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BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.



STB Docket No. 42670

CSX TRANSPORTATION, INC.'S REPLY TO DUKE ENERGY CORPORATION'S
PETITION TO CORRECT TECHNICAL AND COMPUTATIONAL ERRORS

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
A. ALLEGED ERRORS IN SARR OPERATING EXPENSES	3
1. Technical Errors That Impact All Years	3
a. Switch, Helper and Work Train Crew Shifts Per Year	3
b. Double-Count of Chief Engineer and Administrative Staff	3
c. Outside Services	4
d. Non-Executive G&A Department Personnel Wages	4
e. Disallowed Reroute Tonnage	5
2. Technical Errors That Impact 2002-2010 Only	6
3. Technical Error That Impacts 2002 Only	7
B. ALLEGED ROAD PROPERTY INVESTMENT ERRORS	7
1. Grading, Clearing and Grubbing, Facilities, and Performance Bonds	8
2. Tunnels	8
3. Mobilization Costs	9
C. REVENUES	10
CONCLUSION	11

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INTRODUCTION

Defendant CSX Transportation, Inc. ("CSXT") hereby submits its Reply to Complainant Duke Energy Corporation's ("Duke's") March 16, 2004 "Petition To Correct Technical and Computational Errors" (hereinafter "Error Petition"). CSXT responds briefly to each of the alleged technical errors identified by Duke (in the order in which Duke presented them) and identifies certain instances in which Duke's proposed corrections themselves contain erroneous calculations or premises. However, before doing so, CSXT is constrained to make two general observations.

First, Duke never quantifies the ultimate impact of the alleged errors as to which it seeks correction on the DCF results underlying the Board's finding that the rates at issue are not unreasonable. The reason for that omission is simple: even if the Board were to agree with Duke on every point in its Error Petition, the resulting corrections would have no material effect on the Board's rate reasonableness determination. The Board has performed a thorough analysis of the massive record compiled in this case – consisting of three rounds of evidence, briefs, oral argument and supplemental submissions on the issue of rerouted traffic – and it has made and/or reviewed literally hundreds of calculations relating to a host of technical issues. The fact that Duke has identified a relative handful of minor computational errors in this complex process is

hardly remarkable. What is remarkable is the conspicuous care that Duke has taken not to quantify the effect of the errors it identifies on the bottom line results of the SAC DCF analysis: they make absolutely no difference in the outcome of this case.

Second, Duke's Error Petition carries to new heights its blatant disregard for the Board's rules – particularly, the 20-page limit on petitions for reconsideration. Although CSXT has elected not to delay these proceedings further by filing a motion to strike (which would be well-justified), the Board should address the matter of Duke's continuing abuse of its procedural regulations in this case (and in its pending case against Norfolk Southern). The Board's rules authorize one, and only one, motion for post-decisional review by the Board – a “petition for reconsideration.” 49 C.F.R. § 1115.3. The regulations make it absolutely clear that reconsideration petitions “must not exceed 20 pages in length.” *Id.* § 1115.3(d). Yet Duke has filed nearly 50 pages of post-decisional petitions in this proceeding, including the unauthorized 22-page Error Petition, a separate 20-page “Petition for Reconsideration,” and seven pages of narrative “exhibits” to its Reconsideration Petition (which are nothing more than seven additional pages of argument). Duke does not even acknowledge the existence of the Board's 20-page limit on petitions for reconsideration, let alone request leave to exceed that limit. CSXT respectfully submits that, unless the Board acts forcefully now to prohibit circumvention of its rules on page limits (as Duke has clearly done), it will face similar situations in the future, with parties unilaterally giving themselves an unlimited number of pages in which to seek changes to Board decisions. If the Board intends to revise its rules to allow two or more separate post-decisional petitions (*e.g.*, one concerning so-called “technical errors,” and one addressing “substantive” errors), then it should expressly announce this rule and provide guidance on its application in future proceedings. Fairness to the parties requires that the Board articulate and enforce its rules concerning the scope of post-decisional requests for relief.

