

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42099¹

STB Docket No. 42100

STB Docket No. 42101

E.I. DUPONT DE NEMOURS AND COMPANY

v.

CSX TRANSPORTATION, INC.

Decided: April 17, 2009

This decision grants the parties' joint request to hold the procedural schedule in abeyance.

In these three proceedings, E.I. du Pont de Nemours and Company (DuPont) challenged the reasonableness of certain rates charged by CSX Transportation, Inc. (CSXT) for the movement of certain commodities, including hazardous materials. DuPont elected to pursue rate relief under the Three-Benchmark methodology as clarified and modified in Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) (Simplified Standards). In decisions served on June 3, 2008, the Board found: (1) in STB Docket No. 42099 that CSXT had market dominance over the transportation at issue and that the challenged rates were unreasonably high; (2) in STB Docket No. 42100 that CSXT had market dominance over two of the three transportation movements at issue and that the challenged rates for those two movements were unreasonably high; and (3) in STB Docket No. 42101 that CSXT had market dominance over the transportation movement at issue and that the challenged rate was unreasonably high.

Because of a flaw in the Revenue Shortfall Allocation Method (RSAM) formula used in these cases, the Board reopened these proceedings on its own motion in a decision served on November 21, 2008. In a decision served January 27, 2009, the Board issued a procedural schedule for DuPont and CSXT to fully brief the Board regarding how to best apply corrected RSAM numbers to these proceedings, with both parties' briefs due on February 17, 2009, and reply briefs due on March 9, 2009. On January 30, 2009, the parties filed a joint motion to defer the procedural schedule for 45 days, citing the parties' ongoing mediation in another rate

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

reasonableness proceeding. On February 4, 2009, the Board served a decision granting the joint motion and requiring briefs to be filed by April 3, 2009, with reply briefs due April 23, 2009.

On March 24, 2009, the parties filed a second joint motion to defer the procedural schedule, noting that the mediation in their other rate reasonableness case was still ongoing and that further extension of the procedural schedule in this matter would allow them to focus on that larger dispute, while potentially avoiding the need for any further evidentiary filings in this matter. On March 27, 2009, the Board served a decision granting the joint motion and requiring briefs to be filed by April 17, 2009, with reply briefs due May 7, 2009.

On April 14, 2009, the parties filed a joint motion to hold the procedural schedule in abeyance. The parties explain that they have made significant progress in the ongoing mediation of their other rate reasonableness dispute and request that the Board hold the procedural schedule in abeyance to allow them time to focus their attention on reaching a final agreement in their larger rate reasonableness case. The parties' request is reasonable and will be granted pending further order of the Board. The Board will require the parties to file biweekly status reports beginning on April 24, 2009.

It is ordered:

1. The joint motion to hold the procedural schedule in abeyance until further order of the Board is granted.
2. The parties shall file biweekly status reports with the Board beginning April 24, 2009.
3. This decision is effective on the date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary