

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 722

RAILROAD REVENUE ADEQUACY

Digest:¹ In this decision, the Board clarifies that informal discussions between the agency and stakeholders are permitted in this proceeding.

Decided: March 28, 2018

On April 2, 2014, the Board served a notice announcing that it would receive comments in this docket to explore the Board’s methodology for determining railroad revenue adequacy and the use of revenue adequacy in rate reasonableness cases. After receiving opening and reply comments, the Board held a public hearing on July 22-23, 2015, to further examine the issues raised in the comments. The agency has not determined the next action it will take relating to this proceeding. See Report on Pending STB Regulatory Proceedings – December 31, 2017 at 7 (Jan. 2, 2018).²

The Board recently established a new agency rate reform task force to explore alternative rate reasonableness methodologies and is interested in facilitating informal interactions with stakeholders to discuss rate case alternatives. The Board believes an informal forum where the agency can communicate directly with individual stakeholders in real time and ask follow-up questions would be a useful means of obtaining stakeholder input. Because those informal discussions could involve issues or comments raised in this proceeding, the Board will clarify here that informal discussions between the agency and stakeholders related to this proceeding are permitted.

As an initial matter, the Board notes that EP 722 is a pre-rule informational and hearing docket, and that no rulemaking has been initiated. See 49 C.F.R. § 1110.3(b) (providing that rulemaking proceedings are initiated by notices of intent to initiate a rulemaking proceeding, advance notices of proposed rulemaking, or notices of proposed rules). Accordingly, even

¹ 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. Policy Statement on Plain Language in Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² This report for the fourth quarter of 2017, and other related quarterly reports, can be found on the Board’s website at <https://www.stb.gov/stb/rail/ReauthorizationAct.html> (in the section titled “Quarterly Reports on Unfinished Regulatory Proceedings”).

though the Board's policy in effect at the initiation of this proceeding prohibited ex parte communications in informal rulemaking proceedings, that policy would not have strictly barred informal communications regarding the issues raised in this proceeding. See 49 C.F.R. § 1102.2(c) (2017) (amended Apr. 4, 2018). Nonetheless, given the nature of the proceeding, and out of an abundance of caution to avoid confusion for stakeholders, the Board specifically determines that informal communications with stakeholders related to this proceeding are allowable under applicable regulations and policies. However, the Board directs that any stakeholders that engage in informal communications with the agency avoid discussion of any adjudicatory proceedings before the Board that may relate to revenue adequacy issues.

It is ordered:

1. The Board clarifies that informal discussions between the agency and stakeholders are permitted in this proceeding.
2. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.