A. ALLEGED ERRORS IN SARR OPERATING EXPENSES

1. Technical Errors That Impact All Years

a. Switch, Helper and Work Train Crew Shifts Per Year

Duke contends that the Board erred in using 250, rather than 270, shifts per year in calculating personnel requirements for switch, helper and work train crews. Error Petition at 2-3. According to Duke, this error resulted in an overstatement of ACW operating expenses of \$256,321 per year. *Id.*

CSXT concurs with Duke that, consistent with the text of the *Decision*, the Board should have used 270 shifts per year in calculating switch, helper and work train crew requirements. However, CSXT's calculations indicate that the resulting overstatement of ACW annual operating costs should be \$291,989 (or \$35,668 more than Duke's estimate). The difference between the parties' calculations appears to result from the fact that CSXT flowed the correction through its operating expense spreadsheet (to take into account the impact of factors such as wage indexing, fringe benefits, and pre-hire costs), while Duke did not. CSXT's restatement of this expense item is set forth in the workpapers attached to this reply.¹

b. Double-Count of Chief Engineer and Administrative Staff

Duke contends that the Board committed error by including the chief engineer, and four (4) clerks, in both the G&A department and the Maintenance-of-Way department of the ACW. Error Petition at 3-4. According to Duke, this error resulted in an overstatement of ACW operating expenses of \$314,818 per year. *Id.* at 4.

Based upon its review of the *Decision* and the Board's workpapers, CSXT agrees that the positions identified by Duke were double-counted. However, CSXT's calculations indicate that the resulting overstatement of ACW annual operating costs should be \$480,450, rather than \$314,818 as estimated by Duke. Once again, the difference between the parties' calculations

¹ See electronic workpapers "STB-switch and helper crews (Modified) (Corrected).xls" (tabs "Switch crews," "helper crews," and "mow trains"), "STB-Equipment Counts (Modified Off Jct) v3 (Corrected).xls" (tab "Operating Expense Inputs," cell D8), and "STB-OPERATING EXPENSE (Modified Off Jct) v3 (Corrected).xls" (tab "DCF").

appears to have resulted from the fact that CSXT flowed the correction through its operating expense spreadsheet, while Duke did not. CSXT's restatement of this expense item is set forth in the workpapers attached to this reply.²

c. Outside Services

Duke contends that the Board committed error by using CSXT's outsourcing costs, rather than Duke's, even though the *Decision* accepted Duke's G&A staffing levels (and, therefore, presumably also accepted Duke's assumptions regarding outsourcing). Error Petition at 4. According to Duke, this error resulted in an understatement of ACW operating expenses of \$275,725 per year. *Id.*

CSXT agrees with Duke that, consistent with its adoption of Duke's G&A staffing assumptions, the Board should have applied Duke's (rather than CSXT's) outsourcing cost estimate. CSXT also concurs with Duke's calculation of the amount of this cost understatement (\$275,725).

d. Non-Executive G&A Department Personnel Wages

Duke contends that there is a discrepancy between the Board's *Decision* (at 62), which adopted Duke's estimates for non-executive G&A staff salaries, and the Board's operating expense calculations, which utilized the salaries for non-executive G&A staff set forth in CSXT's operating expense spreadsheet. Error Petition at 4-6. According to Duke, this error resulted in an overstatement of ACW operating expenses of \$415,477 per year. Error Petition at 4.

CSXT agrees with Duke that the Board incorrectly applied CSXT's salaries for non-executive staff in calculating the ACW's operating expenses. However, the amount claimed by Duke in connection with this error (\$415,477) is not correct. Specifically, the changes proposed by Duke in Cell H22 (Director of Operations Control), Cell H129 (Controller) and Cell H184

² See electronic workpapers "STB-ACW Payroll (Corrected).xls" (tab "CSX SARR Payroll") and "STB-OPERATING EXPENSE (Modified Off Jct) v3 (Corrected).xls" (tabs "SARR Payroll" and "DCF").

