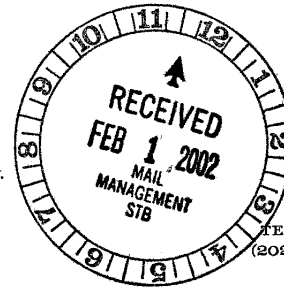


WILLIAM L. SLOVER
C. MICHAEL LOFTUS
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ROBERT D. ROSENBERG
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WASHINGTON, D. C. 20036-3003



204668
TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

cm1@sloverandloftus.com

February 1, 2002

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of the Secretary

FEB 01 2002

Part of
Public Record

Re: STB Docket No. NOR 42072, Carolina Power & Light
Company v. Norfolk Southern Railway Company

Dear Secretary Williams:

Enclosed for filing, please find an original and ten (10) copies of the Verified Complaint of Carolina Power & Light Company against Norfolk Southern Railway Company. Also enclosed is a check in the amount of \$57,500 made out to the Board to cover the required filing fees for processing of formal complaints filed under the coal rate guidelines.

Please date stamp the extra copy of this cover letter and Verified Complaint and return it to our messenger.

Respectfully submitted,

C. Michael Loftus
An Attorney for
Carolina Power & Light Company

Enclosures

FEE RECEIVED

0101885003

FEB 1 2002

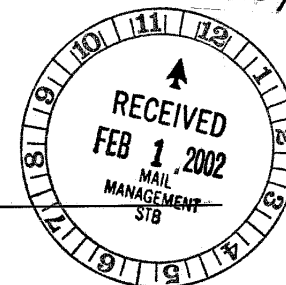
SURFACE
TRANSPORTATION BOARD

FILED

FEB 1 2002

SURFACE
TRANSPORTATION BOARD

204668



BEFORE THE
SURFACE TRANSPORTATION BOARD

CAROLINA POWER & LIGHT COMPANY)
410 South Wilmington Street)
Raleigh, North Carolina 27601)
Complainant,)
v.)
NORFOLK SOUTHERN RAILWAY COMPANY)
110 Franklin Road)
Roanoke, VA 24042-0026,)
Defendant.)

Docket No. NOR 42072

ENTERED
Office of the Secretary
FEB 01 2002
Part of
Public Record

FILED

VERIFIED COMPLAINT

FEB 1 2002

FEE RECEIVED
0101885003
FEB 1 2002

SURFACE
TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

CAROLINA POWER & LIGHT COMPANY

By: David T. Conley
Carolina Power & Light Company
410 South Wilmington Street
Raleigh, North Carolina 27601

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

Dated: February 1, 2002

Attorneys for Complainant

CAROLINA POWER & LIGHT COMPANY)
410 South Wilmington Street)
Raleigh, North Carolina 27601)
)
Complainant,)
)
v.) Docket No. NOR 42072
)
NORFOLK SOUTHERN RAILWAY COMPANY)
110 Franklin Road)
Roanoke, VA 24042-0026,)
)
Defendant.)
)

COMES NOW Carolina Power & Light Company ("CP&L") and files this Verified Complaint under 49 U.S.C. §§ 10701 and 11701, seeking the establishment of reasonable rates and other terms for unit train coal transportation service between various origins in West Virginia, Kentucky, and Virginia and CP&L's Roxboro and Mayo electrical generating facilities in North Carolina. In support thereof, CP&L shows:

- 2 -

the States of North Carolina and South Carolina.

2. CP&L owns and operates the Roxboro Generating Station ("Roxboro") located at or near Hyco, NC, which includes four (4) coal-fired units. One of these units (Unit 4) is partially owned (12.94 percent) by the North Carolina Eastern Municipal Power Agency ("Power Agency"). As the operator of Roxboro, CP&L is authorized to make coal supply and coal transportation arrangements for all coal consumed at Roxboro. Roxboro was specifically designed to burn the bituminous steam coals produced in Central Appalachia. Roxboro consumes approximately 6.0 million tons of coal for its steam-electric turbines each year.

