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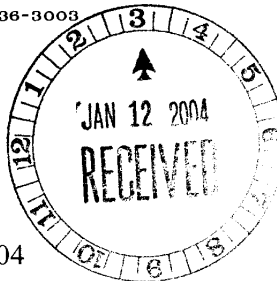
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January 12, 2004

BY HAND DELIVERY

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

209841

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and 16 copies of the Reply Supplemental Evidence on Rerouted Traffic of Complainant Duke Energy Corporation.

We have enclosed an additional copy of this filing to be date-stamped and returned to our messenger. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads 'Robert D. Rosenberg'.

Robert D. Rosenberg

Enclosures

cc: Counsel for Defendant

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DUKE ENERGY CORPORATION

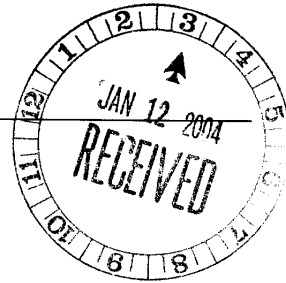
Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. 42070



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**REPLY SUPPLEMENTAL EVIDENCE ON REROUTED TRAFFIC
OF COMPLAINANT DUKE ENERGY CORPORATION**

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Docket No. 42070

**SUPPLEMENTAL EVIDENCE ON REROUTED TRAFFIC
OF COMPLAINANT DUKE ENERGY CORPORATION**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DUKE ENERGY CORPORATION	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42070
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	
	)	

**REPLY SUPPLEMENTAL EVIDENCE ON REROUTED TRAFFIC
OF COMPLAINANT DUKE ENERGY CORPORATION**

Complainant Duke Energy Corporation ("Duke") hereby submits its Reply Supplemental Evidence on Reroutes in response to the Supplemental Evidence of Defendant CSX Transportation, Inc. ("CSXT"), dated January 5, 2004.

I. PRELIMINARY ISSUE

Understandably, CSXT has paid very close attention to developments in Duke's complaint proceeding involving Norfolk Southern (Docket No. 42069).¹ As such, it is presumptively aware of the circumstance that NS's coal rates to Duke stations were found reasonable by the Board on account of the Board's acceptance of NS's high-cost SARR operating plan.² It can be presumed as well that CSXT is on notice of the fact Duke's low cost SARR operating plan in the NS case was rejected in its entirety by the

¹See Defendant CSX Transportation, Inc.'s "Petition for Leave to Correct the Record," filed Dec. 8, 2003.

²See Docket No. 42069, Duke Energy Corp. v. Norfolk Southern Ry. (STB served Nov. 6, 2003) ("Duke/NS"), at 35.

Board because the Board accepted NS's contention that Duke's SARR operating plan failed to provide the SARR customers with the levels and types of coal transportation services which they required and for that reason Duke's plan was commercially infeasible. See Duke/NS at 31.

In this proceeding, CSXT's attack on Duke's SARR operating plan is premised on CSXT's position that Duke's plan is operationally infeasible. CSXT presents no evidence that Duke's SARR operating plan fails to meet the commercial and business requirements of the SARR's customers. Rather, its extended evidentiary attack on Duke's SARR operating plan is predicated on CSXT's position that Duke's plan simply won't work. See CSXT Reply III-B-2 to 4. CSXT's evidentiary position that Duke's SARR operating plan is operationally infeasible rests entirely on "outputs from the RTC Model." Id. at III-C-4. The RTC Model, according to CSXT, "replicates the daily workings of the railroad." Id. at III-B-39. When CSXT applied the RTC Model to Duke's SARR track configuration and operating data, the model showed that Duke's operating plan failed due to "severe congestion" on the SARR. Id. at III-B-43.

A fatal flaw in CSXT's evidentiary attack on Duke's SARR operating plan lies in CSXT's failure to include the RTC Model in its evidence.³ The law is unequivocal that before an administrative agency can accord probity to computer model-based evidence, the model must be introduced into evidence "and made available to the opposing party far in advance of the trial." See United States v. Russo, 480 F.2d 1228,

³See Post-Evidentiary Brief of Complainant Duke Energy Corp., filed April 14, 2003, at 28-30.

