

**BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE 766**

ENTERED
Office of Proceedings
October 13, 2020
Part of
Public Record

**JOINT PETITION FOR RULEMAKING
TO MODERNIZE ANNUAL REVENUE ADEQUACY DETERMINATIONS**

**PETITIONERS' MOTION FOR LEAVE
TO FILE RESPONSE TO REPLY COMMENTS**

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October 13, 2020

Petitioners Norfolk Southern Railway Company, Union Pacific Railroad Company, and the U.S. operating subsidiaries of CN (collectively, “Petitioners”) respectfully seek leave to file the attached response to the Replies to Petitioners’ Petition for Rulemaking (“Petition”) filed in the above-captioned docket. The proffered Response addresses new objections to the Petition raised by the Western Coal Traffic League (“WCTL”) and a coalition of shipper groups calling itself the “Joint Shippers.”¹

While the Board’s rules do not permit replies to replies as a matter of right, *see* 49 C.F.R. § 1104.13(c), the Board grants leave to file replies to replies when it is in the interest of having a more complete record. The Board has granted that leave in the context of petitions for rulemaking when the proponents of a rulemaking sought an opportunity to respond to objections that other parties raised in their comments.² In this case, the Board’s decision on whether to exercise its discretion to open the requested rulemaking would benefit from a complete record in which Petitioners address the objections the Joint Shippers and WCTL have raised and explain why Petitioners believe the Board should open a proceeding to consider modernizing its annual revenue adequacy determinations.

¹ Reply of Joint Shippers, Ex Parte 766 (filed Sept. 21, 2020) (“Joint Shippers Reply”); Reply of the Western Coal Traffic League in Opposition to Petition, Ex Parte 766 (filed Sept. 21, 2020) (“WCTL Reply”).

² *See, e.g., Joint Pet. for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Ex Parte 765 (STB served Aug. 26, 2020), at 2 (ordering petitioners to file response to replies); *Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry’s Cost of Equity Capital*, Ex Parte 664 (Sub-No. 2) (STB served Sept. 28, 2018), at n.3 (allowing reply to reply “in the interest of having a more complete record”); *Nat’l Ass’n of Reversionary Prop. Owners—Pet. for Rulemaking*, Ex Parte 749 (STB served Aug. 14, 2018), at n.1 (allowing reply to reply “in the interest of having a more complete record”).

For these reasons, Petitioners respectfully request that the Board accept the attached response.

Respectfully submitted,

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