3. CP&L owns and operates the Mayo Generating Station ("Mayo"), located at or near Mayo Creek, NC, which includes one (1) coal-fired unit. This unit (Unit 1) is partially owned (16.17 percent) by the Power Agency. CP&L, as operator of Mayo is authorized to make coal supply and coal transportation arrangements for all coal consumed at Mayo. Mayo was specifically designed to burn the bituminous steam coals produced in Central Appalachia. Mayo consumes approximately 2.0 million tons of coal for its steam-electric turbines each year.

4. Defendant Norfolk Southern Railway Company ("NS") is a common and contract carrier by railroad engaged in the transportation of property in interstate and intrastate commerce.

NS is subject to the provisions of the Revised Interstate Commerce Act, as amended by the ICC Termination Act of 1995 (49 U.S.C. § 10101, et seq.), and to the jurisdiction of this Board with respect to its rail transportation services.

5. All of the coal burned at CP&L's Roxboro and Mayo generating stations described in Paragraphs 2 and 3 above is delivered by rail, which constitutes the only practicable method of transporting the volumes involved. NS is the only rail carrier that serves the Roxboro and Mayo generating stations, and is the only rail carrier capable of delivering coal to those stations. All of the coal consumed at those stations is transported by NS in single-line service from coal mine loadouts in West Virginia, Kentucky, and Virginia served by NS.

6. For many years, NS has provided coal transportation to CP&L's Roxboro and Mayo generating stations pursuant to rail transportation contracts, the last of which will expire on March 31, 2002. Efforts by CP&L to negotiate terms for a new contract with NS for application to the transportation services required for Roxboro and Mayo on and after April 1, 2002 have been unsuccessful.

7. On January 9, 2002, in anticipation of the expiration of its contract with NS, and in light of NS's unwillingness to engage in meaningful negotiations for a replacement agreement for Roxboro and Mayo, CP&L made a formal,

written request to NS under 49 U.S.C. § 11101 and 49 C.F.R. Part 1300 for common carrier rates effective April 1, 2002 for shipments from specified NS-served origin districts in West Virginia, Kentucky, and Virginia to the Roxboro and Mayo generating stations. A copy of CP&L's January 9, 2002 letter is attached hereto and made a part hereof as Exhibit A.

8. On January 29, 2002 NS, via facsimile, provided CP&L with common carrier rates and service terms purportedly responsive to CP&L's requests. A copy of NS's January 29, 2002 letter is attached hereto and made a part hereof as Exhibit B.

9. In light of the impending expiration of its contract with NS on March 31, 2002, CP&L intends to ship coal required at its Roxboro and Mayo generating stations using NS's common carrier rail service commencing April 1, 2002. Accordingly, NS will transport coal to these NS-served generating stations from and after April 1, 2002 as a common carrier.

10. The rates offered by NS in Exhibit B for railroad transportation services between NS-served origin districts in West Virginia, Kentucky, and Virginia and CP&L's Roxboro and Mayo generating stations greatly exceed 180 percent of NS's variable service costs. Therefore, the Board has jurisdiction over the challenged rates pursuant to 49 U.S.C. § 10707(d)(1)(A) and the rules and regulations promulgated thereunder.

11. NS enjoys market dominance over the movements of coal between the origin districts named in Exhibit B and CP&L's Roxboro and Mayo generating stations. The only practical means of transporting CP&L's substantial volumes of coal for these stations is by rail, and NS is the only rail carrier capable of providing this service. In addition, as noted above, the revenue-variable cost percentages for the challenged rates exceed 180%. Accordingly, market dominance exists for these movements within the meaning of 49 U.S.C. § 10707.

12. The common carrier rates supplied by NS for coal transportation services between the origin districts named in Exhibit B on the one hand and CP&L's Roxboro and Mayo generating stations on the other (ranging between \$16.56 per ton and \$16.86 per ton, depending on the origin district) are unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702 and the Board's constrained market pricing standards.

