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SERVICE DATE – OCTOBER 29, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

E.I. DUPONT DE NEMOURS AND COMPANY

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Decided: October 28, 2015

On October 7, 2010, E.I. du Pont de Nemours and Company (DuPont) filed a complaint challenging the rates of Norfolk Southern Railway Company (NS) in 138 lanes of movements that cover 26 discrete commodities. DuPont pursued relief under the agency's stand-alone cost (SAC) test. On March 24, 2014, the Board issued its merits decision finding that DuPont did not demonstrate that the challenged rates are unreasonable. Petitions for reconsideration of that decision are pending and will be addressed in a separate decision.

On July 14, 2015, DuPont filed a motion to substitute The Chemours Company FC, LLC, and The Chemours Company TT, LLC (collectively, Chemours) as the complainant in this proceeding. According to DuPont, it has spun off its performance chemicals business into a holding company that is no longer part of DuPont. (DuPont Mot. to Substitute Parties 1.) Because most of the issue traffic in this proceeding involves commodities that are part of the performance chemicals business, DuPont asserts that it no longer has an interest in the case and seeks to substitute Chemours.

NS filed a response on July 30, 2015. Although it does not oppose DuPont's request to substitute Chemours as complainant for the lanes for which Chemours is the responsible shipper, NS does oppose the suggestion that Chemours replace DuPont as the complainant (NS Reply 3-4, July 30, 2015) for 14 lanes on which DuPont continues to be the responsible shipper (*id.*, Ex. 1 at 1). NS argues that DuPont should either remain as a complainant for those lanes or those lanes should be dismissed with prejudice. On August 6, 2015, DuPont submitted a reply stating that it does not object to dismissal with prejudice of those 14 lanes.

The Board will dismiss with prejudice from the reconsideration petition the 14 lanes of movements for which DuPont remains the responsible shipper. See NS Reply Exhibit 1 at 1 for a list of the 14 lanes. Given that Chemours is now the responsible shipper for the remaining lanes at issue in this case, DuPont's request to substitute Chemours as the complainant with respect to those lanes is reasonable and will be granted.

It is ordered:

1. DuPont's motion to substitute parties is granted to the extent discussed above.
2. The 14 lanes for which DuPont remains the responsible shipper are dismissed with prejudice from the petition for reconsideration.
3. This decision is effective on its service date.

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