1241 (6th Cir. 1973) (“Russo”).⁴ Newly cognizant of all of the foregoing, CSXT in its Supplemental Evidence filed 14 months after the close of the massive record in this case and less than one month before the due date of the Board’s decision, has belatedly supplied the essential RTC Model – the cornerstone of its SARR operating cost evidence.

Clearly, CSXT’s effort is too little and too late. There are an estimated 200,000+ pages of written and electronic evidence in this record on operating costs, nearly all of which is infused with conflicting claims based upon the outputs of different computer models. Under the foregoing circumstances, CSXT cannot now be permitted to attempt to rehabilitate its flawed operating evidence through the tardy introduction of the RTC Model in connection with the ancillary reroute issue which by CSXT’s own admission has a minimal impact on the outcome of this case. Neither the Board nor Duke is in any position at this stage of the proceedings to “test and examine the inputs, the program and all outputs” See Russo at 1241. For these reasons, as amplified in Duke’s Brief at 28-30, no probity can be accorded to those portions of the CSXT SARR operating evidence which are dependent upon outputs from its RTC Model.⁵

⁴In rate cases, the Board requires that parties submit all of their affirmative cases at once. See Docket No. 42057, Pub. Serv. Co. of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Ry. (STB served April 4, 2003), at 2.

⁵In its ongoing efforts to independently establish the SARR operational claims which it presents on the basis of outputs from its RTC Model, CSXT references two additional models in its Supplemental Evidence: its Capacity Constraint and Kloer analyses. As noted in Duke’s Rebuttal Evidence (Duke Reb. Exh. III-B-7), each of these ancillary models is deficient for the purpose for which it is employed by CSXT. CSXT’s Capacity Constraint Analysis is flawed because it divides theoretical capacity by 1.5 (reduces theoretical capacity by a third) and then applies that reduced capacity to the ACW’s peak-week period. CSXT’s analysis thus employs a double-dip or mismatch: an

II. INSIGNIFICANCE OF THE REROUTES

Both Duke and CSXT agree in their Supplemental Evidence that the reroutes have little impact on the outcome of the case. While Duke, in view of the small amount of traffic affected, did not undertake to specify any capital cost savings or perform any additional DCF analyses, the parties are actually relatively close in their net estimates of the impact of the reroutes, as shown below:

adjustment meant to measure the capacity needed to provide service at routine traffic levels is used to evaluate a short-term, peak period for traffic (and traffic that is the railroad's least time-sensitive, at that). The Kloer Study, on the other hand, does not purport to be a comprehensive tool for correlating rail configuration with capacity, but instead, is a "rule-of-thumb" which lacks the probity necessary to independently support operating cost claims by CSXT which hugely impact the outcome of this case. The Kloer study was conducted in 1973 (before BN's PRB traffic became significant), and thus does not reflect the thirty years' of improvement in railroad technology and productivity. Moreover, CSXT dismissed as of "minimal" significance the facts that the average ACW train would have a 10% greater maximum velocity and greater average horsepower per Trailing Ton and 6% shorter average train length. There is also no indication that the Kloer study takes into account such matters as the fact that the ACW operates only 350 days a years, with DP locomotives over steel ties. Finally, CSXT provides no indication that it actually relies upon – or has ever even considered using – the Kloer Study in its ordinary course of business.

Table S-5 ⁶ Impact on Revenues and Costs from Eliminating Crossover Traffic Reroutes			
Party/Source	Revenue Reduction	Operating Expense Reduction	Capital Costs Reduction
Duke (Groups I and II combined, MSP) (Exhibit S-4)	\$26,677,527	\$7,740,996	Not calculated
Duke (Group II only, MSP) (Exhibit S-4)	\$13,834,509	\$4,707,723	Not calculated
CSXT (p. 2 of its Supp. Evidence)	\$6.8 million (MSP) \$11.4 million (EMP)	\$9.9 million	\$18.2 million

While CSXT claims a smaller reduction in revenues and a greater reduction in operating expenses, the differences are trivial in the context of the overall stand-alone cost ("SAC") analysis.⁷ The rerouted traffic thus has no significant impact on the ultimate outcome.

