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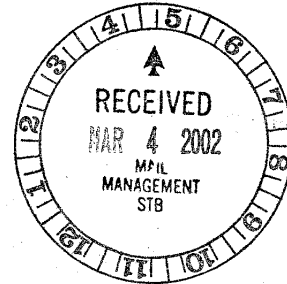
By Hand Delivery

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

ENTERED
Office of the Secretary

MAR 07 2002

Part of
Public Record



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

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are a signed original and ten copies of Defendant's First Motion to Compel Answers to Interrogatories and Production of Documents. Also enclosed is a computer disk containing a copy of this submission in WordPerfect 9.0 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

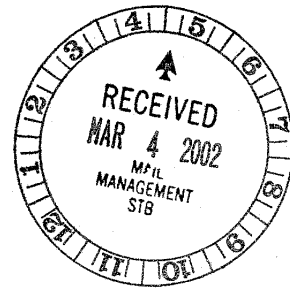
G. Paul Moates
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Enclosures

cc: Counsel for Complainants (w/encls.)

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BEFORE THE
SURFACE TRANSPORTATION BOARD



DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

STB Docket No. 42070

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**DEFENDANT'S FIRST MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

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DATED: March 4, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

STB Docket No. 42070

**DEFENDANT'S FIRST MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. §§ 1114.30 and 1114.31, Defendant CSX Transportation, Inc. ("CSXT") hereby moves the Board for an order compelling Complainant Duke Energy Corporation ("Duke") to provide adequate responses to CSXT's First and Second Sets of Interrogatories and Requests for Production of Documents. CSXT also requests that the Board extend the discovery period for this proceeding -- currently scheduled to close today -- until all discovery disputes (including those addressed in this Motion) have been resolved and all outstanding discovery matters have been completed.¹

¹ With the concurrence of Duke counsel, this motion is being filed one business day beyond the ten-day period for motions to compel specified in 49 C.F.R. § 1114.31(a), in order to permit the parties to complete discussions over possible resolution of their outstanding discovery disputes. The Board has not rigorously enforced the time specified for motions to compel where, as here, the parties first attempted to negotiate the scope of discovery before seeking relief from the agency. *See, e.g., Arizona Public Service Co. v. Atchison, Topeka & Santa Fe Railway Co.*, 2 S.T.B. 367, 371 n. 8 (1997). Moreover, by filing its motion today, CSXT was able to include in the instant motion to compel certain disputes that arise out of Duke's responses (served late on Friday, March 1, 2002) to CSXT's second set of discovery requests and that raise issues similar to those posed by Duke's responses to CSXT's first set of requests.

INTRODUCTION

On December 19, 2001, Duke initiated this proceeding challenging the reasonableness of CSXT's common carrier rates for the transportation of coal between various Central Appalachian origins and three CSXT-served Duke plants (Cliffside at Brice, NC; Riverbend at Riverbend, NC; and Lee at Pelzer, South Carolina). In order to pursue its longstanding strategy of leveraging competition between CSXT and Norfolk Southern Railway Company ("NS") in negotiating rail rates for coal shipments to its generating facilities, Duke terminated its existing rail transportation contract with CSXT approximately one year before its scheduled expiration.² When Duke was unable to extract a significant reduction in its rail rates through negotiations, it initiated simultaneous complaint proceedings against CSXT and NS.³ Duke has indicated that it will seek substantial Board-prescribed reductions in the railroads' rates for the challenged movements.

Thereafter, on December 27, 2001, Duke served a series of wide-ranging and extraordinarily burdensome discovery requests on CSXT. Duke's requests – **consisting of 116 interrogatories and requests for production of documents containing 573 separate subparts** -- sought highly detailed data and information regarding virtually every aspect of CSXT's business, including:

² CSXT and NS jointly serve Duke's Marshall electric generating plant at Terrell, NC. Over the years, Duke has successfully used negotiations with CSXT and NS for competitive movements to Marshall as leverage to obtain rate concessions from both railroads with respect to movements to the Duke facilities that are served exclusively by each carrier. Although Duke's Complaint appears to allege (incorrectly) that CSXT has market dominance with respect to coal movements to the Marshall station, Duke does not seek relief with respect to service to Marshall in this proceeding.

³ See Complaint, *Duke Energy Corp. v. CSX Transportation, Inc.*, STB Docket No. 42070 (filed December 19, 2001); Complaint, *Duke Energy Corp. v. Norfolk Southern Railway Company*, STB Doc. No. 42069 (filed December 19, 2001).

