

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42070

DUKE ENERGY CORPORATION

v.

CSX TRANSPORTATION, INC.

Decided: February 20, 2004

By decision served on February 4, 2004 (February 4 decision), the Board found that the complainant, Duke Energy Corporation (Duke), had failed to establish that certain challenged rates of CSX Transportation, Inc. (CSXT), were unreasonably high. On February 13, 2004, Duke filed a petition to extend the February 24, 2004 due date for filing petitions for reconsideration of the Board's decision until March 25, 2004. Duke argues, among other things, that an extension of time is needed because its consultants have been unable to complete their review of staff workpapers underlying the Board's decision. CSXT does not object to the proposed extension of time. The request is reasonable and will be granted.

Duke also requests that the Board stay the present March 5, 2004 due date for Duke to advise whether it wishes to seek relief under the phasing constraint. Duke seeks a stay of the due date until 15 days after the date the Board issues a decision on petitions for reconsideration. Duke states that it has not made a decision on whether to seek phasing relief, and that the extension of time is necessary because it would need to know what relief it may be awarded as a result of a successful petition for reconsideration in order to make an informed decision on the matter.

CSXT objects to any extension of the March 5 due date. CSXT submits that, because it is unlikely that the challenged rates will be found unreasonable on reconsideration, Duke will be in the same position after reconsideration as it is now. Therefore, CSXT argues that it is preferable to have all of the issues, including phasing, presented to the Board at essentially the same time rather than piecemeal as Duke's approach would advocate. Thus, if Duke elects to seek phasing on the March 5 due date, CSXT states that it will be able to conduct necessary discovery, the parties can prepare their evidentiary submissions during the time any petitions for reconsideration are pending, and the Board will be able to issue a decision on all relevant issues at the same time. Moreover, CSXT argues that extending the March 5 due date would deny the parties finality, impact CSXT's contract negotiations with other shippers, and make its business planning, accounting, and communications with markets and investors difficult.

Because it is possible that, even if Duke does not prevail on reconsideration, it might not choose to pursue phasing, requiring the parties to undergo discovery and other expenses associated with preparing for a decision on phasing relief would be premature at this time. Accordingly, under the circumstances, the March 5 due date for Duke to advise whether it wishes to seek relief under the phasing constraint will be stayed until 15 days after the date the Board issues a decision on reconsideration.

It is ordered:

1. Duke's request to extend the due date for filing petitions for reconsideration of the February 4 decision and its request for stay of the March 5, 2004 due date for it to advise whether it wishes to seek relief under the phasing constraint are granted.
2. The due date for filing petitions for reconsideration of the February 4 decision is extended until March 25, 2004.
3. The due date for Duke to advise whether it wishes to seek relief under the phasing constraint is extended until 15 days after the Board issues a decision on reconsideration of the February 4 decision.
4. This decision is effective on the date of service.

By the Board, Roger Nober, Chairman.

Vernon A. Williams
Secretary