

41669  
DO

SERVICE DATE – JUNE 3, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.

Decided: June 2, 2011

This decision holds in abeyance the procedural schedule for the market dominance phase of this proceeding pending further order of the Board.

By complaint filed May 3, 2010, Total Petrochemicals USA, Inc.'s (TPI) challenges the reasonableness of rates established by CSX Transportation, Inc. (CSXT) for the transportation of polypropylene, polystyrene, polyethylene, styrene, and base chemicals between various 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 (SAC) test.

On October 1, 2010, CSXT filed a motion for expedited determination of jurisdiction over the challenged rates. TPI replied in opposition. By decision served April 5, 2011, the Board determined that bifurcating this proceeding into separate market dominance and rate reasonableness phases was appropriate. As such, the Board postponed the submission and consideration of rate reasonableness evidence, if necessary, until after the Board has made a determination on the issue of market dominance. The Board's decision also established a procedural schedule for the submission of market dominance evidence. In accordance with that procedural schedule, TPI submitted its opening market dominance evidence on May 5, 2011.

On May 17, 2011, CSXT filed a motion to redesignate certain workpapers and exhibits, in TPI's opening market dominance evidence, from "Highly Confidential" to "Confidential." In its motion, CSXT argues, *inter alia*, that TPI's designations have prejudiced CSXT's ability to prepare reply evidence. On May 19, 2011, TPI filed a reply in opposition to CSXT's motion.

Under the current procedural schedule, CSXT's reply is due by June 6, 2011. The deadline for CSXT's reply, and all other remaining deadlines set by the current procedural schedule, will be held in abeyance pending further order of the Board following resolution of the subject motion.

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

It is ordered:

1. The procedural schedule for the market dominance phase of this proceeding is held in abeyance pending further order of the Board.
2. This decision is effective on its service date.

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