13. CP&L's Complaint raises issues common to coal rate cases generally and, accordingly, the reasonableness of the rates should be examined using the Constrained Market Pricing as adopted in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985), as further refined and applied in decisions issued by the Interstate Commerce Commission and the Board in ensuing coal rate cases.

14. The common carrier rates assailed in this Complaint are both exorbitant and punitive. As an example, the rate applicable between CP&L's Roxboro Generating Station and origins in the Virginia origin district exceeds 600% of NS's estimated variable costs, and all the rates are substantially higher than any rates that CP&L has ever paid for rail service. As NS is fully aware, under the existing regulatory scheme, CP&L is left with no choice but to pay the established common carrier rates while it demonstrates their unreasonableness over the course of this proceeding. Because the rates are so high, because of the enormous overpayments that CP&L will be forced to make to NS while its rate case is processed, and because the Board's existing methodologies for reparations and percentage reductions (with reparation interest payments based on conservative short-term governmental securities) are not adequate to protect shippers from the establishment of common carrier rates at such exorbitant levels, CP&L is very concerned that NS will receive an unreasonable economic benefit for having established its rates at excessive levels, and that CP&L will not be made whole for its overpayments. The Board should not sanction NS's attempts to "game" the system in order to seek additional economic gain at the expense of CP&L by establishing rates at confiscatory levels. Accordingly, CP&L hereby provides notice to the Board and NS that CP&L will be seeking both (a)

some modification of or alternative to the percentage reduction methodology to take into account the confiscatory levels of the assailed rates, and (b) interest on reparations in excess of that specified in 49 C.F.R. § 1141.1.

15. This Verified Complaint covers any changes or adjustments in any of the assailed common carrier rates or charges, or changes in any service or other terms, that may be established by NS during the course of this proceeding (including new or replacement rates, charges, or other terms) for railroad transportation services in response to CP&L's request as described in Paragraph 7 of this Verified Complaint.

16. Neither this proceeding nor the granting of the relief requested will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, CP&L prays that Defendant NS be required to answer the charges herein; that, after hearing and investigation, the Board find that the common carrier rates applicable to the transportation of CP&L's coal purchases between the named origin districts in West Virginia, Kentucky, and Virginia and the Roxboro and Mayo generating stations in North Carolina are unreasonably high; that the Board issue an order or orders pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a) prescribing the maximum reasonable rates that Defendant may assess and collect

from CP&L for the described transportation; that the Board award CP&L appropriate reparations for unlawful charges assessed by Defendant for transportation services provided on and after April 1, 2002; that the interest on such reparations be awarded at a rate sufficient to fully compensate CP&L; that the Board order Defendant to reimburse CP&L the \$57,500.00 fee required to file its Verified Complaint; and that the Board grant to CP&L such other and further relief as the Board may deem proper.

Respectfully submitted,

By: David T. Conley
Carolina Power & Light Company
410 South Wilmington Street
Raleigh, North Carolina 27601

C. Michael Loftus
C. Michael Loftus

Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: February 1, 2001

Attorneys for Complainant

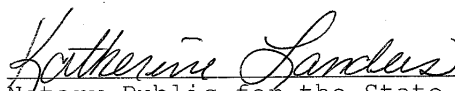
VERIFICATION

STATE OF NORTH CAROLINA)
) ss:
COUNTY OF WAKE)

William R. Knight, being duly sworn, deposes and says that he is Vice President - Progress Fuels, for Carolina Power and Light Company; that has read the foregoing Verified Complaint and knows the contents thereof; and that the same are true as stated, except as to those statements made on information and belief, and as to those, that he believes them to be true.

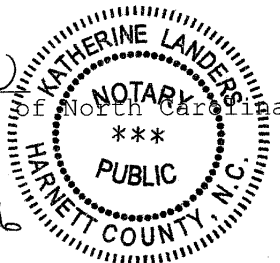

William R. Knight

Subscribed and sworn to before me
this 30 day of January, 2002.


