

Via E-Filing

February 2, 2015

Debra L. Miller, Acting-Chairman
Surface Transportation Board
395 E Street SW
Washington, D.C. 20423

237658

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Office of Proceedings
February 2, 2015
Part of
Public Record

RE: STB Finance Docket No. 42121, Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.

Dear Acting Chairman Miller:

I am writing to you on behalf of Total Petrochemicals & Refining USA, Inc. ("TPI") concerning the procedural schedule in the above-referenced docket, which the Board has held in abeyance by its decision served on December 10, 2014, in order to consider TPI's Petition to Supplement the Record filed on November 5, 2014 ("Petition"). TPI requests that the Board allow the filing of Final Briefs to proceed regardless of any delay in deciding TPI's Petition.

On November 5, 2014, TPI filed both its Rebuttal Evidence on rate reasonableness and its Petition to Supplement the Record with respect to three issues. TPI proposed a procedural schedule that would have permitted the completion of supplemental evidence on those three issues without delaying the December 19, 2014 due date for filing Final Briefs. TPI also requested expedited consideration of its Petition in order to meet that schedule. However, because CSX Transportation, Inc. ("CSXT") did not file its reply until November 25, 2014, TPI's proposed schedule was rendered impractical.¹ Therefore, the Board held the deadline for Final Briefs in abeyance while it considers TPI's Petition.

TPI requests that the Board promptly issue a schedule for the submission of Final Briefs. TPI is prepared to file its brief within a week of such a decision. There is no compelling need or requirement to delay Final Briefs until the Board has resolved TPI's Petition. The three issues encompassed by TPI's Petition are discrete issues that are unrelated to the other issues in this case. Moreover, if the Board grants TPI's Petition and desires briefing of those issues in addition to the supplemental evidence, it can include supplemental briefing limited to those issues as part

¹ Although CSXT's Reply objected to TPI's proposed schedule as not affording CSXT sufficient time to develop and file responsive supplemental evidence, it is notable that CSXT's 30-page reply to TPI's 5-page petition contained a detailed substantive reply to TPI's supplemental evidence that was accompanied by both written and electronic exhibits. Essentially, all that remained was for TPI to submit its rebuttal, which TPI was prepared to do within the parameters of its proposed schedule. TPI urges the Board to keep this fact in mind when setting a procedural schedule for supplemental evidence, if it grants TPI's Petition.

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of the supplemental procedural schedule.² By allowing Final Briefs to be filed now, the Board will have a complete record on every issue in this case, except for the three discrete issues covered by TPI's Petition, so that it will be able to render a final decision more expeditiously upon resolution of the Petition.

The importance of mitigating the impact of further delays to this case is heightened by the procedural history of this case, which already has been pending before the Board longer than most Stand-Alone Cost ("SAC") cases take to reach a final decision. TPI filed its Complaint on May 3, 2010. Since then, the Board has issued final decisions in two later-filed SAC cases.³ Most of TPI's delay is attributable to a 25 month period while the Board decided market dominance on a bifurcated schedule.⁴ Under the most recent procedural schedule, which the Board has held in abeyance, the Board would not have issued a final decision until September 2015, which would be more than 5 years after TPI filed its Complaint. Although some delay clearly is inevitable at this point, TPI asks that the Board mitigate that delay by taking the steps requested above.

Sincerely,



Jeffrey O. Moreno

Counsel for Total Petrochemicals & Refining USA, Inc.

cc: Ann D. Begeman, STB Vice Chairman
G. Paul Moates, Counsel for CSX Transportation, Inc.
Paul A. Hemmersbaugh, counsel for CSX Transportation, Inc.

² In light of the 60 page limit that the Board has placed on Final Briefs in this case, TPI suggests that any supplemental brief be limited to 5 pages. *See* Decision served Sept. 26, 2013. Nor should the parties require more than 10 days to prepare their supplemental briefs.

³ *See, E.I. du Pont de Nemours and Company v. Norfolk Southern Ry. Co.*, Docket NOR 42125 (served Mar. 24, 2014) (Complaint filed Oct. 7, 2010); *SunBelt Chlor Alkali Partnership v. Norfolk Southern Ry. Co.*, Docket NOR 42130 (served June 20, 2014) (Complaint filed July 26, 2011).

⁴ The Board granted a CSXT motion to bifurcate market dominance in a decision served on April 11, 2011. The market dominance record closed just five months later with the filing of TPI's rebuttal evidence on September 6, 2011. The Board served its decision on market dominance 20 months later, on May 31, 2013.
