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SEC

SERVICE DATE - JANUARY 6, 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: January 6, 2005

In a decision served 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.

The complainants elected to continue to contest the challenged rates and filed requests for phasing relief. The complainants also proposed procedural schedules for the submission of further

¹ The three cases have not been consolidated.

evidence. In each case, the complainants and the railroads generally agree on the procedural schedules, with the exception of whether evidence should be filed simultaneously by the parties or whether the complainants should be entitled to open and close these evidentiary phases of the proceedings. Complainants argue that, as the parties with the burden of proof in the proceedings, the normal procedure (wherein the complainants open and close the evidentiary record) should be followed. The railroads argue that the parties should file supplemental evidence in two simultaneous rounds as that would allow both parties to submit the same amount of evidence.

Here, as the shippers have the burden of proof on the phasing issue, it is appropriate that they have the opportunity to open and close. Accordingly, the procedural schedules proposed by the complainants are adopted as outlined below.

Once the record is complete, oral arguments will likely be held and a decisions resolving the shippers rate challenges will be issued as quickly as possible.

It is ordered:

1. The procedural schedule for STB Docket No. 42069 is as follows:

January 26, 2005	Discovery served.
February 25, 2005	Responses and objections to discovery requests due.
March 2, 2005	STB discovery conference.
April 1, 2005	Completion of production.
May 2, 2005	Opening statement due.
June 1, 2005	Reply statement due.
July 1, 2005	Rebuttal statement due.
August 1, 2005	Briefs due.

2. The procedural schedule for STB Docket No. 42070 is as follows:

January 21, 2005	Discovery served.
February 22, 2005	Responses and objections to discovery requests due.
February 25, 2005	STB discovery conference.
March 28, 2005	Completion of production.
April 27, 2005	Opening statement due.
May 27, 2005	Reply statement due.
June 27, 2005	Rebuttal statement due.
July 27, 2005	Briefs due.

3. The procedural schedule for STB Docket No. 42072 is as follows:

January 31, 2005	Discovery served.
March 2, 2005	Responses and objections to discovery requests due.
March 7, 2005	STB discovery conference.
April 6, 2005	Completion of production.
May 6, 2005	Opening statement due.
June 6, 2005	Reply statement due.
July 6, 2005	Rebuttal statement due.
August 5, 2005	Briefs due.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary