and resolution of proceedings, as well as maintaining reasonable rates where there is an absence of effective competition.²

The Task Force plainly considered the long history of this proceeding and the many comments filed by interested shippers over five years ago, including Olin. While the Task Force's recommendations should be further refined in some critical respects, they are a very good start overall. In summary, Olin respectfully submits that: (1) long-term revenue adequacy cannot be reasonably gauged and determined through a strict application of amorphous business cycles that may last more than 10 years, and the Board should instead use presumptions based on the past five years of revenue adequacy determinations; (2) the Board should consider the continued application of differential pricing by a carrier on an individual basis and not on an undefined group of other captive traffic that may, or may not, be similarly situated; and it should avoid implementing a

² Olin Comments, *Final Offer Rate Review*, Docket No. EP 755 (filed Nov. 12, 2019) ("Olin *FORR* Comments").

variety of complicated measures that only increase the complexity of a revenue adequacy constraint presentation; (3) the Board should eliminate *Bottleneck*³ protections for revenue adequate carriers; and (4) the Board should allow the use of simplified road property investment (“RPI”) figures in Simplified Stand-Alone Cost (“Simplified-SAC”) cases, to be used at the shipper’s discretion. In developing these standards, the Board should also incorporate appropriate protections against unreasonable rate bundling practices, as well as against potential railroad “gaming” of the rate review process by establishing high initial rates – issues Olin also addressed in its *FORR* Comments.⁴

Olin also notes that the Task Force accepts without reflection a problematic view of revenue adequacy on an annual basis, namely that a carrier is revenue adequate “when its rate of return on net investment equals or exceeds the industry cost of capital.” Report at 4 n.7 (citing *Standards for R.R. Revenue Adequacy*, 364 I.C.C. 803, 807 (1981)). This mechanical test is flawed insofar as the Board’s calculation of the industry cost of capital has repeatedly been shown by shippers to exceed the industry’s real cost of capital,⁵ and that it makes an arbitrary distinction between carriers just above the line

³ See *Cent. Power & Light Co. v. S. Pac. Transp. Co.*, 1 S.T.B. 1059 (1996), *clarified*, 2 S.T.B. 235 (1997), *aff’d sub nom. MidAmerican Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999).

⁴ Olin *FORR* Comments at 17-18.

⁵ See, e.g., *Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry’s Cost of Capital*, EP 664 (Sub-No. 2), at 6-7 (filed Aug. 27, 2013).

(adequate) and just below the line (not adequate), even though both are effectively revenue adequate.⁶

Additionally, Olin is concerned that the Task Force did not use this opportunity to provide a path to rate reductions under the revenue adequacy constraint – especially for certain shippers, such as Olin, whose rates bear little rational relationship to the costs incurred by the carriers. Likewise, the Task Force provides no path for reparations for unwarranted increases in rates charged by revenue adequate railroads. Instead, the relief is all forward looking, which is certainly helpful, but may necessitate a costly stand-alone cost (“SAC”) proceeding as well to secure rate relief and reparations.

And while Olin generally supports these efforts, the Board must avoid turning this opportunity into a procedural quagmire. Indeed, in 2014, Olin urged that:

[T]he Board should avoid the same pitfalls that render the SAC constraint ineffective. Instead of creating another “full employment bill for economists” as analysis under the SAC constraint has been dubbed, the Board should focus its efforts on creating a simpler and more efficient procedure for reviewing rate cases.

Olin Comments, *R.R. Revenue Adequacy*, Docket No. EP 722, at 7-8 (filed Sept. 5, 2014) (“Olin *Revenue Adequacy* Comments”).

⁶ Olin urges the Board to adopt a cost of equity standard for determining industry cost of capital that more closely follows that used by Wall Street and the investment community, such as through the straight application of the Capital Asset Pricing Model, in *Revisions to the Board’s Methodology for Determining the Railroad Industry’s Cost of Capital*, EP 664 (Sub-No. 4) or other proceedings as the Board determines are necessary.

The Board has pondered the implementation of the revenue adequacy constraint for an extended period, and Olin urges the Board to use this hearing as a springboard to swiftly develop and implement a final proposal.

