

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42072

CAROLINA POWER & LIGHT COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: May 9, 2003

On February 28, 2003, Carolina Power & Light Company (CP&L) and Norfolk Southern Railway Company (NS) filed briefs in this maximum rate reasonableness complaint proceeding.¹ Along with its brief, NS submitted a table, labeled “2002 4th Quarter Actual NS Traffic Volumes for the P&SH Origin-Destination Selection.” On March 12, 2003, CP&L requested that the Board disregard this material as new and improper evidence.² We agree with CP&L and will reject the new material.

DISCUSSION AND CONCLUSIONS

In complex proceedings such as this one, briefs, properly employed, serve to focus the issues and assist us in analyzing the record. But new evidence in briefs is prohibited; the parties are simply to summarize the evidence already in the record and direct our attention to the issues the parties deem critical. In our decision served on December 13, 2002, scheduling the submission of briefs in this case, the parties were reminded that “new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions.”

As we recently explained in Duke Energy Corp. v. Norfolk Southern Ry. Co., STB Docket No. 42069 (STB served Mar. 25, 2003), there must be a clearly defined cut-off point, after which the record of the proceeding is closed. Thus, if a party wishes to introduce further material at a later stage, it must file a petition to supplement the record. Such a petition should

¹ The complaint challenges the reasonableness of rates and other terms for unit train coal transportation service by NS from various origins in West Virginia, Kentucky, and Virginia to CP&L’s Roxboro electricity generating facility in Hyco, NC, and Mayo electricity generating facility in Mayo Creek, NC. Opening, reply, and rebuttal evidence was filed on June 10, 2002, October 11, 2002, and November 27, 2002, respectively.

² In a letter received on March 14, 2003, NS responded that the material, consisting of actual 2002 traffic data, was submitted in response to CP&L’s improper introduction of new evidence on rebuttal.

show that the information sought to be introduced is central to the petitioning party's case, could not reasonably have been introduced earlier, and would materially influence the outcome of the proceeding.

NS has not made such a showing here. Instead, it attempted to include new evidence with its brief, contrary to the explicit instructions in our December 13, 2002 decision. Accordingly, we will not allow the new evidence in this case.

It is ordered:

1. The table submitted with defendant's brief is rejected.
2. This decision is effective on its service date.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary