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August 27, 2003

By Courier

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

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Office of Proceedings

AUG 27 2003

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Public Record



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

Dear Mr. Secretary:

Pursuant to the Board's Decision dated August 11, 2003, in the above-captioned proceedings, this is to inform the Board that the speaker for Defendant CSX Transportation, Inc. ("CSXT") at the oral argument scheduled for September 10 will be the undersigned.

Attached to this letter, also in compliance with the Board's Decision, is CSXT's written summary of points which it desires to raise during the oral argument.

Sincerely,

G. Paul Moates

Enclosure

cc: William L. Slover, Esq. (w/encl.)

CSXT's Written Summary of Oral Argument Points in STB Docket No. 42070

1. CSXT negotiated in good faith to continue the parties' longstanding contract relationship, and the SAC evidence in this record confirms that its negotiating position was a reasonable one. Duke is seeking to obtain, through regulatory intervention, rate reductions that it could not obtain through good faith bargaining in the marketplace and which the evidence unequivocally demonstrates are unwarranted as a matter of sound economics and SAC analysis. By asking the Board to adopt a SAC rate for its so-called "captive plants" that is below the rate it has voluntarily agreed to for its competitively-served Marshall plant, Duke is invoking the regulatory system to support an outcome that is inconsistent with economic logic and fundamental differential pricing principles.

2. Duke's failure to meet its burden of proof with respect to numerous essential elements of its SAC presentation requires dismissal of the Complaint. Duke's evidence regarding such central SAC components as the ACW's configuration and capacity, locomotive and car fleets, crew requirements, and operating statistics are all dependent on the output of a string diagram model that simply does not work – a recurring failure with the made-for-litigation model created by Duke's consultants. Moreover, the underlying assumptions that Duke input to that model are unsupported and wholly unrealistic.

2. CSXT's SAC evidence is well-documented and based upon realistic traffic and revenue projections, as well as fully-supported evidence (including extensive field inspections by CSXT's witnesses) relating to efficient construction and operation of a coal-hauling railroad in the Central Appalachian region. CSXT's rigorous analyses of the configuration and capacity of the ACW constitute far and away the best evidence of record on the SARR's facility requirements.

3. Duke's SARR is demonstrably not a feasible railroad and could not be constructed in the manner and for the costs Duke claims. Duke's evidence is derived in significant measure from construction and operating assumptions taken from SAC cases in

the West, and it utterly fails to account for the rugged terrain and daunting operating conditions of the Central Appalachian mountains.

a. The ACW could not be constructed in the manner and for the costs claimed by Duke – claims improperly made for the first time on Rebuttal when CSXT had no opportunity to reply. Duke’s SAC construction costs are grossly understated, largely because they are based upon a completely unrealistic proposal for earthwork, including the type of equipment required, the production capacity of that equipment, and the amount of earth that would have to be moved.

b. Duke’s evidence regarding the costs of track, tunnels, bridges, communications systems and engineering is ill-supported and in important respects was proffered improperly for the first time on Rebuttal when CSXT had no opportunity to reply.

c. CSXT’s realistic construction cost evidence directly responds to Duke’s infeasible Opening proposal. CSXT had no opportunity to reply to Duke’s dramatically changed Rebuttal proposal, but that evidence is fatally flawed as well. Equipment of the type first proposed by Duke on Rebuttal for construction of the ACW is wholly infeasible and has never been proposed in any prior stand-alone case – for good reason.

4. The ACW is also demonstrably not feasible because it cannot be operated in the manner and for the costs claimed by Duke – its trains exceed the lengths of real-world operations (based upon customer demands and practices, including customer-designed and built loading/ unloading facilities, as well as the practices of ACW’s only connection, CSXT); those trains are longer than the yards and sidings designed by Duke to hold them; they are unrealistically assumed to materialize fully loaded for the ACW’s convenience, in total disregard of the extensive evidence offered by CSXT about the operating complexities and costs of mine loading and gathering operations; Duke provides nowhere near the number of locomotives needed to handle all of the trains its own evidence indicates the ACW would operate; and its assumptions about operating personnel and their efficiency

and multi-tasking abilities are not only wholly unsupported, but they defy real-world experience, common sense, and safety rules developed through more than a century of railroad experience.

5. CSXT's operating plan for the ACW is well-supported and demonstrably feasible. It is based upon detailed expert analysis and testimony, and it is confirmed by evidence derived from three separate and independent capacity and operating models.

6. Duke's made-for-litigation projections of the traffic and revenues available to the ACW are demonstrably overstated for 2002, and contradict Duke's own course-of-business projections for later years. Duke's projections are unsupported in numerous respects and demonstrably false in others.

7. CSXT's traffic and revenue projections are supported by multiple independent experts and demonstrate that Duke has overstated ACW revenues by more than \$3 billion over the course of the 20-year DCF period.

8. CSXT's other differential pricing evidence supports the reasonableness of its SAC evidence and highlights the glaring inadequacy of Duke's SAC presentation. Evidence on the Ramsey price estimates for service to Duke's plants, of comparisons of the R/VC ratios for the issue traffic to CSXT's RSAM ratios, and of the contract rate for Duke's Marshall plant all further confirm the reasonableness of the challenged rates.

9. The evidence in no way supports Duke's reckless claims of "gaming" of the Board's maximum rate reasonableness regime, nor is there any legal or factual basis for adopting any of its proposed alternative rate reduction methodologies.

10. Duke's request for a rate prescription for origin-destination pairs to which it did not build its SARR and for which it did not submit origin-specific cost evidence must be denied. That request violates established Board precedent, Duke's own pleadings and representations in this case, and the fundamental tenets of SAC methodology.

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