

28825
SEC

SERVICE DATE- LATE RELEASE JANUARY 13, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42022

FMC WYOMING CORPORATION AND FMC CORPORATION

v.

UNION PACIFIC RAILROAD COMPANY

Decided: January 13, 1998

Defendant Union Pacific Railroad Company (UP) filed on January 8, 1998, an emergency motion for a 30-day extension of the January 14, 1998 discovery deadline date and a commensurate extension of the deadlines for submission of evidence. UP contends that, despite a “tremendous effort” by a “small army” of employees, it cannot timely complete its production of documents and information responsive to the discovery requests of complainants FMC Wyoming Corporation and FMC Corporation (FMC). UP attributes the delay to the volume of discovery requests by FMC, more than one-fourth of which allegedly were served during the last month of the discovery period, and to the scope of the complaint itself.¹ UP further contends that FMC has been unresponsive with regard to UP’s own discovery requests. In this regard, UP has filed a motion to compel discovery, and FMC has filed motions for protective orders to block or defer UP’s taking of depositions.²

In a response filed January 12, 1998, FMC states that it does not oppose UP’s extension request provided that: (1) no further extensions in the discovery deadline be sought or granted; and (2) no additional discovery be initiated. It acknowledges the time and resources expended by both parties to date but contends that an intense discovery period such as this is preferable to the “inefficient, costly and interminable discovery periods which prevailed prior to the establishment of the Board’s expedited procedures.” It points out that expedited discovery was mandated by Congress in 49 U.S.C. 10704(d), assertedly to ease the burden on shippers of mounting a rate challenge.

Notwithstanding the imminent deadline, discovery has not been completed, and an extension is necessary. The Board shares FMC’s concerns about expediting rate cases, and indeed has committed itself to moving all rate cases—including this one—quickly. However, the parties’ motions to compel and FMC’s motions for orders to block or defer depositions are under

¹ This maximum rate reasonableness complaint involves six commodities moving between four origins and nine destinations.

² FMC has also filed a motion to compel discovery.

consideration by the Board at this time, and the disputed matters are both extensive and complex. For that reason, and because there is no way of knowing in advance the nature of any other disputes that may arise, the Board cannot guarantee that further extensions can be avoided. Accordingly, the discovery deadline will be extended unconditionally for 30 days, and the procedural schedule will be adjusted commensurately upon the conclusion of discovery.

It is ordered:

1. The deadline for discovery is extended to February 13, 1998.
2. Upon completion of discovery, the parties will submit a joint proposal for a new procedural schedule.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

28825
SEC

SERVICE DATE- LATE RELEASE JANUARY 13, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42022

FMC WYOMING CORPORATION AND FMC CORPORATION
v.
UNION PACIFIC RAILROAD COMPANY

Decided: January 13, 1998

Defendant Union Pacific Railroad Company (UP) filed on January 8, 1998, an emergency motion for a 30-day extension of the January 14, 1998 discovery deadline date and a commensurate extension of the deadlines for submission of evidence. UP contends that, despite a “tremendous effort” by a “small army” of employees, it cannot timely complete its production of documents and information responsive to the discovery requests of complainants FMC Wyoming Corporation and FMC Corporation (FMC). UP attributes the delay to the volume of discovery requests by FMC, more than one-fourth of which allegedly were served during the last month of the discovery period, and to the scope of the complaint itself.¹ UP further contends that FMC has been unresponsive with regard to UP’s own discovery requests. In this regard, UP has filed a motion to compel discovery, and FMC has filed motions for protective orders to block or defer UP’s taking of depositions.²

In a response filed January 12, 1998, FMC states that it does not oppose UP’s extension request provided that: (1) no further extensions in the discovery deadline be sought or granted; and (2) no additional discovery be initiated. It acknowledges the time and resources expended by both parties to date but contends that an intense discovery period such as this is preferable to the “inefficient, costly and interminable discovery periods which prevailed prior to the establishment of the Board’s expedited procedures.” It points out that expedited discovery was mandated by Congress in 49 U.S.C. 10704(d), assertedly to ease the burden on shippers of mounting a rate challenge.

Notwithstanding the imminent deadline, discovery has not been completed, and an extension is necessary. The Board shares FMC’s concerns about expediting rate cases, and indeed has committed itself to moving all rate cases—including this one—quickly. However, the parties’ motions to compel and FMC’s motions for orders to block or defer depositions are under

¹ This maximum rate reasonableness complaint involves six commodities moving between four origins and nine destinations.

² FMC has also filed a motion to compel discovery.

consideration by the Board at this time, and the disputed matters are both extensive and complex. For that reason, and because there is no way of knowing in advance the nature of any other disputes that may arise, the Board cannot guarantee that further extensions can be avoided. Accordingly, the discovery deadline will be extended unconditionally for 30 days, and the procedural schedule will be adjusted commensurately upon the conclusion of discovery.

It is ordered:

1. The deadline for discovery is extended to February 13, 1998.
2. Upon completion of discovery, the parties will submit a joint proposal for a new procedural schedule.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary