

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Docket No. EP 715

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COMMENTS OF OCCIDENTAL CHEMICAL CORPORATION REGARDING RATE  
REGULATION REFORMS

October 23, 2012

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Occidental Chemical Corporation (together with its affiliates, “OxyChem”) is a leading North American manufacturer of basic chemicals and vinyl resins, including chlorine, caustic soda and polyvinyl chloride (PVC) – the building blocks for a range of products essential to public health and modern life. Our products, which are used in water purification, medical supplies, pharmaceuticals, construction materials and agricultural chemicals, are also vital to the economy of the United States. OxyChem employs approximately 3,000 people at 21 domestic locations spread throughout the central to eastern United States.

Over 70 percent of Oxy’s origin/destination pairs are served by only one railroad, and many of our products can only be reasonably transported by rail. As reported in earlier dockets, our rates have increased significantly over the past several years. However, in spite of our captivity and soaring rates, we do not have any recourse. Over the past several years, Oxy has considered and evaluated bringing a rate case before the Board. However, to date, we have not been able to do so economically.

The Board’s proposal to remove the limitation on relief for cases brought under the Simplified – SAC alternative and doubling the relief available under the Three Benchmark method are small steps in the right direction. The relief available to a shipper is of key importance. However, regardless of the rate relief thresholds, there are still fundamental issues which will continue to restrict access to rate cases. These issues are bundling, timeliness of a settlement or decision by the Board, and railroads refusing to be competitive. As the Board is well aware, rates must be at tariff before a shipper can file a rate case. Oxy’s shipping patterns are typical of a chemical shipper where we have several shipping points going to thousands of ship to locations. It is symbolic of a sunburst where one manufacturing location ships to

multiple customer locations and typically these shipments are only one or two cars at a time. A typical contract has hundreds of OD (Origination-Destination) pairs and the spend is several million dollars. For example, in a hypothetical negotiation with a railroad, OxyChem may be evaluating a \$10MM annual spend contract that has 300 OD pairs, some of which are open to competition, and some which are not. During negotiations with the railroad, there are a dozen lanes that are problematic in that there is no competition, the RVCR is exorbitant and Oxy cannot be competitive. We ask the carrier to take us to tariff on the 12 lanes in question. The railroad's response is that the rates are "bundled" in that they either are ALL tariff or ALL contract. Therefore, all 300 lanes need to move to tariff rates if any do. Assuming the tariff rate is 20% higher than contract, Oxy would need to spend \$2MM on increased freight rates BEFORE paying the filing fee necessary to initiate a case before the Board. With \$10MM annual spend, it is likely that we would need to file a large rate case, which the Board estimates will take 2-4 years until ruling. It is expected by the Board that the case will require \$2-5MM in consultants, attorney and economist fees, and this may well be a conservative estimate based on shipper experience, and time does not favor the shipper here either as most vendors are hourly rate service providers. Therefore, it is possible that we will spend \$6MM - \$13MM (\$2MM per year in increased tariff rates = \$4-8MM and \$2-5MM in fees) all to attempt to get a better rate on 12 lanes. This may very well not be an economically sensible decision.

Another concern that we have is that the STB requires "market dominance" as a precursor to filing a case. We have examples where theoretically we have access to two railroads. However, one railroad chooses not to compete. Or cases where we have access to only one railroad, but we can use truck as an alternate mode. Although truck is a viable alternative on an emergency basis, it is not a long term solution due to the number of trucks

required, the distance traveled, logistics, or cost and safety considerations. A significant concern regarding open access is that there may be the appearance that there are two railroads competing for your business, but one may choose not to compete and, therefore, alleged “open access” has done nothing for us and may in fact be counterproductive if it causes a shipper to forfeit rights to bring a rate case before the Board.

The time it takes to try a rate case is unacceptable. Although a settlement may be desirable and can be done quickly, there are occasions where both parties in a case will not be able to settle and the case will go to the Board for a decision. As we have already stated, paying a tariff rate for 2-4 years is not a viable option. In a recent case before the Board, the determination of market dominance took more than two years. As this is a threshold decision, which only determines if the rate case can move forward, it is a strong indication that “proving” market dominance takes too long. Shippers cannot afford to spend 2-4 years on a case. They cannot pay tariff rates on an entire contract, cannot afford the attorney fees and cannot wait that long for relief. The time from filing a rate case to a decision from the Board must be dramatically reduced.

Congress has charged the Board with protecting the public from unreasonable pricing by freight railroads. We are hopeful that the Board has realized that the current process is not working for shippers. The current proposals are small steps in the right direction, but there are still fundamental issues with the process. Railroads should not be allowed to “bundle” lanes in contracts, the market dominance rule should be eliminated altogether, and the Board must work with shippers to accelerate the decision process. In addition, shippers need a venue to dispute rates, regardless of alleged “open access”, and should not be penalized in a circumstance where rail competition is merely theoretical, and one railroad chooses not to compete.

OxyChem is grateful for the opportunity to comment on Rate Regulation Reforms. We are hopeful that the specific examples cited by OxyChem will help the Board understand that, although some issues have been addressed by EP 715, there are still fundamental issues with the rate case process which must be addressed in order for shippers to be able to take advantage of the process and receive relief on unchecked freight rates.

Respectfully submitted on behalf of OxyChem by:



Robin Burns  
Vice President Supply Chain  
Occidental Chemical Corporation

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2012, I served a copy of the foregoing Comments of Occidental Chemical Corporation (“OxyChem”), as well as a copy of the Notice of Intent to Participate previously filed by OxyChem with the Surface Transportation Board on August 23, 2012, via email to all parties of record.

/s/ Scott A. King  
Scott A. King, Esq.  
Vice President and General Counsel  
Occidental Chemical Corporation