

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 693

ORAL ARGUMENT

Decided: May 19, 2010

The Surface Transportation Board will hold oral argument on Wednesday, June 30, 2010, at 9:30 a.m., in the Board's hearing room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. The argument will address Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., NOR 42110. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

Seminole Electric Cooperative, Inc. (SECI) filed a complaint challenging the reasonableness of the rates established by CSX Transportation, Inc. (CSXT), for transportation of coal from various origins to SECI's Seminole Generating Station (SGS), near Palatka, Florida, effective January 1, 2009. SECI alleges that CSXT possesses market dominance over this traffic and requests that reasonable rates be prescribed pursuant to the Board's stand-alone cost (SAC) test. CSXT has answered the complaint and both parties have submitted evidence.¹

The Board will hold an oral argument on the issue of market dominance in this rate proceeding. Under 49 U.S.C. §§ 10701(d)(1) and 10707(b)-(c), the Board can consider the reasonableness of a challenged rail rate only if the carrier has market dominance over the traffic involved. Market dominance is "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. § 10707(a). There are two components to the Board's market dominance inquiry. The first component is quantitative. The statute establishes a conclusive presumption that a railroad does not have market dominance if the rate it charges produces revenues that are less than 180% of its variable costs of providing the service. 49 U.S.C. § 10707(d)(1)(A). SECI and CSXT agree that the challenged rates exceed 180% of the variable costs.

If the quantitative threshold is met, the Board moves to the second component, a qualitative analysis. The Board determines whether there are any feasible transportation alternatives that could be used for the issue traffic.

The parties are to address the qualitative component of market dominance during the oral argument. Both parties have submitted evidence regarding the presence or absence of effective competition for the transportation of coal to SECI's SGS. CSXT argues that SECI has access to

¹ Under the current procedural schedule, closing briefs are due June 4, 2010.

intermodal competition because of the potential for SECI to receive coal via barge from the Port of Jacksonville to an unloading dock on the St. Johns River that could be constructed at a site owned by SECI near SGS. SECI argues that the possibility of barge-delivered coal is precluded by the infrastructure requirements and the permitting authority necessary to construct an intermodal operation large enough to constrain CSXT's pricing power.

SECI and CSXT will each have 20 minutes of argument time. SECI will open and may reserve part of its time for rebuttal if it so chooses.

By June 23, 2010, the parties shall submit to the Board the name of the counsel who will be presenting argument and the name of the party counsel will be representing. SECI's filing shall also address the requested time reserved for rebuttal, if any. Absent a request by the Board, no additional written comments or other submissions may be filed in connection with this oral argument. Each party is encouraged to use its oral argument time to call attention to the points it believes are particularly important on the issue of qualitative market dominance. The argument will be in the style of an appellate court. Parties should prepare a short oral statement and be prepared to answer questions from the Board. The purpose of oral argument is not to restate the written arguments previously presented, but to summarize and emphasize the key points of a party's case, and provide an opportunity for questions that the Board may have regarding any issue in the proceeding.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, S.W. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room, or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245, by the close of business on June 22, 2010.

For further information regarding the oral argument, contact Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Oral argument in Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., NOR 42110, will be held on Wednesday, June 30, 2010, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. By June 23, 2010, the parties shall submit to the Board the name of the counsel who will be presenting argument and the name of the party counsel will be representing. SECI's filing shall also address the requested time reserved for rebuttal, if any.

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.