

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42110

SEMINOLE ELECTRIC COOPERATIVE, INC.

v.

CSX TRANSPORTATION, INC.

Decided: October 21, 2008

This decision denies the request of CSX Transportation, Inc. (CSXT) to hold the procedural schedule in abeyance pending mediation of this matter.

On October 3, 2008, Seminole Electric Cooperative, Inc. (SECI) filed a complaint challenging the reasonableness of rates established by CSX Transportation, Inc. (CSXT) for transportation of coal from various origins to SECI's Seminole Generating Station near Palatka, FL. SECI alleges that CSXT possesses market dominance over the traffic and requests that that maximum reasonable rates be prescribed along with other relief pursuant to the Board's Stand-Alone Cost (SAC) test.

By a petition filed on October 10, 2008, CSXT requests that the proceeding be delayed to allow the parties to attempt to resolve their dispute through mediation. CSXT maintains that, if the parties reach an agreement, a brief delay in the procedural schedule would prevent the parties from beginning the costly process of litigating a SAC case. CSXT also asserts that a delay will prevent discovery problems caused by SECI's filing of a complaint before its contract rate expires and before CSXT sets new, shipper-specific tariff rates. On October 15, 2008, SECI filed a response in opposition.<sup>1</sup>

CSXT has not provided a basis for holding the proceeding in abeyance. Once a complaint has been filed under 49 CFR 1111, the Board's rules at 49 CFR 1109.4 require the parties to participate in mediation. Those rules specifically state that, absent a specific order from the Board, "the onset of mediation will not affect the procedural schedule in stand-alone cost rate cases, set forth at 49 CFR 1111.8(a)." CSXT's argument that the parties may reach an agreement is not justification for delaying the early stages of this proceeding. A positive resolution is always the goal of mediation. One party's confidence in that outcome cannot form

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<sup>1</sup> Also on October 15, 2008, SECI filed a report on the parties' conference pursuant to 49 CFR 1111.10(b), and a proposed protective order and procedural schedule. CSXT, too, filed a report on the parties' conference pursuant to 49 CFR 1111.10(b), agreeing to the protective order but opposing SECI's proposed procedural schedule. Both the protective order and the procedural schedule will be addressed in later decisions.

the basis to delay the procedural schedule when the regulations contemplate that mediation and discovery will proceed concurrently. Nor is delay justified by CSXT's claims that discovery would be complete before the tariff rates become effective or CSXT changes them. Most, if not all, discovery can be accomplished whether or not CSXT publishes new rates.

It is ordered:

1. CSXT's petition to delay the proceeding pending mediation is denied.
2. This decision is effective on its service date.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan  
Acting Secretary