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January 8, 2002

By Messenger

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

ENTERED
Office of the Secretary
JAN 09 2002
Part of
Public Record



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

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are a signed original and ten copies of Defendant CSX Transportation, Inc.'s "Answer to Complaint." Also enclosed is a computer disk containing a copy of this filing in WordPerfect format.

Please acknowledge receipt of these papers for filing by date-stamping the enclosed duplicate paper copy and returning it with our messenger. Thank you for your attention to this matter.

Very truly yours,

Vincent F. Prada

G. Paul Moates
Vincent F. Prada

Enclosures

cc: Counsel of Record (w/encls.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

204333

DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

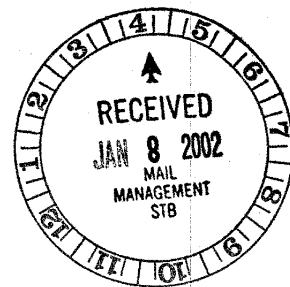
Defendant.

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STB Docket No. 42070



ANSWER TO COMPLAINT

Peter J. Shudtz
CSX Corporation
One James Center
901 East Cary Street
Richmond, Virginia 23219
(804) 783-1343

Ellen M. Fitzsimmons
Paul R. Hitchcock
Gilbert L. Feltel, Jr.
CSX Transportation, Inc.
500 Water Street
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1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel for Defendant CSX Transportation, Inc.

DATED: January 8, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	STB Docket No. 42070
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
<i>Defendant.</i>	)	

ANSWER TO COMPLAINT

Pursuant to 49 C.F.R. § 1111.4, Defendant CSX Transportation, Inc. ("CSXT") respectfully submits this Answer to the Verified Complaint ("Complaint") filed by Duke Energy Corporation on December 19, 2001.

The unnumbered paragraph on page 1 of the Complaint consists of a characterization of the Complaint, as to which no answer is required. In response to the allegations contained in the numbered paragraphs set forth in the Complaint, CSXT answers as follows:

1. CSXT admits that Duke Energy Corporation and/or one or more of its corporate affiliates (including Duke Power Company) (collectively referred to herein as "Duke") generate, distribute and sell electric power, and that Duke's service territory includes portions of the states of North Carolina and South Carolina. CSXT lacks sufficient information to admit or deny the remaining allegations of Paragraph 1.

2. CSXT admits that Duke currently owns and/or operates coal-fired electric generating stations located at or near Brice, NC (Cliffside), Pelzer, SC (Lee), Riverbend, NC

(Riverbend) and Terrell, NC (Marshall), and that each of these stations presently is directly served by rail by CSXT. CSXT lacks sufficient information to admit or deny the remaining allegations of Paragraph 2.

3. CSXT admits the allegations of Paragraph 3.

4. CSXT admits that it is the only rail carrier presently capable of providing direct rail transportation service to the Cliffside, Lee and Riverbend generating stations. CSXT further admits that, during the recent past time period, all of the coal transported by CSXT for delivery at these stations was transported by CSXT in single-line rail service from coal origins in Virginia, West Virginia and Kentucky (including origins at which coal that is trucked from mines not served by CSXT is transferred to CSXT for delivery by rail). CSXT further admits that it has transported coal to the Marshall generating station. CSXT lacks sufficient information to admit or deny the remaining allegations of Paragraph 4.

5. CSXT admits that, for many years prior to December 31, 2001, CSXT provided coal transportation service to the Cliffside, Lee, Riverbend and Marshall generating stations pursuant to a succession of privately negotiated rail transportation contracts entered into pursuant to 49 U.S.C. § 10709 (or predecessor statutory provisions). The most recent of such transportation contracts was terminated effective December 31, 2001, as a result of Duke's unilateral exercise of an option to terminate the contract approximately one year before its scheduled expiration. Having thus terminated the parties' existing transportation contract governing CSXT's coal transportation service to the four Duke generating stations, Duke initiated negotiations with CSXT for a new transportation contract or contracts to replace the contract terminated by Duke and to apply to Duke's coal shipments on and after January 1, 2002. Despite

CSXT's good faith efforts to negotiate such a replacement rail transportation contract, Duke made no written contract proposal to CSXT until December 4, 2001, rejected CSXT's proposals and, upon the filing of the Complaint, informed CSXT that it was no longer interested in discussing with CSXT any contract rate proposals for any Duke generating station other than Marshall. Accordingly, as of the date of this Answer, Duke and CSXT have not reached agreement on the terms of a new rail transportation contract, although CSXT remains willing to continue good faith contract negotiations. CSXT denies the remaining allegations of Paragraph 5.

