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BEFORE THE
SURFACE TRANSPORTATION BOARD

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JUN 30 2011

Part of
Public Record

E.I. DUPONT DE NEMOURS AND COMPANY)

Complainant,)

v.)

Docket No. NOR 42125

NORFOLK SOUTHERN RAILWAY)
COMPANY)

Defendant.)

MOTION TO MODIFY PROCEDURAL SCHEDULE

E.I. du Pont de Nemours and Company ("DuPont"), hereby submits this "Motion to Modify Procedural Schedule" in the above-captioned proceeding. The Board previously adopted a procedural schedule in a decision served on February 24, 2011. Pursuant to that schedule, discovery in this case closed on June 30, 2011. Because discovery has not been completed, DuPont requests an extension of the discovery period until 45 days after the Federal Railroad Administration ("FRA") issues a decision that permits the defendant, Norfolk Southern Railway Company ("NS"), to produce certain information to which NS has objected to producing as Sensitive Security Information ("SSI"). Although this also will require extensions to the due dates for filing evidence, DuPont does not ask the Board to address that issue at this time.

The principal reason why discovery could not be completed by June 30, 2011, is because NS has taken the position that its traffic event files contain SSI, pursuant to 49 C.F.R. §§ 15.5(a) and 1520.5, that cannot be produced without authorization from the Secretaries of Transportation and Homeland Security. Although DuPont has not concurred in that conclusion, it agreed to

approach the Board with NS in a joint effort to address this issue in a manner that would give NS adequate assurance that it could produce its traffic event files without violating SSI regulations.

The issue was formally presented to the Board in a March 9, 2011 letter from NS, to which DuPont replied on March 10, 2011. After several meetings and teleconferences involving DuPont, NS, the Board, and the Department of Transportation, a solution satisfactory to DuPont and NS appeared to have been reached on April 13, 2011.¹ That solution, however, requires a decision from the FRA, which has not yet been issued. Nor is there any clear indication when that decision will be issued. Therefore, NS has not yet produced traffic event files to DuPont.

Traffic event files contain information that is core to a stand-alone cost proceeding. Without that information, DuPont cannot begin to select the traffic that is essential to designing the stand-alone railroad, developing an operating plan, and calculating operating and investment costs. Moreover, until DuPont has reviewed the traffic event data, it cannot conduct other discovery, such as selecting contracts for review.

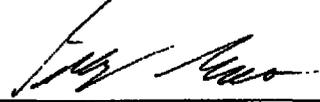
Much of this other discovery will be conducted pursuant to an agreement between NS and DuPont by which NS will grant DuPont access via the Internet for thirty days to an internal NS data repository to review and download that information. Because that review will be most effective only after NS produces traffic event files and DuPont has had sufficient time to review those files, a period of 45 days is needed to complete discovery after NS produces SSI information to DuPont.

WHEREFORE, for the foregoing reasons, DuPont respectfully request that the Board modify the procedural schedule in this docket by extending the discovery period until 45 days after the FRA issues a decision that permits NS to produce SSI information to DuPont. The

¹ Southern Mississippi Electric Power Association, the complainant in STB Docket No. 42128, also participated in these meetings.

requested time period is predicated upon NS representations that it can and will produce SSI information to DuPont immediately upon issuance of the FRA's decision.

Respectfully submitted,



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June 30, 2011

CERTIFICATE OF SERVICE

I hereby certify that this 30th day of June 2011, I served a copy of the foregoing via e-mail and first class mail upon:

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