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TRANSPORTATION UPDATE

DuPont Wins Small Rate Cases

On June 30, the Surface Transportation Board (STB) issued the first decisions applying new guidelines for small rail rate cases in three such cases filed by E.I. du Pont de Nemours and Company (“DuPont”) against CSX Transportation, Inc. (“CSXT”). Shippers have been monitoring these cases closely for the past nine months to see if the STB would grant relief from skyrocketing rail rates under the new guidelines. The answer was a resounding “yes,” as the STB found six of the seven CSXT rates challenged by DuPont to be unreasonably high.

In September 2007, the STB issued its new guidelines in response to a decade of complaints from shippers that the old guidelines were too vague and unpredictable to be of practical benefit for smaller value rate complaints. The STB promptly announced that it would apply these guidelines in three small rate cases that DuPont had recently filed against CSXT. The decisions demonstrate that shippers, both large and small, can obtain rate relief under the new guidelines.

Under the guidelines, each party selects a group of movements from the STB’s Confidential Waybill Sample that it believes are comparable to the movements at issue. The STB then chooses the group that it decides is most comparable and applies a ratio of two benchmark measures published for the defendant railroad in order to adjust the average revenue-to-variable cost (R/VC) ratio of the comparable movements up or down. That adjusted R/VC ratio is multiplied by the railroad’s variable costs to determine the presumptive maximum rate. At that point, the STB will consider other relevant factors to further adjust this rate up or down, provided the parties can quantify the effects.

The STB selected the comparison groups proposed by DuPont in six of the seven lanes, and it rejected the other relevant factors proposed by both DuPont and CSXT. Thus, the maximum rates were set by the DuPont comparison groups without adjustments. The STB denied DuPont relief on a seventh lane, concluding that CSXT did not have market dominance over the traffic due to the presence of barge competition. The STB issued its decisions within the 240-day period that it had set for itself to receive all evidence and decide a small rate case.

Thompson Hine represented DuPont before the STB in all three cases.

FOR MORE INFORMATION

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