IDENTITY AND INTEREST

Headquartered in Clayton, Missouri, Olin is a publicly traded company listed on the New York Stock Exchange with 6,500 employees at 70 locations worldwide. Olin has three business segments: Winchester Ammunition, a leader in small caliber ammunition production and a supplier to U.S. law enforcement and military; Epoxy, a leading producer of epoxy and industry-leading epoxy technology; and Chlor Alkali Products & Vinyls, a leading producer of bulk chlorine, caustic soda, bleach, and other chemicals in North America. Olin was the first commercial supplier of chlorine in the United States and has been involved in the chlor alkali industry for over a century. It currently ships over 47,000 rail cars annually with the highest degree of safety records, as Olin has earned the Association of American Railroads' Grand Slam safety award for the past three years. Chlor Alkali Products & Vinyls is Olin's largest business segment, operating at 10 locations throughout the United States and Canada.

Olin ships the majority of its chlor alkali products via rail from its various North American manufacturing locations, each of which is captive to a single railroad. Rail transportation is one of the single largest costs of our production and distribution process, and the availability of reasonable regulatory protections in the absence of market competition is essential for protecting Olin from unreasonable rates. Thus, Olin has a

direct and substantial interest in the establishment of reasonable and meaningful rate protections and constraints for revenue adequate railroads.

I. STATEMENT

The need for meaningful regulatory rate protections for captive shippers is fundamental and paramount, regardless of a serving railroad's revenue status. Congress has mandated that, absent effective competition, rates on market dominant rail traffic "must be reasonable." 49 U.S.C. §§ 10701(d)(1), 10702(1). Any perceived revenue-driven justification for the extremely high levels of differential pricing imposed by carriers on captive traffic in recent years is largely undercut by the fact that all of the major Class I railroads are revenue adequate and have been able to generate greater revenues/margins from competitive traffic.

The Board has long utilized Constrained Market Pricing ("CMP") principles to evaluate the lawfulness of a railroad's rates, where the railroad has market dominance over the issue traffic. *See Coal Rate Guidelines*.⁷ Under *Coal Rate Guidelines*, there are four CMP constraints that a shipper may elect to use to demonstrate that a carrier's rate is unlawfully high or that its implementation is too abrupt: (i) SAC; (ii) revenue adequacy; (iii) management efficiency; or (iv) phasing. *Id.*, 1 I.C.C.2d at 534-547.

⁷ *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consol. Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987) ("*Coal Rate Guidelines*").

To date, the revenue adequacy, management efficiency and phasing constraints have proven to be of no practical consequence for rail shippers. Since their initial adoption by the Interstate Commerce Commission (“ICC”) in 1985, neither the ICC nor the STB has ever applied these standards to award rate relief in a rail rate case. Similarly, the STB has never awarded a carload shipper any pricing relief in a SAC case. In July 2011, Olin’s subsidiary, SunBelt Chlor Alkali Partnership, filed a SAC complaint at the Board against Norfolk Southern Railway Company (“NS”). *SunBelt Chlor Alkali P’ship v. Norfolk S. Ry.*, Docket No. NOR 42130. In a 215-page decision, with a spirited dissent from then Board Member (now Chairman) Begeman, the Board found that while NS had market dominance over the involved traffic, the challenged rates were not unreasonably high until year 2021, so the Board declined to prescribe rates or order damages or reparations. *Id.*, Docket No. NOR 42130 (STB served June 20, 2014).

The revenue adequacy constraint is designed to ensure that a captive shipper will “not be required to continue to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.” *Coal Rate Guidelines*, 1 I.C.C.2d at 535-36. In describing the constraint in *Coal Rate Guidelines*, the ICC stated, “[c]arriers do not need greater revenues than [the revenue adequacy] standard permits, and we believe that, in a regulated setting, they are not entitled to any higher revenues.” *Id.* at 535. The ICC added that “[t]herefore, the logical

first constraint on a carrier's pricing is that its rates not be designed to earn greater revenues than needed to achieve and maintain this 'revenue adequacy' level." *Id.*⁸

The revenue adequacy constraint has never been a viable means of securing rate relief, because prior to 2000, the railroads were generally not revenue adequate as defined by the Board, and since then, the Board has struggled with whether, and how, to use the constraint.⁹ Yet, for over 15 years, the four major Class I railroads have unquestionably achieved financial health and prolonged prosperity. As the Task Force noted: "[a]lthough not every large railroad has been found 'revenue adequate' year after year under the Board's regulations, many have, and all are financially healthy; indeed, as shippers have pointed out for years, Wall Street finds the railroad industry one of the more attractive investment opportunities in the market." Report at 11. Thus, the Board must find a way to realize the promise of the revenue adequacy constraint while still allowing carriers to remain revenue adequate.

