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SERVICE DATE – JUNE 24, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42120

CARGILL, INCORPORATED v. BNSF RAILWAY COMPANY

Decided: June 23, 2011

In connection with a complaint filed under 49 U.S.C. § 11701(b), Cargill, Incorporated (Cargill), on March 31, 2011, filed a motion to compel discovery from defendant, BNSF Railway Company (BNSF). On April 11, 2011, BNSF replied in opposition, and, at the Board's request, Cargill filed a response on April 15, 2011. Pursuant to 49 C.F.R. § 1114.31(a) (3), Board staff held a conference with Cargill and BNSF on April 26, 2011, to assist them in resolving these discovery matters. Following the conference, the parties engaged in further discussions and resolved the remaining issues in the motion to compel.

On June 6, 2011, Cargill filed with the Board a motion to withdraw its motion to compel discovery. Because Cargill had not received the requested discovery and cannot yet determine whether the documents are sufficiently responsive, it requests that its motion to withdraw be granted without prejudice. Cargill states that BNSF does not oppose the requested relief. Cargill's request is reasonable and will be granted.

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

It is ordered:

1. Cargill's motion to withdraw its motion to compel discovery is granted without prejudice.
2. This decision is effective on the date of service.

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