

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

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

Decided: August 11, 2011

This decision grants the motion of E.I. du Pont de Nemours and Company (DuPont) to withdraw its previously filed second motion to compel discovery from Norfolk Southern Railway Company (NSR).

On October 7, 2010, DuPont filed a complaint challenging the reasonableness of the rates for the transportation of 27 different commodities between 155 origin and destination pairs<sup>1</sup> charged by defendant NSR under the Board's stand-alone cost methodology.<sup>2</sup> On July 22, 2011, DuPont filed a second motion to compel discovery, wherein DuPont sought the production of certain traffic data from NSR.<sup>3</sup> NSR filed its reply in opposition to the second motion to compel on August 1, 2011.

Subsequently, on August 3, 2011, DuPont filed a motion to withdraw its second motion to compel, stating that NSR had "produced a hard drive allegedly containing the requested traffic data."

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<sup>1</sup> In the letter accompanying its second amended complaint, filed July 18, 2011, DuPont states that it is removing five lanes from this proceeding. But in describing the issue movements, DuPont states that it challenges the reasonableness of 160 origin and destination pairs, which is the same number of origin and destination pairs discussed in DuPont's first amended complaint, filed May 11, 2011. 2d Am. Compl. 2; 1st Am. Compl. 2. Exhibits A and B of DuPont's second amended complaint, however, confirm that it is challenging 155 lanes instead of 160.

<sup>2</sup> On June 30, 2011, the day discovery was scheduled to close, DuPont filed a motion to modify the procedural schedule. NSR filed a reply on July 11, 2011, to which DuPont filed a reply on July 12, 2011. On August 9, 2011, DuPont filed a new motion to modify the procedural schedule. DuPont's motions to modify the procedural schedule will be addressed by a separate decision.

<sup>3</sup> DuPont previously filed its first motion to compel discovery from NSR, which it later moved to withdraw. The Board granted DuPont's motion to withdraw in a decision served May 23, 2011.

DuPont's motion to withdraw its second motion to compel discovery will be granted without prejudice.

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

It is ordered:

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

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