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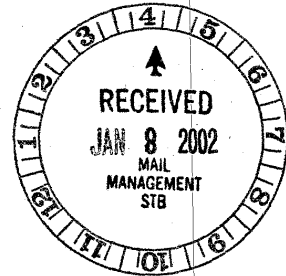
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January 8, 2002

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
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**Re: STB Docket No. 42069, Duke Energy
Corporation. v. Norfolk Southern Railway Company**

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are a signed original and ten copies of Defendant Norfolk Southern Railway Company'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

DUKE ENERGY CORPORATION,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant.

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STB Docket No. 42069



ANSWER TO COMPLAINT

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Counsel for Defendant Norfolk Southern Railway Company

DATED: January 8, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant.

STB Docket No. 42069

ANSWER TO COMPLAINT

Pursuant to 49 C.F.R. § 1111.4, Defendant Norfolk Southern Railway Company ("NS") 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, NS answers as follows:

1. NS 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. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 1.

2. NS admits that Duke currently owns and/or operates coal-fired electric generating stations located at or near Belmont, NC (Allen), Walnut Cove, NC (Belews Creek),

Spencer, NC (Buck), Eden, NC (Dan River) and Catawba, NC (Marshall), and that each of these stations presently is directly served by rail by NS. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 2.

3. NS admits the allegations of Paragraph 3.

4. NS admits that it is the only rail carrier presently capable of providing direct rail transportation service to the Allen, Belews Creek, Buck and Dan River generating stations. NS further admits that, during the recent past time period, NS has transported coal for delivery at these stations in single-line service from coal origins in Virginia, West Virginia and Kentucky served by NS, as well as from origins in South Carolina and Georgia. NS further admits that it has transported coal to the Marshall generating station. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 4.

5. NS admits that, for many years prior to December 31, 2001, NS provided coal transportation service to the Allen, Belews Creek, Buck, Dan River and Marshall generating stations pursuant to a succession of privately negotiated rail transportation contracts entered into pursuant to 49 U.S.C. § 10709 (and predecessor statutory provisions). The most recent of such transportation contracts terminated effective December 31, 2001. Duke and NS engaged in negotiations for a new transportation contract or contracts to replace the terminated contract and to apply to Duke's coal shipments on and after January 1, 2002. NS' efforts to negotiate a mutually agreeable replacement transportation contract were hampered by Duke's refusal to engage in meaningful discussions of critical business terms (including operating parameters for the proposed contract transportation service). Indeed, at Duke's request, NS coal marketing personnel traveled to Duke's headquarters for the purpose of discussing NS' contract proposal

only to be told that Duke could not discuss the proposal because it had not fully reviewed it. As of the date of this Answer, despite NS' good faith efforts, Duke and NS have not reached agreement on the terms of a new rail transportation contract with respect to NS' transportation of coal to the Duke generating stations for which the Complaint seeks prescription of maximum reasonable common carrier rates. NS denies the remaining allegations of Paragraph 5.

6. NS admits that, in an undated letter received by NS on November 7, 2001, Duke requested NS to establish common carrier rates for application to Duke's coal shipments to the Allen, Belews Creek, Buck and Dan River generating stations, and that, in a letter dated November 19, 2001, NS in response to Duke's request established common carrier rates to apply to Duke's coal shipments to the Allen, Belews Creek, Buck and Dan River generating stations. The November 7, 2001 and November 19, 2001 letters, the latter of which is attached as Exhibit A to the Complaint, speak for themselves, and NS refers to them as the best evidence of their contents.

7. NS admits that it has been advised by Duke that it intends to ship coal required at the Allen, Belews Creek, Buck and Dan River generating stations using NS' common carrier rail service during 2002. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 7.

8. NS denies the allegations of Paragraph 8.

9. NS denies the allegations of Paragraph 9.

10. NS denies the allegations of Paragraph 10.

11. NS 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.

12. NS denies the allegations of Paragraph 12, including Duke's unfounded assertions that the challenged common carrier rates of NS are "exorbitant," "punitive," "outrageous" or "confiscatory." NS 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.

13. NS admits the allegations of Paragraph 13.

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. NS denies that Duke is entitled to any of the relief requested.

Respectfully submitted,

Vincent F. Prada

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Counsel for Defendant Norfolk Southern Railway Company

DATED: January 8, 2002

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
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Vincent F. Prada