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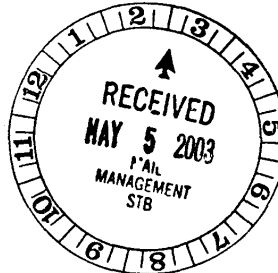
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Part of
Public Record

May 5, 2003

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



Re: Duke Energy Corporation v. CSX Transportation, Inc., Docket No. 42070

Dear Secretary Williams:

We write in brief response to Complainant Duke Energy's ("Duke") letter purporting to respond to CSXT's objection to Duke's untimely submission of new evidentiary material in its final brief in the above-captioned proceeding, and to correct the record regarding the prospective effect of inflation adjustments to the challenged common carrier rates. See William L. Slover Letter to Secretary Williams (April 30, 2003) ("Duke April 30 Letter"). With one exception, Duke does not contest the facts or the arguments set forth in CSXT's April 21 letter:

1. Duke does not deny that the quarterly inflation adjustment provision has been part of the challenged tariff since it first took effect, more than fourteen months ago. See Duke Amended Complaint, Exh. G ¶ 13. There is thus no justification for Duke's raising this quarterly adjustment for the very first time in an "Afterword" to its final brief, and the Board should not consider Duke's untimely Afterword;

2. Duke does not deny that it used the tariff's inflation index to project future rates in its own SAC presentation. Thus, contrary to Duke's claim, there is no need to adjust SAC calculations in this proceeding, because both parties' presentations fully accounted for adjustment of issue traffic rates for inflation; and

3. Duke does not deny that CSXT consistently applied the inflation adjustment as appropriate on a quarterly basis throughout the pendency of this proceeding. Nor does Duke deny that, prior to April 14, 2003, it did not object to the amount of these quarterly adjustments, or suggest such adjustments were improper.

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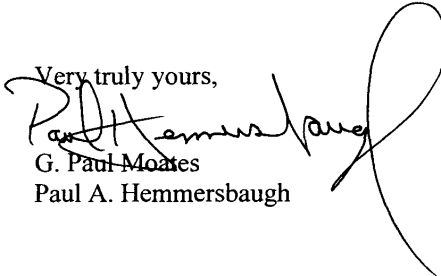
WASHINGTON, D.C.

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The only substantive factual claim in Duke's April 30 Letter is patently false. Duke asserts that CSXT increased Duke's rates "retroactively by 1 full year." Duke April 30 Letter at 2. This is a flat misrepresentation. The quarterly rate adjustment for the coal traffic at issue in this proceeding was effective April 1, 2003, and applies only prospectively. Duke knows this very well – CSXT has followed the same prospective inflation adjustment procedure in every calendar quarter since March 2002 (each such RCAF adjustment has been communicated to Duke in a written "supplement" that re-stated, for sake of completeness, the tariff's original effective date of March 1, 2002). The most recent inflation adjustment expressly provided that it was effective on April 1, 2003. See Exhibit to Duke April 30 Letter at n. (I) (copy of most recent supplement to CSXT tariff, stating, "Increase Effective April 1, 2003").

The mis-statement in Duke's April 30 Letter is only the latest in Duke's pattern of misleading claims and representations in this proceeding. CSXT asks that the Board keep this pattern in mind as it evaluates the parties' evidence.

Very truly yours,


G. Paul Moates

Paul A. Hemmersbaugh

cc: William L. Slover