

SERVICE DATE – JULY 10, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 722

RAILROAD REVENUE ADEQUACY

Docket No. EP 766¹

JOINT PETITION FOR RULEMAKING—ANNUAL REVENUE ADEQUACY
DETERMINATIONS

Digest:² The Board is discontinuing proceedings in which it sought comment on proposed modifications to its procedures for annually determining whether Class I rail carriers are revenue adequate.

Decided: July 7, 2025

In April 2014, the Board instituted a proceeding in Docket No. EP 722 and invited interested persons to comment on “the Board’s methodology in fulfilling its statutory mandate to determine railroad revenue adequacy, as well as the revenue adequacy component of the Board’s standard for judging the reasonableness of rail freight rates, with a view to what, if any, changes the Board can and should consider.” See R.R. Revenue Adequacy, EP 722, slip op. at 4 (STB served Apr. 2, 2014). The Board held a public hearing on those issues in 2015 and then again in 2019. See R.R. Revenue Adequacy, EP 722 (STB served May 8, 2015); R.R. Revenue Adequacy, EP 722 (STB served Sept. 12, 2019). The Board allowed parties to supplement their testimony through February 13, 2020. R.R. Revenue Adequacy, EP 722, slip op. at 1 (STB served Dec. 16, 2019).

On September 1, 2020, in Docket No. EP 766, Union Pacific Railroad Company (UP), Norfolk Southern Railway Company (NS), and the U.S. rail operating affiliates of Canadian National Railway Company (CN, and collectively, Joint Carriers) filed a joint petition for rulemaking to modify the Board’s procedures for determining whether each Class I rail carrier is earning adequate revenues under 49 U.S.C. § 10704(a)(3). By decision served on December 30, 2020, the Board initiated a rulemaking proceeding to allow it to further consider the issues raised

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

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

by the petition. Joint Pet. for Rulemaking—Annual Revenue Adequacy Determinations, EP 766, slip op. at 3 (STB served Dec. 30, 2020). The decision also invited comments on the Joint Carriers’ proposal and several related issues. Id. at 3-5. The Board did not propose regulations or indicate that it would do so.

For the reasons stated below, the Board will discontinue these proceedings.

BACKGROUND

Pursuant to 49 U.S.C. § 10704(a)(3), the Board annually determines which Class I rail carriers are earning adequate revenues, most recently in Railroad Revenue Adequacy—2023 Determination, EP 552 (Sub-No. 28) (STB served Sept. 6, 2024). Adequate revenues are defined as those “that are adequate, under honest, economical, and efficient management, for the infrastructure and investment needed to meet the present and future demand for rail services and to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business.” 49 U.S.C. § 10704(a)(2). The Board has adopted, and periodically revised, revenue adequacy standards and procedures.

To make the annual revenue adequacy determination, the Board compares a carrier’s return on net investment (ROI) with the rail industry’s after-tax cost of capital for that year. Ass’n of Am. R.Rs.—Pet. Regarding Methodology for Determining R.R. Revenue Adequacy, EP 679, slip op. at 1 (STB served Oct. 24, 2008). If its ROI exceeded the cost of capital, the carrier is considered to have been revenue adequate for that year; if its ROI was less than the cost of capital, the railroad is considered to have been revenue inadequate. Id.

PROCEDURAL HISTORY

Docket No. EP 722

On September 5, 2014, the Board received opening comments in Railroad Revenue Adequacy, EP 722, and replies were filed on November 4, 2014. After holding an initial hearing on July 22 and 23, 2015, the Board received additional comments from stakeholders on August 6, 2015. In January 2018, the Board established a Rate Reform Task Force (RRTF) to recommend improvements to the Board’s rate review processes and to propose new rate review methodologies. The RRTF issued a report on April 25, 2019, which included, among other things, recommendations that the Board consider policy changes regarding revenue adequacy. Therefore, the Board solicited written testimony and held a second hearing in this docket on December 12 and 13, 2019, to seek input from stakeholders on revenue adequacy issues raised by the report. The hearing record was kept open through February 13, 2020. R.R. Revenue Adequacy, EP 722, slip op. at 1 (STB served Dec. 17, 2019).

