

44166
DO

SERVICE DATE – DECEMBER 10, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS & REFINING USA, INC.

v.

CSX TRANSPORTATION, INC.

Decided: December 10, 2014

On May 3, 2010, Total Petrochemicals & Refining USA, Inc. (TPI) filed a complaint challenging the reasonableness of rates established by CSX Transportation, Inc. (CSXT) for the transportation of polypropylene, polystyrene, polyethylene, styrene, and base chemicals between 104 origin and destination pairs, located primarily in the Midwestern and Southeastern United States. A procedural schedule to govern the rate reasonableness phase of the proceeding was set forth in a decision served on September 26, 2013, which explained that the schedule would begin at the close of supplemental discovery on October 17, 2013. Multiple unopposed or joint motions to extend the procedural schedule subsequently were granted, the most recent in a decision served on September 4, 2014. That decision set December 19, 2014, as the due date for final briefs.

On November 5, 2014, TPI submitted its rebuttal evidence accompanied by a petition to supplement the record in which TPI: (1) challenges the Board's use of the internal cross-subsidy test first announced in Otter Tail Power Co. v. BNSF Railway, NOR 42071 (STB served Jan. 27, 2006); (2) eliminates investment costs for certain intermodal facilities that TPI asserts were mistakenly included in its opening evidence; (3) changes certain clearing and grubbing and bridge abutment quantities included in the workpapers that accompanied TPI's opening evidence; and (4) proposes a supplemental evidentiary schedule that maintains the December 19, 2014 due date for final briefs. CSXT responded to TPI's petition to supplement on November 25, 2014, arguing that: (1) the Board should not consider the substantive arguments contained in the petition to supplement because TPI failed to meet its burden on the elements required of such a petition; and (2) even if the Board were to consider TPI's proffered supplemental evidence, the supplemental evidentiary schedule proposed by TPI is unfair and unduly short.

Under the current procedural schedule, final briefs are due by December 19, 2014. In order to allow the Board to fully consider the arguments presented in TPI's petition to supplement and CSXT's reply, the deadline for final briefs will be held in abeyance pending further order of the Board.

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

It is ordered:

1. The procedural schedule is held in abeyance pending further order of the Board.
2. This decision is effective on the date of service.

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