

## **SURFACE TRANSPORTATION BOARD DENIES RAILROAD'S UNTIMELY REQUEST TO SUBMIT ADDITIONAL EVIDENCE IN "STAND-ALONE" COST CASE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied a request by CSX Transportation, Inc. (CSXT) to modify and supplement its evidence after the close of the evidentiary record in a railroad coal rate complaint case.

In the proceeding, Potomac Electric Power Company (PEPCO) is challenging the reasonableness of CSXT rates on coal shipments from West Virginia to PEPCO'S Dickerson, Maryland power plant. Under the directive of the ICC Termination Act of 1995, the Board has adopted rules designed to expedite the completion of rate complaints. Among other things, the rules set strict deadlines under which parties may use the "discovery" process to obtain relevant information from each other, and they also set deadlines governing the filing of evidence and the Board's issuance of a final decision.

In presenting a coal rate case, shippers such as PEPCO typically construct what is known as a hypothetical "stand-alone" railroad, that is, a railroad that could replace the service historically provided by the "incumbent" railroad. Shippers use the revenues actually earned by the incumbent to estimate the revenues that the hypothetical railroad would be able to earn. In this case, CSXT indicated during discovery that certain information concerning revenues that it received on rate contracts--specifically, the amount of refunds that it had paid in 1996 to various contract shippers--was not available. Therefore, PEPCO developed its case without using the apparently unavailable information.

After the record in the case had closed, however, CSXT sought to submit what it described as "errata" to its earlier filed evidence. Included in the errata was the information on rate contracts that CSXT had, during discovery, asserted was unavailable. CSXT argued that this evidence would more accurately reflect the revenues that the hypothetical stand-alone railroad, designed by PEPCO to replace the service historically provided by CSXT, would be able to earn.

The Board accepted some of the errata filed by CSXT. However, because CSXT had failed earlier to supply the contract rate information, which had been sought by PEPCO during discovery, the Board refused to accept that information now. The Board found that it would be unfair to allow "a party to withhold information during discovery and then introduce that information . . . only after it proves to be beneficial to its case."

The Board's decision in *Potomac Electric Power Company v. CSX Transportation, Inc.*, STB Docket No. 41989, was issued to the public on November 24, 1997.

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