- all of CSXT's confidential rail transportation contracts involving shipments of coal (and other commodities) in the states served by the prospective stand-alone railroad ("SARR");
- CSXT's internal business plans and forecasts;
- Detailed traffic and car movement data;
- CSXT's entire equipment fleet;
- CSXT's roadway and equipment investment;
- All CSXT joint facility agreements relating to the SARR states;
- The cost of maintaining virtually every element of CSXT's rail system;
- The duties performed by, and the costs associated with, thousands of CSXT employees;
- The cost of hundreds of CSXT construction projects; and
- A broad range of other operating and labor statistics.⁴

CSXT has engaged in a massive effort to respond to these requests. To date, CSXT has produced to Duke more than 10,000 pages of hard-copy documents, CD Roms containing 85MB of additional information in electronic form, and a massive database of car movement and equipment statistics filling 352 computer tape cartridges and containing nearly 400,000,000 records. CSXT is continuing to identify and compile additional responsive materials.⁵ The process of identifying, gathering, and producing this data and information has required the attention of scores of CSXT employees across almost every department of the

⁴ At the close of business on Friday, March 1, 2002, Duke served on CSXT a second set of Interrogatories and Document Production Requests, containing more than 30 additional separate subparts.

⁵ CSXT has collected more than 300 rail transportation contracts between it and coal shippers other than Duke, which will be produced to Duke pursuant to the Board's order served today compelling such production. Part II of this Motion seeks entry of a similar order (to which Duke does not object) requiring Duke to produce certain categories of documents that may be subject to third party confidentiality restrictions.

railroad, who have devoted more than 1500 person-hours (including nights and weekends) to the effort. CSXT has incurred considerable expense (including the cost of round-the-clock computer operations on nights and weekends) to compile the information sought by Duke's discovery requests.

The instant motion is necessitated by Duke's failure to provide meaningful responses to CSXT's reciprocal discovery requests, which were served on January 17, 2002.⁶ CSXT's requests are directed primarily to the issues of intramodal and intermodal competition for Duke shipments, and to the measurement of future traffic and revenues that would potentially be available to the SARR. Duke operates an electric generating system consisting of both coal-fired and non-coal facilities. By its own admission, Duke dispatches those facilities (and/or purchases power generated by sources outside the Duke system) on the basis of the relative cost of exercising such options. CSXT requested that Duke produce its internal forecasts and projections (including underlying data and assumptions) concerning a variety of factors – such as present and future generating capacity, coal consumption, rail transportation rates, coal availability and price and alternative sources of power – that are likely to affect the amount of coal consumed at Duke facilities (including the three CSXT-served plants at issue in this proceeding -- the "Issue Plants") in future years. CSXT also sought discovery of information relating to Duke's consideration of potential changes in technology and environmental regulation that might impact the future operating costs (and, therefore, coal consumption) of the Issue Plants or other generating facilities served by the SARR. In its second set of requests, CSXT asked Duke to produce, *inter alia*, documents relating to Duke's practice, in rate negotiations with CSXT and NS, of "bundling" together transportation services to Duke's jointly served Marshall

⁶ Duke's response to CSXT's first and second sets of interrogatories and document requests are

facility with movements to its exclusively-served plants.

Duke has steadfastly refused to produce documents or information relating to these critically important issues. In its responses to CSXT's discovery requests, Duke dismissed virtually all of CSXT's requests for information relating to coal-fired facilities other than the Issue Plants, or to Duke's non-coal generating facilities, as irrelevant to the issues in this proceeding. Duke took the position that the STB's decision not to consider product and geographic competition for purposes of making market dominance determinations⁷ effectively precludes discovery of facts relating to non-issue generating facilities or fuels other than coal for **any** purpose, including estimation of the SARR's prospective traffic and revenues. Duke likewise refused to produce documents relating to environmental regulation or technological advances-- even where such changes directly affect the Issue Plants -- on the grounds of relevance and burden. Indeed, Duke objected on burden grounds to the vast majority of CSXT's requests, notwithstanding the enormous burden that Duke's own discovery requests have placed on CSXT.

The materials actually produced by Duke to date in response to CSXT's discovery requests have been scarce. Many of the documents produced by Duke are copies of public documents such as reports filed with the Federal Energy Regulatory Commission ("FERC") or state regulatory agencies, or routine (and relatively useless) documents such as train detention reports. Several of Duke's responses state only that the requested information "may be contained" in such public filings, and that CSXT should examine them "to investigate whether

attached hereto as Exhibits A and B, respectively.

