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SEC

SERVICE DATE – JUNE 12, 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: June 11, 2009

This decision grants the parties' joint request to continue to hold the procedural schedule in abeyance for 30 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 reasonableness proceeding in STB Docket No. 42112. On February 4, 2009, the Board served a

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

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 explained that they had made significant progress in the ongoing mediation of their other rate reasonableness dispute and that they filed a joint stipulation to stay the other rate reasonableness proceeding on April 9, 2009. The parties requested 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. On April 17, 2009, the Board served a decision holding the procedural schedule in abeyance and requiring that the parties file biweekly joint status reports.

On May 8, 2009, the parties filed a joint status report noting that they had settled their large rate case in STB Docket No. 42112. Accordingly, DuPont filed a motion to dismiss that complaint, which the Board granted in a decision served on May 11, 2009. On the same day, the Board granted the parties' request that the Board continue to hold the instant proceedings in abeyance until June 10, 2009, to allow them time to negotiate a resolution to their disputes.

On June 10, 2009, the parties filed a joint status report stating that, although they have not yet reached a resolution to their disputes, they are continuing to engage in discussions. The parties now request that the Board continue to hold the instant proceedings in abeyance for 30 days to allow them time to continue negotiations. The Board finds this request reasonable and will grant the parties' request. The Board will require that the parties file a joint status report on July 10, 2009.

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 hold the procedural schedule in abeyance is granted and these proceedings are held in abeyance until July 10, 2009.

2. The parties shall file a status report with the Board on July 10, 2009.

3. This decision is effective on the date of service.

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

Anne K. Quinlan  
Acting Secretary