

BEFORE THE SURFACE TRANSPORTATION BOARD

236031
236032

STB Ex Parte No. 722

RAILROAD REVENUE ADEQUACY

ENTERED
Office of Proceedings
May 12, 2014
Part of
Public Record

STB Ex Parte No. 664 (Sub-No. 2)

**PETITION OF THE WESTERN COAL TRAFFIC LEAGUE TO INSTITUTE A
RULEMAKING PROCEEDING TO ABOLISH THE USE OF THE MULTI-STAGE
DISCOUNTED CASH FLOW MODEL IN DETERMINING THE RAILROAD
INDUSTRY'S COST OF CAPITAL**

**PETITION OF THE ASSOCIATION OF AMERICAN RAILROADS FOR
MODIFICATION OF THE PROCEDURAL SCHEDULE**

The Association of American Railroads (“AAR”) hereby requests that the Board modify the procedural schedule in the above-captioned matters.¹ For the reasons set out below, AAR proposes the following modifications to the procedural schedule: (1) that the Board establish separate procedural schedules in Ex Parte No. 664 (Sub-No. 2), *Petition of the Western Coal Traffic League To Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry’s Cost of Capital (“Cost of Capital”)* and Ex Parte No. 722, *Railroad Revenue Adequacy (“Revenue Adequacy”)*; (2) that the schedule for filing opening comments in Ex Parte No. 664 (Sub-No. 2) be extended 30 days until August 1, 2014, with reply filings due 45 days later on September 15, 2014; and (3) that the schedule for filing opening comments in Ex Parte No. 722 be extended 66 days until September 5, 2014, with reply comments due 60 days later on November 4, 2014. AAR has conferred with counsel for the Western Coal Traffic League, the National Industrial Transportation League and

¹ This Petition is being filed simultaneously in the two above-captioned matters which have not been consolidated.

the American Chemistry Council and AAR has been authorized to represent that those parties do not oppose AAR's requested schedule modifications. The grounds for AAR's request are set out below.

I. The Proposed Schedule Changes Are Needed to Avoid Overlapping Filing Dates in Three Major Comment Proceedings

AAR and its member railroads view the *Cost of Capital* and *Revenue Adequacy* proceedings as among the most important matters to come before the Board in recent years, and undoubtedly many rail customers and shipper organizations share that view. It is therefore important that parties intending to participate in those proceedings have ample opportunity to develop their positions and prepare their comments in those proceedings.

The Board set the current filing dates for the *Cost of Capital* and *Revenue Adequacy* proceedings on April 2, 2014. In the April 2, 2014 Notice, which was issued in both dockets, the Board did not consolidate the two proceedings, but it established a single procedural schedule for the filing of comments in the two proceedings and suggested that a single hearing would be held to address the issues raised in the parties' comments. The procedural schedule called for opening comments in both proceedings to be filed on July 1, 2014 and reply comments on August 15, 2014.

The schedule set out in the April 2, 2014 Notice entailed a modest amount of overlap during July with the then-current schedule in a third important industry-wide comment proceeding, *Rail Transportation of Grain, Rate Regulation Review*, Ex Parte No. 665 (Sub-No. 1) ("*Grain Rates*"), which called for opening comments to be filed on May 12, 2014, and reply comments 60 days later on July 12, 2014. However, some two weeks after the Board established the comment schedules in the *Cost of Capital* and *Revenue Adequacy* proceedings, the Board granted a request by the Alliance for Rail Competition to extend the comment schedule in the

Grain Rates proceeding by 45 days. See Ex Parte No. 665 (Sub-No. 1) (Decision served April 18, 2014). The new schedule in the *Grain Rates* proceeding created a nearly complete overlap in the schedules of the three proceedings, with opening comments in the *Grain Rates* proceeding due a few days before opening comments in the *Cost of Capital* and *Revenue Adequacy* proceedings and reply comments in the *Grain Rates* proceeding due a few days after reply comments were due in the *Cost of Capital* and *Revenue Adequacy* proceedings. The chart set out below shows the overlap in the current schedules of the three proceedings.

CURRENT SCHEDULE		
Ex Parte No. 665 (Sub-No.1)	Opening Comments	June 26, 2014
	Reply Comments	August 25, 2014
Ex Parte No. 664 (Sub No. 2)	Opening Comments	July 1, 2014
	Reply Comments	August 15, 2014
Ex Parte No. 722	Opening Comments	July 1, 2014
	Reply Comments	August 15, 2014

All three proceedings raise important issues that warrant careful consideration by railroad and shipper interests alike. Many of the same parties, including AAR and at least some of its member railroads can be expected to participate in all three proceedings. The extensive overlap in schedules in the three proceedings would make it very difficult for the parties to develop an adequate record in each proceeding. It would be particularly challenging to prepare reply comments in three major industry-wide proceedings over the same compressed time period in light of the range of issues involved in the three proceedings and the possible diversity of perspectives that different parties will bring to the issues. An extension of the procedural schedules in the *Cost of Capital* and *Revenue Adequacy* proceedings will allow for a more thorough and considered examination of the issues in all three proceedings.