⁷ STB Ex Parte No. 627, *Market Dominance Determinations -- Product & Geographic Competition* (served Dec. 21, 1998, July 2, 1999), *pet. for review granted sub nom. Association of American Railroads v. United States*, 237 F.3d 676 (D.C. Cir. 2001), *on remand* (served April 6, 2001), *pet. for review pending sub nom. Association of American Railroads v. United States*, No. 01-1213 (D.C. Cir.).

and what responsive information is included therein.” *See, e.g.*, Duke General Objection No. 1; Responses to CSXT Interrogatory Nos. 21, 22, 24, 25, 28 and Document Request Nos. 13, 14, 18, 19, 20, 21, 22, 23, and 27. While Duke has subsequently indicated its intention to provide further responses to a number of CSXT’s requests, it is unclear at this point precisely what additional materials Duke will actually produce.

In an effort to narrow the parties’ discovery disputes, CSXT proposed a meeting with Duke’s counsel to discuss their respective responses and objections. At the meeting, CSXT expressed its willingness to narrow the scope of its requests, and it identified a limited number of discovery topics which CSXT deemed most crucial to CSXT’s ability to prepare its defense. Although Duke committed to provide limited additional information in response to some of these key requests, Duke adhered to its blanket objections with respect to a number of subjects that are highly relevant to the critical issue of the SARR’s future traffic and revenues. Those topics, to which CSXT’s motion is directed, include the following:

1. Internal Duke forecasts or projections of future coal and other fuel usage, electric generation and other factors (including electricity demand, fuel prices, generating capacity, rail rate levels, inflation and other indicators) that would affect the future coal traffic volumes and revenues of the SARR. To date, the only internally-generated forecasts that Duke has produced to CSXT are certain “base case” short-term coal burn projections for its coal-fired facilities.
2. Studies or analyses of the impact of environmental regulations on (i) the future level (or cost) of generating electricity at Duke’s coal-fired plants, and (ii) the future volume, quality and sources of coal consumed at those facilities. Duke has refused to produce **any** materials in response to these requests.
3. Studies or analyses of the impact of alternative fuels and/or advances in electric generating technology on future output and fuel consumption at Duke’s generating plants. Duke has refused to produce **any** materials in response to these requests.
4. Studies or analyses of the impact of potential changes in railroad rate levels on the volume of coal consumed at particular Duke electric generating plants. Duke has refused to produce any materials in response to this request.

5. Information sufficient to enable CSXT to understand Duke's dispatch practices, including the "dispatch model" (as well as model inputs, assumptions and outputs) used by Duke to determine the priority of dispatch among its various electric generating facilities. To date, Duke has agreed to produce only certain monthly "snapshots" of actual dispatching of Duke's facilities.

Information relating to each of these topics is vital to any meaningful analysis of the traffic and revenues that are likely to be available to the SARR during the 20-year DCF study period. Duke's blanket refusal to furnish such information will impair both CSXT's ability to prepare its evidence on that critical issue, and the Board's ability to reach a reasoned estimate of future traffic volumes based upon the best available evidence. Accordingly, for the reasons discussed more fully below, CSXT asks the Board to require Duke to provide full and complete responses to CSXT's discovery requests addressed to these topics.

ARGUMENT

The Board's rules authorize broad, liberal discovery, providing in part that a party "may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter of a proceeding." 49 C.F.R. § 1114.21. The Board has repeatedly affirmed the broad scope of discovery permitted in STB proceedings. *See, e.g., FMC Corporation et al v. Union Pacific Railroad Company*, STB Doc. No. 42022 (served Feb. 5, 1998) at 8 ("parties may obtain discovery regarding any non-privileged matter which is relevant to the subject matter"); *Trailer Bridge, Inc. v. Sea Star Lines*, STB Doc. No. WCC-104, 2000 STB LEXIS 627 at *18 (served Oct. 27, 2000). In particular, the Board's rules require a party to produce all responsive non-privileged information so long as the request for that information is reasonably calculated to lead to the discovery of admissible evidence. *E.g., Trailer Bridge, Inc.*, 2000 STB LEXIS *18; *see* 49 C.F.R. § 114.21(a)(2) ("It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the

discovery of admissible evidence.”).