Notary Public for the State of North Carolina

My Commission expires

4-11-2006





January 9, 2002

Mr. J. W. Fox, Jr.
Senior Vice President
Norfolk Southern Corporation
Coal Marketing Department
110 Franklin Road
Roanoke, Virginia 24042-0026

Dear Bill:

As you know, Carolina Power & Light Company's (CP&L) Contract C-8906 for coal transportation to CP&L's NS-served electric generating stations is scheduled to expire March 31, 2002. Based on our discussions, we are awaiting receipt from you of contract proposals for coal transportation to our Asheville, Lee and Cape Fear Stations. We would appreciate your prompt attention to those proposals and you have our assurance that we will review the proposals and get back to you on them promptly.

With respect to the coal traffic moving to our Roxboro and Mayo Stations, despite CP&L's best efforts, it does not appear that Norfolk Southern is willing to engage in negotiations for a new contract on any other basis than a major increase in our current rate levels. As a result, we hereby request on behalf of CP&L, pursuant to 49 U.S.C. Sec. 11101 and 49 C.F.R., Part 1300, common carrier rates, charges and service terms for application to rail transportation by Norfolk Southern in unit train service of CP&L's coal requirements for its Roxboro Station at Hyco, North Carolina and its Mayo Station at Mayo Creek, North Carolina. Norfolk Southern is familiar with the facts and circumstances of our coal traffic moving to Roxboro and Mayo, and from an operating standpoint, CP&L contemplates only one change from the operations under C-8906, an increase of one hour in the unloading free time for Roxboro. We enclose as Attachment A to this letter an outline defining the principal parameters for these movements.

We request that Norfolk Southern either a) disclose existing common carrier rates charges and service terms, if any, that are appropriate for application to these transportation services or, b) establish and provide appropriate and reasonable common carrier rates, charges and service terms for application to said transportation services.

We would appreciate your cooperation in providing the requested information as soon as possible. If you have any questions about this request, or require clarification of any aspect of the request, please direct your inquiries, in writing, to me and we will respond promptly.

Sincerely,

A handwritten signature in dark ink, appearing to read 'William R. Knight'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William R. Knight
Vice President -- Progress Fuels

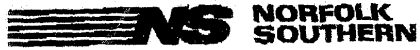
WRK:mhm (u:\mmdt\wrk\NS Letter 1-9-02.rtf)

Attachment

PO Box 1551
Raleigh, NC 27602

ATTACHMENT A

<u>Commodity</u>	Coal
<u>Origins:</u>	Loading points on NS in the following Coal origin districts: A. Kenova/Kanawha B. Thacker/Virginian C. CV2/Tiller/St. Charles/Interstate
<u>Destinations:</u>	CP&L's steam electric generating stations: Roxboro Station at Hyco, NC Mayo Station at Mayo Creek, NC
<u>Route:</u>	NS-direct
<u>Expected Annual Volume:</u>	Roxboro - 6.15 to 7.42 million tons Mayo - 1.35 to 2.13 million tons
<u>Equipment Supply:</u>	Carrier supplied rail cars suitable for use at the loading and unloading facilities
<u>Car Capacity:</u>	Cars rated for 286,000 pounds gross weight on rail
<u>Train Length:</u>	90-110 railcars
<u>Rates:</u>	Rates are requested for service in carrier cars
<u>Loading Free Time:</u>	Four (4) hours (floodload origins), twenty-four (24) hours (other origins)
<u>Unloading Time:</u>	Roxboro - Seven (7) hours Mayo - Six (6) hours. Free time for Trains Actually Placed between 11:00 p.m. and 6:59 a.m. to begin the following 7:00 a.m.



