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SERVICE DATE – LATE RELEASE MAY 13, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

E.I. DUPONT DE NEMOURS AND COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: May 13, 2011

This decision extends the deadline for a Board decision on 2 motions to compel discovery filed in this proceeding.

E.I. du Pont de Nemours and Company (DuPont) challenges the reasonableness of rates established by Norfolk Southern Railway Company (NSR) for the transportation of 27 different commodities between 146 origin and destination pairs. DuPont alleges that NS possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed pursuant to the Board's Stand-Alone Cost test. By decision served on February 24, 2011, the Board established a procedural schedule. Under the procedural schedule, the parties have until June 30, 2011, to complete discovery.

On April 14, 2011, DuPont filed a motion to compel discovery from NSR. On April 20, 2011, NSR filed a motion to compel discovery from DuPont. NSR replied to DuPont's motion to compel discovery on April 25, 2011. DuPont replied to NSR's motion to compel discovery on May 2, 2011. Pursuant to 49 C.F.R. § 1114.31(a)(3), Board staff conducted a discovery conference with the parties on May 6, 2011, to discuss the motions.

Under the Board's regulations at 49 C.F.R. § 1114.31(a)(4), the Board has 5 business days from the date of the discovery conference to issue a decision on a motion to compel discovery. However, based on negotiations between the parties during and after the discovery conference, the parties have agreed to a 10-day extension of the Board's deadline for ruling on the motions to compel discovery, until May 23, 2011, so that the parties may continue to negotiate their discovery disputes. The deadline will be extended, as agreed upon.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. At the consent of the parties, the Board's deadline for a decision on the merits of the parties' motions to compel is extended until May 23, 2011.

2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.