This Motion seeks an order compelling Duke to produce full and complete responses to CSXT’s discovery requests addressing five topics that relate directly and significantly to the stand-alone cost (“SAC”) test of the Board’s Constrained Market Pricing Guidelines:

1. Duke’s internal projections and forecasts of electricity demand and generation, coal consumption, and rail rates;
2. Analyses of the effects (and cost) of compliance with environmental laws, regulations, and requirements;
3. Analyses of the impact of alternative fuels and/or advances in technology on future output and fuel consumption at Duke’s generating plants;
4. studies or analyses of the impact of potential changes in railroad rate levels on the volume of coal consumed at particular Duke electric generating plants; and
5. Information concerning Duke’s dispatch order and the factors affecting that order.

In addition, CSXT asks the Board to compel Duke to produce certain documents that are (or may be) subject to third party confidentiality restrictions. In each case, Duke has indicated its willingness to produce such materials pursuant to a Board order. CSXT also seeks enlargement of the prescribed discovery period to enable the Board to rule on this Motion and to provide adequate time for the orderly completion of discovery in accordance with the Board’s rulings.

In an effort to avoid any discovery whatsoever on these topics, Duke characterizes them as “relevant principally (if not solely) to the subject of indirect competition (*i.e.*, product and geographic competition....” See Duke Responses at 1 (General Objection No. 1). Citing the Board’s decision in *Ex Parte No. 627*,⁸ Duke objects (except in a few instances) to producing any data or information relating to Duke plants other than the Issue Plants, or to fuels other than coal,

⁸ *Ex Parte No. 627, Market Dominance Determinations – Product and Geographic Competition*

on the grounds that the Board no longer entertains such evidence in making market dominance determinations. But data and information relating to the topics identified above are highly relevant to a proper analysis of future coal traffic volumes potentially available to the SARR in this proceeding, and are therefore properly discoverable.

While Duke acknowledges that the information requested by CSXT may, in fact, be relevant to the issue of future traffic volumes (Duke Response at 2), Duke asserts (without any factual support) that the burden of producing such documents, in all instances, outweighs their evidentiary value. Such a blanket objection to production of documents relating to these important topics should be rejected out of hand. Discovery is, and should be, a two-way street. Duke — a company with far greater resources than CSXT — has invoked this Board's jurisdiction in an effort to obtain for itself rate reductions that could (if Duke prevails) amount to tens of millions of dollars annually. In support of that effort, Duke has availed itself of the Board's discovery process, and has required CSXT to produce a massive volume of documents, electronic files and computer tapes in response to Duke's exceedingly broad discovery requests. Duke's unsubstantiated burden claims cannot excuse Duke from its obligation to respond to CSXT's reciprocal requests for the information necessary to prepare its defense. CSXT has indicated its willingness to cooperate with Duke to mitigate any legitimate burden involved in responding to CSXT's requests, and has, in fact, narrowed the scope of (and/or decided not to pursue an order to compel with respect to) several of the requests to which Duke has objected. In these circumstances, the Board should require Duke to provide meaningful responses to the limited number of discovery requests to which CSXT's Motion is directed.

(served December 21, 1998, July 2, 1999, April 6, 2001).

I. THE BOARD SHOULD COMPEL DUKE TO PROVIDE MORE COMPLETE RESPONSES TO CSXT'S INTERROGATORIES AND DOCUMENT REQUESTS.

A. Projections and Forecasts

In light of the increasing significance of traffic projections and forecasts in recent SAC cases, CSXT requested that Duke produce its internal forecasts or projections relating to a variety of factors that could materially impact the amount of coal traffic (and revenues) potentially available to the SARR in future years. Specifically, CSXT's Interrogatory No. 25 requested that Duke identify any forecasts and projections prepared by or for it with respect to future generating capacity, demand for power, transmission constraints, coal burn and other fuel burn, coal availability and cost, rail transportation rates, and rates of inflation. CSXT Interrogatory No. 26 requested that Duke identify and describe the assumptions and data upon which such forecasts were based. CSXT Document Request No. 29 requested production of the documents comprising or relating to any forecasts identified by Duke in response to CSXT Interrogatory Nos. 25 and 26. Finally, CSXT Document Request Nos. 31 and 32 sought production of the computer models that Duke uses or could use to develop forecasts or estimates of these economic measures bearing on future SARR traffic volumes and revenues, including input data and assumptions and previous output from such models.

