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SERVICE DATE – NOVEMBER 25, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

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

Decided: November 25, 2011

This decision holds in abeyance a motion to compel discovery filed in this proceeding.

E.I. du Pont de Nemours and Company (DuPont) challenges the reasonableness of rates established by Norfolk Southern Railway Company (NSR) for the transportation of 27 different commodities between 155 origin and destination pairs. DuPont alleges that NSR possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed pursuant to the Board's stand-alone cost test.

On October 31, 2011, NSR filed its second motion to compel discovery from DuPont. DuPont replied to NSR's second motion to compel discovery on November 10, 2011. Pursuant to 49 C.F.R. § 1114.31(a)(3), Board staff conducted a discovery conference with the parties on November 18, 2011, to discuss the motion. Related to its second motion to compel discovery, on November 23, 2011, NSR filed a petition for a third-party subpoena.

Under the Board's regulations at 49 C.F.R. § 1114.31(a)(4), the Board has five business days from the date of the discovery conference to issue a decision on a motion to compel discovery. However, within its petition for a third-party subpoena, NSR requests that the Board postpone the deadline for deciding its second motion to compel discovery while NSR pursues third-party discovery. NSR states that DuPont consents to the Board holding NSR's second motion to compel discovery in abeyance until after the Board has acted on the petition for a third-party subpoena and the resulting production of information is complete. The agreed upon request to postpone the Board's deadline for deciding NSR's second motion to compel discovery will be granted, and said motion will be held in abeyance pending further order of the Board. The petition for a third-party subpoena will be addressed in a separate decision.

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

It is ordered:

1. NSR's request to postpone the Board's deadline for a decision on the merits of NSR's second motion to compel discovery is granted. NSR's second motion to compel discovery is held in abeyance pending further order of the Board.

2. This decision is effective on its service date.

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