

SERVICE DATE – MARCH 30, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 558 (Sub-No. 13)

RAILROAD COST OF CAPITAL—2009

Decided: March 29, 2010

By this decision, we are instituting a proceeding to determine the railroad industry's cost of capital for 2009. The most recent finding regarding the railroad industry's cost of capital was made in Railroad Cost of Capital—2008, Ex Parte No. 558 (Sub-No. 12) (STB served Sept. 25, 2009), which determined the industry's 2008 cost of capital. The cost of capital finding made in this proceeding will be used in the determination of railroad revenue adequacy for 2009. It may also be used in other Board railroad proceedings, including, but not necessarily limited to, those involving the prescription of maximum reasonable rate levels; the determination of trackage rights compensation; proposed abandonments of rail lines; railroad mergers; and applications to purchase feeder lines.

The Cost of Capital for 2009

In this proceeding, we seek comment on the following narrow issues: (1) the railroads' 2009 current cost of debt capital; (2) the railroads' 2009 current cost of preferred equity capital (if any); (3) the railroads' 2009 cost of common equity capital; (4) how the change in BNSF Railway Company's (BNSF's) share prices from November 2009 through December 2009, following the announcement of BNSF's acquisition by Berkshire Hathaway Inc., should be considered in calculating the 2009 cost of common equity capital; and (5) the 2009 capital structure mix of the railroad industry on a market value basis. Our conclusions regarding these matters will be used in our computation of the industry's overall, or composite, cost of capital for 2009.<sup>1</sup>

The railroad industry's cost of capital will be determined on the basis of data for a sample of railroads. Using the criteria set forth in Railroad Cost of Capital—1984, 1 I.C.C.2d 989 (1985), a railroad will be included in the sample base if it meets all of the following criteria during 2009:

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<sup>1</sup> The current cost of debt and market-value based capital structure mix will be used in this cost of capital determination. For purposes of consistency, the current cost of preferred equity, if any, will also be used. No consideration will be afforded to evidence depicting the embedded costs of debt or preferred equity or the book value capital structure mix.

- The company is a Class I line-haul railroad.
- If the Class I railroad is controlled by another company, the controlling company is primarily a railroad company and is not already included in the study frame.<sup>2</sup>
- The company's bonds are rated at least BBB by Standard & Poor's and Baa by Moody's.
- The company's stock is listed on either the New York or the American Stock Exchange.
- The company has paid dividends throughout 2009.

All railroads that meet these criteria shall be included in the sample base for this proceeding.

Comments should focus on the various cost of capital components listed above using the methodology followed in Railroad Cost of Capital—2008. At this time we seek the information needed to calculate the 2009 cost of capital under the existing methodology.

#### Procedural Matters

All Class I railroads shall be respondents in this proceeding. They shall, and other interested parties may, submit evidence to enable the Board to update the cost of capital findings in Railroad Cost of Capital—2008. Two copies of all underlying work papers and background material used to develop that evidence shall be furnished to the Board and be made available, upon request, to other participants in this proceeding.

Railroads and others that intend to participate in this proceeding shall file an original and one copy of a notice of intent to participate with the Board by the date specified below. Evidentiary statements are to be filed with the Board on or before the dates set forth below. Comments may be submitted either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 558 (Sub-No. 13), 395 E Street, S.W., Washington, DC 20423-0001. In addition, the evidence contained in the statement shall be submitted on a compact disc or a 3.5-inch disk, in MS Word 2003 or its equivalent.

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<sup>2</sup> A company is considered to be primarily in the railroad business if at least 50 percent of its total assets are devoted to railroad operations.

Notices of intent to participate will be due by April 16, 2010. Statements of the railroads will be due by May 17, 2010. Statements of other interested persons will be due by June 15, 2010. Rebuttal statements by the railroads will be due by July 15, 2010.

Environmental and Energy Considerations

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

It is ordered:

1. This proceeding is instituted pursuant to 49 U.S.C. 10704(a)(2) to determine the railroad industry's cost of capital for 2009. Evidence on this matter is required of all Class I railroads, and comments are invited from all other interested persons.

2. Notices of intent to participate are due by April 16, 2010. Statements of the railroads are due by May 17, 2010. Statements of other interested persons are due by June 15, 2010. Rebuttal statements by the railroads are due by July 15, 2010.

3. Notice of this decision will be published in the Federal Register on April 2, 2010.

4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.