(Director Customer Service) are not appropriate, because each of those positions is an “executive,” rather than “non-executive,” position. As Duke’s Petition (at 9) acknowledges, the definition of “executive” employees encompasses STB Occupation Codes 101, 102, 103, 105 and 205. Duke’s Petition (at 5-6) further indicates that the positions in Cell H22 (Occupation Code 103), Cell H129 (Occupation Code 102) and Cell H184 (Occupation Code 205) should properly be classified as “executive” positions. Therefore, the adjustment proposed by Duke for non-executive G&A staff should not be applied to those cells. Correcting this error in Duke’s analysis, applying Duke’s (rather than CSXT’s) non-executive G&A staff salary estimates to the other positions identified by Duke, and flowing those changes through CSXT’s operating cost spreadsheet results in an overstatement of ACW G&A costs of only \$4,619, rather than \$415,477 as claimed by Duke.³ Thus, the impact of this error is *de minimus*.

e. Disallowed Reroute Tonnage

Duke contends that, in developing the ratio of peak year tons to base year tons used to calculate base year operating statistics, the Board failed to exclude from the peak year 495,869 tons associated with movements that the *Decision* (at 20) disallowed on the grounds that Duke improperly rerouted those movements. Error Petition at 6-7. According to Duke, this error (and the resulting error in the ratio used to adjust peak year operating statistics to the base year) caused an understatement of base year operating expenses of \$684,991. *Id.* at 7.

CSXT agrees with Duke that the 495,869 tons associated with disallowed reroutes should have been excluded in developing the operating statistics adjustment ratio. However, CSXT’s calculation of the resulting understatement in base year operating expenses differs from that presented by Duke. As the attached workpapers show, the correct amount of the understatement should be \$709,759 in the base year.⁴

³ See electronic workpapers “STB-ACW Payroll (Corrected).xls” (tab “CSX SARR Payroll”) and “STB-OPERATING EXPENSE (Modified Off Jct) v3 (Corrected).xls” (tab “DCF”).

⁴ See electronic workpapers “STB-LUMs and Carmiles (CSX) v4 (Modified Off Jct) v3 (Corrected).xls” (tab “LUMS & Carmiles,” cells A175 – A181 and A592), “STB-Equipment Counts (Modified Off Jct) v3 (Corrected).xls” (tab “Operating Expense Inputs”), and “STB-OPERATING EXPENSE (Modified Off Jct) v3 (Corrected).xls” (tab “DCF”).

2. Technical Errors That Impact 2002-2010 Only

Duke claims that the Board erred in adopting CSXT's calculations of certain payments that the ACW would be required to make in connection with shipments from the Goals and Fola mines. Error Petition at 7-9. According to Duke, the errors in CSXT's calculations result in an overstatement of such payments totaling \$34,382,056 in the year 2002. *Id.* at 9.

It is important to note that the calculations that Duke challenges in its Error Petition were part of CSXT's Reply Evidence, filed on September 20, 2002. The errors Duke has identified now, eighteen months later, could and should have been raised by Duke in its November 12, 2002 Rebuttal submission. Duke offers no explanation for its failure to point out these errors in its Rebuttal or in any one of its several other opportunities in the fourteen months between Rebuttal filings and the service of the *Decision*. Regardless of the reason for the timing of Duke's raising of this issue, however, CSXT agrees (based upon a review of its workpapers) with Duke that CSXT's calculations with respect to payments made in connection with movements from the Goals mine were in error. However, Duke's claim that CSXT incorrectly calculated the payments that the ACW would be required to make in connection with shipments from the Fola mine is wrong. The mine refund on traffic originating at Fola would be \$1.25 per ton. In addition, because the ACW would be "stepping into the shoes" of CSXT in serving Fola, it would also be responsible for paying the origin switch charge of \$0.316 per ton that CSXT (and NS) must pay to the Vaughn Railroad on shipments originated at Fola. *See* CSXT Reply III-D-117. Therefore, the total payment associated with shipments from Fola is \$1.566 per ton (as shown in CSXT's Reply workpapers), not \$1.25 (as Duke contends).

As the workpapers accompanying this Reply show, the overstatement associated with the Goals originations is \$33,479,278. The ACW's annual operating costs for the years 2002-2010 should be adjusted by this amount (rather than the \$34,382,056 proposed by Duke).⁵

⁵ *See* CSXT electronic WP "ACW payments to mines (Corrected).xls"; and "STB-OPERATING EXPENSE (Modified Off Jct) v3 (Corrected).xls."

