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April 21, 2010



**By Hand Delivery**

Rachel D. Campbell,  
Director  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Re: Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., STB Finance  
Docket No. 42110

Dear Ms. Campbell:

Enclosed for filing in the above-referenced matter is the original and ten (10) copies of CSX Transportation, Inc.'s Petition for Extension of Time to File Closing Briefs.

Please stamp one copy of the Reply to indicate it has been received and filed, and return the stamped copy with our messenger for our files. Thank you for your assistance in this matter.

If you have questions, please contact the undersigned.

Very truly yours,

G. Paul Moates

Enclosure

cc: Counsel of Record

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

SEMINOLE ELECTRIC COOPERATIVE, INC. )

Complainant, )

v. )

CSX TRANSPORTATION, INC. )

Defendant )

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Docket No. NOR 210



**DEFENDANT CSX TRANSPORTATION, INC.'S PETITION FOR EXTENSION OF  
TIME TO FILE CLOSING BRIEFS**

Pursuant to 49 C.F.R. § 1104.7(b), Defendant CSX Transportation, Inc. ("CSXT") respectfully requests that the Board extend the due date for the parties to file Closing Briefs from May 5, 2010 to June 4, 2010. CSXT has discussed this revised due date with counsel for Seminole Electric Cooperative, Inc. ("SECI"), and CSXT is authorized to represent that SECI does not oppose this request. There is good cause to grant this unopposed request for a 30-day extension, because this extension is necessary for CSXT to have a fair opportunity to analyze the voluminous Rebuttal Evidence that SECI filed April 15, 2010 and prepare a Closing Brief that analyzes the key differences in the parties' evidence in a way that will aid the Board's resolution of this case.<sup>1</sup>

This is the first request for extension that CSXT has filed in this case. CSXT does so with some reluctance, because CSXT wishes to expedite resolution of this case as much as possible. But CSXT has concluded that it must seek an extension if it is to file a Closing Brief

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<sup>1</sup> In light of the current due date of May 5, 2010 – only two weeks from today – CSXT respectfully requests that the Board expedite consideration of this Petition.

that fully analyzes and addresses SECI's Rebuttal Evidence. An extension is necessary for three reasons.

First, the Rebuttal Evidence SECI filed on April 15 is voluminous— indeed, it is far lengthier than SECI's Opening Evidence. SECI's Opening Narrative volume totaled 405 pages, but its Rebuttal Narrative totals 605 pages – nearly 50 percent longer. SECI has also filed multiple additional exhibits, submitted reports from new expert witnesses, and produced over 450 additional workpapers, many of which are complex tables and spreadsheets that require careful review. The 20 days permitted for briefs under the current schedule is simply not enough time for CSXT to analyze this evidentiary filing and prepare a brief addressing it and the other evidence that has been submitted by the parties. In a complex Stand Alone Cost case like this one that involves thousands of pages of evidence and hundreds of disputed issues, the Board is well served by closing briefs that put into perspective the principal issues to be decided and direct the Board to the key evidence in the record. After its initial review of SECI's Rebuttal filing, CSXT has determined that it needs additional time to conduct the thorough analysis of SECI's Rebuttal that is a prerequisite for CSXT to prepare a brief that will be as helpful to the Board as possible.

Second, and relatedly, CSXT's analysis of SECI's Rebuttal Evidence requires substantial input from CSXT's experts and consultants – many of whom have extensive commitments over the next three weeks in another Board proceeding. For CSXT to file a brief in this proceeding that meaningfully and thoroughly addresses the evidence in the record, its rail industry experts must have sufficient time to analyze SECI's Rebuttal Evidence. However, as CSXT explained in its Reply to SECI's most recent request for an extension, several of CSXT's key railroad consultants are also consultants to the defendant railroads in *Arizona Electric Power*

*Co. v. BNSF Ry. Co. & Union Pacific R.R.*, STB Docket No. 42113 (“*AEPCO*”). See CSXT’s Reply to SECI’s Petition to Extend Remaining Due Dates at 4-5 (filed Feb. 22, 2010). The defendants’ reply evidence in the *AEPCO* proceeding is due May 7, 2010 – only two days after the existing date for final briefs in this case – and CSXT’s expert witnesses are intensely engaged in preparing that evidence. If the deadline for CSXT to file its briefs in this proceeding is not extended, CSXT would face significant unfair prejudice because its consultants will be hard-pressed to conduct a thorough review of SECI’s Rebuttal Evidence while simultaneously preparing reply evidence in *AEPCO*. In addition, one of CSXT’s expert witnesses is recovering from major surgery, and additional time will better enable him to analyze SECI’s evidence and identify points to be addressed in CSXT’s brief.

Third, the brief extension CSXT requests should be granted as a matter of simple fairness. Thus far SECI has requested and received three separate extensions, and in total has received 125 more days to prepare its evidentiary filings than were allotted under the Board’s procedural schedule. See *SECI v. CSXT*, Docket No. 42110 (served May 6, 2009) (granting SECI request for 60-day extension to file Opening Evidence); *SECI v. CSXT*, Docket No. 42110 (served July 13, 2009) (granting SECI request for additional 30-day extension to file Opening Evidence)<sup>2</sup>; *SECI v. CSXT*, Docket No. 42110 (served March 5, 2010) (granting SECI request for 35-day extension to file Rebuttal Evidence). CSXT consented unconditionally to SECI’s first two extension requests; for the third request CSXT objected to SECI’s request for an additional five weeks – in part to avoid the conflict detailed above between its experts’ commitments in this case and those in *AEPCO* – but consented to a briefer three-week extension. See CSXT’s Reply to SECI’s Petition to Extend Remaining Due Dates at 1 (filed Feb. 22, 2010). (The Board chose

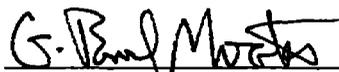
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<sup>2</sup> The Board’s July 13, 2009 decision *sua sponte* gave CSXT an additional 30 days for its reply evidence.

to give SECI the full five weeks it requested. *SECY v. CSXT*, Docket No. 42110 (served March 5, 2010).) In short, throughout this proceeding both CSXT and the Board have agreed to multiple requests by SECI for extensions of the procedural schedule. Having granted SECI a considerable amount of additional time to prepare its evidence, the Board should allow CSXT a brief extension to analyze that evidence before filing its closing brief.

For the foregoing reasons, good cause exists to grant CSXT's unopposed request to extend the due date for briefs. Accordingly, the Board should grant CSXT's Petition and order that briefs in this proceeding shall be served on or before June 4, 2010.

Respectfully submitted,



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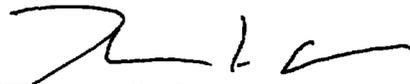
*Counsel to CSX Transportation, Inc.*

Dated: April 21, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of April, 2010, I caused a copy of the foregoing CSX Transportation, Inc.'s Petition for Extension of Time to File Closing Briefs to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

Kelvin J. Dowd  
Christopher A. Mills  
Daniel M. Jaffe  
Joshua M. Hoffman  
Stephanie M. Adams  
Slover & Loftus  
1224 17th Street, NW  
Washington, DC 20036

  
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Matthew J. Warren