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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.; MOHAWK, ADIRONDACK & NORTHERN RAILROAD
CORP.; AND R.J. CORMAN RAILROAD COMPANY (MEMPHIS)

Decided: February 4, 2011

This decision dismisses with prejudice the remaining short line defendants in this proceeding. It also grants a motion to modify the procedural schedule and sets a new procedural schedule for this proceeding.¹

On May 3, 2010, Total Petrochemicals USA, Inc. (TPI) filed a complaint challenging the reasonableness of rates established by 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 June 23, 2010, the Board served a decision establishing a procedural schedule and protective order. On July 26, 2010, TPI filed an amended complaint, which removed 2 origin and destination pairs, but added 18 other origin and destination pairs.

On October 4, 2010, TPI filed a motion for leave to file a second amended complaint, and tendered the second amended complaint, which joined as defendants Mohawk, Adirondack & Northern Railroad Corporation (MHWA) and R.J. Corman Railroad Company (Memphis) (RJCM), as well as 9 other short line carriers. The Board granted the motion for leave to file a second amended complaint on November 19, 2010.

On January 4, 2011, TPI filed a third amended complaint and a motion to dismiss 5 short line defendants from this proceeding. On January 19, 2011, TPI filed a second motion to dismiss 4 additional short line defendants. In a decision served on January 21, 2011, the Board granted the motions to dismiss those 9 short line defendants.

¹ CSX Transportation, Inc.'s (CSXT) motion for a determination of jurisdiction over the challenged rates filed on October 1, 2010, and any other related motions will be ruled on in a separate decision.

On February 1, 2011, TPI filed a third motion to dismiss, as it has reached a settlement with RJCM. Then, on February 2, 2011, TPI filed a fourth motion to dismiss, explaining that it has reached a settlement with MHWA. On February 3, 2011, TPI filed a fourth amended complaint, which reflects the recent changes. In its motions, TPI notes that CSXT has previously indicated it does not object to the dismissal of other defendants or traffic lanes. The Board will grant the motions to dismiss and dismiss with prejudice the complaint against RJCM and MHWA.

On January 10, 2011, TPI filed a motion to modify the procedural schedule to which TPI states CSXT consents. TPI notes that its motion was filed simultaneously with motions to modify or establish a procedural schedule in 2 other SAC proceedings in which TPI is not a party.² All 3 of these complaints were filed within 6 months of one another. In these 3 proceedings, the same counsel and consultants represent the complainants and the same counsel and consultants represent the Class I defendant railroads. TPI states that it has carefully coordinated the proposed procedural schedule with Norfolk Southern Railway and CSXT to minimize resource conflicts. TPI proposes that the procedural schedule be modified as follows:³

TPI Opening Evidence	April 29, 2011
CSXT Reply to TPI	August 29, 2011
TPI Rebuttal Evidence	December 20, 2011
TPI/CSXT Briefs	January 31, 2012

TPI's motion to modify the procedural schedule will be granted, and the procedural schedule set forth above will be adopted for this proceeding.

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

It is ordered:

1. TPI's third and fourth motions to dismiss the complaint with prejudice against RJCM and MHWA, respectively, are granted.
2. TPI's motion to modify the procedural schedule is granted as modified above.
3. This decision is effective on its service date.

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

² M&G Polymers USA, LLC v. CSX Transp., Inc., NOR 42123; E.I. du Pont de Nemours & Co. v. Norfolk S. Ry., NOR 42125. The motions requesting new procedural schedules in the other proceedings will be addressed in separate decisions.

³ TPI's proposed schedule included discovery deadlines pertaining to short line defendants. Because this decision will dismiss the remaining short line defendants, the requested deadlines are moot.