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SERVICE DATE – LATE RELEASE JANUARY 13, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

E.I. DUPONT DE NEMOURS AND COMPANY

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Decided: January 13, 2012

This decision grants a motion to modify the procedural schedule filed by E.I. du Pont de Nemours and Company (DuPont).

By decision served on February 24, 2011, the Board established a procedural schedule for DuPont's challenge to the reasonableness of rates established by Norfolk Southern Railway Company (NSR). By decision served on August 25, 2011, the Board granted a motion filed by DuPont to modify the procedural schedule.

On December 12, 2011, DuPont filed its second motion to modify the procedural schedule. DuPont states that NSR did not complete its production of data in response to DuPont's discovery requests until November 21, 2011, and as a result, DuPont asserts that an additional 90 days is required to develop and submit its opening evidence. Specifically, DuPont requests that the Board adopt the following modified procedural schedule:

Complainant's Opening	April 30, 2012
Defendant's Reply	August 30, 2012
Complainant's Rebuttal	December 21, 2012
Closing Briefs	January 31, 2013

NSR replied to DuPont's motion on December 20, 2011. NSR argues that the discovery issues relied on by DuPont are not significant enough to support the requested extension and that granting DuPont's request would prolong excessively the procedural schedule. NSR requests that, if DuPont is granted an extension, NSR also be granted an equal extension of time to submit its reply evidence. On December 21, 2011, DuPont submitted a reply to NSR's reply, disputing NSR's statements regarding the timing and significance of the discovery issues referenced in its motion. DuPont asks the Board to accept its reply because doing so would not prejudice a timely decision by the Board, as DuPont filed its reply only one day after NSR's reply. By letter submitted on December 23, 2011, NSR asks the Board to reject DuPont's December 21, 2011 filing. In the interest of compiling a more complete record, the surreplies will be accepted.

DuPont's motion to modify the procedural schedule, filed on December 12, 2011, will be granted, and the procedural schedule in this proceeding will be revised as described above. The parties express widely divergent opinions regarding the importance of the discovery materials requested by DuPont and the timing of various discovery communications, but their arguments underscore one key fact: the unusual scope and complexity of this proceeding. Even if the data received by DuPont on November 21, 2011, were not central to the case, as NSR asserts, it would still be important to ensure that the complainant in a case of this extraordinary size has enough time, after assembling a full set of information, to develop its evidence without shortcuts.

NSR's request for an extension of time in which to file its reply will be rejected as premature at this time. NSR will have an opportunity to seek additional time, if warranted, after DuPont has filed its opening evidence.

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

It is ordered:

1. DuPont's December 21, 2011 filing and NSR's December 23, 2011 filing are accepted into the record.
2. DuPont's motion to modify the procedural schedule, filed on December 12, 2011, is granted. The procedural schedule in this proceeding is revised as described above.
3. NSR's request for an extension of time in which to file its reply is rejected as premature.
4. This decision is effective on its service date.

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