

36010
SEC

SERVICE DATE – JULY 8, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42069

DUKE ENERGY CORPORATION
v.
NORFOLK SOUTHERN RAILWAY COMPANY

STB Docket No. 42070

DUKE ENERGY CORPORATION
v.
CSX TRANSPORTATION, INC.

STB Docket No. 42072

CAROLINA POWER & LIGHT COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: July 7, 2005

In a decision served on October 20, 2004 (October 2004 decision), the Board determined that the challenged rates being charged by the railroads in these three cases had not been shown to be unreasonable under the Board's stand-alone cost (SAC) test.¹ The Board explained, however, that the SAC test is not the only regulatory constraint on railroad pricing. Because in each of these cases the challenged rates represented unusually large rate increases, the Board provided the complainants the opportunity to pursue rate relief under the phasing constraint of the Board's Coal Rate Guidelines. Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 546-47 (1985). The complainants filed requests for phasing relief and a procedural schedule for each proceeding was established by a decision served on January 6, 2005 (and modified in several subsequent decisions).

¹ The three cases have not been consolidated. A single decision is being issued for administrative convenience.

By motions filed on June 24, 2005 (in STB Docket No. 42069), and June 29, 2005 (in STB Docket Nos. 42070 and 42072), each complainant has separately requested dismissal of its complaint with prejudice. Each complainant states that it has reached a voluntary settlement of the matters at issue in these proceedings. Accordingly, the motions to dismiss the complaints with prejudice will be granted and the proceedings will be discontinued. Further, the complainants' appeals seeking access to additional information in the costed Waybill Sample will be dismissed as moot.

It is ordered:

1. The complaints in these proceedings are dismissed with prejudice and the proceedings are discontinued.
2. The complainants' appeals seeking access to additional information in the costed Waybill Sample are dismissed as moot.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary