

	)	
AGRIUM INC. and	)	
AGRIUM U.S. INC.	)	
	)	
Complainants,	)	
	)	Docket No. NOR 42145
v.	)	
	)	
CANADIAN PACIFIC RAILWAY	)	
COMPANY	)	
	)	
Defendant.	)	
	)	

Attorneys for Complainants

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AGRIUM INC. and AGRIUM U.S. INC.	)	
	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. NOR 42145
	)	
CANADIAN PACIFIC RAILWAY COMPANY	)	
	)	
	)	
Defendant.	)	
	)	

**AGRIUM’S REPORT ON THE PARTIES’ CONFERENCE AND
REQUEST TO ADOPT A PROPOSED PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. § 1111.10(a), counsel for Complainant Agrium Inc. and Agrium U.S. Inc. (collectively “Agrium”) submits its report on the parties’ conference and its request that the Board adopt the procedural schedule set forth in Attachment 1. In support hereof Agrium states as follows:

1. Agrium filed its Complaint initiating this proceeding on May 15, 2015. Agrium’s Complaint seeks, *inter alia*, a Board determination that certain defense, indemnity, and liability provisions, as currently set forth in CP Tariff 8, Item 54, constitute an unreasonable and unlawful practice as applied to Agrium’s rail transportation service described therein in violation of 49 U.S.C. § 10702(2). *Id.* at 16-17. Defendant Canadian Pacific Railway Company (“CP”) filed its Answer on June 4, 2015.

2. The Board's Rules of Practice ("Rules") call for the parties in this case to "meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed." 49 C.F.R. § 1111.10(a). As called for under the Rules, the parties have engaged in telephone discussions concerning procedural matters and discovery.

3. During the course of these discussions, Agrium and CP discussed the need for Board adoption of a protective order governing the exchange of confidential and highly confidential information in this case. Agrium does not anticipate that this issue will be contentious, and that one or both of the parties will be filing a motion asking that the Board adopt an appropriate protective order.

4. The Board's Rules also provide that "[w]ithin 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case." 49 C.F.R. § 1111.10(a).

5. Agrium requests that the Board adopt the proposed procedural schedule set forth in Attachment 1. The proposed schedule calls for a 90 day discovery period, followed by evidentiary filings to be completed over the next 150 days. Agrium believes this schedule can accord it sufficient time to present its case assuming that discovery is carried out in a fair and expeditious manner. This schedule is also consistent with the procedural schedules adopted in recent unreasonable practice cases.¹ Agrium

¹ See, e.g., *Cargill, Inc. v. BNSF Ry. Co.*, STB Docket No. NOR 42120, (STB served Jan. 4, 2011) at 6-7 ("*January 2011 Cargill Decision*").

reserves the right to ask the Board to amend the schedule if it becomes necessary in order for Agrium to properly develop or present its case to the Board.

6. Agrium also proposes that the Board incorporate into the procedural schedule governing this case the expedited discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4). These procedures, which were promulgated to apply in stand-alone cost (“SAC”) cases and simplified standards rate cases, call for expedited briefing of discovery motions, active involvement of the Board’s staff, and expedited Board decisions. Counsel for Agrium discussed these procedures with counsel for CP, and believes that these procedures have worked well in SAC cases and non-SAC cases² and their application in this case should help facilitate the prompt and efficient resolution of discovery disputes.

7. Agrium has discussed its proposed procedural schedule set forth in Attachment 1 with CP. It understands that CP is generally in agreement with this proposed procedural schedule.

8. Based on CP’s Answer, and discussions with CP, Agrium anticipates that CP may be filing a motion to dismiss parts or all of Agrium’s Complaint, but respectfully submits that the Board should adopt a procedural schedule now and for this case to proceed in accordance with that schedule. Discovery disputes can be handled as they arise, and Agrium has proposed that the Board adopt expedited procedures to

² See *January 2011 Cargill Decision* at 7; *Arkansas Elec. Coop. Corp. – Petition for Declaratory Order*, STB Finance Docket No. 35305 (STB served Dec. 1, 2009) at 4 (appointing a Board employee to “act as a discovery facilitator”).

address them. Also, the Board looks with great disfavor on motions to dismiss,³ as well as on requests to delay the processing of cases pending resolution of these motions.⁴

Issuance of a schedule now is fully consistent with Board precedent and the national rail transportation policy. *See* 49 U.S.C. § 10101(15) (calling for “the expeditious handling and resolution of all [Board] proceedings”).

WHEREFORE, for the reasons set forth above, Agrium requests that the Board accept its report on the parties' conference and that the Board issue an order adopting the procedural schedule set forth in Attachment 1.

Respectfully submitted,

AGRIUM INC. and AGRIUM U.S. INC.

By: /s/
Peter A. Pfohl
Frank J. Pergolizzi
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: June 23, 2015

Attorneys for Complainant

³ See *January 2011 Cargill Decision* at 4; *Entergy Ark., Inc. v. Union Pac. R.R.*, STB Docket No. 42104 (STB served Dec. 30, 2009) at 3.

⁴ See *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption & Revocation Proceedings*, 1 S.T.B. 859, 864 (1996) and 1 S.T.B. 754, 763-764 (1996); 49 C.F.R. 1112.2 (“[t]he filing of motions or other pleadings will not automatically stay or delay the established procedural schedule”); *AEP Tex. N. Co. v. BNSF Ry. Co.*, STB Docket No. 41191 (Sub-No. 1) (STB served Sept. 11, 2003) at 2 (denying BNSF’s request asking the Board to withhold issuance of a procedural schedule until the Board decided BNSF’s motion to dismiss).

**AGRIUM'S PROPOSED PROCEDURAL SCHEDULE
FOR STB DOCKET NO. 42145**

Day	Event
0	Board Serves Procedural Schedule; Discovery Begins
0+90	Discovery Ends*
0+150	Agrium Opening Statement
0+210	CP Reply Statement
0+240	Agrium Rebuttal Statement

* The expedited procedures set forth in 49 C.F.R. § 1114.31(a) governing motions to compel in rate cases considered under the stand-alone cost methodology or simplified standards will also apply in this case.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2015, I caused copies of Agrium's Report on the Parties' Conference and Request to Adopt a Proposed Procedural Schedule to be served electronically upon counsel for Defendant Canadian Pacific Railway Company, as follows:

David F. Rifkind
John McCaffrey
Stinson Leonard Street LLP
1775 Pennsylvania Ave. N.W., Suite 800
Washington, D.C. 20006

/s/

Peter A. Pfohl