

BALCH & BINGHAM LLP

ATTORNEYS AND COUNSELORS

POST OFFICE BOX 306

BIRMINGHAM, ALABAMA 35201-0306

(205) 251-8100

Susan B. Livingston

DIRECT DIAL TELEPHONE:

(205) 226-3411

Writer's E-Mail Address:

INTERNET:SLIVINGS@BALCH.COM

WRITER'S OFFICE:

1710 SIXTH AVENUE NORTH

BIRMINGHAM, ALABAMA 35203-2015

FACSIMILE (205) 226-8798

February 22, 2002

VIA FEDERAL EXPRESS

The Honorable Vernon A. Williams

Secretary

Surface Transportation Board

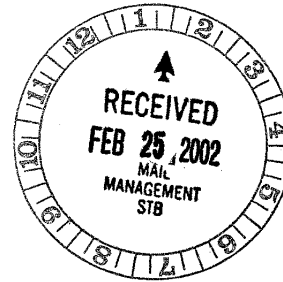
1925 K Street, N.W.

Washington, D. C. 20423-0001

ENTERED
Office of the Secretary

FEB 27 2002

Part of
Public Record



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

Dear Secretary Williams:

On February 11, 2002, Norfolk Southern's counsel notified our client, Southern Company Services, Inc., agent for Alabama Power Company, Georgia Power Company, Savannah Electric and Power Company, Mississippi Power Company and Gulf Power Company (collectively, "Southern"), of the request of Duke Energy Corporation ("Duke") for the production of transportation contracts between Southern and Norfolk Southern (the "NS Contracts").

Southern strongly objects to the disclosure of its transportation contracts to Duke. These contracts contain extraordinarily sensitive information and Duke is a direct competitor of Southern. Unauthorized disclosure or use of this information would be extremely damaging to Southern's competitive position in the electric wholesale market, especially in today's electric regulatory environment. The fact that there exists a Protective Order and that the information would be designated as Highly Confidential does not assure Southern that the information contained in its NS Contracts will not be used for competitive gain by Duke or other competitors of Southern who are represented by Duke's outside counsel.

The sensitivity of this information and the possibility of its misuse or unauthorized disclosure outweighs any probative value that it would have to Duke's case. It appears to Southern from a review of Duke's Motion to Compel that the requested information has little relevance to Duke's allegations. We question why Duke needs to review NS's contracts for transporting coal at a negotiated rate to Southern destinations. Even if the Board were to

1710 SIXTH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
(205) 251-8100

1901 SIXTH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203
(205) 251-8100

2 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104
(334) 834-6500

655 GALLATIN STREET
HUNTSVILLE, ALABAMA 35801
(256) 551-0171

1275 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 347-6000

1310 TWENTY FIFTH AVENUE
GULFPORT, MISSISSIPPI 39501
(228) 864-9900

226 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI 39201
(601) 961-9900

119 HARDY STREET
HATTIESBURG, MISSISSIPPI 39403
(601) 544-1215

841 HIGHWAY 90
BAY ST. LOUIS, MISSISSIPPI 39520
(228) 466-9905

BALCH & BINGHAM LLP

Honorable Vernon A. Williams

Page 2

February 22, 2002

determine that the rates themselves should be disclosed, Southern contends that the other particulars of the contracts, such as destination, origin, and shipper, that would enable an unauthorized party to track Southern's highly proprietary fuel costs, should not be disclosed.

Southern respectfully requests that the Board deny Duke's request for production of Southern's NS Contracts unless Duke can show that the relevant information contained in the NS Contracts cannot be obtained by means other than the disclosure of these contracts. In the alternative, Southern requests that the Board require NS to produce only the contract price for each NS Contract and to confirm merely that these contracts fall within the category of contracts Duke requested NS to produce in its request for production of documents. For example, NS could certify that the shipments of coal under the NS Contracts traverse a portion of the Duke routes and are handled by NS as originating, terminating, overhead or single-line carriers. At a minimum, Southern requests that the origin, destination, and shipper for each of the NS Contracts be protected from disclosure to Duke in this proceeding.

Respectfully submitted,



Susan B. Livingston,
Attorney for Southern Company Services, Inc.

SBL/jfb

cc: Henry D. Light
George A. Aspatore
Jill K. Wainger
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

G. Paul Moates
Vincent F. Prada
Paul A. Hemmersbaugh
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, DC 20005

Paul R. Kinney
Assistant General Counsel
Duke Energy Corporation
Mail Code PB05E
422 South Church Street
Charlotte, NC 28202-1904

William L. Slover
Robert D. Rosenberg
Christopher A. Mills
Andrew B. Kolesar, III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036