

BEFORE THE
SURFACE TRANSPORTATION BOARD

239320

ENTERED
Office of Proceedings
October 6, 2015
Part of
Public Record

Docket No. FD 35964

AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, AND THE
FERTILIZER INSTITUTE
—PETITION FOR DECLARATORY ORDER—
POSITIVE TRAIN CONTROL

REPLY OF
THE AMERICAN CHEMISTRY COUNCIL, THE CHLORINE INSTITUTE, AND THE
FERTILIZER INSTITUTE TO
PETITION OF THE ASSOCIATION OF AMERICAN RAILROADS FOR
PROCEDURAL SCHEDULE

Petitioners, the American Chemistry Council (“ACC”), the Chlorine Institute (“CI”), and The Fertilizer Institute (“TFI”) (collectively “the Petitioners”) hereby reply to the “Petition of the Association of American Railroads for Procedural Schedule,” filed in this docket on October 5, 2015. Petitioners neither oppose nor support the AAR’s proposed schedule. AAR’s proposal is generally consistent with the time frames that Petitioners proposed in their September 30, 2015 Petition for Declaratory Order, with the exception of the request for oral hearing. While Petitioners do not object in concept to an oral hearing, they are concerned that it not delay the Board’s timely resolution of this proceeding before the threatened embargoes of toxic inhalation hazards as soon as Thanksgiving. Petitioners defer to the Board’s judgment as to whether it can meet that objective under the AAR’s proposed schedule.

As Petitioners previously informed the Board, they have filed a separate judicial action against all seven Class I railroads in *American Chemistry Council et al. v. BNSF Railway Co. et al.*, Case 1:15-cv-01584-JEB, seeking declaratory and injunctive relief on grounds that the threatened embargoes would violate the common carrier obligation. The Court has issued a procedural schedule that will culminate with a hearing on November 20, 2015. The schedule also provides for defendants to file a motion to dismiss by October 19, 2015. Because the defendants have stated that they may move to dismiss for lack of subject matter jurisdiction, on grounds that this Board has either primary or exclusive jurisdiction over common carrier claims, it is possible that this agency could be forced to resolve this matter in the first instance, if the Court grants such motion. That fact renders the need for an expedited resolution of this proceeding all the more important.

Respectfully submitted,



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October 6, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October 2015, I electronically served a copy of the foregoing upon the counsel listed below.

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