

EXPEDITED CONSIDERATION REQUESTED

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Before the Surface Transportation Board

STB Docket No. EP 766

Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations

Petition for Extension of Time to Comment

The American Chemistry Council, Corn Refiners Association, American Fuel & Petrochemical Manufacturers, The National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute (collectively, Joint Shippers) request that the Board extend the March 1, 2021 deadline for filing comments in this proceeding to 90 days after Union Pacific Railroad Company, Norfolk Southern Railway Company, and the U.S. rail operating affiliates of Canadian National Railway Company (collectively, Joint Carriers) have filed the workpapers that the Board directed them to file and obtained a protective order under which they will release those workpapers. Joint Shippers also request a corresponding extension of the March 31, 2021 deadline for reply comments to 30 days after the requested deadline for initial comments. Joint Shippers are authorized to represent that Joint Carriers do not oppose to the grant of the relief sought in this Petition. Joint Shippers also are authorized to represent that the National Grain and Feed Association strongly supports this petition for extension.

Joint Shippers also request expedited consideration of this Petition because the deadline for initial comments is in 28 days.

The Board's rules provide that the Board may grant extensions of time "in its discretion, upon request and for good cause." 49 C.F.R. § 1104.7(b). Here, there is good cause for the

requested extension because it will facilitate critical review of Joint Carriers' proposals in this proceeding and it would promote shipper participation.

In a decision served on December 30, 2020, the Board invited comments on Joint Carriers' revenue-adequacy proposals in this proceeding and set the current deadlines for the comments. The Board also directed the Joint Carriers to submit workpapers supporting their proposals and make those workpapers available under a protective order. The workpapers have not been filed and are not available to participants in this proceeding despite the passage of more than 30 days. Nor is there a protective order in place for producing those workpapers to stakeholders.

An extension of time to file comments is necessary to provide a meaningful opportunity to review the Joint Carriers' workpapers, conduct the analyses required to respond to the questions posed by the Board, and comment on the Joint Carriers' proposals. According to the Decision, Joint Carriers' workpapers are supposed to be sufficient to replicate the analysis underlying the Joint Carriers' revenue-adequacy proposals.¹ This data-intensive analysis involved calculating rate of return and cost of capital for most S&P 500 firms over a 14-year period, comparing the difference between railroad return on investment and cost of capital with the difference between return on investment and cost of capital of S&P 500 firms, and determining the impact of various proposed adjustments to the Board's return on investment calculation.² In addition, the Board has asked stakeholders to evaluate the suitability of alternative industry groups to the S&P 500 firms that the Joint Carriers have proposed, and Joint Carriers' workpapers will include significant data about S&P 500 firms. Given the scope of

¹ Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations, EP 766, slip op. at 4 (STB served Dec. 30, 2020).

² *E.g.*, Joint Carriers' Pet. at 53-72 (describing the Joint Carriers' analyses and underlying data).

these analyses and their connection to various economic arguments by Joint Carriers' expert-witness economists, Joint Shippers expect that reviewing Joint Carriers' workpapers will be time-consuming. Also, because these analyses are connected to the various economic arguments underlying Joint Carriers' proposal, Joint Shippers are unable to conduct a critical review of the Joint Carriers' proposal until they receive their workpapers. A 90-day period to prepare comments on all the above is eminently reasonable in view of the fact that the Joint Carriers have spent more than a year developing and refining their proposal prior to filing their Petition for Rulemaking.³

The extension also is necessary to enable Joint Shippers to coordinate in preparing their comments. Joint Shippers are trade associations that each must review and approve comments before submission. For many of the Joint Shippers, this involves submitting the comments to their shipper members for approval. During this review process, revisions will probably be identified, and these revisions will have to be circulated for approval. Although this coordinated effort requires additional time for submitting comments, it promotes a more complete record in this proceeding by enabling interested shippers to pool resources to retain counsel and expert economists necessary to fully evaluate the Joint Carriers' proposals.

³ See, Testimony of Professor Kevin Murphy, Professor Mark Zmijewski, and Matthew Warren, Ex Parte Nos 722 & 754 (filed Dec. 10, 2019), in which the Joint Carriers' economic witnesses first publicly presented the concepts underlying their proposal nearly ten months prior to Joint Carriers' Petition for Rulemaking, filed September 1, 2020.

For the foregoing reasons, Joint Shippers request that the Board grant this Petition.

Respectfully submitted,

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Certificate of Service

I hereby certify that this 1st day of February 2021, I served a copy of the foregoing via e-mail upon:

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