

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.; CAROLINA PIEDMONT DIVISION; GEORGIA WOODLANDS RAILROAD, LLC; MADISON RAILROAD; MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORP.; NASHVILLE AND EASTERN RAILROAD CORP.; NEW HOPE & IVYLAND RAILROAD; PIONEER VALLEY RAILROAD; R.J. CORMAN RAILROAD COMPANY (MEMPHIS); SEMINOLE GULF RAILWAY L.P.; SEQUATCHIE VALLEY RAILROAD COMPANY; AND SOUTH BRANCH VALLEY RAILROAD

Decided: January 21, 2011

This decision grants the motions of Total Petrochemicals USA, Inc. (TPI) to dismiss with prejudice its complaint against Georgia Woodlands Railroad, LLC (GWRC), Nashville and Eastern Railroad Corporation (NERR), Seminole Gulf Railway, L.P. (SGLR), South Branch Valley Railroad (SBVR), Carolina Piedmont Division (CPDR), Madison Railroad (CMPA), New Hope & Ivyland Railroad (NHRR), and Sequatchie Valley Railroad Company (SQVR), and to dismiss without prejudice its complaint against Pioneer Valley Railroad (PVR). This proceeding will continue with regard to the remaining defendants: CSX Transportation, Inc. (CSXT); Mohawk, Adirondack & Northern Railroad Corp. (MHWA); and R.J. Corman Railroad Company (Memphis).<sup>1</sup>

On May 3, 2010, 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 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.

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<sup>1</sup> CSXT's motion for a determination of jurisdiction over the challenged rates filed on October 1, 2010, TPI's motion to modify the procedural schedule filed on January 10, 2011, and any other related motions will be ruled on in a separate decision. Because NHRR will be dismissed from this proceeding, the motion to dismiss filed by NHRR on December 9, 2010, is moot.

On October 4, 2010, TPI filed a motion for leave to file a second amended complaint, and tendered the second amended complaint. TPI's second amended complaint: (1) joined 11 short line carriers as defendants; (2) modified the routings, origins, or commodities for 8 origin and destination pairs; (3) added 1 new origin and destination pair; (4) relocated 4 origin and destination pairs from Exhibit A (local moves) to Exhibit B (joint moves); and (5) removed 16 origin and destination pairs. On November 19, 2010, the Board served a decision granting TPI's motion to file a second amended complaint.

On January 4, 2011, TPI filed a third amended complaint and a motion to dismiss 5 short line defendants from this proceeding. TPI's third amended complaint: (1) removed defendants GWRC, NERR, SGLR, SBVR, and PVRR; (2) removed 1 origin and destination pair from Exhibit B; and (3) modified the destination of 6 origin and destination pairs in Exhibit B. TPI states in its motion to dismiss that it has reached settlement agreements with GWRC, NERR, SGLR, and SBVR. TPI also states that it seeks to dismiss PVRR as a defendant because the third amended complaint removes the origin and destination pair associated with PVRR due to the closure of TPI's customer's facility. On January 14, 2011, MHWa filed its answer to the third amended complaint. On January 19, 2011, TPI filed a second motion to dismiss 4 additional short line defendants. In its second motion, TPI states that it has reached settlement agreements with CPDR, CMPA, NHRR, and SQVR. TPI's motions to dismiss GWRC, NERR, SGLR, SBVR, PVRR, CPDR, CMPA, NHRR, and SQVR from this proceeding will be granted.

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 motions to dismiss are granted. The complaint against GWRC, NERR, SGLR, SBVR, CPDR, CMPA, NHRR, and SQVR is dismissed with prejudice. The complaint against PVRR is dismissed without prejudice.

2. This decision is effective on its service date.

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