3. Technical Error That Impacts 2002 Only

Duke claims that the Board erred in calculating the ACW's training and recruiting costs. Specifically, Duke contends that the Board "improperly included five (5) employees with an Occupation Code of 201 in with the personnel count for employees with an Occupation Code of 205." Error Petition at 9. According to Duke, this error resulted in an overstatement of training and recruiting costs of \$82,343. *Id.*

Based upon its review of the Board's workpapers, CSXT agrees with Duke that the five employees were incorrectly treated as "executive" employees (Occupation Code 205) in the Board's calculations. However, both Duke's proposed solution to this error and its calculation of the overstatement are incorrect. Specifically, it appears that, rather than reclassifying the five employees as "non-executive" positions, and including the appropriate pre-hire costs for those positions in its calculation of ACW non-executive training and recruiting costs, Duke simply excluded those five positions altogether from its calculation of training and recruiting costs. Moreover, Duke (again) did not flow its proposed correction through the operating expense spreadsheet. The impact of correcting the Board's classification error, Duke's error in excluding the five employees from its calculations, and Duke's failure to flow its proposed correction through the operating expense spreadsheet is an overstatement in the ACW's 2002 training and recruiting costs of \$81,079.⁶

B. ALLEGED ROAD PROPERTY INVESTMENT ERRORS

Duke has identified a number of alleged technical errors in the road property investment cost components of the *Decision*. Although most of the items Duke cites do appear to involve technical or computational errors, adjusting those errors would not have a significant impact on overall SARR investment costs, and would have no effect whatsoever on the Board's conclusion that the challenged rates are reasonable. Moreover, some of the "errors" Duke has identified are errors in Duke's own evidence, which Duke has disclosed for the first time in this petition. Duke

⁶ See electronic workpaper "STB-OPERATING EXPENSE (Modified Off Jct) v3 (Corrected).xls" (tabs "Initial Training" and "DCF").

has repeatedly asserted that the Board should not take official notice of material new public, government data that come to light after the close of the evidentiary record. *See, e.g.*, Duke Reply to NS Reconsideration Petition at 6-8 (March 15, 2004), STB Doc. No. 42069. At a minimum, Duke's position regarding post-close-of-record official government records should estop it from claiming now that its own rebuttal evidence was incorrect, and that the Board should consider the "corrected" new evidence that Duke proffers for the first time on reconsideration nearly fifteen months after Duke itself insists the evidentiary record should have closed.

1. Grading, Clearing and Grubbing, Facilities, and Performance Bonds

Duke is correct that, in one respect, the Board's workpapers appear to implement incorrectly the yard grading methodology adopted in the text of the *Decision*. Error Petition at 10-11. CSXT agrees that the net result of this computational mistake was to overstate SARR investment costs by approximately \$3.95 million. Duke is also correct that a few small errors in the Board's calculation of clearing and grubbing costs resulted in a net understatement of road property investment costs of approximately \$1.54 million. Error Petition at 11-12. CSXT further agrees that the Board's workpapers incorrectly applied Duke's facility costs, even though the *Decision* adopted CSXT's facilities cost, and that the net result of that error was an understatement of SARR facilities costs by approximately \$631,000. Finally, CSXT agrees that, when grading, clearing and grubbing, and facilities costs are corrected, performance bond costs should be adjusted accordingly. The net result of these three categories of errors is an overstatement of SARR investment costs of approximately \$1,782,000.

2. Tunnels

Duke has identified two "errors" in the tunnel feet calculated in the *Decision*. First, Duke contends that the Board erroneously included a tunnel (located near Holden, West Virginia) that should have been excluded from the SARR. Based on its review of Duke's claim and the record, CSXT has determined that this tunnel should not have been included in the *Decision*. This error

resulted from an error in CSXT's tunnel inventory, which indicated that tunnel was located on a line replicated by the SARR, when in fact that tunnel is on a nearby CSXT line that is not part of the SARR.

Second, sixteen months after the close of the evidentiary record, Duke has disclosed to the Board that its rebuttal evidence contained "errors" which, if corrected, would decrease road property investment costs. Error Petition at 13 (attributing *Decision's* purported misstatement of total tunnel feet to one error in Duke's Road Property Investment Rebuttal Evidence, and two errors in its supporting workpapers). It is far too late for Duke to correct errors in its own evidentiary submissions, much less to use such changes as a basis for "correcting" the *Decision* in ways that favor Duke.

CSXT agrees, however, that there is a discrepancy between the text of the *Decision* (which states that total SARR tunnel feet is 66,136) and the Board's workpapers (which use 67,136 tunnel feet). If the text of the *Decision*, rather than the Board's workpapers, expresses the Board's intended finding with respect to the ACW's tunnel feet, the Board's workpapers appear to overstate total SARR tunnel length by 1000 feet. CSXT concurs that the net result of these two apparent overstatements of tunnel feet would be an overstatement of SARR road property investment costs of about \$25.86 million. See Duke Error Petition at 16.

