

SERVICE DATE – JUNE 6, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36298

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY
SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE
PROPULSION, LLC—PETITION FOR DECLARATORY ORDER

Decided: June 6, 2019

On April 30, 2019, the Naval Nuclear Propulsion Program, the United States Army Military Surface Deployment and Distribution Command, and Fluor Marine Propulsion, LLC (collectively, the Government), filed a petition seeking a declaratory order related to the regulatory status of a rail segment near Ballston Spa, N.Y., and the obligations of Delaware and Hudson Railway Company d/b/a Canadian Pacific (CP) as to shipments on the segment.

The Government simultaneously filed a motion for procedural schedule, and the Board adopted a procedural schedule in a decision served on May 14, 2019. The Board directed CP to file its reply on the merits by May 31, 2019, and permitted the Government to file a rebuttal by June 14, 2019. The Board further asked the parties to inform the agency by May 31, 2019, whether they are interested in participating in Board-sponsored mediation.

On May 31, 2019, the Government responded that it is willing to engage in mediation. That same day, CP filed a reply to the Government's petition as well as a letter asking that the Board extend the due date for its response as to whether it is willing to participate in Board-sponsored mediation.¹ CP explains that it expects that current discussions between CP and the Government regarding mediation will be informed by its reply to the Government's petition and that it anticipates responding to the mediation question by June 7, 2019.

CP's request is reasonable and will be granted. CP's response to whether it is willing to engage in mediation will be due by June 7, 2019.

It is ordered:

1. CP's extension request is granted, and its reply concerning mediation is due by June 7, 2019.

¹ Also on May 31, 2019, Samuel J. Nasca, on behalf of SMART/Transportation Division, New York State Legislative Board, submitted comments and petitioned to intervene in the proceeding.

2. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.