That said, it is appropriate for Duke to address briefly a number of aspects of CSXT's Supplemental Evidence.

III. CONFLICTING CLASSIFICATIONS OF REROUTES

CSXT's Supplemental Evidence offers no reconciliation of the parties' differing identifications of rerouted traffic that should be returned to its original routing. Moreover, CSXT classified one movement as a reroute for the first time in its Supplemental Evidence.

⁶Duke has numbered its Table S-5 because Tables S-1 through 4 appear in its earlier Supplemental Evidence.

⁷Duke's figures reflect the 2004 peak-year volumes, revenues, and costs, whereas CSXT's figures reflect 2002 values.

Accordingly, it is appropriate for Duke to address the reroute status of six movements amounting to 276,907 tons in the 2004 peak-year. The movements can be divided into three categories: (G)⁸ three movements that CSXT previously classified as reroutes, but Duke found to be permissible in its earlier reconciliation, (H) one movement that CSXT classified as a reroute for the first time in its Supplemental Evidence, and (I) two movements that Duke, but not CSXT, identified as reroutes.

Duke's position on the six movements is as follows. Movement G-1 (Liberty, WV to Graingers, NC) involves only 5,819 tons in 2004, but CSXT Reply electronic workpaper "reroute2compare.xls" shows that some cars for this O-D pair used the ACW's route (via Erwin, TN) in 2001. Given the small volume and the fact that some cars moved via the ACW's route, the movement should not be classified as a reroute. For movements G-2 (Damfork, KY to Bridgeport, AL) and G-3 (Consol95, WV to Bostwick, FL), which Duke identified as movements B-4 and F-1, respectively, in Exhibits S-3, S-5, and S-7, Duke's reroutes are shorter by 12.67 miles and 31.4 miles, respectively, as shown on Exhibit S-3. These reroutes should be accepted under the Board's reasoning in Duke/NS and CP&L.

CSXT's "reroute2compare.xls" did not identify movement H-1 (Loveridge Mine, WV to Bostwick, FL) as a reroute, and Duke's reroute results in only a 11.8-mile or 1.01% extension. This modest reroute should be acceptable.

Duke identified movements I-1 (Welprepla, WV to Stilesboro, GA) and I-2 (Sarah, KY to Harllee, GA) as reroutes B-15 and C-12, respectively. CSXT did not treat

⁸Duke begins its listing with G so as to avoid confusion with the traffic headings (A-F) in its Supplemental Evidence.

them as reroutes, and Duke is willing to concur in treating them as non-reroutes. They involve minor volumes (33,737 tons and 10,626 tons in 2004, respectively).

IV. UNSUITABILITY OF JUDGING REROUTES ON THE BASIS OF DISTANCE

Duke's Supplemental Evidence explained that the Board's actions in Duke/NS and CP&L accepting or rejecting reroutes according to whether the total distance was decreased or increased were conceptually flawed since NS and CSXT did not make their routing decisions solely or, at times, even primarily on that basis. Duke explained that holding the SARR to a standard not utilized by the real-world defendants constituted reliance on an impermissible entry barrier. Duke Supplemental Evidence at 4 and 8-10.

Significantly, CSXT concedes, in the second paragraph of its Supplemental Evidence, that "the relative length of haul involved is not, in all circumstances, determinative of the relative efficiency of alternative routings." CSXT's concession is hardly surprising since (1) CSXT uses some very circuitous routings, and (2) CSXT thus requires some basis, other than distance, to challenge a number of Duke's reroutes. In other words, the Board's criterion is not compelling to begin with, and CSXT needs to augment it in order to overcome the economic logic of the ACW's design.⁹

⁹Nonetheless, CSXT seeks to apply the distance criterion where the ACW's reroutes are longer (the movements identified in its paragraph beginning "Second" on p. 7 of its Supplemental Evidence), and other factors where the ACW's reroutes are not significantly longer or are even shorter (the movements identified in the paragraph beginning "First" on p. 7 of its Supplemental Evidence). CSXT thus seeks to have its cake and eat it too.

