

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42099<sup>1</sup>

STB Docket No. 42100

STB Docket No. 42101

E.I. DUPONT DE NEMOURS AND COMPANY

v.

CSX TRANSPORTATION, INC.

Decided: September 1, 2009

This decision grants E.I. du Pont de Nemours and Company's (DuPont) request to dismiss its complaints with prejudice and discontinue these proceedings.

In these three proceedings, DuPont challenged the reasonableness of certain rates charged by CSX Transportation, Inc. (CSXT) for the movement of certain commodities, including hazardous materials. DuPont elected to pursue rate relief under the Three-Benchmark methodology as clarified and modified in Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007), aff'd sub nom. CSX Transportation, Inc. v. Surface Transportation Board, 568 F.3d 236 (D.C. Cir. 2009). In decisions served on June 30, 2008, the Board found: (1) in STB Docket Nos. 42099 and 42101 that CSXT had market dominance over the transportation at issue and that the challenged rates were unreasonably high; and (2) in STB Docket No. 42100 that CSXT had market dominance over two of the three transportation movements at issue and that the challenged rates for those two movements were unreasonably high.

Because of a flaw in the Revenue Shortfall Allocation Method (RSAM) formula used in these cases, the Board reopened these proceedings on its own motion in a decision served on November 21, 2008. In a decision served January 27, 2009, the Board issued a procedural schedule for DuPont and CSXT to fully brief the Board regarding how to best apply corrected RSAM numbers to these proceedings. Since then, the Board has granted several joint requests by the parties to hold the procedural schedule in abeyance.

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<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative convenience.

On August 31, 2009, DuPont filed a motion to dismiss its complaints with prejudice and discontinue these proceedings. DuPont states that it has reached a voluntary settlement with CSXT. DuPont's request will be granted.

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 dismiss its complaints with prejudice is granted, and these proceeding are discontinued.
2. This decision is effective on its service date.

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

Anne K. Quinlan  
Acting Secretary