

SERVICE DATE - JUNE 27, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41989

POTOMAC ELECTRIC POWER COMPANY

v.

CSX TRANSPORTATION, INC.

Decided: June 18, 1997

Potomac Electric Power Company (PEPCO) has filed a complaint seeking the establishment of reasonable rates for the transportation of coal between certain origins and/or interchanges and its generating plant. Based on our decisions in the *Bottleneck Proceedings, infra*, we are granting the motion of defendant CSX Transportation, Inc. (CSXT) for partial dismissal of the complaint.

BACKGROUND

PEPCO's Dickerson Station generating plant in Dickerson, MD, is served exclusively by CSXT. Until recently, CSXT transported the coal supplying the Dickerson Station plant under a contract established pursuant to former 49 U.S.C. 10713 (recodified as 49 U.S.C. 10709), which contract expired on December 31, 1996.

By complaint filed January 3, 1997, PEPCO seeks the establishment of reasonable rates for the transportation of coal in unit trains between, on the one hand, certain origins and/or interchanges in Pennsylvania, West Virginia, and Maryland, and, on the other, PEPCO's Dickerson Station generating plant. Some of the movements involved in the complaint originate from mines served by CSXT and involve single-line service; others originate at mines served by Consolidated Rail Corporation (Conrail) and require interchange with CSXT at Lurgan, PA, and perhaps other unidentified CSXT-Conrail interchange points (one of which may be Rivesville, WV). PEPCO alleges that it has been unable to negotiate reasonable rates to replace the rates established under the expired contract.

By motion filed January 23, 1997, which PEPCO has opposed, CSXT requests partial dismissal of PEPCO's complaint to the extent that it seeks prescription of reasonable rates for the segments of the proposed Conrail-CSXT interline movements between the interchange points mentioned in the complaint and the Dickerson Station plant, i.e., over only CSXT's *portions* of through movements. CSXT does not seek dismissal to the extent that the complaint seeks prescription of single-line rates for movements from CSXT-served origin mines to the destination plant.<sup>1</sup>

DISCUSSION AND CONCLUSIONS

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<sup>1</sup> CSXT has filed a motion, which PEPCO has opposed, requesting leave to file a separate tendered reply to PEPCO's reply in opposition. We will not consider CSXT's reply to PEPCO's reply. Under our rules at 49 CFR 1104.13(c), replies to replies are prohibited. As noted by CSXT, we have waived this rule to permit evaluation of evidence or authority that could not have been submitted earlier and for other compelling reasons. But CSXT has not submitted compelling reasons for a waiver. CSXT's pleading tenders no additional statutory authority or case law, but simply argues that we should reject the reasoning submitted in PEPCO's reply. CSXT's reply to PEPCO's reply is merely an attempt to have the last word in argument, which contravenes the intent of our prohibition of replies to replies.

In our decisions in *Central Power & Light Co. v. Southern Pac. Transp. Co.*, Nos. 41242 *et al.* (STB served Dec. 31, 1996), \_\_\_ STB \_\_\_ (1996) (*Bottleneck I*), clarified by decision served Apr. 30, 1997 (*Bottleneck II*), \_\_\_ STB \_\_\_ (1997) (collectively, *Bottleneck Proceedings*), we clarified our authority to prescribe rates that would apply solely over the “bottleneck segments” of through routes.<sup>2</sup> In *Bottleneck I*, we held that:

- A bottleneck carrier cannot refuse to provide service to a shipper from an origin that it does not serve, but instead must accept traffic from the origin carrier at a reasonable interchange point and provide a route and rate to complete the transportation.
- A shipper can use existing competitive access procedures to obtain the prescription of a new through route from an origin that is served by the bottleneck carrier.
- And notwithstanding prior precedent generally restricting rate reasonableness challenges to origin-to-destination rates, when the non-bottleneck segment of a through route is covered by a rail/shipper contract, the rate covering the bottleneck segment is challengeable separately.

As relevant here, complainant PEPCO seeks to ship coal from certain origins not served by CSXT and to obtain a separate rate prescription over CSXT’s bottleneck segment.<sup>3</sup> As we noted in *Bottleneck I*, we will prescribe a separate rate for a bottleneck segment of an origin-to-destination service, but only if the utility enters into a contract with the origin carrier to ship over the non-bottleneck segment beforehand. PEPCO acknowledges that it has not entered into a contract with Conrail (or any other origin carrier) for shipment over the non-bottleneck segments (from any proposed origin to any junction point with CSXT) involved in the complaint, but it states that it “may enter into a contract with Conrail at a future date, possibly before the Board serves its final decision on the merits in this case.” While there may be such a contract at a future date, our decision in *Bottleneck II* (slip op. at 11-12) made it clear that a contract must be in place *before* we can prescribe the rate for the bottleneck segment of the proposed through service. *See also Western Resources, Inc. v. Atchison, T. & S. F. Ry.*, No. 41604 (STB served May 28, 1997). Thus, for the reasons discussed in our *Bottleneck Proceedings* decisions, CSXT’s motion for partial dismissal must be granted.<sup>4</sup>

## SUMMARY

Our decisions in the *Bottleneck Proceedings* provided substantial opportunities for shippers to obtain relief. Because PEPCO can not obtain relief as to that part of its complaint that is the

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<sup>2</sup> A “bottleneck segment” is the portion of a rail movement for which no alternative rail route is available.

<sup>3</sup> There is no indication that PEPCO is seeking to make a case under our competitive access procedures in order to move coal from an origin currently served by CSXT over an alternate route to its plant.

<sup>4</sup> Like the utility-complainants in the *Bottleneck Proceedings*, in paragraph 16 of its complaint, PEPCO alleges that CSXT’s refusal to provide a discrete bottleneck-segment rate from CSXT’s interchange with Conrail at Lurgan, PA (or from any other CSXT/Conrail interchange point), to the Dickerson Station violates its obligation under 49 U.S.C. 11101 to provide service “on reasonable request.” As we explained in our *Bottleneck Proceedings* decisions, however, so long as the bottleneck carrier offers, as CSXT does here, single-line rates or origin-to-destination through rates with other carriers, it is not required additionally to hold out separately challengeable bottleneck-segment rates for transportation not local to the bottleneck segment at the request of a shipper. *Bottleneck I* (slip op. at 5-6); *Bottleneck II* (slip op. at 3-5, 10 n.13). Our dismissal thus includes this part of PEPCO’s complaint as well.

subject of CSXT's motion for partial dismissal, we must grant the motion without prejudice to PEPCO's ability to file a new complaint involving these movements that conforms with our decisions in the *Bottleneck Proceedings*. Moreover, we are dismissing only those parts of PEPCO's complaint discussed above, and the remainder of the complaint can go forward.

*It is ordered:*

1. CSXT's motion for partial dismissal is granted.
2. This decision is effective July 27, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary