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SEC

SERVICE DATE - LATE RELEASE JUNE 5, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42022

FMC WYOMING CORPORATION AND FMC CORPORATION  
v.  
UNION PACIFIC RAILROAD COMPANY

Decided: June 5, 1998

This case involves a challenge by complainants FMC Wyoming Corporation and FMC Corporation (FMC) to the reasonableness of the rates assessed by defendant Union Pacific Railroad Company (UP) for the transportation of FMC's mineral products<sup>1</sup> between certain origins and destinations and/or interchanges in Wyoming, Idaho, Missouri, Illinois, Oregon, and Kansas. FMC's verified complaint was filed October 31, 1997, but the procedural schedule has been substantially delayed while the parties litigate over the permissible scope of discovery. By decisions served February 5 and 12, 1998, the discovery disputes were assigned to an Administrative Law Judge (ALJ) who conducted a conference and issued various rulings on March 17, 1998. In response to appeals by FMC, the Board, in decisions served April 17 and May 5, 1998, furnished guidance regarding the role and permissible scope of discovery relating to product and geographic competition. The Board based its guidance on existing market dominance guidelines and its understanding of the parties' factual dispute as reflected in the record. Practical resolution of the disputed matters was left to the parties and to the ALJ.

Concurrently, and in part because of the instant dispute, the Board announced in Review of Rail Access and Competition Issues, STB Ex Parte No. 575 (STB served Apr. 17, 1998), that it would reconsider whether issues of product and geographic competition should be eliminated from the market dominance analysis, and shortly thereafter instituted a proceeding, Market Dominance Determinations—Product and Geographic Competition, STB Ex Parte No. 627 (STB served Apr. 29, 1998). FMC then filed a motion on May 13, 1998, to defer consideration of product and geographic competition in this proceeding. According to FMC, deferral would (1) allow this case to go forward on other substantive issues while the Board decides whether consideration of product and geographic competition should be eliminated from the market dominance analysis; (2) spare the parties from undertaking enormously expensive and time-consuming discovery and preparation of evidentiary submissions on potentially irrelevant issues; (3) obviate numerous discovery motions regarding the proper scope and propriety of discovery on these issues; and (4) significantly shorten the procedural schedule in this case. UP replied in opposition to the motion on June 2, 1998.

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<sup>1</sup> Soda ash, phosphorus, phosphate rock, coke, and sodium bicarbonate (including sodium sesquicarbonate).

Meanwhile, on May 18, 1998, UP filed and served on FMC a motion to compel production of documents and information related to product and geographic competition. In response, FMC filed on May 26, 1998, a motion for a protective order and on May 29, 1998, a motion for an extension of time to respond to UP's motion to compel. UP replied. In both motions, FMC asks that it not be required to respond until the Board has rendered its decision on FMC's May 13 motion to defer consideration of product and geographic competition.<sup>2</sup> According to FMC, this would avoid unnecessarily duplicative parallel proceedings before the Board and the ALJ relating to the issue of product and geographic competition.

As noted, the Board is currently considering FMC's motion to defer consideration of product and geographic competition in this case. Under the circumstances, it would be inefficient and wasteful to go before the ALJ at this time for a resolution of UP's motion to compel. FMC's motion for an extension of time will therefore be granted. If the Board denies FMC's motion to defer consideration of product and geographic competition in this case, FMC's reply to UP's motion to compel will be due 10 days after the service date of the Board's decision.<sup>3</sup> FMC's motion for a protective order will be dismissed as moot.<sup>4</sup>

It is ordered:

1. The due date for FMC's reply to UP's motion to compel is extended as discussed above.
2. FMC's motion for a protective order is dismissed as moot.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>2</sup> FMC's response to UP's motion to compel would be due June 8, 1998.

<sup>3</sup> If the Board grants the motion to defer, UP's motion to compel will be moot.

<sup>4</sup> The motion for a protective order seeks the same relief as the motion for an extension of time.