In its Notice, the Board asks interested parties to comment on four elements of the Task Force's Revenue Adequacy Restraint recommendations: (i) the definition of long-term revenue adequacy; (ii) the implementation of a rate increase constraint; (iii)

⁸ The *Coal Rate Guidelines* further indicate that a rail carrier seeking to earn revenues that would provide, over the long-term, a return on investment ("ROI") above the cost of capital would bear the burden of demonstrating "with particularity: (1) a need for the higher revenues; (2) the harm it would suffer if it could not collect them; and (3) why the captive shippers should provide them." *Id.* at 536 n.36.

⁹ The Board has applied the revenue adequacy constraint in a pipeline case (*CF Indus., Inc. v. Koch Pipeline Co., L.P.*, 4 S.T.B. 637, 663 (2000)), but the Board has not adapted the pipeline analysis and procedure for use in rail rate cases.

changes in *Bottleneck* rules; and (iv) the use of certain summary RPI figures in Simplified-SAC cases against revenue adequate railroads. Notice at 2-3. Olin addresses each of these issues, in turn, below.

A. Long-Term Revenue Adequacy Determinations Should Rely on Easily Ascertainable Criteria and Defined Time Periods

The Task Force proposes that the Board use a variable, multi-year process to determine whether a carrier is long-term revenue adequate, specifically: “the shortest period of time, not less than five years, that includes both a year in which a recession began and a year that follows a year in which a recession began.” Report at 33. Olin respectfully submits that the practical application of this process is ill defined by the Task Force Report, and the test creates unnecessary barriers to utilizing a potential revenue-adequacy rate constraint.

The Task Force proposes that the Board rely on economic reports from the National Bureau of Economic Research to determine a period of at least five years where both a recession *and* a recovery year occurred, and then incorporate that period into a determination of long-term revenue adequacy. *Id.* at 33-34. The Report suggests that the effects of a recession are particularly important to capture, but does not tie the need for that data to real past performances of the railroads. *Id.* at 33. Moreover, the Task Force proposes that the currently applicable long-term revenue adequacy period is a whopping

11 years covering 2007-2018. *Id.* at 34. The Task Force’s approach is unsupported by its own analysis and is unnecessarily complicated for the intended purpose.

The problems with the Task Force’s 11-year analysis are largely self-evident. The recessionary period covered by the Task Force’s analysis began in December 2007 and extends through June 2009. *Id.* Yet in 2008, during the recession, the four major Class I carriers’ ROI improved.¹⁰ All of the Class I carriers’ returns declined in the year the “recovery” began (2009) and then increased in 2010.¹¹ In other words, there is no obvious correlation between the railroad business cycle and the recessionary/growth period analysis that the Task Force proposes.

The performance of a railroad 11 years ago also bears little relationship to its recent performance and general health, and certainly, a period from 11 years ago should not be weighted equally against recent performance. The ICC previously considered and rejected a business cycle approach with respect to productivity, settling instead on a five-year period to reflect such changes without a significant time

¹⁰ *Compare R.R. Revenue Adequacy – 2007 Determination*, Docket No. EP 552 (Sub-No. 12), slip op. at 3 (STB served Sept. 26, 2008), *with R.R. Revenue Adequacy – 2008 Determination*, Docket No. EP 552 (Sub-No. 13), slip op. at 3 (STB served Oct. 26, 2009) (showing increased ROI for BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company).

¹¹ *Compare R.R. Revenue Adequacy – 2009 Determination*, Docket No. EP 552 (Sub-No. 14) (STB served Nov. 10, 2010), *with R.R. Revenue Adequacy – 2010 Determination*, Docket No. EP 552 (Sub-No. 15) (STB served Nov. 3, 2011).

distortion.¹² The Task Force provides no valid basis to adopt a business cycle approach here.