6. CSXT admits that, in an undated letter sent on or about November 5, 2001, Duke requested CSXT to establish common carrier rates for application to Duke's coal shipments to the Cliffside, Lee and Riverside generating stations. The November 5, 2001 request, which is attached as Exhibit A to the Complaint, speaks for itself, and CSXT refers to it as the best evidence of its content.

7. CSXT admits that, in a letter dated November 16, 2001, CSXT responded to Duke's November 5 request. In its November 16, 2001 letter, CSXT stated that it could not establish appropriate unit-train common carrier rates without additional information (including specific operating parameters) from Duke. (CSXT did provide a schedule of single-car common carrier rates that were immediately effective.) CSXT further admits that, in a letter dated November 19, 2001, Duke purported to supply the additional information requested by CSXT, and advised CSXT that it requested common carrier rates to apply to 90-car unit-trains, and four-hour origin loading and destination unloading time. The November 16, 2001 and November 19, 2001 letters, which are attached as Exhibits B and C, respectively, to the Complaint, speak for themselves, and CSXT refers to them as the best evidence of their contents.

8. CSXT admits that, in a letter dated November 30, 2001, it advised Duke of the common carrier rates that, in response to Duke's request, CSXT would establish and apply, on an interim basis, to Duke's coal shipments to the Cliffside, Lee, Riverside and Marshall generating stations. These interim common carrier rates were incorporated in a rate publication entitled "CSXT-CORE-105," which CSXT furnished to Duke by letter dated December 10, 2001. In its November 30, 2001 letter, CSXT stated that, in light of the parties' continued efforts to reach agreement on terms for a new transportation contract to govern Duke's coal shipments to the Cliffside, Lee, Riverside and Marshall generating stations, and the need for CSXT in establishing appropriate common carrier rates to assess Duke's shipment volume requirements and the applicability of certain mine loading and unloading requirements, the rates established in CSXT-CORE-105 would remain in effect only until February 28, 2002 and that, in the event the parties could not reach agreement on terms for a new transportation contract, CSXT would establish by February 15, 2002 volume-sensitive unit-train common carrier rates to apply after February 28, 2002 to Duke's coal shipments to the Cliffside, Lee, Riverside and Marshall generating stations. CSXT's November 30, 2001 letter specifically apprised Duke that its request for common carrier rates based on four-hour loading and unloading time was inconsistent with the operating conditions at certain of the origins and destinations for which Duke requested establishment of common carrier rates, and that Duke's requested operating parameters could subject it to substantial demurrage charges. Subsequently, in response to CSXT's advice, Duke by letter dated December 27, 2001 requested additional common carrier rates to apply from 24-hour loading origins to 24-hour unloading destinations. Duke has not made a request for common carrier rates from four-hour loading origins to 24-hour unloading destinations, or from 24-hour

loading origins to four-hour unloading destinations. By letter dated January 8, 2002, CSXT nonetheless established for Duke a schedule of common carrier rates (incorporated in rate publications entitled "CSXT-CORE-105," "CSXT-CORE-115," "CSXT-CORE-117" and "CSXT-CORE-109"), effective January 1, 2002, including rates responsive to Duke's December 27 request as well as other rates (not requested by Duke) applicable to alternative operating parameters for which Duke probably should have requested establishment of common carrier rates given its shipping patterns. Duke's December 27, 2001 letter is attached hereto as Exhibit A, and CSXT's January 8, 2002 letter (and attachment) are attached hereto as Exhibit B. The November 30, 2001 and December 10, 2001 letters and attached rate publication, which are attached as Exhibit C to the Complaint, speak for themselves, and CSXT refers to them as the best evidence of their contents.

9. CSXT admits that it has been advised by Duke that it intends to ship coal required at the Cliffside, Lee and Riverbend generating stations using CSXT's common carrier rail service during 2002 and that, if Duke tenders such shipments, CSXT will transport coal to these stations as a common carrier. CSXT lacks sufficient information to admit or deny the remaining allegations of Paragraph 9.

10. CSXT denies the allegations of Paragraph 10.

11. CSXT denies the allegations of Paragraph 11.

12. CSXT denies the allegations of Paragraph 12.

13. CSXT admits that, to the extent the rates challenged by Duke are subject to the regulatory jurisdiction of the Surface Transportation Board (the "Board"), the reasonableness of the rates should be examined using the standards announced in Ex Parte No. 347 (Sub-

No. 1), *Coal Rate Guidelines -- Nationwide*, 1 I.C.C.2d 520 (1985), and subsequent administrative and judicial decisions interpreting and applying such standards.

