

SURFACE TRANSPORTATION BOARD**Ex Parte 755*****Final Offer Rate Review***ENTERED
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Summary of Videoconference Meeting between U.S. rail operating subsidiaries of
Canadian National Railway ("CN") and Surface Transportation Board Vice
Chairman Marty Oberman

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: Marty Oberman, Vice Chairman; Ellen Erichsen, 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.

Vice Chairman Oberman 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. CN explained the basis for its legal arguments that FORR's lack of a methodology violated the statute and was an inappropriate departure from past agency decisions, and that the NPRM's proposal of a rate process based on Canadian Final Offer Arbitration conflicted with Congress's instruction requiring arbitration to be voluntary.

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 explained that these changes could include enhanced confidentiality, greater flexibility in selecting arbitrators, and mediation. CN discussed both the Board's statutory authority to develop an alternative arbitration program and the policy benefits from creating a voluntary program that could be used to resolve smaller rate disputes. Vice Chairman Oberman asked questions about the potential process, including standards for the selection of arbitrators and potential flexibility in the methods used to assess rate reasonableness. CN

explained that arbitrators could render their decisions similar to that under 49 U.S.C. § 11708(c)(3) and (d). The parties also discussed eligibility for the program, including potential relief or carload limits, and discussed ideas about ways to encourage participation in voluntary arbitration. 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.