



The Offices at Park 10, Phase II
16290 Katy Frwy, Suite 600
Houston, TX 77094
www.Olin.com

May 17, 2021

The Hon. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: *Joint Petition for Rulemaking – Annual Revenue
Adequacy Determinations, STB Docket No. EP 766*

Dear Ms. Brown:

Olin Corporation (“Olin”) submits this letter in response to the Board’s December 30, 2020 decision in the above-reference proceeding. The Board’s decision opened a rulemaking proceeding to consider the petition that the U.S. rail operating affiliates of Canadian National Railway Company (“CN”), Norfolk Southern Railway Company (“NS”), and Union Pacific Railroad Company (“UP”) (collectively the “Carriers”) filed on September 1, 2020 (the “Petition”). Olin opposes the relief that the Carriers seek in their Petition and Olin requests that the Board terminate this proceeding with no further substantive action. Olin also notes that it supports the Comments filed in this proceeding by the American Chemistry Council (“ACC”) and the various other Joint Shippers participating with the ACC in its submission.

The Carriers’ proposal constitutes a results-driven request that the Board refrain from deeming a Class I carrier ever to have earned adequate revenues. It thereby seeks to insulate the rates charged to captive shippers from scrutiny under the Board’s revenue adequacy constraint. Rather than abetting the efforts of the rail industry to shield its profits from potential regulatory review, the Board instead should devote its attention and resources toward resolving the proceedings already pending before it, most notably, the pending inquiry into *Final Offer Rate Review*, Docket No. EP 755 (STB served Sept. 12, 2019) (“FORR”).

A. Identity and Interest

Headquartered in Clayton, Missouri, Olin is a publicly traded company listed on the New York Stock Exchange with 6,500 employees at 70 locations worldwide. Among other businesses, Olin is a leading producer of bulk chlorine, caustic soda, bleach, and other chemicals in North America. It currently ships over 47,000 rail cars annually. Chlor Alkali Products & Vinyls is Olin’s largest business segment, operating at 10 locations throughout the United States and Canada.

Olin ships the majority of its chlor alkali products via rail from its various North American manufacturing locations, each of which is captive to a single railroad. Rail transportation is one of the single largest costs of our production and distribution process, and the availability of reasonable regulatory protections in the absence of market competition is essential for protecting Olin from unreasonable rates. Thus, Olin has a direct and substantial interest in the establishment of meaningful rate protections and constraints for revenue adequate railroads.

In particular, Olin strongly supports a path to rate constraints as our rates, like those of many other shippers, bear little rational relationship to the costs incurred by the carriers. Olin also strongly supports Board initiatives – like FORR – that would help to eliminate impediments to rate relief for high-volume carload shippers. Conversely, Olin strongly opposes any initiatives that would allow Class I carriers to perpetuate their financial control over captive shippers or to perpetuate the myth that carriers are in any way “revenue inadequate.”

B. Comments

In their Petition, the Carriers recount that the Board “has committed itself to ‘evidence-based decision-making’” and add that “[e]vidence-based decisionmaking requires good evidence.” Petition at 1. Strikingly, however, the Carriers nevertheless propose that the Board modify its revenue adequacy determinations in a manner that would use manifestly flawed evidence; namely, evidence regarding the return on investment (“ROI”) that would be associated with applying a partially-modified version of the Board’s railroad-industry ROI model to numerous *non*-railroad entities.

Reduced to its essence, the Carriers’ Petition amounts to little more than an effort to guarantee that the Board never regards a Class I railroad as being revenue adequate. The Carriers’ requested relief therefore would immunize the Class I’s from any potential scrutiny (under the Board’s revenue adequacy constraint) for charging excessive rates to captive shippers. There is no basis for drawing conclusions about railroad revenue adequacy from the application of railroad-based standards to non-railroad entities.

Moreover, as Olin itself explained in its November 26, 2019 Comments in Docket Nos. EP 761 (*Hearing on Revenue Adequacy*) and EP 722 (*Railroad Revenue Adequacy*), the Board’s own Rate Reform Task Force recently observed that Wall Street regards the railroads as particularly attractive investments:

“[a]lthough not every large railroad has been found ‘revenue adequate’ year after year under the Board’s regulations, many have, and all are financially healthy; indeed, as shippers have pointed out for years, Wall Street finds the railroad industry one of the more attractive investment opportunities in the market.”