Duke objected to these discovery requests on multiple grounds. First, Duke asserted that the requested information is irrelevant (except as it relates directly to the three Issue Plants and Marshall), because the STB no longer considers the issue of product and geographic competition in market dominance determinations. Second, Duke complained that, even if the requested information is relevant, producing it would simply be too burdensome for Duke. Third, Duke asserted that production of certain requested information (including coal prices and rail rate forecast information) is precluded by third-party confidentiality restrictions. *See, e.g.,*

Duke Response to Interrogatory No. 25.

On the basis of these objections, Duke has limited its response to CSXT's request for forecasts and projections to a handful of documents. The materials produced by Duke include certain reports filed with state regulatory agencies (which contain highly aggregated estimates of future electricity generation and fuel consumption),⁹ certain "base case" short-term coal burn projections for Duke's coal-fired facilities (extending only through 2003), and a single coal consumption forecast prepared by a commercial outside vendor.¹⁰ Duke's response to these critically important CSXT discovery requests is both woefully inadequate and wholly unjustified.

Duke's relevance objection to CSXT's request for internal forecasts and projections is without merit. As an initial matter, Duke's suggestion that the Board's *Ex Parte No. 627* decision somehow precludes discovery of data and information relating to Duke's non-issue plants, or relating to fuels other than coal, for **any** purpose is simply wrong. In *Ex Parte No. 627*, the Board held only that it would not consider product and geographic competition in making future market dominance determinations. Nowhere did the Board suggest (as Duke would have it) that a railroad defendant is barred from seeking discovery regarding alternative generation sources or fuels where such discovery may lead to admissible evidence on other issues (such as future SARR traffic and revenues). Duke's transparent attempt to misuse *Ex Parte No. 627* in this manner should not be countenanced.

The future traffic volumes (and associated revenues) potentially available to the

⁹ These publicly filed reports include Duke's recent Integrated Resource Plans, Annual Plans and Short-Term Action Plan. Each of these reports makes reference to Duke's forecasting model for estimating future electricity demand and fuel consumption for Duke's system as a whole and for different fuel types. However, these reports do not contain **any** plant-specific fuel consumption or electricity generation forecasts, nor do they detail the assumptions and data inputs underlying the projections contained in the reports.

¹⁰ Duke has also advised CSXT that it will produce (if available) inflation and rail cost forecasts,

SARR are a critical element of any SAC calculation under the 20-year Discounted Cash Flow (“DCF”) model currently employed by the Board in determining rate reasonableness. Indeed, in recent cases, this element of the SAC analysis has been a major — if not the controlling — factor in the Board’s decisions.¹¹ Moreover, internally generated forecasts, prepared for business and planning purposes, have often been accorded greater weight by the Board in recent cases than forecasts prepared expressly for litigation or regulatory purposes. *See, e.g., WP&L* at 14-28. In response to one of Duke’s many discovery requests, CSXT is producing its own internal projections of future coal traffic volumes and revenues. Any internal analyses conducted by or on behalf of Duke that contain forecasts or projections relating to factors that may affect the SARR’s future traffic and revenues are likewise highly relevant to the issues before the Board in this proceeding, and are therefore properly discoverable.

The future volume of coal transported to the three Issue Plants, and to other coal-fired plants potentially served by the SARR, clearly may be affected by each of the factors to which CSXT’s discovery requests are addressed. For example, future coal consumption at the Riverbend generating plant will depend, among other factors, on the level of electricity demand in Duke’s service territory. That demand may, in turn, depend on a variety of factors such as economic growth and energy conservation initiatives. Any forecasts or projections Duke possesses concerning these matters are clearly relevant to the issue of the SARR’s likely traffic

but it has not yet done so.

¹¹ *See, e.g.,* STB Docket No. 42051, *Wisconsin Power & Light v. Union Pacific Railroad Co.* (served Sept. 12, 2001) (“*WP&L*”), at 14-28; STB Docket No. 42022, *FMC Wyoming Corp. v. Union Pacific Railroad Co.* (served May 12, 2000), at 26-37; *West Texas Utilities Co. v. Burlington Northern Railroad Co.*, 1 S.T.B. 638, 660-64 (1996), *aff’d sub nom. Burlington Northern Railroad v. STB*, 114 F.3d 206 (D.C. Cir. 1997).¹¹ Indeed, in *WP&L*, the Board’s resolution of the SARR traffic grouping issues (including its forecast of future volumes) was essentially outcome-determinative. *See WP&L* at 28-30.

and revenues.

