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SERVICE DATE – LATE RELEASE MAY 23, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

E.I. DUPONT DE NEMOURS AND COMPANY

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Decided: May 23, 2011

This decision grants separate motions to withdraw 2 previously filed motions to compel discovery.

In connection with a complaint challenging the reasonableness of the defendant railroad's rates for the transportation of 27 different commodities between 160 origin and destination pairs, E.I. du Pont de Nemours and Company (DuPont) filed, on April 14, 2011, a motion to compel discovery from defendant Norfolk Southern Railway Company (NSR) to provide documents responsive to DuPont's Requests for Production (RFP) numbers 167 and 168. NSR replied in opposition to DuPont's motion on April 25, 2011. On April 20, 2011, NSR filed a motion to compel discovery from DuPont to provide documents responsive to NSR's RFP number 20. DuPont replied in opposition to NSR's motion on May 2, 2011.

Pursuant to 49 C.F.R. § 1114.31(a)(3), Board staff held a conference with DuPont and NSR on May 6, 2011, to assist the parties in resolving these discovery matters. Under 49 C.F.R. § 1114.31(a)(4), the Board has 5 business days from the date of the discovery conference to issue a decision on a motion to compel discovery. By decision served on May 13, 2011, based on continuing negotiations between the parties after the discovery conference and with the consent of the parties, the Board extended the deadline for a decision on the motions to compel discovery by 10 days.

On May 19, 2011, DuPont filed with the Board a motion to withdraw its motion to compel discovery, and on May 20, 2011, NSR filed a motion to withdraw its motion to compel discovery. Both motions state that the parties have come to an agreement regarding the discovery at issue. Because neither party has received the requested discovery and cannot yet determine whether the documents are sufficiently responsive, both parties ask that their respective motions to withdraw be granted without prejudice.

Both Dupont's motion to withdraw its motion to compel discovery and NSR's motion to withdraw its motion to compel discovery will be granted without prejudice.

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

It is ordered:

1. DuPont's motion to withdraw its motion to compel discovery is granted without prejudice.
2. NSR's motion to withdraw its motion to compel discovery is granted without prejudice.
3. This decision is effective on the date of service.

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