Norfolk Southern Corporation
Coal Business Group
110 Franklin Road
Roanoke, Virginia 24042-0026
540/985-6740
Fax: 540/985-6398
Email: jwfox@nscorp.com

Bill Fox
Senior Vice President
Coal Services

January 29, 2002
CP&L

VIA AIRBORNE EXPRESS

Mr. William R. Knight
Vice President
Electric Fuels - Carolina
Carolina Power & Light Company
P. O. Box 1551
Mail Code 333-3
Raleigh, NC 27602

Dear Bill:

This is in response to CP&L's request for common carrier transportation rates applicable for the movement of coal from NS-served coal loading origins for consumption at CP&L's steam stations located at Roxboro, NC, and Mayo Creek, NC (Destinations). These common carrier transportation rates are per net ton for trainload shipments subject to the following conditions:

<u>Effective Date:</u>	April 1, 2002.
<u>Route:</u>	NS-direct.
<u>Equipment:</u>	NS supplied rail cars.
<u>Minimum Train Size:</u>	Trainload shipments of 110-cars, unless further restricted by mine origin or route constraints; however, under no circumstances shall shipments be less than 100 cars per train.
<u>Minimum Loading Requirement:</u>	All cars shall be loaded to not less than 98% of Umler capacity. Cars that are loaded to less than 98% of Umler capacity shall be subject to full freight deficit charges equal to the deficit tonnage (defined as 98% Umler capacity minus actual loaded capacity) multiplied by the applicable per ton common carrier rate.

Mr. William R. Knight
Page 2
January 29, 2002

Loading Free
Time:

Trainloads originating at floodload locations shall be governed by NS Tariff 9219-B. Trainloads originating at non-floodload locations shall be governed by RPS-6008.

Unloading Free
Time:

CP&L shall completely unload and release all cars in each shipment within the allowable free time, which begins when the trainload shipment is actually placed for unloading or is tendered for unloading as documented in CTMS and other data monitoring systems.

Trainload shipments may be placed for unloading at anytime by NS twenty-four hours a day, seven days a week, at Destination(s). Free Time for unloading shall be six hours per trainload shipment at Destination(s).

Detention charge shall be \$500 per hour or fraction thereof after actual placement or tender of a shipment for unloading. The trainload shipment shall be released and detention charges for the shipment shall cease once the shipment has been completely unloaded and the empty equipment released via CTMS by CP&L.

Applicable Tariffs:

Shipments moving on these common carrier transportation rates shall be subject to all classifications, tariffs, government, AAR, and carrier rules and regulations. These shall specifically include but shall not be limited to NS Tariffs 9037-I, 9219-B, 6004-B, RPS-6008, and NS Conditions of Carriage #2C.

Mr. William R. Knight
 Page 3
 January 29, 2002

Trainload Common Freight rates for trainload shipments per net ton shall
Carrier Freight Rates: be as shown in the Origin/Destination matrix below:

Destination/Origin		Interstate	
		CV1 & 2	Virginia
	Kanawha	St Charles	Thacker I
	Kenova	Tiller	Thacker II
Roxboro Plant	\$16.74	\$16.86	\$16.56
Mayo Plant	\$16.74	\$16.86	\$16.56

Non-Trainload Common Shall be made pursuant to Freight tariff NS
Carrier Freight Rates: 4203-J.

NS is preparing contract proposals for transportation service to Brickhaven, Goldsboro, and Asheville. Please contact Tom Rappold or Jim Hamilton to determine a mutually acceptable time and location for the continuance of our contract discussions.

Very truly yours,

Bill Fox

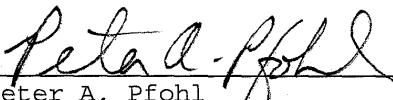
CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1111.3, I hereby certify, that I have this 1st day of February, 2002 caused to be served copies of this Verified Complaint by overnight express courier on the senior legal officer of defendant Norfolk Southern Railway Company ("NS") as follows:

Henry D. Light
Senior Vice President-Law
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

and by hand delivery on designated outside counsel for NS, as follows:

G. Paul Moates, Esq.
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, D.C. 20005


Peter A. Pfohl
An Attorney for Complainant