

Surface Transportation Board Issues Decision in "Duke v. Norfolk Southern" Rail Rate-Complaint Case

Surface Transportation Board (Board) Chairman Roger Nober today announced that the Board has issued its decision in compliance with its statutory deadline, which it tolled for three weeks for the parties to submit additional evidence, in the maximum rate case brought by Duke Energy Corporation (Duke) against Norfolk Southern Railway Company (NS). Duke's complaint challenged NS's rates for the movement of coal from origins in Virginia, West Virginia, and Kentucky to Duke's Allen, Belews Creek, Buck, and Dan River electricity generating facilities in North Carolina. In its decision, the Board found that the NS rates challenged by Duke had not been shown to be unreasonable under the Board's standard "stand-alone cost" test. But the Board expressed concern over the size of the rate increases involved and stated that, if Duke wishes to pursue the matter further, the Board would look at whether NS should be required to phase in those rate increases over some period of time.

The Board decided the case under its well established "stand-alone cost" rate review methodology, which seeks to determine the lowest cost at which a hypothetical, efficient "stand-alone railroad" could provide the transportation service required by the complaining shipper. The costs of building and operating such an efficient railroad are then compared to the revenues that such a system could expect to earn. If the shipper demonstrates that the stand-alone railroad would earn more from its shippers than is necessary to cover all of its costs, the shipper is entitled to rate relief. In a stand-alone cost rate case, the parties typically litigate over issues such as how much traffic might be carried by the stand-alone railroad; how the stand-alone railroad would have to operate in order to meet the requirements of the railroad's shippers; how much it would cost to conduct such operations; and how much revenue the system would generate.

A printed copy of Board's decision, in the case entitled *Duke Energy Corporation v. Norfolk Southern Railway Company*, STB Docket No. 42069, is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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