The level of future coal consumption and electricity generation at non-issue Duke generating plants, and the availability and cost of purchased power, are likewise relevant in estimating the volume of coal likely to be transported to, and consumed by, the Issue Plants. As Duke itself has acknowledged, the order in which each Duke unit is dispatched is based upon an assessment of the relative cost of all generation sources available to the Duke system. *See* Response to CSXT Interrogatory No. 20 (“Duke states that, in determining the relative order in which power will be generated or dispatched, it generally follows an economic dispatch policy in which generating resources are ranked in terms of operating costs.”).¹² Thus, if Duke’s internal forecasts were to project a significant increase in gas-fired or nuclear generating capacity within the Duke system, or a significant future reduction in the cost of producing gas-fired or nuclear power, Duke’s acknowledged “dispatch” practice would suggest (in the absence of greater overall demand) that the coal-fired Issue Plants might experience a corresponding reduction in electricity generation and coal consumption. Accordingly, forecasts or projections concerning the relative availability and operating costs of **all** of Duke’s electricity generating units are directly relevant in estimating future power generation and coal consumption at the Issue Plants. For the same reason, Duke’s forecasts regarding the availability and relative cost of purchased power are relevant (and therefore subject to discovery).

Duke’s objection to producing its internal forecasts and projections on the grounds of burden is similarly unavailing. Duke has not explained why it believes production of such information poses an undue burden. CSXT seeks only to discover any forecasts or

¹² The single dispatch priority “snapshot” produced by Duke to date confirms that Duke determines the relative dispatch order of the units in its system based on their operating costs.

projections made by (or for) Duke on a plant-specific basis, with sufficient supporting data and information to assess the forecasts' assumptions and conclusions. To the extent that Duke has expressed concerns about producing proprietary or licensed computer models or software, CSXT has advised Duke that it is willing to limit its requests to input data, processing assumptions, and output runs, data or information (rather than the model itself). What is essential is that Duke provide information sufficient to allow CSXT (and the Board) to evaluate, on a plant-specific basis, potential changes in availability, output or costs that may affect future coal consumption (and transportation requirements) for any facility likely to be served by the SARR. CSXT (and the STB) must have that information in order to estimate the future traffic volumes and revenues available to the SARR.

Finally, Duke objects that some of the information CSXT seeks is subject to unexplained "confidentiality restrictions with third parties." *See, e.g.* Duke Response to CSXT Interrogatory No. 25.¹³ As Duke's counsel is well aware, confidential information is routinely produced by the parties in STB rate proceedings. In anticipation of such production, the Board has entered a Protective Order which provides ample protection for confidential and sensitive information produced by the parties in this case. *See* Decision served Feb. 5, 2002 and Appendix (Protective Order). Pursuant to the terms of the Protective Order, Duke may designate information it deems competitively sensitive or proprietary as "Highly Confidential." Given the availability of these protections, Duke's confidentiality objection provides no basis for withholding responsive information.

In summary, the Board should compel Duke to provide fuller responses to

¹³ This objection is ironic, in light of Duke's demand that CSXT produce its competitively sensitive rail transportation contracts and joint facility agreements with non-parties notwithstanding the existence of similar prohibitions against third-party disclosure in those

CSXT's discovery requests seeking Duke's internal forecasts and projections (including CSXT Interrogatory Nos. 25 and 26, and Document Request Nos. 29, 31 and 32). In particular, CSXT asks that Duke be required to produce, for each of the economic measures listed in Interrogatory No. 25, (1) Duke's internal forecasts and projections for **all** of its generating plants, (2) Duke's forecasting model (or, at a minimum, a description of the input data and assumptions that affect forecast results under the model), and (3) any output or forecast results produced by Duke's forecasting model. Fundamental fairness requires that Duke be required to produce these materials in order to enable CSXT (and the Board) to test Duke's projections of future traffic and revenues for the SARR.

B. Impacts of Environmental Regulations and Emissions Restrictions on Future Coal Consumption and Electricity Generation

Like other electric utilities, Duke's coal-fired generating plants are subject to extensive environmental regulation by both federal and state governments. The most significant of these regulations is the federal Clean Air Act. The 1990 amendments to that statute created significant additional limitations on power plant emissions of sulfur dioxide, nitrogen oxide and other products of combustion. These new requirements are being phased in over a lengthy time period which includes a substantial portion of the DCF period in this case. Other Clean Air Act programs, such as the "Prevention of Significant Deterioration" and "New Source Review" programs impose significant compliance costs and limitations on coal-fired power plants. State laws impose further regulatory costs and burdens on coal-fired power plants. These requirements, will impose substantial (and generally increasing) compliance costs on coal

agreements. *See* Duke Energy Motion to Compel Production of Documents, filed Feb. 5, 2002.

burning plants in coming years.¹⁴ Such costs may, in turn, affect Duke's decisions concerning (i) the amount of power it produces at coal-fired plants (including the Issue Plants); (ii) whether to convert those plants to alternative fuels (e.g. natural gas); (iii) whether to shift production to plants using other fuels or other means of generation; and even (iv) whether to shut down or retire some of the Issue Plants (or units within those plants).