Duke, of course, concurs that distance should not be the factor that controls reroutes. Railroads, particularly in the East, frequently route traffic over longer routes, especially because of capacity limitations in their more direct routings, as well as their decision to place a higher priority on serving their non-coal customers. As a result, coal service frequently suffers from slower and inefficient routings.¹⁰

Accordingly, the Board cannot reject the proposed ACW reroutes on the basis of distance when that is not the dispositive criterion for the real-world defendant. If, however, distance is to be the Board's controlling or presumptive criterion, then the Board should certainly adopt the "hold constant" adjustment presented in Duke's Supplemental Evidence, rather than reject longer reroutes outright. In any event, the Board also cannot reject the ACW's proposed reroutes when CSXT actually routes particular O-D movements over the path proposed by Duke.

V. TREATMENT OF SPECIFIC REROUTES

CSXT specifically challenges two sets of proposed ACW's reroutes. The first involves coal moving from local ACW origins through Spartanburg, SC, and a small portion moving through Mount Holly, NC, where the ACW's reroutes result in a longer overall distance. Duke identified these in its Supplemental Evidence as Group II

¹⁰In contrast, the ACW is designed expressly to handle its traffic base, without regard to other traffic or diversion options. The ACW is thus designed to provide a level of service and achieve an efficiency that CSXT does not achieve in the real world, in large part because CSXT is more concerned about its non-captive traffic. However, CSXT uses the ACW's dedicated service as the basis for saddling the ACW with all sorts of operating inefficiencies and excess capital investments that the ACW does not need to discharge its responsibilities in a manner comparable or superior to the coal service provided by CSXT.

movements under headings A, B, C, and E. The second involves reroutes of overhead movements of Northern Appalachian coal where the ACW's reroutes (under heading F) result in total distances similar to those of CSXT.

Duke will address each category separately.

A. ACW-Originated Movements Made Longer by the ACW's Reroutes

CSXT devotes much of its attention to the Lynch 3, KY-Stilesboro, GA movement covering 1.3 million tons (CSXT's 2002 figure) or 1.5 million tons (Duke's 2004 figure). Duke indicated in its Supplemental Evidence that the movement is more profitable (albeit not by a large amount) to Duke (1) with the original reroute than (2) with the reroute after the "hold constant" adjustment is applied to the MSP method. Under the circumstances, Duke is willing to have the original routing restored for this movement, which covers a substantial portion of the Duke Group II traffic.

As for CSXT's challenges to the other ACW-originated movements that are lengthened by the reroutes, Duke's analysis shows that the reroutes remain more profitable to the ACW with the "hold constant" adjustment to the MSP than with the original routing. Customers plainly benefit from reroutes that increase the SARR's share of the movement because the customers will then receive more SAC relief as the SARR's efficiencies more than offset the additional length. These reroutes are thus efficient and should be accepted.

B. The Northern Appalachian Overhead Movements

CSXT challenges the ACW's proposed reroute of about 456,000 tons of overhead Northern Appalachian coal through DK Cabin, WV instead of Cumberland,

MD. CSXT's claim here is not that the ACW's reroutes significantly extend the mileage, as the ACW's reroutes extend the total distance by not more than 3%.¹¹ Instead, CSXT's criticisms are that CSXT's routing does not come within 250 miles of the ACW route and that off-SARR factors bar the ACW's proposed reroutes.

CSXT's concerns are contrived. As noted in the Duke Rebuttal Narrative at III-A-17, 30% of the ACW's 2002 tonnage consists of Northern Appalachian coal, of which the rerouted volumes comprise less than 2%. Nothing inherently prevents the routing of Northern Appalachian coal over the ACW route, as CSXT does so all the time.

CSXT's citations to TMPA¹² are entirely misplaced. CSXT's quoted text is from p. 17 (not p. 18, as cited) of the decision and addressed the carrier's unsuccessful attempt to bar crossover traffic on the grounds that the underlying contracts called for single-carrier service. While TMPA did reject some proposed reroutes, the analysis was fact-specific and did not suggest that substantial reroutes were necessarily barred. Indeed, TMPA at 21-22, accepted the rerouting of the local Big Brown traffic through Kansas City, MO instead of Denver, CO, two locations that are more than 600 miles apart. The out-of-route distance is thus plainly not a controlling factor.