Instead of establishing a prescribed, restrictive test that may not reflect the true financial status of a railroad over time, Olin proposes that the Board rely on an easily ascertainable five-year analysis to establish a *presumption* that a railroad is revenue adequate. Olin further proposes that the Board permit shippers in individual cases to provide additional evidence of revenue adequacy beyond a simple comparison between the carrier's returns and the railroad industry cost of capital.

A simple five-year analysis to establish a presumption of railroad revenue adequacy is a superior approach. First, it simplifies a shipper's consideration of selecting the revenue adequacy constraint in a maximum reasonable rate case. Second, it reflects a fair assessment of a railroad's ROI beyond a mere snapshot. Third, it is consistent with the approach the Board has taken in other proceedings, such as when determining a long-run measure of productivity for railroad cost recovery purposes.¹³

Olin further urges the Board to allow shippers to present additional evidence beyond the five-year ROI analysis in a maximum reasonable rate case proceeding. The Board has already acknowledged that other evidence beyond the revenue adequacy determination is permissible and appropriate.¹⁴ The Board should not

¹² *Productivity Adjustment – Implementation*, 9 I.C.C.2d 1072 (1993).

¹³ *Consumers Energy Co. v. CSX Transp., Inc.*, Docket No. NOR 42142, slip op. at 4 (STB served Jan. 11, 2018).

¹⁴ *Productivity Adjustment – Implementation*, 9 I.C.C.2d at 1077-78.

foreclose additional probative evidence based solely on one formula of railroad health, especially since, as explained above, the Board's current calculation of the industry cost of capital suffers from known flaws.

B. The Revenue Adequacy Constraint Should Protect Complainant Shippers, Not Invite Undue Complexity and Potential Rate Increases

The Task Force proposes an extremely complicated process for presenting and evaluating a rate case under the revenue adequacy constraint. The key elements of the proposal are: (i) determination of a so-called surplus of net operating income above the amount required to earn an adequate ROI over the revenue adequacy determination period; (ii) divide any surplus by the number of years evaluated to determine an annual average surplus; (iii) allocate that surplus over an unknown group of shippers/commodities/service combinations where revenue-variable cost ("R/VC") ratios exceed 180%; and (iv) use the Board's Maximum Mark-up Methodology ("MMM") until the surplus is eliminated. Report at 37. From there, if the complainant shipper's R/VC ratio exceeds the R/VC for the unknown group's MMM R/VC ratio, the carrier could only adjust the existing rates by the Rail Cost Adjustment Factor, unadjusted for productivity ("RCAF-U"). *Id.* If the complainant's R/VC ratio is below the unknown group's MMM R/VC ratio, the carrier could raise its rates to the average R/VC level of the unknown group. *Id.*

Olin is concerned that the Task Force's proposal is overly complicated and will produce a revenue adequacy constraint that is largely unusable for shippers, and will potentially provide no relief, if not outright rate increases, for captive shippers, even if

the carrier is revenue adequate. Moreover, the Task Force's proposal is unnecessary given other options that stakeholders have previously presented to the Board in this proceeding.

1. The Task Force Proposal Is Problematic on Multiple Fronts

First, the calculations of net surpluses and the MMM process are time consuming and complicated, including the likely need to evaluate large quantities of traffic and cost data. The SAC case process is enormously complex and often involves analyzing millions of traffic movements, determining costs and revenues for those movements, and determining the application of surplus revenues using the MMM process. While the Task Force's proposal does not quite reach the level of effort required by a SAC case, it is dangerously close. More importantly, the proposal is inconsistent with the working assumption under *Coal Rate Guidelines* that revenue adequate carriers do not require further differential pricing on a complaining captive shipper's traffic.¹⁵ The only exception is when a carrier can show it needs those additional revenues, it would suffer harm if did not receive those revenues, and that captive shippers ought to provide the revenues.¹⁶ The Task Force's proposal appears to start with a presumption that more revenues are necessary unless proven otherwise, which turns *Coal Rate Guidelines* on its head.

¹⁵ *Id.*, 1 I.C.C.2d at 535-36 ("captive shippers should not be required to pay differentially higher rates than other shippers when some or all that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.").

¹⁶ *Id.* at 536 n.36.

Second, the Task Force does not assign responsibility for such calculations to any particular party in the proceeding. The burden of proof for any increased revenues and rates should be placed on the revenue-adequate carrier, and shippers should not be burdened with a SAC-style revenue adequacy *prima facie* case requirement.