Moreover, Duke's coal-fired power plants are currently the subject of a significant Clean Air Act enforcement action by the United States and others. In that litigation, the United States seeks to impose severe restrictions on Duke's coal-fired plants, and to assess fines and penalties for numerous alleged violations of the Clean Air Act. The cost of complying with any judgment in the pending environmental litigation could likewise affect Duke's decisions concerning its coal-fired power plant operations.

In light of the potentially significant impact of environmental laws, regulations and litigation on the amount of coal consumed by (and hence transported to) Duke's coal-fired plants in the future, CSXT made several discovery requests that seek information concerning Duke's analyses or projections concerning the effects of environmental regulation on consumption of coal at Duke's facilities. For example, CSXT Interrogatory No. 28 seeks information regarding federal and state environmental proceedings to which Duke has been a party since January 1999. CSXT Document Request Nos. 34, 39(b) and 67 request production of studies or analyses conducted by or for Duke relating to the potential impact of compliance with

¹⁴ North Carolina (where two of the three Issue Plants are located) recently considered legislation that would have imposed additional emissions restrictions on Duke's coal-fired plants and required the installation of "scrubbers" and other pollution abatement devices to achieve compliance. If such legislation were passed in the future, the required devices would affect both the cost of burning coal at Duke's plants as well as the quality (and, therefore, potential sources) of coal burned at those facilities. See Exhibit C (summary of proposed North Carolina legislation).

the Clean Air Act or various other environmental laws or regulations. CSXT Document Request No. 68 is addressed to Duke's current litigation with the United States under the Clean Air Act. CSXT Document Request No. 72 requested internal studies or analyses by Duke of certain environmental legislation recently proposed in North Carolina. CSXT Document Request No. 78(d) requested any analyses by or for Duke of the effects of environmental, mining or trucking restrictions on Central Appalachian coal availability and reserves.

Duke's response to these requests is similar to that which it made to CSXT's request for Duke's internal forecasts – Duke objects on the grounds of relevance and burden, and directs CSXT to certain public reports filed by Duke with FERC and state public utility commissions. *See, e.g.* Duke Response to CSXT Interrogatory No. 28 (“information responsive to this Interrogatory **may** be contained in the documents that Duke references in General Objection No. 1”); CSXT Document Request Nos. 34 (same), 39 (b) (same), 67 (same) (emphasis added). Duke's wholesale objections, and its attempt to limit its response to public documents, are unsupportable. Potential reductions in coal consumption necessitated by environmental regulation could have a major impact on the SAC analysis. Indeed, any projection of increasing (or even constant) coal tonnages in Duke's SAC evidence would be severely undercut by an internal analysis predicting that Duke is likely to face increasing environmental constraints in the Carolinas, or that an adverse result in the pending Clean Air Act litigation would require it to reduce its reliance on coal to generate power. Thus, the content of any such analyses performed by or for Duke are highly relevant to the issues in this proceeding. Moreover, Duke has not shown that production of such studies or analyses would impose a substantial burden on it.¹⁵ Even if such a showing could be made, the probative value of such

¹⁵ Duke has not even identified what responsive studies, might exist, nor has it offered any

evidence to the critical issue of future SARR traffic and revenues would outweigh the purported burden of producing them. Accordingly, the documents relating to environmental matters requested by CSXT are clearly discoverable under the Board's discovery guidelines.

Duke's obligation to respond to CSXT's legitimate requests cannot be satisfied by the few public documents furnished by Duke to date. The FERC and PUC reports Duke has produced do not address the environmental issues and information CSXT requests except very generally and indirectly. Those public reports do not even consider, much less analyze with specificity, the potential effects of a change in environmental regulations or an outcome in the pending litigation that curtailed or discouraged coal-fired power generation. Given the obvious importance of these issues to Duke's power generation business and its planning for the future, it is inconceivable that Duke has not conducted any internal analyses of such questions – and Duke has not claimed otherwise. The Board should order Duke to produce such internal analyses of the potential impact of environmental regulations and litigation to CSXT.

