

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42117

CARGILL, INC.; E.I. DU PONT DE NEMOURS AND COMPANY; EXXON MOBIL CORPORATION; JONES-HAMILTON CO.; PPG INDUSTRIES, INC.; REAGENT CHEMICAL AND RESEARCH, INC.; TAMINCO METHYLAMINES, INC.

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY; BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY; BNSF RAILWAY COMPANY; BOSTON AND MAINE CORPORATION; BUFFALO AND PITTSBURGH RAILROAD, INC.; CANADIAN NATIONAL RAILWAY; CANADIAN PACIFIC RAILWAY; CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY; CENTRAL WASHINGTON RAILROAD COMPANY; CSX TRANSPORTATION INC.; ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; GARY RAILWAY COMPANY; INDIANA & OHIO RAILWAY COMPANY; IOWA, CHICAGO & EASTERN RAILROAD CORPORATION; IOWA NORTHERN RAILWAY COMPANY; KANSAS CITY SOUTHERN RAILWAY COMPANY; MAINE CENTRAL RAILROAD COMPANY; MONTANA RAIL LINK, INC.; NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORP.; NORFOLK SOUTHERN RAILWAY COMPANY; PAN AM RAILWAYS INC.; PORTLAND TERMINAL COMPANY; ROCHESTER AND SOUTHERN RAILROAD, INC.; SANDERSVILLE RAILROAD COMPANY; SPRINGFIELD TERMINAL RAILWAY CO.; UNION PACIFIC RAILROAD COMPANY; ASSOCIATION OF AMERICAN RAILROADS; RAILINC

Decided: August 30, 2010

Cargill, Inc., E.I. du Pont de Nemours and Company, Exxon Mobil Corporation, Jones-Hamilton Co., PPG Industries, Inc., Reagent Chemical and Research, Inc. and Taminco Methlamines, Inc. (collectively, complainants), have filed a complaint against the above-named parties¹ (collectively, defendants), requesting that the Board determine the reasonableness of certain rail practices and prescribe reasonable rail practices for the future. Specifically, complainants allege that, with respect to the calculation of “mileage equalization” charges set forth in Freight Tariff RIC 6007-Series (Tariff), Item 187 and Item 190, defendants have charged complainants unreasonable amounts due to interpretations and applications of the Tariff that were not justified either by the Tariff or decisions of the Board’s predecessor, the Interstate Commerce Commission, and that are thus unlawful. Complainants also filed a petition for mediation simultaneously with their complaint.

¹ In a decision served on June 8, 2010 (June 8 decision), the Board granted complainants’ motion to dismiss Sandersville Railroad Company (Sandersville) as a defendant in this proceeding. As a result, Sandersville is no longer a party to this proceeding.

In its June 8 decision, the Board resolved several pending matters and held this proceeding in abeyance to allow for mediation among the parties. The mediation was to take place for a period of 30 days from the appointment of a mediator, subject to requests for an extension. By a decision served on June 15, 2010, the mediation period was extended for an additional 30 days, to August 14, 2010.

On August 23, 2010, complainants filed a request to extend the mediation period for an additional 30 days, to September 13, 2010, to allow for a joint mediation session to take place on September 7, 2010. At that time, the parties will determine whether further mediation is desirable. Complainants note that all defendants have been notified of this mediation session.

Complainants state that, according to counsel for the Association of American Railroads (AAR), who is coordinating the AAR defendants'² participation in the mediation, the AAR defendants do not object to this motion. Complainants also state that the AAR defendants are the only active railroad participants in the mediation process to date. Accordingly, the mediation period will be extended until September 13, 2010, and may be extended further based upon the consent of the parties and the recommendation of the mediator.

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

It is ordered:

1. Complainants' request to extend the mediation period to September 13, 2010, is granted.
2. This decision is effective on the date of service.

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

² The AAR defendants are: AAR; Railinc; BNSF Railway Company; Buffalo & Pittsburgh Railroad, Inc.; Canadian National Railway; Canadian Pacific Railway; CSX Transportation, Inc.; Gary Railway Company; Norfolk Southern Railway Company; Rochester & Southern Railroad, Inc.; Kansas City Southern Railway Company; and Union Pacific Railroad Company.