

SERVICE DATE – FEBRUARY 4, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 766

JOINT PETITION FOR RULEMAKING—ANNUAL REVENUE ADEQUACY
DETERMINATIONS

Decided: February 4, 2021

On September 1, 2020, Union Pacific Railroad Company, Norfolk Southern Railway Company, and the U.S. rail operating affiliates of Canadian National Railway Company (collectively, Joint Carriers) filed a joint petition for rulemaking to change the Board's procedures for determining which Class I rail carriers are earning adequate revenues under 49 U.S.C. § 10704(a)(3).

On December 30, 2020, the Board instituted a rulemaking proceeding to consider the petition and invited comment on the issues raised in the petition generally as well as on several specific questions. The Board also requested that the Joint Carriers file workpapers sufficient to replicate the analysis underlying their proposals and to make those workpapers available, upon request, to other participants in this proceeding, under an appropriate protective order.¹ The Board set a deadline of March 1, 2021 for comments and March 31, 2021 for replies.

On February 2, 2021, 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) filed a petition requesting that the Board extend the March 1, 2021 deadline for filing comments to 90 days after the Joint Carriers have filed the workpapers the Board directed them to file and obtained a protective order. The Joint Shippers also request an extension of the March 31, 2021 deadline for reply comments to 30 days after the requested deadline for initial comments. The Joint Shippers state that they are authorized to represent that the Joint Carriers do not oppose the requested extensions and that the National Grain and Feed Association supports the extension request. The Joint Shippers argue that 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.

¹ The Joint Carriers filed a motion for protective order on February 1, 2021. That motion was granted by decision served February 4, 2021.

The request to extend the deadline for comments and replies will be granted. The Joint Carriers are directed to file workpapers sufficient to replicate the analysis underlying their proposals with the Board by February 22, 2021. The deadline for comments and replies will be extended to May 17, 2021, and June 16, 2021, respectively.

It is ordered:

1. The Joint Carriers are directed to file their workpapers with the Board by February 22, 2021.
2. Comments are due May 17, 2021; replies are due June 16, 2021.
3. This decision is effective on its service date.

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