Third, the Task Force proposes to allocate the surplus “to a defined set of commodity-service characteristic combinations based on that category’s share of total revenues with R/VCs exceeding 180%,”¹⁷ but the Task Force leaves such categories wide-open to dispute. Indeed, the Report mentions only a few variations of commodity and shipment types,¹⁸ but even there, the Task Force only focuses on mileage and number of cars, where there are many more characteristics that are or could be relevant, such as car ownership. Olin also submits that the commodity itself could be open to dispute, as many commodities share similar operating characteristics. The obvious result here is that disputes over such characteristics are inevitable and will likely lead to extended and costly arguments and analyses, just as with so many issues in a SAC case.

Fourth, the allocation of the surplus net operating income to a set of commodity-service characteristics is overly complicated, versus looking at all captive shippers as contemplated by the *Coal Rate Guidelines*.¹⁹ The Task Force provides no reason to introduce such complexity. The threshold determination is whether the carrier

¹⁷ Report at 37.

¹⁸ *Id.* at 37-38.

¹⁹ *Id.*, 1 I.C.C.2d at 535-36.

is revenue adequate. If so, the only pertinent question is whether the carrier has a legitimate basis for revenues above its already revenue-adequate levels.

Fifth, the Task Force's proposal allows for significant increases in existing rates to select captive shippers even if the railroad is revenue adequate – again, in contravention to the *Coal Rate Guidelines*.²⁰ Specifically, using the Task Force's commodity-service grouping (whatever that may be), if a captive shipper's R/VC ratio is below the average R/VC ratio of others in its group, then the carrier is free to impose greater differential pricing on the complaining shipper's rates up to the average R/VC ratio.²¹

Olin suggests that there are better alternatives to the Task Force's proposal for implementing the revenue adequacy constraint. Specifically, Olin supports an approach, presented by multiple shippers, that if a shipper files a complaint, proves market dominance and that the carrier is revenue adequate, then the carrier may not impose rate increases above the rates in effect as adjusted by the RCAF-A. Alternatively, Olin asks the Board to consider its R/VC limit proposal presented in Olin's written submission in this proceeding in 2014, and incorporated herein by reference, which could also provide a path to rate reductions for shippers that are already paying rates in excess of that required for a carrier to remain revenue adequate.²²

²⁰ *Id.*

²¹ Report at 37 (carrier can raise rates up to the calculated rate increase constraint).

²² Olin *Revenue Adequacy* Comments at 7-9.

2. Protecting Against Rate Bundling and Railroad Gaming in the Provision of Common Carrier Rates

Olin has informed the Board of railroad-imposed, anti-competitive bundling arrangements with respect to the provision of rates that create a significant barrier to access to the Board's rate relief process²³ – even before application of the Task Force's unduly complex revenue adequacy constraint. Rate bundling refers to railroads bundling multiple lanes together into single contract rates and refusing to provide shippers with common carrier rates for individual lanes that would then be subject to regulatory challenge. *Id.*

Additionally, the Board has recognized the problem of railroads setting high common carrier rates substantially above prior contract levels when establishing new common carrier rates. *Final Offer Rate Review*, Docket No. EP 755 (STB served Sept. 12, 2019) (recognizing that when shippers “shift from contract rates to tariff rates before bringing a rate case, . . . tariff rates may be higher than prior contract rates”) (“*FORR*”). Such practices allow railroads to engage in anticipatory retaliation and “game” the rate relief process by refusing to provide necessary rates for individual lanes that could be challenged, and by setting high initial common carrier rates that will nullify any potential relief that could be provided through the rate constraints, including the

²³ Olin *FORR* Comments at 13-16.

revenue adequacy constraint. In either instance, a shipper is effectively deprived of the opportunity to even seek regulatory rate relief for the most problematic lanes.

To address these problems, Olin suggests that the Board take several protective steps, similar to what Olin suggested in its comments on the Board's proposed final offer rate review rules in *FORR*.²⁴ First, the Board should clarify that a railroad is required as part of its common carrier obligation to provide rates and routes to move traffic from one or more *individual* origins to one or more *individual* destinations, if a shipper so specifies in its common carrier rate request. Additionally, the Board should declare that a railroad found to have manipulated its response to a common carrier rate request for commercial advantage purposes through rate bundling or other similar practices will be deemed to have engaged in an unreasonable transportation practice under 49 U.S.C. § 10702(2) by creating an unreasonable barrier to entry to the Board's regulatory processes. Second, the Board should declare that it will use the expired contract or previously used tariff rates as the starting point for applying its revenue adequacy constraint. Without these, or similar protective steps, the railroads will have an open invitation to manipulate the STB's maximum ratemaking process, which will also translate into abusive leverage in the negotiations that precede any rate litigation.

