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SERVICE DATE - MAY 29, 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. 42060 (Sub-No. 1)

NORTH AMERICA FREIGHT CAR ASSOCIATION  
v.  
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

STB Docket No. 42064

E. I. DUPONT DE NEMOURS AND COMPANY —  
PROTEST AND PETITION FOR INVESTIGATION

Decided: May 28, 2002

In a decision served October 18, 2001 (October 18 decision), the Board ordered that STB Docket Nos. 42060 and 42064 and three other proceedings<sup>1</sup> 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

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<sup>1</sup> STB Docket No. 42061, Railway Progress Institute Committee on Tank Cars Petition for Investigation and Protest Pursuant to Ex Parte No. 328; STB Docket No. 42062, The Chlorine Institute, Inc. — Protest and Petition for Investigation — Tariff Publications of Union Pacific Railroad Company; and STB Docket No. 42063, Railway Progress Institute Committee on Tank Cars Petition for Investigation and Protest Pursuant to Ex Parte No. 328.

(1986).<sup>2</sup> The parties were directed to give the Board a written report on the progress of the negotiations. In decisions served November 20, 2001 (November 20 decision), January 8, 2002, February 22, 2002, and April 12, 2002, the Board held the October 18 decision in abeyance until January 4, 2002, February 19, 2002, April 5, 2002, and May 20, 2002, respectively. In the interim, three proceedings have been discontinued: STB Docket No. 42061 in a decision served March 20, 2002, STB Docket No. 42062 in a decision served April 12, 2002, and STB No. 42063 in a decision served May 15, 2002. Finally, the Board, in its November 20 decision, indicated that the filing of petitions for reconsideration or clarification of the October 18 decision was extended until 20 days after the end of negotiations.

In a joint statement filed May 20, 2002 (Joint Motion), in STB Docket Nos. 42060 and 42060 (Sub-No. 1),<sup>3</sup> the U.S. Clay Producers Traffic Association, Inc. (Clay Producers) and BNSF indicate that BNSF has agreed to negotiate in good faith with individual members of the Clay Producers and to establish a system within BNSF for these negotiations. In exchange, the Clay Producers agreed to withdraw their notice of intent to participate or alternatively petition to intervene in these proceedings. The Clay Producers separately filed, also on May 20, 2002, a notice of withdrawal from the proceedings.

On May 20, 2002, BP Corporation North America Inc. (BP) filed a letter indicating that it and BNSF had reached a settlement agreement. BP requests leave to withdraw its petition for leave to intervene in STB Docket No. 42060 “and to cease its continued participation in the proceeding.”

On May 23, 2002, Diversified CPC International, Inc. (Diversified) filed a letter stating that BNSF has negotiated in good faith to make an agreement that meets Diversified’s current storage requirements. Accordingly, Diversified states that it has agreed to withdraw its notice of intent to participate in STB Docket No. 42060.

Finally, in a letter filed May 20, 2002, certain parties note that, with the discontinuance of STB Docket Nos. 42061, 42062, and 42063, and the withdrawal of certain intervenors, the remaining active proceedings and parties are: STB Docket No. 42060, with NAFCA as petitioner and the

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<sup>2</sup> In addition, the North America Freight Car Association (NAFCA) filed a complaint against The Burlington Northern and Santa Fe Railway Company (BNSF) in STB Docket No. 42060 (Sub-No. 1). Complainant indicated that “at an appropriate time” it intended to file a petition to consolidate that proceeding with STB Docket No. 42060. BNSF has filed a motion to dismiss the complaint, and complainant filed a reply on November 5, 2001. Three parties have sought to intervene.

<sup>3</sup> The parties referenced STB Docket No. 42061. As noted, however, that proceeding was discontinued in a decision served March 20, 2002.

National Industrial Transportation League (NITL) and E.I. du Pont de Nemours and Company (DuPont) as intervenors, and STB Docket No. 42064, with DuPont as petitioner and NITL and NAFCA as intervenors. In STB Docket No. 42060, NAFCA has taken the lead in negotiating with BNSF, and in STB Docket No. 42064, DuPont has taken the lead in negotiating with the Union Pacific Railroad Company (UP).

In STB Docket No. 42060, the May 20 letter indicates that BNSF has made certain changes to its diversion and storage charges. BNSF will not oppose a request by petitioners to withdraw their protest without prejudice, and it is willing to negotiate with individual BNSF customers. BNSF has clearly indicated, however, that negotiations are concluded. The non-carrier parties in STB Docket No. 42060 assert that they do not believe the changes made by BNSF concerning private car storage have resolved many important issues in that proceeding. They also indicate that the negotiations have concluded, and they request that the Board resume its consideration of that case. They also seek clarification as to when the 20-day period for filing petitions for reconsideration or clarification of the October 18 decision begins.

Finally, in STB Docket No. 42064, DuPont and UP indicate that they have concluded that further negotiations will not result in an industry-wide resolution of the issues, but DuPont has determined to address its own situation in negotiations with UP. The parties in this proceeding request a further extension of 30 days to complete negotiations. NAFCA and NITL state, however, that they are willing to go forward in STB Docket No. 42060 without regard to the time frame in STB Docket No. 42064.

The request of the Clay Producers in STB Docket Nos. 42060 and 42060 (Sub-No. 1) to withdraw their notice of intent to participate or alternatively petition to intervene, and the request of BP in STB Docket No. 42060 to withdraw its petition to intervene, will be granted. Diversified CPC International, Inc. is granted permission to withdraw its notice of intent to participate in STB Docket No. 42060. In STB Docket No. 42064, a 30-day extension for negotiations will be granted.

As to the request for clarification of when the 20-day period for filing petitions for reconsideration or clarification begins, the November 20 decision indicated that petitions were to be filed “20 days after the end of the negotiations contemplated in the Joint Motion.” That motion had sought to hold the October 18 decision in abeyance for 45 days, because the parties “believe[d] that it may be possible for them to amicably resolve the issues in these proceedings without reopening the 1986 Agreement for negotiations.” In essence, the parties in these proceedings wanted to explore whether they could resolve the issues in the proceedings before reopening the 1986 Agreement for

industry-wide negotiations.<sup>4</sup> Further negotiations appear fruitless in STB Docket No. 42060, but the parties still wish to negotiate in STB Docket No. 42064. By the terms of the November 20 decision, the 20-day period for filing petitions for reconsideration or clarification runs from when all negotiations end. The Board will be kept apprised of the negotiations in STB Docket No. 42064, and when negotiations there end, the Board will issue a decision identifying the beginning of the 20-day period for filing petitions. If negotiations in STB Docket No. 42064 become protracted to the detriment of the parties in STB Docket No. 42060, a separate decision will be issued in STB Docket No. 42060 to establish a procedural schedule for that proceeding.

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 Nos. 42060 and 42060 (Sub-No. 1), the request of the U.S. Clay Producers Traffic Association, Inc. to withdraw its notice of intent to participate or alternatively its petition to intervene is granted.
2. In STB Docket No. 42060, the request of BP Corporation North America Inc. to withdraw its petition for leave to intervene is granted.
3. In STB Docket No. 42060, Diversified CPC International, Inc. is granted permission to withdraw its notice of intent to participate.
4. In STB Docket No. 42064, the parties are given a 30-day extension from the service date of this decision to negotiate.
5. The time for filing petitions for reconsideration or clarification will be set in a future Board decision, as discussed in this decision.
6. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>4</sup> As noted, prior to this decision, the October 18 decision has been held in abeyance until May 20, 2002.