14. CSXT denies the allegations of Paragraph 14, including Duke's unfounded assertions that the challenged common carrier rates of CSXT are "exorbitant," "punitive," "outrageous" or "confiscatory." CSXT specifically denies that Duke is entitled to have its Complaint processed more expeditiously than other similar proceedings or, in the event the challenged common carrier rates are found to exceed a maximum reasonable level, to obtain (a) interest on reparations in excess of that provided for under 49 C.F.R. § 1141.1 and (b) modification of the Board's established methodology for calculating appropriate reparations and rate prescriptions.

15. CSXT admits the allegations of Paragraph 15.

The unnumbered paragraph beginning on page 6 of the Complaint consists of a characterization of the request for relief, as to which no answer is required. CSXT denies that Duke is entitled to any of the relief requested.

Respectfully submitted,



G. Paul Moates

Terence M. Hynes

Vincent F. Prada

Sidley Austin Brown & Wood LLP

1501 K Street, N.W.

Washington, D.C. 20005

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Ellen M. Fitzsimmons

Paul R. Hitchcock

Gilbert L. Feltel, Jr.

CSX Transportation, Inc.

500 Water Street

Jacksonville, Florida 32202

(904) 359-1192

Counsel for Defendant CSX Transportation, Inc.

DATED: January 8, 2002

EXHIBIT A



Duke Energy Corporation
Fuel Procurement and Coal Transportation
P.O. Box 1006 (EC01U)
Charlotte, NC 28201-1006
(704) 382-1568 FAX

December 27, 2001

T. J. Carollo
CSX Transportation
500 Water Street J-842
Jacksonville, FL 32202

Dear Tom,

Duke requests additional common carrier rates as outlined in our November 5, 2001 fax with the following changes:

Unit Train size - 90 car unit trains
Origin loading free time - 24 hours origin loading time
Destination unloading free time - 24 hours destination unloading time

Sincerely,

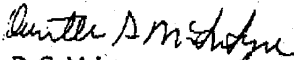

D. G. McInyre
Manager, Coal Transportation
Fuel Procurement

EXHIBIT B



T. J. Carollo
Director-Utility South

500 Water Street - J842
Jacksonville, FL 32202-4057
Phone: (904) 359-1870
Fax: (904) 359-1744

January 8, 2002

Mr. D. G. McIntyre
Manager, Coal Transportation
Duke Energy Corporation
526 South Church Street
P. O. Box 1006
Charlotte, NC 28201-1006

Dear D. G.,

In response to your letter of December 27, 2001 requesting common carrier rates to your plants for 24 hour load/unload logistics, please find attached rates which are effective from January 1 through February 28, 2002.

We are also including rates for load/unload logistics of 4 Hr/24 Hr and 24 Hr/4Hr respectively. This matrix will give Duke a more comprehensive level of rates depending on the logistics of each origin/destination pair. The common carrier rate publications are summarized as follows:

<u>Common Carrier Publication</u>	<u>Origin Load Time</u>	<u>Destination Unload Time</u>
CSXT-CORE-105	4 HR	4 HR
CSXT-CORE-115	24 HR	24 HR
CSXT-CORE-109	4 HR	24 HR
CSXT-CORE-117	24 HR	4 HR

Per our discussion last Friday, the Marshall Station is the only CSXT served plant that can unload within 4 hours. Accordingly, all other plants will be billed at the 24 hour rate levels.

D. G. please give me a call if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "T. J. Carollo". The signature is written in a cursive, flowing style.

T. J. Carollo

Cc: M. P. Sullivan

CSX TRANSPORTATION
CSXT-CORE-105
Common Carrier Rate on Coal
For Duke Energy

Effective Date: January 1, 2002
Termination Date: February 28, 2002

1. Transportation Particulars:

Origin Rate Districts (as defined in CSXT 8200)	Rates per net ton to:			
	<u>Brice, NC</u>	<u>Riverbend, NC</u>	<u>Terrell, NC</u>	<u>Peizer, SC</u>
Big Sandy	\$17.80	\$17.88	\$21.53	\$17.88
Kanawha	\$18.45	\$18.50	\$22.17	\$18.50
New River	\$18.95	\$19.00	\$22.67	\$19.00
Clinchfield	\$16.51	\$16.66	\$20.24	\$16.66
Elkhorn	\$17.95	\$18.00	\$21.60	\$18.00
Harlan	\$17.05	\$17.10	\$20.70	\$17.10
Hazard	\$17.95	\$18.00	\$21.60	\$18.00
J/M	\$17.05	\$17.10	\$20.70	\$17.10
SWVA	\$16.51	\$16.66	\$20.24	\$16.66

