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SERVICE DATE – SEPTEMBER 12, 2019

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. EP 761¹

HEARING ON REVENUE ADEQUACY

Docket No. EP 722

RAILROAD REVENUE ADEQUACY

Decided: September 12, 2019

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on December 12, 2019, on revenue adequacy issues raised in the report issued by the Board's Rate Reform Task Force (RRTF). The hearing will be held in the James E. Webb Memorial Auditorium of the National Aeronautics and Space Administration (NASA), located at 300 E Street, S.W., Washington, DC. All interested persons are invited to appear.

DATES: The hearing will be held on December 12, 2019, beginning at 9:30 a.m., in NASA's James E. Webb Memorial Auditorium and will be open for public observation. Any person wishing to speak at the hearing should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) no later than October 31, 2019. All hearing participants are required to submit written testimony by November 26, 2019. Written submissions by interested persons who will not appear at the hearing should also be filed by November 26, 2019.

ADDRESSES: All filings, referring to Docket No. EP 761 et al., must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001.

Filings will be posted to the Board's website and need not be served on the other hearing participants or written commenters. Copies of the filings will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: In April 2014, the Board instituted a proceeding in Docket No. EP 722 and invited interested persons to comment on the Board's methodology for determining revenue adequacy, the revenue adequacy component for judging the reasonableness of rail freight rates, and what, if any, changes the Board should consider. See R.R. Revenue Adequacy, EP 722 et al., slip op. at 4 (STB served Apr. 2, 2014). The Board held a public hearing on those issues in 2015.²

In January 2018, the Board established its RRTF with the objectives of developing recommendations to reform and streamline the Board's rate review process for large cases, and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report).³ The RRTF Report recommended, among other things, that the Board consider policy changes regarding revenue adequacy. RRTF Report 12-13, 32-42.

The Board will hold a public hearing on December 12, 2019, and invites interested persons to provide input on the RRTF's recommendations regarding revenue adequacy.⁴ All hearing participants are required to submit written testimony by November 26, 2019. Written submissions by interested persons who will not appear at the hearing should also be filed by November 26, 2019. All participants and interested persons are asked to address the following RRTF recommendations in their written testimony or submissions and at the hearing:

- Definition of long-term revenue adequacy: The RRTF recommended determining long-term revenue adequacy by looking at the annual determinations over "the shortest period of time, not less than five years, that includes both a year in which a recession began and a year that follows a year in which a recession began." RRTF Report 13, 33.

² The Board subsequently clarified that informal discussions between the agency and stakeholders are permitted in the proceeding. See R.R. Revenue Adequacy, EP 722, slip op. at 1-2 (STB served Mar. 28, 2018).

³ The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.

⁴ Under 49 U.S.C. § 10701(d)(2), when determining whether a rate is reasonable, the Board is directed to give due consideration to three factors, recognizing the policy that "rail carriers shall earn adequate revenues." The Board is required to "annually determine which rail carriers are earning adequate revenues." 49 U.S.C. § 10704(a)(3); see, e.g., R.R. Revenue Adequacy—2017 Determination, EP 552 (Sub-No. 22) (STB served Dec. 21, 2018). This annual determination is distinct from long-term revenue adequacy, which "calls for a company, *over time*, to average return on investment equal to its cost of capital." Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 536 (1985).

- Rate increase constraint: The RRTF recommended considering a rate increase constraint for long-term revenue-adequate carriers, which would identify a point beyond which further application of differential pricing would be unwarranted. See RRTF Report 13, 36-39.
- Bottleneck changes: The RRTF recommended considering suspension of the Board's Bottleneck⁵ protections as applied to long-term revenue-adequate carriers. See RRTF Report 13, 39-41.
- Simplified Stand-Alone Cost (Simplified-SAC) changes: For purposes of considering whether a long-term revenue-adequate carrier's rate is reasonable under Simplified-SAC, the RRTF recommended reinstating the simplification of the Road Property Investment analysis. See RRTF Report 13, 41-42, & app. B.

BOARD RELEASES AND TRANSCRIPT AVAILABILITY: Decisions and notices of the Board, including this notice, are available on the Board's website at www.stb.gov. The Board will issue a separate notice containing instructions for attendance at the hearing and the schedule of appearances. **Please note that streaming and recording systems will not be available for this hearing.** As soon as a transcript is available, it will be posted on the Board's website.

It is ordered:

1. A public hearing will be held on December 12, 2019, at 9:30 a.m., in the James E. Webb Memorial Auditorium of the National Aeronautics and Space Administration (NASA), located at 300 E Street, S.W., Washington, DC.
2. By October 31, 2019, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker, and the amount of time requested.
3. Written testimony by hearing participants, and written submissions by interested persons who will not appear at the hearing, shall be filed by November 26, 2019.
4. Filings will be posted to the Board's website and need not be served on any hearing participants or other commenters.
5. This decision is effective on its service date.
6. This decision will be published in the Federal Register.

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

⁵ See Cent. Power & Light Co. v. S. Pac. Transp. Co., 1 S.T.B. 1059 (1996), clarified, 2 S.T.B. 235 (1997), aff'd sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999).