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SEC

SERVICE DATE - LATE RELEASE DECEMBER 17, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42022

FMC WYOMING CORPORATION AND FMC CORPORATION

v.

UNION PACIFIC RAILROAD COMPANY¹

Decided: December 17, 1997

By a verified complaint filed October 31, 1997, FMC Wyoming Corporation and FMC Corporation (FMC) allege that Union Pacific Railroad Company (UP) and Missouri Pacific Railroad Company (MP) possess market dominance over the transportation of FMC's mineral products² between certain origins and destinations and/or interchanges in Wyoming, Idaho, Missouri, Illinois, Oregon, and Kansas, and that the rates assessed for this transportation exceed a maximum reasonable level.

On November 20, 1997, UP filed a motion to dismiss on behalf of MP. UP points out that MP was merged into UP on January 1, 1997 [See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver & Rio Grande Western Railroad Company, Finance Docket No. 32760, slip op. at 1-2 n.3 (STB served Jan. 14, 1997)]. Thereafter, UP asserts, MP had no separate corporate identity. UP further notes that the claims in this case are alleged to have commenced, at the earliest, on September 1, 1997, and that all of the rates challenged in the complaint are rates of UP, not rates of MP. FMC filed a reply on December 12, 1997, in which it states that it does not object to the dismissal of MP from this proceeding, provided that UP produce in discovery any information that was generated by MP to the same extent that MP would have been required to produce it. FMC's requested qualification is reasonable and MP will be dismissed as a party defendant, subject to the requested proviso as to discovery. The proceeding has been retitled to reflect this change.

UP also filed on December 12, 1997, a motion to compel discovery accompanied by a motion to shorten the time for FMC's reply. UP points out that the 20-day reply period in 49 CFR

¹ This proceeding was originally titled FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company and Missouri Pacific Railroad Company.

² Soda ash, phosphorus, phosphate rock, coke, and sodium bicarbonate.

1104.13³ will not allow the Board sufficient time to issue a meaningful decision before depositions of FMC witnesses, which are to begin on January 5, 1998,⁴ and before discovery itself ends on January 14, 1998. UP asks that FMC be required to reply by December 18, 1997.

By letter filed December 16, 1997, FMC agrees that prompt Board action is needed and has agreed to respond to UP's motion to compel within 7 days (by December 19, 1997). FMC also requests that UP be required to respond to FMC's motion to compel, filed December 15, 1997, within 7 days (by December 22, 1997).

The Board appreciates the parties' efforts to resolve discovery matters expeditiously in this proceeding and, in particular, FMC's agreement to respond quickly to UP's motion to compel. In light of FMC's agreement to respond within 7 days, it is reasonable that UP also be required to respond within 7 days. To expedite discovery and allow the development of a complete record, FMC's reply to UP's motion to compel will be due December 19, 1997, and UP's reply to FMC's motion to compel will be due December 22, 1997.

Finally, the parties have agreed⁵ to minor revisions in the section 1111.8 procedural schedule to allow each of them full time periods (60 and 30 days, respectively) for preparing reply and rebuttal evidence. The revisions are reasonable and are accepted. Reply evidence will be due May 1 (originally April 29), 1998, and rebuttal evidence will be due June 1 (originally May 29), 1998.

It is ordered:

1. Missouri Pacific Railroad Company is dismissed as a party defendant subject to the requirement that UP produce in discovery any information that was generated by MP to the same extent that MP would have been required to produce that information. The proceeding is retitled accordingly.
2. FMC's reply to UP's motion to compel is due December 19, 1997.
3. UP's reply to FMC's motion to compel is due December 22, 1997.
4. Reply evidence is due May 1, 1998, and rebuttal evidence is due June 1, 1998.

³ FMC's reply would be due January 2, 1998.

⁴ UP alleges that the materials FMC has not produced are needed to prepare for the January 5th deposition.

⁵ The parties met on November 10, 1997, to discuss procedural and discovery matters pursuant to 49 CFR 1111.9(b). Their report was filed November 13, 1997.

5. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

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