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SERVICE DATE – LATE RELEASE JUNE 28, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35324

TECK METALS LTD. – PETITION FOR DECLARATORY ORDER – PRACTICES
OF WHEELING & LAKE ERIE RAILWAY COMPANY

Decided: June 28, 2010

On November 17, 2009, Teck Metals Ltd. (Teck) filed a petition for declaratory order to resolve a dispute over demurrage charges assessed by Wheeling & Lake Erie Railway Company (W&LE). This matter was referred to the Board by the United States District Court for the Northern District of Ohio, Eastern Division, on October 29, 2009, in Wheeling & Lake Erie Railway v. Teck Cominco Metals, Ltd., No. 5:09-CV-01184. By decision served on January 22, 2010, the Board instituted the instant proceeding and adopted a procedural schedule.

On May 24, 2010, Teck filed a petition to hold the proceeding in abeyance. Teck stated that it had reached an agreement in principle with W&LE to settle all matters at issue in this proceeding, that the parties would execute a settlement agreement in the very near future disposing of all matters at issue, and that Teck would move to dismiss this proceeding. Teck also states that W&LE concurred in the relief requested. On May 26, 2010, the Board granted Teck's petition to hold the proceeding in abeyance pending further order of the Board.

On June 22, 2010, Teck filed a motion to dismiss the proceeding, with prejudice, stating that the parties had reached a voluntary, final settlement that resolved all of the issues raised in this proceeding and in the action pending in federal court.¹ Because the parties have settled their dispute, there appears to be no reason to continue this proceeding. Accordingly, the Board will grant Teck's request and dismiss this declaratory order proceeding, with prejudice.

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

¹ As part of the settlement agreement, Teck states that both parties have stipulated to the dismissal of the declaratory order proceeding before the Board, as well as to the dismissal of the civil action before the federal court.

It is ordered:

1. Teck's motion to dismiss the petition for declaratory order, with prejudice, is granted.
2. This decision is effective on the date of service.
3. Copies of this decision will be mailed to:

The Honorable John R. Adams
United States District Court for the Northern District of Ohio
Eastern Division
510 United States Courthouse
Two South Main Street
Akron, Ohio 44308-1813

RE: No. 5:09-CV-1184

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.