

SURFACE TRANSPORTATION BOARD**Ex Parte 755*****Final Offer Rate Review***ENTERED
Office of Proceedings
July 1, 2020
Part of
Public Record

Summary of Videoconference Meeting between U.S. rail operating subsidiaries of
Canadian National Railway ("CN") and Surface Transportation Board Member
Patrick Fuchs

June 24, 2020

CN Attendees: Kathryn Gainey, CN Counsel, U.S. Regulatory Affairs; David Woodruff, CN Assistant Vice President & Head of U.S. Public & Government Affairs; Matt Warren, Partner, Sidley Austin LLP.

STB Attendees: Patrick Fuchs, Member; Lisa Novins, Attorney-Advisor.

CN opened the meeting with a brief update on the status of operations and CN's efforts to serve customers during the COVID-19 pandemic while protecting the health and safety of CN personnel. CN thanked the Board for conducting ex parte meetings in this proceeding and emphasized the importance of alternative dispute resolution.

Member Fuchs asked several questions about CN's legal arguments in its Ex Parte 755 comments that the STB's proposal for final offer rate review ("FORR") was inconsistent with the statute, and CN discussed the basis for its legal arguments. CN discussed the due process problems that under the Board's proposal, railroads would be given only 10 days to respond to a shipper's proposal, and the policy and practical problems stemming from FORR's lack of a defined methodology.

The discussion then turned to CN's proposal in its Ex Parte 755 comments that the Board consider reforms to its voluntary arbitration process as an alternative to the STB's FORR proposal. CN discussed a potential framework for a voluntary arbitration program targeted to small rate disputes, and potential changes that the Board could implement to better tailor its arbitration program to small rate disputes. CN suggested that these changes could include enhanced confidentiality, greater flexibility in selecting arbitrators, and mandatory mediation prior to beginning arbitration. CN discussed both the Board's statutory authority pertaining to arbitration and the policy benefits from creating a voluntary program that could be used to resolve smaller rate disputes.

In response to CN's description of potential arbitration program changes, Member Fuchs asked several questions about the Board's statutory authority to adopt changes to voluntary arbitration that would allow an arbitrator to determine market dominance in light of the requirements of 49 U.S.C. § 11708(c). Member Fuchs also asked questions about the extent of confidentiality that would be needed to allow such a program to be successful. Member Fuchs also asked questions about CN's views on eligibility and limits for the program. CN indicated that it was continuing to discuss potential changes to voluntary arbitration with other stakeholders. CN expressed its willingness to work with other stakeholders in an effort to develop a proposal for voluntary arbitration of small rate disputes.