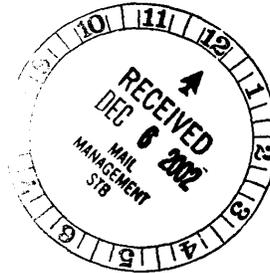


KELLER AND HECKMAN LLP
SERVING BUSINESS THROUGH LAW AND SCIENCE®

206767

1001 G STREET, N. W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TEL. 202.434.4100
FAX 202.434.4646
WWW.KHLAW.COM



WRITER'S DIRECT ACCESS

Martin W. Bercovici
(202) 434-4144
bercovici@khlaw.com

December 6, 2002

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W. Rm. 700
Washington, DC 20243-0001

ENTERED
Office of Proceedings

DEC 06 2002

Part of
Public Record

Re: Canadian National Railway Company – Control –
Illinois Central Railroad Company, Finance Docket No. 33556;
Request of ATOFINA Petrochemicals, Inc. for Oral Argument

Dear Secretary Williams:

ATOFINA Petrochemicals, Inc. (“ATOFINA”) respectfully requests the opportunity for Oral Argument before the Board with regard to its pending Petition For Reconsideration of Decision No. 39 in the above-captioned proceeding. This request is made in accordance with Section 1116.1 of the Board’s regulations.¹

There are several important issues raised in this proceeding. First and foremost concerns the loss of rail competition in merger proceedings, including the Board’s statutory responsibility under 49 U.S.C. §11324 to consider potential adverse effects on competition among rail carriers in the affected region. One of the issues subsumed within the cited statutory directive and the Board’s Decision No. 39 is whether the Board need only address adverse effects on competition that are brought to its attention by parties or whether the Board also has an obligation to consider adverse effects on competition of which it is aware, e.g., due to related proceedings. Another important policy issue concerns the nature of changed circumstances that warrant reopening of proceedings, and the balancing between changed circumstances and the need for finality. Subsumed within this issue is the meaning and nature of the oversight retained by the Board, as well as the Board’s inherent statutory power to reopen proceedings.

¹ ATOFINA understands that Section 1116.1 (c) states that “Requests for oral argument should be filed within 20 days after the date of service of the decision . . . being appealed, unless the Board by order prescribes a different time period.” ATOFINA interprets the Board’s regulation, and specifically the use of the term “should be filed,” as precatory and not prescriptive in nature. This interpretation is based on the fact that where the Board intends to prescribe specific times for filing pleadings it uses mandatory terms such as “shall” or “must.” See, e.g., 49 C.F.R. §1110.6 (a) (petitions for extension of time to respond to a notice of proposed rulemaking); §1111.4 (a)-(c) (answers and cross-complaints to formal complaints); §1115.2 (e) (appeals of initial decisions), and §1146.1 (b)(2) (reply to petitions for relief from service emergencies).

WASHINGTON, D.C.

BRUSSELS

SAN FRANCISCO

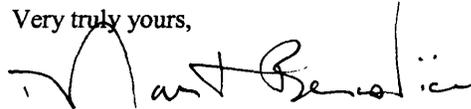
Vernon A. Williams, Secretary
December 6, 2002
Page 2

KELLER AND HECKMAN LLP

The importance of the competitive issues posed in this proceeding is highlighted by the letter dated October 17, 2002 from the Honorable John Breaux to Chairman Morgan, which has been placed in the public record. A copy of Senator Breaux's letter is associated herewith for convenient reference.

In consideration of the foregoing, ATOFINA Petrochemicals, Inc., respectfully submits that Oral Argument will facilitate the disposition of this proceeding and so requests that the Board schedule this matter for Oral Argument.

Very truly yours,



Martin W. Bercovici
Attorney for ATOFINA Petrochemicals, Inc.

Enclosure

cc: The Honorable Roger P. Nober, Chairman
The Honorable Wayne O. Burkes, Vice-Chairman
The Honorable Linda J. Morgan
Paul A. Cunningham, Counsel for Canadian National Railway Company
Nicholas J. DiMichael, Counsel for National Industrial Transportation League
William A. Mullins, Counsel for Kansas City Southern Railway Company
Thomas E. Schick, Counsel for American Chemistry Council

JOHN BREAUX
LOUISIANA

MAJORITY
CHIEF DEPUTY WHIP
COMMITTEES:
COMMERCE, SCIENCE, AND
TRANSPORTATION
FINANCE
RULES AND ADMINISTRATION
SPECIAL COMMITTEE ON AGING
Overseas
Washington Office
(202) 224-4923
TDD (202) 224-1988
senator@breaux.senate.gov
<http://www.senate.gov/~breaux>

United States Senate
WASHINGTON, DC 20510-1803

STATE OFFICES:

3287 South America Turnpike, Suite 802
Baton Rouge, LA 70803
(225) 348-0104

U.S. Postal Courthouse Building
900 Lafayette Street, Suite 1300
Lafayette, LA 70501
(225) 888-8877

1800 North 16th Street, Suite 606
Monroe, LA 71201
(504) 388-8330

Miss Becca Pugh's Bureau
801 Magazine Street, Suite 1008
New Orleans, LA 70130
(504) 869-3331

Central Louisiana
(504) 487-8448

October 17, 2002

Ms. Linda Morgan
Chairman
Surface Transportation Board
1925 K St., N.W., Suite 820
Washington, D.C. 20423-0001

Dear Chairman Morgan:

ATOFINA Petrochemicals, Inc., has filed an appeal with the Surface Transportation Board regarding the company's proposed rail line extension from its Carville, La. plant. According to information that I've received, ATOFINA is served by only one rail line currently. The company would like to build a rail line from its Carville plant to Geismar, thereby making it feasible for it to have access to competitive rail service at Geismar. As I understand, certain shippers in the Geismar area do have access to competitive rail service at that junction.

As you know, I believe that competitive rail service is sound national policy. I have supported and promoted such competition in the law and in the marketplace. Competitive rail service is essential to the nation's economy and it is equally as important to Louisiana and its economy. Louisiana is one of the major multimodal and intermodal states in terms of the commercial transportation of products. The petrochemical industry in Louisiana is vital to the nation's economy and security and is reliant on rail service to supply its customers reliably and safely. For the petrochemical industry in Louisiana, competitive rail service is essential in order for it to operate efficiently and to fulfill its commercial commitments.

For these reasons, I ask that the Surface Transportation Board be mindful of the critical need for competitive rail service in the United States and in Louisiana. Please give the reconsideration petition by ATOFINA every appropriate consideration within the Board's regulations and within the context of competitive rail service. Once a final decision has been made on the petition, please let me know the outcome.

In closing, I ask for the Board's guidance with regard to decisions on pending cases in the

Page 2

absence of a complete Board membership. Please advise if final decisions on pending cases will be made with the existing membership or if they will be held in abeyance until the full Board can be in place.

As always, thank you for your attention and consideration.

Sincerely,


JOHN BREAUX
United States Senator

JB/jeb