

TPI's Motion effectively did anticipate CSXT's arguments, this reply addresses just two discrete points.

First, CSXT proposes to peg the start of its procedural schedule to the date of a Board decision on the parties' pending Petitions for Reconsideration of the Decision. CSXT Reply, pp. 3-5. TPI addressed most of CSXT's arguments on this subject in Part III.A of its Motion and refers the Board to the TPI Motion. CSXT, however, also attempts to justify its proposal by reference to the procedural schedule that the parties jointly proposed in *M&G Polymers USA, LLC v. CSX Transp., Inc.*, STB Docket No. 42123 (filed Dec. 13, 2012) ("*M&G*"). CSXT Reply, p. 5. There is a significant distinction, however, between that case and this one. The market dominance decision in *M&G* was not yet final; rather, it was a tentative decision upon which the Board had solicited public comment and was evaluating those comments prior to issuing a final decision. In contrast, TPI's market dominance Decision is final.¹

Second, CSXT attempts to justify 180 days for its Reply evidence based upon the fact that such time is less than the 197 days that Norfolk Southern ("NS") received in *E.I. du Pont de Nemours and Company v. Norfolk Southern Ry. Co.*, STB Docket No. 42125 ("*DuPont*"), and is less than the 195 days that CSXT's proposed schedule affords TPI to prepare its opening evidence. CSXT Reply, p. 7. But NS had 197 days to reply to both DuPont's rate reasonableness and market dominance evidence, and the market dominance evidence concerned 26 different commodities moving over 99 contested lanes. In this proceeding, the CSXT reply will not have to address market dominance at all.

¹ By unilaterally refusing to begin the process of updating its discovery responses, CSXT also has granted itself an extension to even the procedural schedule proposed by TPI. Although TPI and CSXT agree that 90 days is an appropriate time frame for updating discovery responses, TPI's schedule contemplates 90 days from the May 31 market dominance Decision, whereas CSXT's schedule contemplates 90 days from a Board decision on the parties' Reconsideration Petitions.

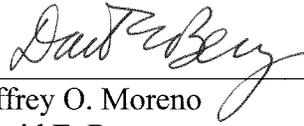
In addition, CSXT exaggerates the amount of time that its proposed schedule affords TPI to prepare opening evidence. It is not 195 days, as CSXT claims. That time frame in CSXT's schedule includes 90 days for CSXT to update its discovery responses and just 105 days for TPI to prepare its opening evidence. CSXT Reply, p. 13. Once TPI receives the updated discovery responses, it must review and organize the raw data before beginning to develop its evidence, and TPI has no assurance as to when it will receive updated discovery responses from CSXT during the 90 day discovery window.

It is worth noting that TPI has been equally, if not more, aggressive with its own due date for rebuttal evidence than it has been with CSXT's reply evidence. While TPI has proposed 120 days for CSXT's reply evidence, it has proposed just 75 days for its own rebuttal evidence. Contrast that with the 119 days DuPont received for its rebuttal evidence. *DuPont*, slip op. at 2 (served Sept. 11, 2012).

It is important that the Board not lock-in an unnecessarily long procedural schedule at the outset of the rate reasonableness phase. Although procedural schedules can be and are extended as circumstances dictate, they are seldom, if ever, reduced. The parties will utilize all of the time provided to them by a longer schedule regardless whether such time is truly necessary.² Therefore, the Board should start with a more conservative schedule and consider extensions only if and to the extent a party shows that circumstances warrant such an extension.

² The longer a party has to prepare evidence, the more issues it will find to raise. If the Board grants CSXT's request for 180 days to prepare its reply evidence, rather than the 120 days proposed by TPI, that could jeopardize TPI's ability to submit its rebuttal evidence within the 75 days that it has proposed for itself.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July 2013, I served a copy of the foregoing upon counsel for defendant CSXT via electronic mail and U.S. first-class mail, postage prepaid, at the address below:

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