

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.; CAROLINA PIEDMONT DIVISION; GEORGIA WOODLANDS RAILROAD, LLC; MADISON RAILROAD; MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORP.; NASHVILLE AND EASTERN RAILROAD CORP.; NEW HOPE & IVYLAND RAILROAD; PIONEER VALLEY RAILROAD; R.J. CORMAN RAILROAD COMPANY (MEMPHIS); SEMINOLE GULF RAILWAY L.P.; SEQUATCHIE VALLEY RAILROAD COMPANY; AND SOUTH BRANCH VALLEY RAILROAD

Decided: December 9, 2010

In connection with this proceeding involving a complaint challenging the reasonableness of the defendant railroads' rates for polypropylene, polystyrene, polyethylene, styrene, and base chemicals, Total Petrochemicals USA, Inc. (TPI) filed, on November 16, 2010, a second motion to compel defendant CSX Transportation, Inc. (CSXT) to provide documents responsive to TPI's Requests for Production of Documents (RFP) numbers 43, 70, 105, 129, 134, 135, 148, 149, 158, 162, and 163. CSXT replied in opposition to the second motion to compel discovery on November 24, 2010.

Pursuant to discovery rules at 49 C.F.R. § 1114.31(a)(3), Board staff held a conference with TPI and CSXT on December 2, 2010, to explore whether the parties could resolve this matter and thus avoid the need for a ruling on the second motion to compel discovery. During the course of the conference, and in subsequent discussions held between the parties after the conference, the parties reached agreements on the subject RFPs.

On December 7, 2010, TPI filed a motion with the Board to withdraw its second motion to compel discovery. TPI states that the parties have resolved all of the subject discovery issues, except with regard to RFP 149, in which TPI seeks cost information related to the design, installation, and maintenance of CSXT's Positive Train Control system. TPI states that CSXT has agreed to provide additional information that would be responsive to RFP 149, but that TPI has not yet received the information and therefore cannot yet determine whether the information is sufficiently responsive. Therefore, TPI requests that the Board grant the motion to withdraw without prejudice to TPI's renewing its motion to compel discovery with respect to RFP 149. TPI states that CSXT does not oppose the motion to withdraw, including TPI's request for the motion to be granted without prejudice with regard to RFP 149.

TPI's motion to withdraw its second motion to compel discovery will be granted without prejudice to TPI's renewing its motion to compel discovery responsive to RFP 149.

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

It is ordered:

1. TPI's motion to withdraw its second motion to compel discovery is granted without prejudice to TPI's renewing its motion to compel discovery responsive to RFP 149.
2. This decision is effective on the date of service.

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