39552 SERVICE DATE – DECEMBER 11, 2008
EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42110

SEMINOLE ELECTRIC COOPERATIVE, INC.
v.
CSX TRANSPORTATION, INC.

Decided: December 10, 2008

The default procedural schedule set forth at 49 CFR 1111.8 for rail rate cases that use our full Stand-Alone Cost (SAC) test has grown dated due to the increasing complexity of these cases and changes to the jurisdictional inquiry. Accordingly, we establish a modified procedural schedule for this case that we conclude is more reasonable, given our experience in these proceedings.

BACKGROUND

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 the maximum reasonable rates be prescribed along with other relief pursuant to the Board's SAC test.

SECI, a non-profit electric generation and transmission cooperative, sells and transmits bulk supplies of wholesale electricity, primarily to its ten member distribution cooperatives. These members provide retail electric distribution services to residential, commercial and industrial consumers. SECI and its members serve nearly 900,000 metered residential and business consumers in 46 of Florida's 67 counties. The primary energy resource serving SECI and its member systems is SGS.

On October 15, 2008, SECI and CSXT filed reports and competing proposed procedural schedules. SECI's proposed procedural schedule calls for an expanded discovery period and additional time, beyond that laid out in 49 CFR 1111.8(a), for filing evidence. CSXT opposes SECI's schedule on the grounds that it deviates from the procedural schedule in 49 CFR 1111.8(a).

DISCUSSION AND CONCLUSIONS

We will adopt a procedural schedule here that deviates from the schedule in section 1111.8(a) in order to balance the need for appropriate time for discovery and for the parties to develop their evidence and testimony with the need to expedite proceedings to the extent practicable.

In 1996, the Board adopted the default procedural schedules for SAC cases. See Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527 (STB served Oct. 8, 1996); 49 CFR 1111.8(a). However, that default schedule has not been adhered to in individual cases, where individualized schedules have been adopted for each case and procedural extensions have been granted as well. Moreover, SAC cases have become far more complex and time consuming since 1996. Finally, the Board has made both procedural and substantive changes to improve the handling of rail rate cases. See, e.g., Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006), aff'd sub nom. BNSF Ry. v. STB, 526 F.3d 770 (D.C. Cir. 2008) (Major Issues). These recent changes have made the procedural schedule timeframe in section 1111.8(a) unworkable.

Some of the filings contemplated by the default schedule are no longer necessary. In Major Issues, the Board significantly overhauled substantive areas of the SAC proceeding, including disallowing movement-specific adjustments to the system-average variable cost produced by the Uniform Rail Costing System (URCS). This will greatly streamline the evidentiary exploration as to whether a carrier has market dominance over the traffic involved and the level at which the floor for regulatory rate relief is set. Thus, to receive six pleadings on this issue would be excessive. We would expect the parties to meet and seek to resolve any disputes over operating characteristic inputs into URCS prior to filing any evidence, and to provide the Board with a joint submission of operating characteristics, including any areas of disagreement. This joint submission should also indicate whether the parties request a staff-supervised technical conference at that time.

Despite the improvements made in Major Issues, the development and presentation of a full SAC case remains a time consuming endeavor. In developing the procedural schedule below, we have attempted to realistically estimate the time necessary to submit evidence in this proceeding. We note that the changes to how the Board will handle simplified rate complaints include a procedural schedule for a simplified SAC process that reflected wide public input. See Simplified Standards For Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007). Parties filing under Simplified-SAC procedures, which provide for a shorter and more expedited proceeding, have a longer timeframe for filing evidence than the parties in full SAC cases would have under the current default schedule. Because a full SAC case is more complicated that a Simplified-SAC case, parties to a full SAC case should have as much time as, if not more time than, the parties have in Simplified-SAC cases to file evidence.

While we would like SAC cases to be concluded as expeditiously as possible, unrealistic timeframes in the past have forced multiple extensions at all stages of SAC proceedings. These

cases have rarely maintained their original procedural schedule. We think that the following is a more realistic procedural schedule for this SAC case:

Day 0—Complaint filed, discovery period begins;

Day 7 or before—Conference of the parties convened pursuant to 49 CFR 1111.10(b);

Day 20—Defendant's answer to complaint due;

Day 75—Staff-supervised discovery conference, if necessary;

Day 150—Discovery completed;

Day 220—Joint submission of operating characteristics;

Day 240—Complainant files opening evidence;

Day 330—Defendant files reply evidence;

Day 375—Complainant files rebuttal evidence;

Day 395—Both parties file closing briefs.

Therefore, we will adopt this schedule and apply it to this proceeding. As we have built ample time into this schedule, requests for extensions of time will be viewed with disfavor.

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

It is ordered:

1. The following procedural schedule is adopted for this case:

December 17, 2008	Staff-supervised discovery conference, if necessary
March 2, 2009	Discovery completed
May 11, 2009	Joint submission of operating characteristics
June 1, 2009	Complainant's opening evidence due
August 31, 2009	Defendant's reply evidence due
October 15, 2009	Complainant's rebuttal evidence due
November 4, 2009	Closing briefs due

2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary