

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

303242

Ex Parte No. 765

ENTERED
Office of Proceedings
November 24, 2021
Part of
Public Record

**JOINT PETITION FOR RULEMAKING TO ESTABLISH AN ALTERNATIVE
VOLUNTARY ARBITRATION PROGRAM FOR SMALL RATE DISPUTES**

**MOTION OF JOINT SHIPPERS
TO HOLD PROCEDURAL SCHEDULE IN ABEYANCE**

The American Chemistry Council, Corn Refiners Association, National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute, (collectively “Joint Shippers”) hereby request that the Board hold the procedural schedule in the above-captioned proceeding in abeyance until the Joint Petitioners¹ state whether they would agree to arbitrate cases under the revenue adequacy standard, as proposed in the Notice of Proposed Rulemaking, at 38-40, served by the Surface Transportation Board in this docket on November 15, 2021 (“NPRM”). If the Petitioners decline to accept that requirement in the NPRM, the Board should terminate this proceeding. **The Joint Shippers request expedited consideration of this motion because they will need to begin expending resources to prepare their opening comments very soon to meet the current January 14, 2022 deadline.**

¹ The five Joint Petitioners are Canadian National Railway Company, CSX Transportation, Inc., Kansas City Southern Railway Company, Norfolk Southern Corporation, and Union Pacific Railroad Company. In a separate filing, Canadian Pacific joined in much of the Petition. See NPRM at 6 & n. 12.

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The Joint Petitioners' "Petition for Rulemaking" established five red lines that, if crossed, would cause them to withhold their consent to arbitrate.² One of those red lines was that the STB must prohibit arbitration based upon the revenue adequacy constraint.³ The NPRM honors all the red lines except the one on revenue adequacy.⁴ If the Joint Petitioners continue to insist upon this red line, the Board should not require itself or stakeholders to expend the substantial resources to prepare and assess comments upon the balance of the NPRM.

Therefore, Joint Shippers ask the Board, on an expedited basis, to take the following actions:

1. Hold the procedural schedule in this docket in abeyance.⁵
2. Require the Joint Petitioners, within a reasonable time, to inform the Board whether they will consent to arbitration of rate cases if arbitrators are permitted to consider revenue adequacy as proposed in the NPRM.
3. If the Joint Petitioners withdraw their objections to consideration of revenue adequacy as proposed in the NPRM, the Board should receive opening comments 45 days thereafter.

² "Joint Petition For Rulemaking To Establish An Alternative Voluntary Arbitration Program For Small Rate Disputes," at 25-27 (filed July 31, 2020).

³ *See, Id.*, at 27 (filed July 31, 2020) ("As a third protective feature, Petitioners' consent voluntarily to arbitrate smaller rate disputes does not include consent to arbitrate certain highly contested legal theories: namely, the limit price test and a system-wide revenue adequacy constraint. "); Petitioners' Supplemental Pleading, at 15 (filed Sept. 10, 2020) ("In any event, Petitioners will not agree to arbitrate rate disputes where shippers are permitted to use a revenue adequacy constraint.").

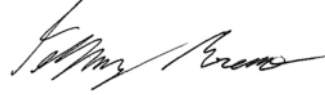
⁴ NPRM at 38-40.

⁵ Although the Board has linked this proceeding with EP 755, *Final Offer Rate Review* (served Nov. 15, 2021), and established the same dates for filing comments in both dockets, it is not necessary to also hold EP 755 in abeyance. The Board can still maintain any link by issuing simultaneous final decisions in both dockets if EP 765 is not otherwise terminated.

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4. On the other hand, if Joint Petitioners refuse to withdraw their objections, the Board should terminate this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', written in a cursive style.

Jeffrey O. Moreno, Esq.
Karyn A. Booth
Jason D. Tutrone, Esq.
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 263-4107

Dated: November 24, 2021

On behalf of the Joint Shippers

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Certificate of Service

I certify that on November 24, 2021, I served a copy of the foregoing “Motion Of Joint Shippers To Hold Procedural Schedule In Abeyance” upon all Parties of Record by electronic mail.

A handwritten signature in black ink, appearing to read "Jeffrey Moreno", written in a cursive style.

Jeffrey Moreno