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SEC

SERVICE DATE - MARCH 20, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42060

NORTH AMERICA FREIGHT CAR ASSOCIATION — PROTEST AND
PETITION FOR INVESTIGATION — TARIFF PUBLICATIONS OF THE
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

STB Docket No. 42061

RAILWAY PROGRESS INSTITUTE COMMITTEE ON TANK CARS
PETITION FOR INVESTIGATION AND PROTEST PURSUANT TO EX PARTE NO. 328

Decided: March 19, 2002

In a decision served October 18, 2001 (October 18 decision), the Board ordered that these proceedings and certain other proceedings¹ be put on hold while parties and interested individuals and organizations negotiate concerning the storage and diversion issues raised relating to the 1986 Agreement prescribed in Investigation of Tank Car Systems, 3 I.C.C.2d 196 (1986). The parties were directed to give the Board a written report on the progress of the negotiations. In decisions served November 20, 2001, January 8, 2002, and February 22, 2002, the Board held the October 18 decision in abeyance until January 4, 2002, February 19, 2002, and April 5, 2002, respectively.

In STB Docket No. 42061, the Railway Progress Institute's Committee on Tank Cars (RPI-CTC) filed on March 6, 2002, a notice of settlement and withdrawal of its petition for investigation and protest² of charges published by The Burlington Northern and Santa Fe Railway Company (BNSF). RPI-CTC states that it and BNSF have voluntarily negotiated a resolution of their dispute. RPI-CTC indicates that this resolution involves an amendment to

¹ STB Docket No. 42062, The Chlorine Institute, Inc. — Protest and Petition for Investigation — Tariff Publications of Union Pacific Railroad Company; STB Docket No. 42063, Railway Progress Institute Committee on Tank Cars Petition for Investigation and Protest Pursuant to Ex Parte No. 328; and STB Docket No. 42064, E.I. DuPont de Nemours and Company — Protest and Petition for Investigation.

² The petition was filed on June 27, 2001.

BNSF Private Storage Book 6005 (Storage Book 6005) to exclude its application to private cars held outside repair facilities. In withdrawing its petition for investigation and protest, RPI-CTC “requests that [STB] Docket No. 42061 be dismissed without prejudice.”

RPI-CTC’s request will be granted. Pending requests to intervene were filed by U.S. Clay Producers Traffic Association, Inc. (U.S. Clay); BP Corporation of America Inc. (BP); the National Industrial Transportation League (NITL); E.I. du Pont de Nemours and Company (DuPont); and the North America Freight Car Association and certain of its members (NAFCA). While mooted their request, the dismissal of this proceeding should not prejudice the parties seeking intervention because Storage Book 6005 is being amended.

On February 26, 2002, the Chlorine Institute and BNSF filed in STB Docket No. 42060 a joint statement indicating that they had voluntarily negotiated a resolution of their dispute. Establishing a process within BNSF for negotiations, BNSF has pledged to negotiate in good faith with the Chlorine Institute’s individual members. For its part, the Chlorine Institute seeks to withdraw its pending notice of intent to participate (or alternatively its petition to intervene) filed August 7, 2001. It should be noted that the Chlorine Institute’s withdrawal does not moot this proceeding. NAFCA’s protest and petition for investigation, filed June 26, 2001, is still pending, as are requests to intervene filed by Diversified CPC International, Inc.; DuPont; NITL; U.S. Clay; and BP.

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

It is ordered:

1. In STB Docket No. 42061, RPI-CTC’s petition is dismissed without prejudice, and the proceeding is discontinued.
2. In STB Docket No. 42060, the Chlorine Institute’s request to withdraw its notice of intent to participate (or alternatively its petition to intervene) is granted.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary