Kansas Administrative Regulations

Kansas Corporation Commission

Article 9.—Railroad Rates

82-9-7. Burden of proof.

(a) General. The burden shall be on the protestant to prove the matters described in K.A.R. 82-9-3 of these rules.

(b) Jurisdiction. The respondent railroad shall bear the burden of showing that the commission lacks jurisdiction to review the proposed rate because the rate produces a revenue—variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2), which is hereby adopted by reference, as in effect on September 23, 1983. The railroad may meet its burden of proof by showing the revenue—variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2). The protestant may rebut the railroad's evidence with a showing that the revenue—variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709(d)(2).

(c) Intramodal and intermodal competition. The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. The respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

(d) Product and geographic competition. The railroad shall also introduce evidence of product or geographic competition by identifying such competition. Once the railroad has made this identification, the party opposing the rate shall have the burden of proving that the product or geographic competition identified by the railroad is not effective.

(e) Reasonableness of rate increases. Each party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if the rate:

(1) is authorized under 49 U.S.C. § 10707a, as in effect on September 23, 1983; and

(2) results in a revenue—variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. § 10707a(e)(2)(A), as in effect on September 23, 1983.

(f) Respondent's burden of proof. The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if:

(A) The rate is greater than that authorized under paragraph (e)(1) of this regulation; or

(B) The rate results in a revenue—variable cost percentage, for the transportation to which the rate applies, that is equal to or greater than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. § 10707a(e)(2)(A), as in effect on September 23, 1983; and

(2) the commission initiates an investigation.

(g) Rate decreases. A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low. A party may meet its burden by making a showing that the rate is less than the variable cost for the transportation to which the rate applies.

(Authorized by K.S.A. 66-106; implementing K.S.A. 66-146; effective May 1, 1984; amended May 1, 1985.)