

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

E.I. DUPONT DE NEMOURS AND COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: June 10, 2014

On March 24, 2014, the Board served the final merits decision (Merits Decision) in this proceeding regarding the challenge by E.I. du Pont de Nemours and Company (DuPont) to the reasonableness of certain rates established by Norfolk Southern Railway Company (NS).¹ On March 31, 2014, DuPont filed a motion (1) stating that it had identified a number of technical errors in the Merits Decision and (2) requesting that the Board extend the deadline for filing petitions for reconsideration until 20 days after the Board issues a decision addressing the technical errors. NS filed a reply in support of DuPont's motion on April 2, 2014. In a decision served on April 11, 2014, the Board tolled the deadline for filing petitions for reconsideration and instructed the parties to file a joint petition to correct technical errors in accordance with the procedure set forth in Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington Northern & Santa Fe Railway, 7 S.T.B. 1029, 1029-30 (2004). DuPont and NS submitted a joint petition to correct technical errors on April 14, 2014. In a decision served on April 30, 2014, the Board confirmed that it would be issuing a decision correcting technical errors and that petitions for reconsideration of the Merits Decision and the decision correcting technical errors would be due 20 days from the effective date of the latter decision.²

On May 9, 2014, DuPont filed a motion requesting an extension of the page limit on petitions for reconsideration to 50 pages.³ As justification for its motion, DuPont asserts that the Merits Decision involves multiple novel legal issues, incorporates intervening regulatory

¹ Among other things, the Merits Decision instructed the parties to prepare and submit within 30 days a redacted public version of the highly confidential market dominance appendix that was initially released only to the parties' outside counsel in connection with that decision. The parties agreed to a set of redactions in a pair of April 23, 2014 filings. The public version of the market dominance appendix incorporating those redactions will be released in a subsequent decision.

² The petition to correct technical errors is pending before the Board and will be addressed in a subsequent decision.

³ Our regulations specify that petitions for reconsideration and any replies thereto must not exceed 20 pages in length. 49 C.F.R. § 1115.3(d).

changes relevant to DuPont's evidence, and is unprecedented in terms of length, number of issues, and complexity. DuPont's motion includes a request for expedited consideration.

NS filed a reply in opposition to DuPont's motion on May 13, 2014. In its reply, NS acknowledges that "this case is unprecedented in its complexity and size," but argues that extension of the page limits for reconsideration petitions is unnecessary given the fact that the extensive record in this case "has been extraordinarily well vetted and has been subjected to extensive analysis and argument by both sides."⁴ Furthermore, NS notes that the extensive requests for correction of technical errors set forth in the parties' joint petition obviates the need to address those issues in any reconsideration petition. Alternatively, in the event the Board extends the page limit on petitions for reconsideration, NS requests that replies to such petitions be permitted an equal number of pages.

The Board will grant DuPont's motion. As explained in a prior decision, and as both parties have acknowledged, this case is exceptionally complex. E.I. DuPont de Nemours & Co. v. Norfolk S. Ry., NOR 42125, slip op. at 2 (STB served Sept. 11, 2012) (granting request by NS to modify the procedural schedule); DuPont Motion 1-3; NS Reply 1. The agency has granted page limit waivers under similar circumstances in the past. See, e.g., Burlington N., Inc. & Burlington N. R.R.—Control & Merger—Santa Fe Pac. Corp. & Atchison, Topeka & Santa Fe Ry., FD 32549, slip op. at 1 (STB served Feb. 11, 2000) (granting waiver of 20-page limit under 49 C.F.R. § 1115.3(d)); Pa. Power & Light Co. v. Consol. Rail Corp., NOR 38186S et al., slip op. at 2 (ICC served Aug. 31, 1984) (granting waiver of 30-page limit on appeal filings due to the "size and complexity of the record"). Furthermore, in the interest of fairness, we will likewise extend the page limit for replies to petitions for reconsideration to 50 pages.

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 for an extension of the page limits for petitions for reconsideration in this proceeding is granted.
2. Petitions for reconsideration in this case and replies thereto shall not exceed 50 pages in length.
3. This decision is effective on the date of service.

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

⁴ NS Reply 1-2.