Docket No. EP 766

In Joint Petition for Rulemaking—Annual Revenue Adequacy Determinations, EP 766, Joint Carriers propose two changes to the Board’s procedures for the annual revenue adequacy

determination. First, Joint Carriers propose that the Board determine whether a railroad is revenue adequate by comparing the extent by which its ROI exceeds the rail industry's cost of capital to the extent by which the ROI of companies in the S&P 500 exceeds their cost of capital. (Pet. 3, 8, EP 766.) Second, Joint Carriers propose that the Board change its treatment of deferred taxes by implementing a flow-through approach by which annual deferred taxes and accumulated deferred taxes would not be removed from net operating income and the investment base, respectively. (*Id.* at 38.)

On September 21, 2020, the Board received replies to the petition from CSXT and the Western Coal Traffic League (WCTL), and a joint reply from 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). CSXT supports the petition, while WCTL and Joint Shippers oppose it. On October 13, 2020, Joint Carriers responded to WCTL's and Joint Shippers' arguments against their petition.

After initiating the proceeding, the Board received opening comments on May 17, 2021, from the Association of American Railroads (AAR), Dow, Inc., Industrial Minerals Association, Joint Carriers, Joint Shippers, Olin Corporation, the United States Department of Agriculture (USDA), and jointly from WCTL and Seminole Electric Cooperative, Inc. (Seminole Electric), and replies on August 16, 2021, from AAR, Joint Carriers, Joint Shippers, and jointly from WCTL and Seminole Electric.

DISCUSSION AND CONCLUSIONS

The Board appreciates the effort undertaken by stakeholders in these exploratory dockets to provide additional information and arguments for the Board's consideration. While the Board continues to explore ideas related to revenue adequacy, at this time, the Board has determined that the public interest would be better served by the Board devoting its limited resources to other reform and potential rulemaking matters. For example, the agency recently initiated a reform initiative aimed at streamlining its processes and procedures, including those used in rate, service, and other cases. *See* Press Release, STB, STB Gathers More Than 100 Ideas from Legal Practitioners to Streamline Board Processes, No. 25-22 (STB posted June 10, 2025). The Board is also undertaking a review of its regulations implementing environmental laws, including the National Environmental Policy Act (42 U.S.C. §§ 4321–4370m-11), conducting a comprehensive review of its regulations and policies related to competition, and considering issues related to class exemptions and preemption.

The Board's docket prioritization is guided in part by the fact that revenue adequacy issues have been raised in individual matters. *See, e.g., Consumers Energy Co. v. CXS Transp., Inc.*, NOR 42142, slip op. at 2 (STB served June 15, 2015). For example, at present, the ideas proposed by Joint Carriers regarding benchmarking railroad return on investment and cost of capital to companies in the S&P 500 could be offered by a carrier (or a complainant) in a rate reasonableness dispute. As such, the Board is discontinuing the proceedings in Docket No.

EP 722 and Docket No. EP 766 in the interest of administrative efficiency.³ This action, however, does not foreclose the possibility of the Board exploring revenue adequacy issues in the future in a new docket.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Docket No. EP 722 and Docket No. EP 766 are discontinued.
2. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

³ Under the Board's practice, information-gathering proceedings are automatically discontinued once the record closes. Rev. of the Surface Transp. Bd.'s Gen. Costing Sys., EP 431 (Sub-No. 3) et al., slip op. at 3 (STB served Jan. 19, 2010). Therefore, another revenue adequacy-related docket, Hearing on Revenue Adequacy, Docket No. EP 761, was discontinued as of February 13, 2020. While Docket No. EP 722 could also have been considered discontinued that day (see R.R. Revenue Adequacy, EP 722 et al., slip op. at 1 (STB served Dec. 17, 2019) (setting February 13, 2020, as the deadline to submit evidence on the record)), there continued to be activity in and related to that docket after February 13, 2020. See In re: W. Coal Traffic League, 108 F.4th 905 (D.C. Cir. 2024). Accordingly, the Board is discontinuing Docket No. EP 722 in this decision.