

Surface Transportation Board Announces Results of October 20 Voting Conference

Surface Transportation Board Chairman Roger Nober today announced the results of the voting conference held today, October 20, 2004 by the STB.

The list of cases on which Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey voted, and the outcome of the voting, are attached as a fact sheet.

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ATTACHMENT

Fact Sheet

VOTING RESULTS OF SURFACE TRANSPORTATION BOARD'S OCTOBER 20, 2004 VOTING CONFERENCE

• ***Duke Energy Corporation v. Norfolk Southern Railway Company***, STB Docket No. 42069; ***Duke Energy Corporation v. CSX Transportation, Inc.***, STB Docket No. 42070; and ***Carolina Power & Light Company v. Norfolk Southern Railway Company***, STB Docket No. 42072.

At issue in these three cases are petitions for reconsideration of the Board's prior decisions involving complaints challenging the reasonableness of certain rates for coal transportation. The Members voted unanimously to modify the prior decisions in these three rail-rate cases, and to find that none of the challenged rates have been shown to be unreasonable under the "stand-alone cost" test.

• ***CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operation Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation [General Oversight]***, STB Finance Docket No. 33388 (Sub-No. 91).

This case involves issues raised by various parties in the fifth annual round of the "Conrail merger" general-oversight proceeding. The Members voted unanimously to: (1) formally conclude, as scheduled, the Board's five-year oversight in this proceeding; (2) terminate reporting requirements, with the exception of operational monitoring of the Shared Assets Areas; (3) remind the parties that the agency's jurisdiction and authority to enforce the merger conditions imposed in this case will continue; and (4) deny various requests for relief.

• ***HolRail LLC--Construction and Operation Exemption--in Orangeburg and Dorchester Counties, SC***, STB Finance Docket No. 34421, embracing ***HolRail LLC--Petition for Crossing Authority under 49 U.S.C. 10901(d)***, STB Finance Docket No. 34421 (Sub-No. 1).

At issue is a petition for an exemption from the agency's prior-approval requirements for the construction of a two-mile build-out line in Orangeburg and Dorchester Counties, South Carolina, and a motion to dismiss that petition. The Members voted unanimously to: (1) deny a "CSXT" motion to dismiss "HolRail's" exemption petition seeking authority to construct the two-mile rail line; (2) grant two HolRail motions to compel discovery; and (3) grant in part a CSXT motion to compel discovery.

• ***MVC Transportation, LLC--Acquisition Exemption--P&LE Properties, Inc.***, STB Finance Docket No. 34462, embracing ***MVC Transportation, LLC--Petition for Declaratory Order***, STB Finance Docket No. 34462 (Sub-No. 1).

At issue in these cases are a petition seeking an STB declaratory order (in which the agency states its position on a matter

of dispute) in connection with litigation pending in a Pennsylvania court, and a related petition for revocation of an acquisition exemption. The Members voted unanimously to deny the "MVC" petition seeking a declaratory order, and thus to leave the resolution of a dispute over ownership of rail-yard track assets to a Pennsylvania court; and to deny a petition to revoke MVC's acquisition exemption.

• ***Tongue River Railroad Company, Inc.--Construction and Operation--Western Alignment, STB Finance Docket No. 30186 (Sub-No. 3).***

This case involves a petition asking the agency to reconsider an earlier decision concerning the entity that is the applicant for authority to construct and operate a segment of rail line at issue in this case. The Members voted unanimously to deny the petition, but to require that the applicant provide to the Board a current organizational chart diagramming the entities that control it.

• ***Lake Superior & Ishpeming Railroad Company--Abandonment Exemption--in Marquette County, MI, STB Docket No. AB-68 (Sub-No. 4X).***

At issue in this proceeding is "Lake Superior's" petition for the agency's reconsideration of an earlier decision that rejected a petition seeking an exemption from the agency's prior-approval requirements concerning the proposed abandonment of a rail line. The Members voted unanimously to grant the petition for reconsideration--based on changed circumstances--and to reinstate the petition for exemption to abandon a segment of the original line.

The STB provides the above summaries as a courtesy to the public and the media. The actions of the agency in these cases, however, are its written decisions. Those decisions will be forthcoming, and will be available for viewing (under "E-Library/"Decisions & Notices") and downloading via the STB's Web site at <http://www.stb.dot.gov>. Printed copies of the decisions also will be available for a fee by contacting **ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone (202) 306-4004**, or via asapdc@verizon.net.

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