

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42110

SEMINOLE ELECTRIC COOPERATIVE, INC.

v.

CSX TRANSPORTATION, INC.

Decided: February 17, 2009

This decision grants a motion to compel discovery filed by Seminole Electric Cooperative, Inc. (SECI).

BACKGROUND

On October 3, 2008, SECI filed a complaint challenging the reasonableness of the rates established by CSX Transportation, Inc. (CSXT) for transportation of coal from various origins to SECI's Seminole Generating Station, near Palatka, FL, effective January 1, 2009. SECI alleges that CSXT possesses market dominance over this traffic and requests that reasonable rates be prescribed pursuant to the Board's stand-alone cost (SAC) test.

On January 23, 2009, SECI filed a motion to compel discovery from CSXT, seeking documents and information responsive to SECI's fourth request for production of documents. SECI requests information relating to the operating activities and financial data of CSXT's corporate affiliate, CSX Intermodal, Inc. (CSXI). SECI claims that this information is relevant to the costs and revenues of intermodal traffic that is transported on CSXT—information necessary to designing a stand-alone railroad (SARR). SECI argues that public information indicates that intermodal traffic moving on CSXT's system is marketed by CSXI, which collects the full revenues from that traffic and compensates CSXT for the approximate costs CSXT incurs for the rail portion of the service. SECI Motion at 8 (citing CSXT's Annual Report to the Board at 14B).

CSXT replied to the motion on February 2, 2009, arguing that it will produce documents and information that will allow SECI to determine CSXT's costs and revenues associated with intermodal traffic. CSXT argues that all other information sought by SECI in this discovery request is irrelevant and in the sole possession of CSXI, a separate corporate entity.

DISCUSSION AND CONCLUSIONS

SECI's motion to compel will be granted. Parties are entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49

CFR 1114.21(a)(1). Further, it “is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 49 CFR 1114.21(a)(2).

Here, CSXT’s statement that it will provide SECI with enough information for SECI to design a SARR does not satisfy its discovery obligation. SECI is entitled to all relevant and potentially admissible information—including CSXI’s cost and revenue information—not only the information that the defendant believes is sufficient.

SECI’s request for the production of documents and information related to CSXI’s costs and revenues is relevant to its complaint and appears reasonably calculated to lead to admissible evidence. CSXT argues that the information sought is not relevant and characterizes the payment CSXT receives from CSXI as similar to any other third-party payment CSXT receives. But in order for SECI to evaluate whether the revenues CSXT receives from CSXI for traffic marketed and billed by CSXI approximates a result of an arm’s-length transaction, SECI must have access to CSXI’s cost and revenue information. Thus, the information sought by SECI is relevant to the SAC analysis of the transportation of its traffic by rail by CSXT.

Likewise, CSXT cannot use CSXI’s status as a separate corporate entity as a shield from discovery requests. Because they are corporate affiliates with the same parent company, CSXT likely has access to the information requested by SECI. Because the information requested should be readily accessible by CSXT, a special study is unlikely to be required. Thus, the requests do not seem unduly burdensome.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. SECI’s motion to compel discovery is granted.
2. This decision is effective on its service date.

By the Board, Anne K. Quinlan, Acting Secretary

Anne K. Quinlan  
Acting Secretary