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SURFACE TRANSPORTATION BOARD

Ex Parte 755

Final Offer Rate Review

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Summary of Teleconference 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”), Kansas City Southern Railway Company (“KCS”), and Surface Transportation Board Member Patrick Fuchs

July 15, 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;

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

KCS: Adam J. Godderz, Senior Vice President, Chief Legal Officer and Corporate Secretary.

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

The railroads thanked the Board for holding these ex parte meetings. The discussion updated the Board on efforts to develop a confidential and non-precedential voluntary arbitration program targeted to smaller rate disputes. The railroads discussed hypothetical changes to the proposal that was discussed with the Board members in the ex parte meetings on June 29, 2020, and ways that the program might be changed in response to feedback from various stakeholders. The

discussion included ideas for ensuring greater confidentiality while enabling the Board to monitor the program; the standards that the arbitrators would use to decide market dominance and the maximum lawful rate; potential ways to streamline the determination of market dominance by the arbitration panel; hypothetical changes to eligibility for the program; and the process for selection of an arbitration panel in an individual case. The railroads discussed the reasons why they believed that voluntary arbitration would be attractive for both railroads and customers and a better alternative than the proposed Final Offer Rate Review or other regulatory proposals that have been suggested as a means to address the concern that the Board's rate reasonableness methods are not available for smaller cases.

Member Fuchs asked several questions about potential features of the voluntary arbitration proposal. Member Fuchs asked about the Board's statutory authority to adopt changes to voluntary arbitration that would allow an arbitration panel to determine market dominance, and the Board's role in review of such determinations. Member Fuchs also asked questions about potential eligibility, limits for the program, the decision-making criteria for arbitrators to determine the maximum lawful rate, and the applicable standard for the Board to review arbitration panel decisions. Member Fuchs discussed the importance of developing a proposal that could encourage participation, and the railroads indicated that discussions were ongoing, and that they hoped to present a proposal that could attract support from multiple stakeholders.