Id. at 8 (citing the Rate Reform Task Force’s April 25, 2019 Report at 11).

Significantly, this rulemaking proceeding takes place at a time when at least one of the three Carriers, CN, has offered to pay \$34 billion to acquire the revenue-**inadequate** Kansas City Southern Railway. *See Railroad Revenue Adequacy – 2019 Determination*, Docket No. EP 552 (Sub-No. 24), at 3 (STB served Oct. 1, 2020). That payment amount – by the railroad industry’s own description – is extremely high and goes beyond what Berkshire Hathaway Chairman and CEO Warren Buffett, whose holding company previously paid a substantial \$8.1 billion acquisition premium for then revenue **inadequate** BNSF Railway in 2010, reports that he would have been willing to pay:

Buffett suggested the Canadians are willing to pay too much for KCS, given that its concession to operate in Mexico ends in 2047. CP’s friendly bid for KCS is worth \$29 billion, while CN has offered \$33.7 billion. “We would not pay this price,” he says. “It implies a price for BNSF that’s even higher than what the UP is selling for.”

Union Pacific is valued at nearly \$148 billion based on the current value of its outstanding shares.

Bill Stephens, *Trains*, “Buffett talks about Canadian pursuit of KCS, plus BNSF narrowing gap with UP,” May 3, 2021 (available at <https://www.trains.com/trn/news-reviews/news-wire/buffett-talks-about-canadian-pursuit-of-kcs-plus-bnsf-narrowing-gap-with-up/>). Accordingly, one of the three petitioning Carriers has provided compelling evidence that it is not at all difficult for Class I carriers to obtain necessary capital investment.

In addition, Canadian Pacific Railway has explained that its substantial offer to acquire KCS had been made in the context of simultaneous interest in KCS from private equity. *See Canadian Pacific Ry. – Control – Kansas City Southern*, CP Petition to Establish Procedural Schedule (filed March 22, 2021), Docket No. FD 36500, at 2 (requesting that the Board establish a 10-month or shorter timeframe for review because “Applicants are undertaking this transaction against the backdrop of a competing bid for control of KCS by private equity acquirers.”).

The Carriers’ Petition is thus directly at odds with what Wall Street, the financial community, and the Carriers themselves view as the true, extremely robust financial health of the railroads. Especially in light of this very recent history, it is entirely untenable for CN and the other Carriers to claim that the Board must change its revenue adequacy standards in order to refrain from overstating the financial health of the railroad industry. *See, e.g.*, September 1, 2020 Petition of CN, NS, and UP at 5-6, 28. There is no basis for such a modification.

Finally, Olin notes that the Carriers premise their request for an adjustment to the Board’s Revenue Adequacy approach on arguments regarding the previously rejected use of replacement cost accounting. *See, e.g.*, September 1, 2020 CN, NS, UP Petition at 30-31 (“Petitioners

emphatically support a Board effort to revisit the question of using replacement costs Until such time as that fundamental flaw in the Board's use of accounting measures is resolved, . . . this Petition proposes a more modest path by which the Board can incrementally improve the accuracy and reliability of its methodology – even as the inherent shortcomings of using book values remained unaddressed.”). As such, the Carriers' request amounts to little more than an acknowledged effort to circumvent the existing prohibition on replacement-cost accounting. There is no basis for this effort. Contrary to the situation that existed fifty or more years ago, the railroads do not face anything remotely resembling the prospect of financial ruin. The effort to require the Board to compare railroad profitability to that of the very strongest firms in the country using a financial metric ill-suited to evaluating non-railroads constitutes nothing more than an effort to perpetuate a financial charade; namely, forcing the agency to label highly profitable railroads as being unprofitable. There is no basis – and no need for – the relief that the Carriers seek.

C. Conclusion

For the reasons set forth above, Olin respectfully requests that the Board reject the Carriers' proposal and terminate this rulemaking proceeding with no further action.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Frank Chirumbole", written in a cursive style.

Frank Chirumbole

Vice President, Integrated Supply Chain

Olin Corporation

16290 Katy Freeway, Suite 600

Houston, Texas 77094