Commodity: Steam Coal (STCC NO. 11-212-90)
Route: CSXT Direct
Equipment: Railroad supplied gondolas and bottom drop hoppers
Train Size: 90 car unit trains
Loading/Unloading: Four (4) hour Loading & Unloading
Demurrage: Subject to the provisions of CSXT 8200-series
Fuel Surcharge: Subject to Fuel Surcharge as published in CSXT 8200-series

2. Incorporation of Tariffs, Rules, ETC:

Except when in conflict, this Price Sheet incorporates all tariffs (i.e. Common Carrier Rates and other service terms), statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any conflict without limitation.

3. Payment:

Payment of all rates and charges must be received by CSXT from industry within fifteen (15) days of the date of each bill. CSXT may cancel these credit provisions at any time. Industry may not set off payment in any dispute with Carrier.

4. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein reference. Industry will add the following to each bill of Lading:

"Subject to CSXT-CORE-105"

CSXT-CORE-105

5. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by the 49 USC 11707 and 49 CFR 1005.

9. Car Supply:

If Carrier is to supply cars, Industry understands that such supply is not guaranteed but will be supplied subject to Carrier's availability and distribution considerations.

The terms and conditions herein may be modified from time to time by supplements.

Issued: December 10, 2001

CSX TRANSPORTATION
CSXT-CORE-115
Common Carrier Rate on Coal
For Duke Energy

Effective Date: January 1, 2002
Termination Date: February 28, 2002

1. Transportation Particulars:

Origin Rate Districts (as defined in CSXT 8200)	Rates per net ton to:			
	<u>Brice, NC</u>	<u>Riverbend, NC</u>	<u>Terrell, NC</u>	<u>Pelzer, SC</u>
Big Sandy	\$18.30	\$18.38	\$22.03	\$18.38
Kanawha	\$18.95	\$19.00	\$22.67	\$19.00
New River	\$19.45	\$19.50	\$23.17	\$19.50
Clinchfield	\$17.01	\$17.16	\$20.74	\$17.16
Elkhorn	\$18.45	\$18.50	\$22.10	\$18.50
Harlan	\$17.55	\$17.60	\$21.20	\$17.60
Hazard	\$18.45	\$18.50	\$22.10	\$18.50
J/M	\$17.55	\$17.60	\$21.20	\$17.60
SWVA	\$17.01	\$17.16	\$20.74	\$17.16

Commodity: Steam Coal (STCC NO. 11-212-90)
Route: CSXT Direct
Equipment: Railroad supplied gondolas and bottom drop hoppers
Train Size: 90 car unit trains
Loading/Unloading: Twenty-four (24) hour Loading and Unloading
Demurrage: Subject to the provisions of CSXT 8200-series
Fuel Surcharge: Subject to Fuel Surcharge as published in CSXT 8200-series

2. Incorporation of Tariffs, Rules, ETC:

Except when in conflict, this Price Sheet incorporates all tariffs (i.e. Common Carrier Rates and other service terms), statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any conflict without limitation.

3. Payment:

Payment of all rates and charges must be received by CSXT from industry within fifteen (15) days of the date of each bill. CSXT may cancel these credit provisions at any time. Industry may not set off payment in any dispute with Carrier.

4. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein reference. Industry will add the following to each bill of Lading:

"Subject to CSXT-CORE-115"

CSXT-CORE-115

5. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by the 49 USC 11707 and 49 CFR 1005.

9. Car Supply:

If Carrier is to supply cars, Industry understands that such supply is not guaranteed but will be supplied subject to Carrier's availability and distribution considerations.

The terms and conditions herein may be modified from time to time by supplements.

Issued: December 10, 2001

CSX TRANSPORTATION
CSXT-CORE-117
Common Carrier Rate on Coal
For Duke Energy

Effective Date: January 1, 2002
Termination Date: February 28, 2002

1. Transportation Particulars:

<u>Origin</u> <u>Rate Districts</u> (as defined in CSXT 8200)	<u>Rates per net ton to:</u>			
	<u>Brice, NC</u>	<u>Riverbend, NC</u>	<u>Terrell, NC</u>	<u>Pelzer, SC</u>
Big Sandy	\$18.05	\$18.13	\$21.78	\$18.13
Kanawha	\$18.70	\$18.75	\$22.42	\$18.75
New River	\$19.20	\$19.25	\$22.92	\$19.25
Clinchfield	\$16.76	\$16.91	\$20.49	\$16.91
Elkhorn	\$18.20	\$18.25	\$21.85	\$18.25
Harlan	\$17.30	\$17.35	\$20.95	\$17.35
Hazard	\$18.20	\$18.25	\$21.85	\$18.25
J/M	\$17.30	\$17.35	\$20.95	\$17.35
SWVA	\$16.76	\$16.91	\$20.49	\$16.91

