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SEC

SERVICE DATE – MARCH 27, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42099<sup>1</sup>

STB Docket No. 42100

STB Docket No. 42101

E.I. DUPONT DE NEMOURS AND COMPANY

v.

CSX TRANSPORTATION, INC.

Decided: March 27, 2009

This decision grants the parties' joint request to extend the deadline for filing briefs 14 days.

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

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<sup>1</sup> 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. The parties state the mediation in their other rate reasonableness case is still ongoing. They note that an extension of the procedural schedule in this matter will allow them to focus on that larger dispute, while potentially avoiding the need for any further evidentiary filings in this matter. The request for an extension of the procedural schedule for an additional 14 days is reasonable and will be granted. The procedural schedule will be revised accordingly.

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

It is ordered:

1. The joint motion to defer the procedural schedule is granted.
2. Briefs are due on April 17, 2009.
3. Reply briefs are due on May 7, 2009.
4. This decision is effective on the date of service.

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

Anne K. Quinlan  
Acting Secretary