C. The Board Should Revise Its Bottleneck Limitations

Bottleneck restrictions have a 20-year history before the Board and the courts, and now the Board has asked for comments on the Task Force's proposal to

²⁴ Olin *FORR* Comments at 14-15, 17-18.

suspend “*Bottleneck* protections as applied to long-term revenue-adequate carriers.”

Notice at 3. Olin has long supported lifting *Bottleneck* protections, including supporting legislation that would eliminate such restrictions. As Olin explained in 2006, “the freight rail marketplace of today doesn’t behave like a marketplace at all” and, among other remedies, it supported legislation to “eliminate ‘bottlenecks’ that allow monopoly carriers to take advantage of their pricing power to prevent competition over a short, competitive portion of a route.”²⁵

Olin supports the elimination of all *Bottleneck* restrictions. Enabling a shipper to obtain a rate for the captive, or “bottleneck” portion of the movements will limit any litigation before the agency to only that captive portion of the movement. This has the virtue of greater simplicity, reduced costs to litigate, and more reliance upon the marketplace (rather than the regulatory agency) as the principal driver of the total rail transportation costs to be paid for origin-to-destination service. Starting that process by eliminating *Bottleneck* protections for revenue adequate carriers is a worthy first step to improving competitive options for shippers that might negate the need for future rate cases. However, the Board must ensure that shippers have access to individual bottleneck rates and are not precluded from using those rates because of anticompetitive, rate-bundling and other abusive rate-setting tactics by taking the appropriate precautions described above to ensure that bottleneck rate relief protections cannot be manipulated.

²⁵ *Economics, Service and Capacity in the Freight Railroad Industry: Hearing Before the Subcomm. on Surface Transp. & Merch. Marine of the Senate Comm. on Commerce, Sci. & Transp.*, 109th Cong. 73 (June 21, 2006) (testimony of John L. McIntosh, President, Chlor-Alkali Products, Olin Corp.).

D. Olin Supports Streamlining the Simplified-SAC Process, with Some Exceptions

The Task Force recommends that when a Simplified-SAC case is brought against a revenue-adequate carrier, the parties not develop a full analysis of RPI costs but use, instead, the Board's simplified presentation as contemplated in *Simplified Standards*.²⁶ Report at 41-42. The method determines RPI costs by utilizing average costs for certain investment categories that the Board has determined from prior SAC proceedings.²⁷ The Task Force believes that the simplified RPI presentation would make the Simplified-SAC process more accessible to shippers.²⁸

As Olin stated in its recent comments to the Board in Docket No. EP 755,²⁹ shippers have had little reason to use Simplified-SAC because it is expensive to pursue and is designed to produce higher maximum rates than the SAC test. Given that the Simplified-SAC method is essentially dormant, Olin has no objection to attempting to streamline the standard and potentially reduce litigation costs. However, Olin still has significant concerns regarding whether Simplified-SAC can produce meaningful relief for shippers, even with the implementation of simplified RPI evidentiary filings.

²⁶ *Simplified Standards for Rail Rate Cases*, Docket No. EP 646 (Sub-No. 1), at 15 (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc. v. STB*, 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g*, 584 F.3d 1076 (D.C. Cir. 2009) ("*Simplified Standards*").

²⁷ *Id.*

²⁸ Report at 42.

²⁹ Olin *FORR* Comments at 8.

Olin also has considerable concerns that a move toward “simplification,” in and of itself, may only lead to the allowance of even higher rates than under existing standards. Thus, Olin encourages the Board to leave the option to make a full RPI presentation to the shipper’s discretion in a Simplified-SAC case, especially since the route may differ significantly from those aggregated in the Board’s full SAC calculations of such costs.

CONCLUSION

For the reasons set forth above, Olin respectfully submits that the Board adopt its recommendations as described herein.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Frank Chirumbole".

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Dated: November 26, 2019