Commodity: Steam Coal (STCC NO. 11-212-90)
Route: CSXT Direct
Equipment: Railroad supplied gondolas and bottom drop hoppers
Train Size: 90 car unit trains
Loading: Twenty-four (24) hour Loading
Unloading: Four (4) Unloading
Demurrage: Subject to the provisions of CSXT 8200-series
Fuel Surcharge: Subject to Fuel Surcharge as published in CSXT 8200-series

2. Incorporation of Tariffs, Rules, ETC:

Except when in conflict, this Price Sheet incorporates all tariffs (i.e. Common Carrier Rates and other service terms), statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any conflict without limitation.

3. Payment:

Payment of all rates and charges must be received by CSXT from industry within fifteen (15) days of the date of each bill. CSXT may cancel these credit provisions at any time. Industry may not set off payment in any dispute with Carrier.

4. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein reference. Industry will add the following to each bill of Lading:

"Subject to CSXT-CORE-117"

CSXT-CORE-117

5. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by the 49 USC 11707 and 49 CFR 1005.

9. Car Supply:

If Carrier is to supply cars, Industry understands that such supply is not guaranteed but will be supplied subject to Carrier's availability and distribution considerations.

The terms and conditions herein may be modified from time to time by supplements.

Issued: December 13, 2001

CSX TRANSPORTATION
CSXT-CORE-109
Common Carrier Rate on Coal
For Duke Energy

Effective Date: January 1, 2002
Termination Date: February 28, 2002

1. Transportation Particulars:

Origin Rate Districts (As defined in CSXT 8200)	Rates per net ton to:			
	Brice, NC	Riverbend, NC	Terrell, NC	Pelzer, SC
Big Sandy	\$18.05	\$18.13	\$21.78	\$18.13
Kanawha	\$18.70	\$18.75	\$22.42	\$18.75
New River	\$19.20	\$19.25	\$22.92	\$19.25
Clinchfield	\$16.76	\$16.91	\$20.49	\$16.91
Elkhorn	\$18.20	\$18.25	\$21.85	\$18.25
Harlan	\$17.30	\$17.35	\$20.95	\$17.35
Hazard	\$18.20	\$18.25	\$21.85	\$18.25
J/M	\$17.30	\$17.35	\$20.95	\$17.35
SWVA	\$16.76	\$16.91	\$20.49	\$16.91

Commodity: Steam Coal (STCC NO. 11-212-90)
Route: CSXT Direct
Equipment: Railroad supplied gondolas and bottom drop hoppers
Train Size: 90 car unit trains
Loading: Four (4) hour Loading
Unloading: Twenty-four (24) Unloading
Demurrage: Subject to the provisions of CSXT 8200-series
Fuel Surcharge: Subject to Fuel Surcharge as published in CSXT 8200-series

2. Incorporation of Tariffs, Rules, ETC:

Except when in conflict, this Price Sheet incorporates all tariffs (i.e. Common Carrier Rates and other service terms), statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any conflict without limitation.

3. Payment:

Payment of all rates and charges must be received by CSXT from industry within fifteen (15) days of the date of each bill. CSXT may cancel these credit provisions at any time. Industry may not set off payment in any dispute with Carrier.

4. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein reference. Industry will add the following to each bill of Lading:

"Subject to CSXT-CORE-109"

CSXT-CORE-109

5. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by the 49 USC 11707 and 49 CFR 1005.

9. Car Supply:

If Carrier is to supply cars, Industry understands that such supply is not guaranteed but will be supplied subject to Carrier's availability and distribution considerations.

The terms and conditions herein may be modified from time to time by supplements.

Issued: December 13, 2001

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of January, 2002, I served the foregoing
"Answer to Complaint" by causing a copy thereof to be delivered, in the manner indicated, to
each of the following:

William L. Slover
Robert D. Rosenberg
Christopher A. Mills
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(By *Hand Delivery*)

Paul R. Kinny
Duke Energy Corporation
Mail Code PB05E
422 South Church Street
Charlotte, North Carolina 28202-1904
(By *Overnight Express Courier*)



Vincent F. Prada