II. Establishing Different Schedules in the *Cost of Capital* and *Revenue Adequacy* Proceedings Would Be Appropriate

AAR recognizes that the current procedural schedules established by the Board reflect the Board’s desire to move forward its consideration of these important issues without delay. AAR believes that the best way to accomplish this objective while allowing adequate development of the record in each proceeding is to establish separate procedural schedules for the *Cost of Capital* and *Revenue Adequacy* proceedings, with a modest 30-day extension of the current schedule in the *Cost of Capital* proceeding and a 66-day extension of the procedural schedule in the *Revenue Adequacy* proceeding plus a 60-day, instead of 45-day, reply period. Under this proposed schedule, there will still be some overlap in the preparation of opening and reply comments in the three proceedings, which may be necessary to avoid undue delay, but the staging of filings in the three proceedings will give the parties a much better opportunity to fully address the relevant issues. AAR’s proposal would result in the schedules in the chart below:

PROPOSED SCHEDULE		
Ex Parte No. 665 (Sub-No.1)	Opening Comments	June 26, 2014
	Reply Comments	August 25, 2014
Ex Parte No. 664 (Sub No. 2)	Opening Comments	August 1, 2014
	Reply Comments	September 15, 2014
Ex Parte No. 722	Opening Comments	September 5, 2014
	Reply Comments	November 4, 2014

Separate procedural schedules in the *Cost of Capital* and *Revenue Adequacy* proceedings would be appropriate given the differences in the underlying issues and the degree to which the issues have been developed in prior regulatory filings. While the Board’s cost of capital calculations are related to the issues that will be addressed in the *Revenue Adequacy* proceeding, the *Cost of Capital* proceeding raises discrete and focused methodological issues. Moreover, some aspects of those issues have already been the subject of recent pleadings, including the

WCTL's August 27, 2013 Petition in Ex Parte No. 664 (Sub-No. 2) and AAR's September 16, 2013 reply. A 30-day extension in the procedural schedule for the filing of *Cost of Capital* comments, with a longer extension in the *Revenue Adequacy* proceeding, will minimize the overlap with the filing of comments in the *Grain Rates* proceeding while allowing for prompt consideration of the issues in the *Cost of Capital* proceeding. AAR also believes that the differences between the issues in the *Cost of Capital* and *Revenue Adequacy* proceedings would justify the scheduling of separate hearings in the *Cost of Capital* and *Revenue Adequacy* proceedings. Staging the filing of *Cost of Capital* and *Revenue Adequacy* comments on different schedules will facilitate the scheduling of separate hearings in the two proceedings.

A longer 66-day extension of the procedural schedule is appropriate in the *Revenue Adequacy* proceeding in light of the fact that issues relating to railroad revenue adequacy are broader and have not yet been the focus of recent industry-wide consideration. The Board's April 2, 2014 Notice acknowledged that the Board "has not yet had the opportunity to address how the revenue adequacy constraint would work in practice in large rail rate cases," and it expects that the parties' comments will "cover[] a range of issues." April 2, 2014 Notice at 4. Given the need for AAR's members and their counsel, as well as shippers, shipper associations and their counsel, to prepare opening and reply comments in two other important industry-wide proceedings over the summer months, a 66-day extension in the procedural schedule for the *Revenue Adequacy* comments is warranted.² AAR also requests that the Board extend the reply period in the revenue adequacy proceeding to 60 days in light of the novelty and potential range

² The 66-day extension requested by AAR is far shorter than the cumulative 105 day extension granted by the Board in *Grain Rates* in response to two separate shipper requests for extension. See Ex Parte No. 665 (Sub-No. 1), Decisions served February 10, 2014 and April 18, 2014.

of issues to be addressed in that proceeding. A 60-day reply period is consistent with the reply period that the Board has established in the *Grain Rates* proceeding.

For the reasons set forth above, AAR requests that the Board modify the procedural schedules in Ex Parte Nos. 664 (Sub-No. 2) and 722 as follows:

Ex Parte No. 664 (Sub No. 2)	Opening Comments	August 1, 2014
	Reply Comments	September 15, 2014
Ex Parte No. 722	Opening Comments	September 5, 2014
	Reply Comments	November 4, 2014

AAR suggests that under this revised schedule the Board may wish to schedule a public hearing on the cost of capital issues raised in Ex Parte No. 664 (Sub No. 2) once replies have been filed on September 15, 2014. A separate hearing could then be scheduled following the filing of reply comments in Ex Parte No. 722. Under this approach, the additional extension in Ex Parte No. 722 would not delay Ex Parte No. 664 (Sub-No. 2).

Respectfully submitted,

Of Counsel:

Thomas A. Andreoli
David L. Coleman
Paul A. Guthrie
Paul R. Hitchcock
James A. Hixon
Theodore K. Kalick
Jill K. Mulligan
Roger P. Nober
John P. Patelli
David C. Reeves
Louise A. Rinn
John M. Scheib
Peter J. Shultz
Greg E. Summy
Gayla L. Thal
Richard E. Weicher
Adam Weiskittel
W. James Wochner

*Counsel for the Association of American
Railroads*

May 12, 2014



Louis P. Warchot
Timothy J. Strafford
ASSOCIATION OF AMERICAN RAILROADS
425 Third Street, S.W.
Washington, D.C. 20024
(202) 639-2502

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Frederick J. Horne
STEPTOE & JOHNSON, LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6486

G. Paul Moates
Matthew J. Warren
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Michael L. Rosenthal
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 662-6000

Counsel for the Association of American Railroads