3. Mobilization Costs

Duke is partly correct that the *Decision* overstated mobilization costs, but Duke overstates the amount of the computational error. Contrary to Duke's assertion, the *Decision* did include investment costs for excavation and compaction for culverts.⁷ Because the *Decision* included those excavation and compaction costs, it properly included associated mobilization costs. See *id.* Thus, the *Decision's* inclusion of these mobilization costs was not an error. Eliminating this non-error from the purported errors identified by Duke reduces the amount of the overstatement of grading costs from \$965,932 to \$807,691.⁸ Duke also erred in its

⁷ See STB Decision Workpapers at "STB Duke Reb CSX_culvert_inventory.xls".

⁸ See CSXT Technical Error Reply Elec. WP "STB III F – Construction Total.xls"

calculation of the total overstatement in roadbed preparation mobilization costs by simply adding the mobilization portion of the yard grading cost overstatement to the mobilization overstatement, rather than calculating the combined effect of the two errors. This resulted in an inflation of the overstatement of roadbed mobilization costs by another approximately \$6,593. The net result of these two corrections to the mobilization cost errors alleged in Duke's Error Petition is to reduce the amount of the roadbed mobilization cost overstatement from the \$998,899 alleged by Duke to a corrected amount of \$834,065.⁹

The net result of the technical errors alleged by Duke, as adjusted in the manner described above, would be an overstatement of SARR investment costs of approximately \$28,439,677. Thus, if the Board decides to consider Duke's "Error Petition," and excuses Duke's untimely attempt to change its tunnel cost evidence, the *Decision* should be adjusted by reducing SARR road property investment costs by \$28,439,677.¹⁰

C. REVENUES

Duke identifies two computational errors in the Board's calculation of the ACW's revenues. First, Duke states that the *Decision* understated the revenues associated with the ACW's service to Duke plants by overstating the discounts applicable to this traffic. Error Petition at 20-21. CSXT agrees with Duke that this is an error that causes the discounts to decrease from \$.82 to \$.12 per ton for tonnages associated with the Duke issue plants. Second, Duke states that the *Decision* erroneously applied CSXT's revenue division approach, instead of the Board's Modified Straight Mileage Prorate ("MSP") methodology, to the steel move from Russell, KY to Ashland, KY. Error Petition at 21-22. CSXT agrees with Duke that this error caused revenues to be understated in 2001 by approximately \$1.3 million (\$1,337,645 = \$4,885,576 - \$3,547,931).

Making the revenue adjustment Duke requests would result in an increase of \$92 million over 20 years, or a barely perceptible 7/10 of one percent in the overall SARR revenues of \$12.4

⁹ See CSXT Technical Error Reply Elec. WP "STB III F 9 Mobilization.xls"

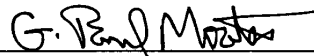
¹⁰ See CSXT Technical Error Reply Elec. WP "STB III F – Construction Total.xls"

billion. See *Decision* at 32, ACW Cash Flows table (showing the Board's finding of ACW revenues totaling approximately \$12.4 billion).

CONCLUSION

For the reasons set forth above, the Board should adjust the *Decision's* cost and revenue findings by, at most, the amounts CSXT has calculated and supported in this Reply. As the foregoing discussion shows, even if the Board were to revise the *Decision* to correct all of the "technical errors" Duke has identified, it would have a relatively small effect on the cumulative net present value of the excess of SAC costs over revenues. The net effect of these adjustments would be to reduce that excess from \$1.447 billion to \$1.182 billion. More important, such adjustments would have no effect whatsoever on the Board's ultimate conclusion that the challenged rates are not unreasonable.

Respectfully submitted,



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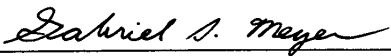
Counsel for Defendant CSX Transportation, Inc

DATED: April 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of April 2004, I served the foregoing
“Defendant CSX Transportation, Inc.’s Reply to Duke Energy Corporation’s Petition to Correct
Technical and Computational Errors” by causing five (5) copies thereof to be delivered, via hand
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