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February 21, 2002

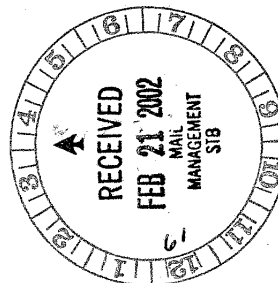
By Messenger

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

ENTERED
Office of the Secretary

FEB 22 2002

Part of
Public Record



Re: STB Docket No. 42072, Carolina Power & Light Co. v. Norfolk Southern Railway Co.

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,

G. Paul Moates
Vincent F. Prada

Enclosures

cc: Counsel of Record (w/encls.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Original

CAROLINA POWER & LIGHT COMPANY,

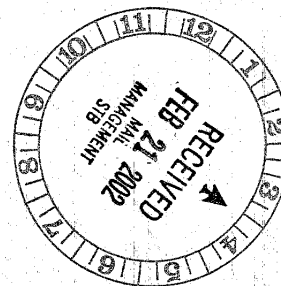
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

STB Docket No. 42072



ANSWER TO COMPLAINT

ENTERED
Office of the Secretary

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Counsel for Defendant Norfolk Southern Railway Company

DATED: February 21, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

CAROLINA POWER & LIGHT COMPANY,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

STB Docket No. 42072

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 Carolina Power & Light Company on February 1, 2002.

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 Carolina Power & Light Company (and/or one or more of its corporate affiliates) (collectively referred to herein as "CP&L") generate, transmit, distribute and sell electric power, and that CP&L'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 CPL currently owns and/or operates a coal-fired electric generating station ("Roxboro") located at or near Hyco, NC, and that CP&L has arranged coal

transportation arrangements with NS for coal consumed at that station. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 2.

3. NS admits that CPL currently owns and/or operates a coal-fired electric generating station ("Mayo") located at or near Mayo Creek, NC, and that CP&L has arranged coal transportation arrangements with NS for coal consumed at that station. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 3.

4. NS admits the allegations of Paragraph 4.

5. NS admits that it is the only rail carrier presently capable of providing direct rail transportation service to the Roxboro and Mayo 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. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 5.

6. NS admits that, for many prior years (and currently), NS has provided coal transportation service to the Roxboro and Mayo 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). NS further admits that the most recent of such transportation contracts will not expire until March 31, 2002. NS further admits that NS and CP&L have engaged in negotiations for a new transportation contract or contracts to replace the current contract scheduled to expire on March 31, 2002 and to apply to the transportation of coal to the Roxboro and Mayo generating stations on and after April 1, 2002, but that the parties have not reached agreement on the terms of such a new rail transportation contract. NS denies the remaining allegations of Paragraph 6.

7. NS admits that, in a letter dated January 9, 2002, CP&L requested NS to establish common carrier rates for application to CP&L's coal shipments to the Roxboro and Mayo generating stations. The January 9, 2002 letter, which is attached as Exhibit A to the Complaint, speaks for itself, and NS refers to it as the best evidence of its contents. NS specifically denies that it was unwilling to engage in "meaningful negotiations" for a "replacement contract" for the Roxboro and Mayo stations. To the contrary, when NS and CP&L personnel met in October 2001 to negotiate new contract rates applicable to a number of CP&L destinations, CP&L personnel unilaterally announced that they had no interest in discussing new contract rates for Roxboro and Mayo unless NS were willing to accept very substantial reductions in then-existing rate levels for CP&L, and advised NS that CP&L would not even negotiate over a replacement contract for Roxboro and Mayo unless NS agreed to such rate reductions. NS, which was seeking market-based increases in then-existing rates, could not agree to the steep rate reductions CP&L was seeking as a precondition to contract negotiations. There were no "meaningful negotiations" for a "replacement contract" because CP&L declined to engage in such negotiations. NS denies the remaining allegations of Paragraph 7.

8. NS admits that, in a letter dated January 29, 2002, NS in response to CP&L's request established common carrier rates to apply to CP&L's non-contractual coal shipments to the Roxboro and Mayo generating stations. The January 29, 2002 letter, a copy of which is attached as Exhibit B to the Complaint, speaks for itself, and NS refers to it as the best evidence of its contents. NS denies the remaining allegations of Paragraph 8.

9. NS admits that it has been advised by CP&L that it intends to ship coal required at the Roxboro and Mayo generating stations using NS's common carrier rail service

commencing April 1, 2002. NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 9.

10. NS will not contend in this proceeding that the common carrier rates established in its letter of January 29, 2002 and challenged by CP&L are less than 180 percent of NS' variable costs of providing the covered rail service. NS denies the remaining allegations of Paragraph 10.

11. NS will not contend in this proceeding that the common carrier rates established in its letter of January 29, 2002 and challenged by CP&L are less than 180 percent of NS' variable costs of providing the covered rail service. NS denies the remaining allegations of Paragraph 11.

12. NS denies the allegations of Paragraph 12.

13. NS admits that, to the extent the rates challenged by CP&L 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. NS denies the allegations of Paragraph 14, including CP&L's unfounded assertions that the challenged common carrier rates of NS are "exorbitant," "punitive," "outrageous" or "confiscatory." NS specifically denies that CP&L is entitled, 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. Paragraph 15 is a legal characterization of the scope of the Complaint, as to which no answer is required. To the extent an answer is required, NS denies the allegations of Paragraph 15.

16. NS admits the allegations of Paragraph 16.

The unnumbered paragraph beginning on page 8 of the Complaint consists of a characterization of the request for relief, as to which no answer is required. NS denies that CP&L is entitled to any of the relief requested.

Respectfully submitted,



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Counsel for Defendant Norfolk Southern Railway Company

DATED: February 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of February, 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:

C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(*By Hand Delivery*)

David T. Conley
Carolina Light & Power Company
410 South Wilmington Street
Raleigh, North Carolina 27601
(*By Overnight Express Courier*)



Vincent F. Prada