

40070
SEC

SERVICE DATE – JULY 13, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42106

AMEROPAN OIL CORPORATION—PETITION FOR DECLARATORY ORDER—
REASONABLENESS OF DEMURRAGE CHARGES

Decided: July 10, 2009

On March 19, 2008, Ameropan Oil Corporation (AOC) filed a petition for declaratory order to resolve a dispute over demurrage charges assessed by Illinois Central Railroad Company (IC), as referred to the Board by the United States District Court for the Northern District of Illinois, on March 13, 2008, in Illinois Central Railroad Company v. Ameropan Oil Corporation, No. 1:07-CV-03833. By decision served on May 29, 2008, the Board adopted a procedural schedule under the Board's modified procedure provisions at 49 CFR part 1112.

On July 11, 2008, IC requested that the Board mediate this dispute and hold this matter in abeyance for a 90-day period, to which IC agreed in writing.¹ By decision served on July 22, 2008 (July 2008 decision), the Board provided a 90-day period for non-binding mediation and indicated that the Board would designate a staff member to serve as mediator. The July 2008 decision also held the procedural schedule in abeyance for 90 days, until October 20, 2008, while the parties pursued a mediated agreement. By decisions served on November 12, December 22, 2008, March 23, and April 16, 2009, the time for mediation was extended and the procedural schedule was held in abeyance. Most recently, by decision served on June 1, 2009, at the joint request of the parties, the time for mediation was extended until July 1, 2009, and the procedural schedule was held in abeyance.

On July 2, 2009, AOC filed a request for a 60-day extension of the mediation period that ended on July 1, 2009. AOC states that, shortly before the expiration of the latest mediation period, AOC submitted a proposal to IC, and, although that proposal was not accepted, IC suggested a 60-day extension of the mediation period for the parties to resolve their differences. AOC indicates that counsel for AOC discussed this request with one of the Board-designated mediators and that the Board-designated mediator agreed to it, but pointed out that the mediation period had become lengthy.

¹ The Board's regulations provide for the use of alternative dispute resolution (ADR), including mediation, in cases such as this upon the mutual consent of the parties. See 49 CFR 1109.1.

The request is reasonable and will be granted. However, it has been nearly a year since the parties requested that the Board mediate this dispute for a 90-day period. Since that time, the parties have requested and received five extensions. The parties are now encouraged to resolve this dispute by the end of this mediation period, or to proceed with the schedule for submission of evidence. Accordingly, the time for mediation will be extended until August 31, 2009, and the procedural schedule will be held in abeyance until then.

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

It is ordered:

1. The request for a 60-day extension of the mediation period, until August 31, 2009, is granted.
2. The procedural schedule is held in abeyance until August 31, 2009, while ADR procedures are ongoing.
3. This decision is effective on the date of its service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary