

**Surface Transportation Board
Docket No. EP 755, *Final Offer Rate Review***

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**Summary of Ex Parte Meeting Between Olin Corporation and
STB Board Member Martin Oberman**

Date and Location of Meeting: July 8, 2020, telephone conference call

Names and Titles of Persons Attending:

Olin: Frank Chirumbole, Vice President, Integrated Supply Chain
Mike Meenan, Director of Global Government Affairs
Brian Vain, Director of Logistics, North America
Jeffrey Kilts, Lead Rail Logistics Analyst
Angela M. Castle, Associate General Counsel, Integrated Supply Chain and Operations
Peter Pfohl – Slover & Loftus LLP, outside counsel

STB: Board Member Martin Oberman
Ellen Erichsen, Attorney Advisor

Summary of Meeting:

- Olin thanked Board Member Oberman for his continuing efforts on needed reforms and stressed that obtaining reasonable rail rates was more critical than ever in an extremely challenging business environment.
- Olin explained that FORR is the most important reform the STB can make in the near term; it will help create a more level playing field for negotiations with the railroads. Olin stressed that today, the railroads approach negotiations knowing customers like Olin have little realistic recourse to unreasonably high rates, and EP 755 can help remedy that problem.
- Olin also explained that it stands by its comments filed in support of EP 755. It reemphasized the need to address railroad “rate bundling” practices used to effectively block access to the Board’s rate relief processes.
- Olin emphasized its preference that there be no dollar cap for recovery on individual lanes, but it is critical that it be allowed to challenge multiple lanes at once. It also emphasized that the expedited process is critical to the utility of FORR.
- Board Member Oberman asked a series of questions over rate bundling from Olin’s perspective, and the participants discussed the issue in the context of the railroads’ common carrier and reasonable practice obligations.
- Olin emphasized that the Board has the authority to promulgate FORR; FORR is not mandatory arbitration as the Board (not an arbitrator) decides a case by applying the standards set forth in the Interstate Commerce Act.
- Olin stressed that applying a principle-based, non-prescriptive criteria on a case-by-case basis is entirely appropriate and consistent with the approach used by the Board in making reasonableness determinations in other types of adjudications. In response to Board Member Oberman’s questions on FORR evidentiary filings, Olin replied that a complainant (or defendant) is not limited to existing rate reasonable methodologies under

FORR, and the proposed principle-based rules are properly designed to allow for a complainant to be flexible in presenting its evidence.

- Olin also stressed that the selection of one final offer over another is appropriate, and that the Board regularly exercises its authority in accepting one party's evidence and arguments over another's in maximum rate cases.
- The participants discussed some of the railroads' examples of possible unfair and extreme rate relief outcomes under FORR. Olin responded that protections are built in (along with the ability to appeal), to ensure that arbitrary outcomes, inconsistent with the statutory principles, will not occur. The participants also discussed whether the FORR procedures could be modified to allow for the Board to reject both offers if not sufficiently supported and possibly seek renewed offers.
- The participants discussed CN's written comments, suggesting that the Board consider adopting some new arbitration rules. Olin responded that CN's comments were skeletal, containing no proposed standards, principles, or procedures as an alternative to FORR. Olin stated that any revisions to the existing voluntary arbitration standards would likely be difficult and complex, especially given recent Congressional pronouncements under 49 U.S.C. § 11708 and the Board's subsequent adoption of conforming rate arbitration rules with which CN's proposal appears to conflict in several instances. Olin remarked that the few arbitration items addressed by CN, including extreme rate relief caps (100 times below the cap mandated by Congress) that would effectively block the availability of arbitration for virtually all stakeholders, reveal that CN's initial proposal is not a meaningful attempt to provide for an effective voluntary arbitral forum to supplement rate review before the Board.
- Olin emphasized that the Board has a statutory obligation to maintain reasonable rates and standards and provide its own forum for adjudication of cases. Olin does not oppose arbitration as a concept, but stressed that the Board should not allow the thin comments on arbitration to be used to delay implementation of FORR. Olin expressed that any further consideration of such new voluntary arbitration rules to supplement FORR could take place in a separate proceeding, but it is critical that the Board promptly complete FORR and implement its own workable rate dispute resolution process leveraging its own expertise.