CSXT's claim that it would be forced to cross mountains twice to deliver the coal to DK Cabin is makeweight (as well as vague). CSXT's current routing via

¹¹The exception is the Resource, KY-Red Level Junction, FL movement, covering only 70,723/78,644 (CSXT 2002/Duke 2004) tons, which CSXT acknowledges is only slightly out of route. The ACW's routing is 59.22 miles or 7.3% longer.

¹²Docket No. 42056, Texas Municipal Power Agency v. Burlington Northern and Santa Fe Ry. Co. (STB served March 21, 2003).

Cumberland has ample mountainous terrain of its own (not to mention the congestion of its I-95 corridor), and the ACW's proposed reroute causes the ACW (not CSXT) to bear the cost of routing the traffic through territory that CSXT elsewhere characterizes as highly demanding. CSXT's vague claims do not demonstrate that the DK Cabin routing is infeasible.

CSXT's remaining claims that its customers would reject the longer routings because of the higher private car costs or because CSXT would have to handle trains of smaller size lack substance, as noted in Duke's Rebuttal Narrative at III-A-60 to 61. The mileage extensions are very modest, and the ACW's potential SAC savings are more than sufficient to overcome any increased car costs as well as any reductions in train size. CSXT's claims concerning train sizes are quite vague and trivial in any event. The 456,000 tons at issue correspond to only 40 trains per year (at 11,294 tons per train), or less than one per week. Such a small volume should not have discernable effect on the fluidity of CSXT's operations or on customer expectations. Moreover, there is little reason to credit CSXT's conjectures about operational difficulties or service impediments in light of the CSXT's recent (and unfortunate) service difficulties that have received wide coverage.

In short, CSXT has not identified a sufficient reason for rejecting the ACW's proposed reroutes of Northern Appalachian coal.

VI. OTHER MATTERS

Duke will very briefly address several other matters raised by CSXT.

First, CSXT presented an alternative revenue calculation using its Enhanced Mileage Prorate (“EMP”). Both Duke/NS and CSXT rejected EMP, and it should not be adopted here. Moreover, CSXT did not recalculate its EMP adjustment, but simply applied a reduction ratio to the revenues for the rerouted movements. Such an approach is very arbitrary and says much about the inherent complexity and thus unsuitability of the EMP methodology. Also, CSXT’s failure to recalculate its EMP adjustment contrasts sharply with its efforts to try to submit the RTC model into the record at the last minute.

Second, CSXT, like Duke, did not identify any significant changes in the ACW’s operations that would be necessitated by elimination of the reroutes.

Third, it is entirely unrealistic to expect Duke to be able to comment upon CSXT’s operating and capital cost calculations in light of CSXT’s last-minute attempt to sneak the RTC model into the record. As noted supra, all of CSXT’s design and operating criticisms depend heavily on the RTC model. Given that CSXT’s use of the model results in highly bloated capital requirements and operating costs, it is only to be expected that relatively small reductions in traffic would result in larger cost savings than Duke is able to identify under its cost approach. Duke reiterates that the amount of traffic affected by the reroutes that would be returned to their original routes is very small relative to the ACW’s overall traffic base. The fact that CSXT proposes to eliminate six tracks or sidings in response to a very small traffic reduction demonstrates that those

enhancements (and numerous others) to what Duke proposed in its Rebuttal are not needed at all.

Fourth, CSXT's discussion of off-SARR costs south-of-Spartanburg continues to suffer from all of the flaws that Duke identified on Rebuttal at III-C-70 to 72 and in its Supplemental Evidence.

VII. CONCLUSION

For the reasons stated above, the Board should adopt Duke's position on the rerouted traffic and reject that of CSXT.

Respectfully submitted,

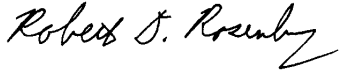
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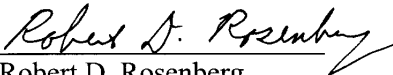
Dated: January 12, 2004

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2004, I caused five copies of the foregoing Reply Supplemental Evidence on Rerouted Traffic of Complainant Duke Energy Corp. to be served by hand upon the following counsel for Defendant CSX Transportation, Inc.:

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