

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
August 16, 2021
Part of
Public Record

JOINT PETITION FOR RULEMAKING –
ANNUAL REVENUE ADEQUACY
DETERMINATIONS

)
)
) Ex Parte No. 766
)
)

**REPLY COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE
AND SEMINOLE ELECTRIC COOPERATIVE, INC.**

William L. Slover
Kelvin J. Dowd
Robert D. Rosenberg
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
202.347.7170

Attorneys for the
Western Coal Traffic League and
Seminole Electric Cooperative, Inc.

Dated: August 16, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

JOINT PETITION FOR RULEMAKING –	)	
ANNUAL REVENUE ADEQUACY	)	Ex Parte No. 766
DETERMINATIONS	)	
	)	

**REPLY COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE
AND SEMINOLE ELECTRIC COOPERATIVE, INC.**

The Western Coal Traffic League (“WCTL”) and Seminole Electric Cooperative, Inc. (“Seminole”), submit these Reply Comments in the above-captioned proceeding.

The three railroad proponents as well as the Association of American Railroads argue that the revenue adequacy of a railroad should be based on earning a return in excess of the cost of capital for otherwise the railroad will be unable to attract the capital that is required for it to sustain itself.

Kansas City Southern (KCS) has not earned its cost of capital, yet finds itself a desirable acquisition target for Canadian National (CN), one of the railroad proponents, as well as Canadian Pacific and private equity. If an excess return were so vital, these railroads would not be so willing to expend a substantial premium to acquire KCS.

Significantly, CN-KCS jointly submitted CN-20/KCS-3 in their merger proceeding, FD 36514, on June 14, 2021, to defend their voting trust. Their filing included a Verified Statement from Michael W. Upchurch, KCS’s Executive Vice President and Chief Financial Officer (Upchurch VS). He claimed that “KCS would be financially strong if held in a trust like the one proposed by CN.” Upchurch VS at 2. He saw no need to discuss KCS’s return on investment, cost of capital, or need for a premium return. Instead, he explained that “KCS

compares very favorably to other Class I railroads in almost every important financial measure including revenue growth, operating ratio, EBITDA, EPS growth, free cash flow yields, debt leverage ratio, liquidity, interest coverage ratio, and funds from operations to debt ratio,” and also “generates substantially more cash flow than is required for our annual investment needs.” *Id.* at 4-5. These are the measures that WCTL and Seminole have explained should be considered in evaluating revenue adequacy.

If there is no need to consider the return on investment relative to the cost of capital, let alone a premium return, for purposes of considering the KCS voting trust and the future of KCS if its merger is not approved, then there should be none for measuring revenue adequacy. KCS is plainly able to attract massive investment despite its seemingly low return on investment.

The railroads’ revenue adequacy proposal should not receive any further consideration.

Respectfully submitted,

William L. Slover
/s/Kelvin J. Dowd
Robert D. Rosenberg
Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036
202.288.1474

Attorneys for the
Western Coal Traffic League
and Seminole Electric Cooperative, Inc.

Dated: August 16, 2021