

SURFACE TRANSPORTATION BOARD**Ex Parte 755*****Final Offer Rate Review*****ENTERED**
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Summary of Videoconference Meeting between Union Pacific Railroad Company (“UP”), Norfolk Southern Railway Co. (“NS”), CSX Transportation, Inc. (“CSXT”), and the US rail operating subsidiaries of Canadian National Railway (“CN”), and Surface Transportation Board Member Patrick Fuchs

June 29, 2020

Railroad Attendees:

UP: Rhonda S. Ferguson, Executive Vice President, Chief Legal Officer and Corporate Secretary;

NS: Vanessa A. Sutherland, Executive Vice President and Chief Legal Officer;

CSXT: Nathan D. Goldman, Executive Vice President, Chief Legal Officer and Corporate Secretary; and

CN: Kathryn Gainey, Counsel, U.S. Regulatory Affairs.

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

The railroads thanked the Board for holding these ex parte meetings. The discussion focused on ways that the Board could reform its voluntary arbitration process for smaller rate disputes. The railroads outlined a potential framework for a confidential and non-precedential voluntary arbitration program targeted to smaller rate disputes, and discussed potential changes that the Board could implement to better tailor its voluntary arbitration program to smaller rate disputes. The railroads suggested that these changes could include enhanced confidentiality, greater flexibility in selecting arbitrators, a more streamlined

process for determining market dominance, mediation, and mechanisms to tailor relief to smaller cases. The railroads discussed the reasons why they believed such a voluntary arbitration program would be attractive for both railroads and customers, and a better alternative than other proposals for determining the maximum lawful rate that have been suggested for smaller rate cases.

Member Fuchs expressed appreciation for the railroads' efforts to develop a proposal for a voluntary arbitration process. Member Fuchs asked several questions about potential features of the voluntary arbitration proposal. The railroads indicated that they believed that voluntary arbitration would be a superior alternative to other proposals such as final offer rate review (FORR). Member Fuchs also asked 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). The railroads responded that they believed that the proposal is consistent with 49 U.S.C. § 11708(c), and that if the Board believed anything in the proposal might require a departure from a provision of § 11708(c), it had the authority to issue an exemption to such a provision in the interest of creating a more effective voluntary arbitration program for smaller rate disputes. Member Fuchs also asked questions about potential eligibility and limits for the program, and the railroads indicated the importance of ensuring that the voluntary arbitration program was tailored to smaller rate cases and would not allow a large case to be disaggregated into multiple smaller cases. Member Fuchs also asked about the decision-making

criteria for arbitrators, considering subsections (c) and (d) of 49 U.S.C. § 11708, and the railroads discussed the statutory provisions and related standards. The railroads indicated that they were continuing to consider potential changes to such a voluntary arbitration program with other stakeholders.