

SERVICE DATE – AUGUST 26, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 765

JOINT PETITION FOR RULEMAKING TO ESTABLISH A VOLUNTARY ARBITRATION
PROGRAM FOR SMALL RATE DISPUTES

Decided: August 26, 2020

On July 31, 2020, five parties—Canadian National Railway Company; CSX Transportation, Inc.; The Kansas City Southern Railway Company; Norfolk Southern Corporation; and Union Pacific Railroad Company (collectively, Petitioners)¹—filed a petition for rulemaking to create a new small rate case arbitration program, to be codified at 49 C.F.R. part 1108a, which would function alongside the Board’s existing arbitration program at 49 C.F.R. part 1108.

Petitioners pledge to participate in their proposed arbitration program for a period of five years, provided the Board adopts the program according to the terms set forth in the petition, including (among other things) an exemption from the Final Offer Rate Review process proposed in Docket No. EP 755 and the right to withdraw from the program under certain circumstances. (Pet. 2, 17.)

Replies to the petition were filed on August 20, 2020. In its reply, the National Grain and Feed Association (NGFA) proposes certain modifications to Petitioners’ proposed arbitration program. NGFA states that it would not object to Petitioners’ replying to NGFA’s comment (or the replies of other parties²) to inform the Board whether they would be agreeable to NGFA’s proposed modifications, “as well as whether consideration and adoption of those changes would

¹ The petition lists one of the petitioners as “CN.” Based on the meeting summaries in Final Offer Rate Review, Docket No. EP 755, in which these same entities or their affiliates discussed a possible voluntary arbitration program for small rate cases, the Board presumes that Petitioners intend “CN” to refer to the U.S. operating subsidiaries of Canadian National Railway Company. (See, e.g., Ex Parte Mtg. Summary (filing ID 300901), July 21, 2020, Final Offer Rate Review, EP 755.) In addition, another petitioner is listed as Norfolk Southern Corp., even though Norfolk Southern Railway Company is that entity’s operating affiliate.

² The Board also received replies from Olin Corporation; the American Fuel & Petrochemical Manufacturers; the U.S. Department of Agriculture; and (filing jointly) the American Chemistry Council, Corn Refiners Association, Institute of Scrap Recycling Industries, National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute.

result in their electing not to participate in the [proposed arbitration program] if modified in certain respects.” (NGFA Reply 3.)

Before deciding whether to institute a rulemaking proceeding, the Board would benefit from having Petitioners’ reaction to the proposed modifications to the arbitration program suggested by NGFA and other parties. Accordingly, Petitioners may submit a supplemental pleading responding to the replies no later than September 10, 2020. Other interested persons also may respond to the replies by this date.

It is ordered:

1. Supplemental pleadings responding to the replies in this docket are due no later than September 10, 2020.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.