

SURFACE TRANSPORTATION BOARD

Docket No. FD 35517

CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY, POINT COMFORT AND
NORTHERN RAILWAY, AND THE MICHIGAN SHORE RAILROAD—PETITION FOR
DECLARATORY ORDER

Docket No. NOR 42129¹

AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, INC., THE
FERTILIZER INSTITUTE, AND PPG INDUSTRIES, INC. v. ALABAMA GULF COAST
RAILWAY AND RAILAMERICA, INC.

Decided: January 24, 2013

By motion filed on January 18, 2013, RailAmerica, Inc., Alabama Gulf Coast Railway LLC, Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Mid-Michigan Railroad, Inc. (Respondents) request that the Board dismiss these proceedings. Respondents state that they and several of their affiliates have amended their tariffs to eliminate the only two practices still at issue in these proceedings: (1) using priority trains to handle Toxic-by-Inhalation Hazardous materials and Poison-by-Inhalation Hazardous materials (TIH/PIH), and (2) limiting trains with TIH/PIH cars to three cars per train. Thus, Respondents contend these proceedings are moot.

Respondents also ask the Board to hold Docket No. FD 35517 in abeyance² and postpone the date for the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Transportation Security Administration (TSA) to file comments until other parties have had an opportunity to respond to Respondents' motion to dismiss.³

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² Docket No. NOR 42129 is already in abeyance pending issuance of a final decision in Docket No. FD 35517. See Am. Chemistry Council v. Ala. Gulf Coast Ry., NOR 42129 (STB served May 4, 2012).

³ By decision served on November 28, 2012, in Docket No. FD 35517, the Board requested comments from FRA, PHMSA, and TSA on the safety and security ramifications of the priority train service and three-car limit requirements for the movement of TIH/PIH materials. The Board had requested such comments by January 28, 2013.

Respondents' request to hold Docket No. FD 35517 in abeyance is reasonable and will be granted. Pursuant to 49 C.F.R. § 1104.13, other parties to these proceedings may file replies to Respondents' motion to dismiss in both dockets, and these replies are due by February 7, 2013. In all other respects, including the submission of comments from FRA, PHMSA, and TSA in Docket No. FD 35517, both dockets shall remain in abeyance until further order of the Board.

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

It is ordered:

1. Replies to Respondents' motion to dismiss are due by February 7, 2013.
2. In all other respects, Docket No. FD 35517 is held in abeyance, and Docket No. NOR 42129 shall remain in abeyance, until further order of the Board.
3. This decision is effective on its service date.

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