

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.

Decided: November 19, 2010

This decision grants a motion filed by Total Petrochemicals USA, Inc. (TPI), for leave to file a second amended complaint in this proceeding. The Board is also granting a motion filed jointly on behalf of TPI and CSX Transportation, Inc. (CSXT), to extend the deadline for submission of operating characteristics.

On May 3, 2010, TPI filed a complaint challenging the reasonableness of rates established by CSXT for the transportation of polypropylene, polystyrene, polyethylene, styrene, and base chemicals between 104 origin and destination pairs, located primarily in the Midwestern and Southeastern United States. TPI alleges that CSXT possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed pursuant to the Board's Stand-Alone Cost test. By a decision served on June 23, 2010, a procedural schedule and a protective order were established. On July 26, 2010, TPI filed an amended complaint, which removed 2 origin and destination pairs, but added 18 other origin and destination pairs.

On October 4, 2010, TPI filed a motion for leave to file a second amended complaint, and tendered the second amended complaint. TPI's second amended complaint: (1) joins 11 short line carriers as defendants; (2) modifies the routings, origins, or commodities for 8 origin and destination pairs; (3) adds 1 new origin and destination pair; (4) relocates 4 origin and destination pairs from Exhibit A (local moves) to Exhibit B (joint moves); and (5) removes 16 origin and destination pairs.¹ By reply filed on October 25, 2010, CSXT states that it does not oppose the motion, but asks the Board to prohibit TPI from amending its complaint in the future.

The 11 short line carriers that TPI seeks to join as defendants under the second amended complaint are: Carolina Piedmont Division; Georgia Woodlands Railroad, LLC; Madison

¹ On October 1, 2010, 3 days prior to when TPI filed its motion for leave to file a second amended complaint, CSXT filed a motion for a determination of jurisdiction over the challenged rates. That motion, and any related motions, will be ruled upon in a separate decision. In addition, the motions to compel discovery filed by TPI on November 4 and 16, 2010, will be ruled upon separately.

Railroad; Mohawk, Adirondack & Northern Railroad Corp.; Nashville and Eastern Railroad Corp.; New Hope & Ivyland Railroad; Pioneer Valley Railroad; R.J. Corman Railroad Company (Memphis); Seminole Gulf Railway L.P.; Sequatchie Valley Railroad Company; and South Branch Valley Railroad. According to TPI, these short line carriers terminate the issue movements at 12 destinations contained in the second amended complaint.

On November 15, 2010, TPI and CSXT jointly filed a motion to extend the deadline for the submission of operating characteristics. TPI and CSXT request that the deadline be extended until 10 days after the ruling on TPI's motion for leave to file an amended complaint.

TPI's unopposed motion for leave to file a second amended complaint, and the joint motion to extend the deadline for the submission of operating characteristics will be granted. Any amendments to the complaint sought in the future will be considered on a case-by-case basis. The 11 defendants added under the second amended complaint will have 20 days from the service date of this decision to file an answer. See 49 C.F.R. § 1111.4(c).

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

It is ordered:

1. TPI's motion for leave to file a second amended complaint is granted.
2. The motion to extend the deadline for submission of operating characteristics that was jointly filed by TPI and CSXT is granted. The new deadline is November 29, 2010.
3. The 11 short line carriers that were added as defendants under the second amended complaint have until December 9, 2010, to file an answer.
4. This decision is effective on its date of service.

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