C. Impacts of Alternative Fuels and Technological Advances on Future Coal Consumption and Electricity Generation

CSXT's Document Request No. 25 seeks production of any studies or analyses performed by or for Duke that relate to the potential impact of advances in electric generation technology, or alternative fuels, on the future volume of coal consumed at any Duke facility. For the reasons discussed above (in connection with CSXT's motion to compel production of Duke's internal forecasts), such studies or analyses are clearly relevant to the estimation of future coal traffic volumes (and revenues) potentially available to the SARR. While Duke's response to this request included certain statements regarding its current plans with respect to alternative fuels,

explanation why production of such materials would impose an undue burden on it.

Duke has flatly refused to produce **any** documents, again on grounds of relevance and burden. *See* Duke Response to CSXT Document Request No. 25. Indeed, during the parties' recent discovery conference, Duke counsel confirmed that **Duke refuses even to produce documents that relate directly to the impact of technological advances on the Issue Plants** (which clearly will be included in the SARR).

Duke's relevance objection to Request No. 25 is specious. Technological advances or facilities modifications that would affect the level of electricity generation or coal consumption at the Issue Plants (or, for that matter, at any other Duke facility) are directly relevant to the question of the future coal traffic volumes and revenues available to a SARR designed specifically to serve those very plants. If Duke has studied the potential effects of such technological advances, CSXT is clearly entitled to discover such studies.

Duke has failed to explain -- much less substantiate -- its vague assertion that compliance with CSXT's straightforward discovery request would impose an undue burden on it. Even if such a showing could be made (which is dubious), CSXT is prepared to discuss with Duke ways to reduce any burden associated with production of the requested materials. The Board should order Duke to comply promptly with CSXT Request No. 25.

D. Impacts of Rail Rate Levels on Future Coal Consumption and Electricity Generation

CSXT Document Request Nos. 30(b) and (c) seek studies or analyses prepared by or for Duke of the potential impact of changes in the level of railroad coal transportation rates on the level of electricity generation (and, therefore, volume of coal consumed) at the subject plants. Because SAC analysis requires an assessment of the future rate levels of the SARR, as well as its prospective coal traffic volume, such information is directly relevant to the issues in this

case.¹⁶

Duke objected to these requests on the grounds of relevance and burden. The relevance of the requested materials is patently obvious. CSXT's requests are designed to elicit information concerning the relationship between rail rate levels for coal transportation service (which affects the cost of electric power produced at a given facility) and the electricity output of a given generating plant. If Duke's internal analyses suggest that increases in rail rate levels would (or, for that matter, would not) affect the volume of coal consumption and electricity generation at Duke facilities served by the SARR, such information would have direct relevance to the coal traffic and revenues likely to be available to the SARR. Indeed, such studies might undercut an attempt by Duke to show that the SARR could simultaneously enjoy both increasing rail rate levels and consistently increasing coal traffic volumes to Duke's facilities. Any purported burdensomeness objection is obviated by CSXT decision to confine these requests to studies and analyses (as opposed to routine emails or other internal communications of an informal nature). The Board should compel Duke to respond to CSXT Document Request Nos. 30(b) and 30(c).

E. Economic Dispatch Practices

Like most integrated electric utilities, Duke obtains its supply of electricity from a variety of sources, including power generated at its own coal-fired and non-coal facilities, as well as power purchased from other generators or suppliers. By its own admission, Duke makes decisions regarding the utilization of these sources on the basis of the relative cost of each available source. *See* Response to CSXT Interrogatory No. 20. The amount of electricity

¹⁶ Duke's response to CSXT Request No. 30(a) indicated that there exist no non-privileged documents that are responsive to that subpart. Duke has made no claim that it does not have documents responsive to subparts 30 (b) and 30 (c).

produced today (and in the future) at the Issue Plants and at Marshall and, therefore, the volume of coal transported to those plants are both heavily dependent on the relative cost and availability of power produced at other Duke facilities or purchased in the wholesale power market.

Accordingly, CSXT propounded several discovery requests concerning Duke's current dispatch policies and practices. CSXT sought documents and information relating to Duke's formal policies or procedures, as well as any instructions Duke gives to its dispatchers regarding dispatch priorities and the selection of internally generated power (as opposed to off-system power purchases). CSXT Interrogatory Nos. 20, 21; CSXT Document Request Nos. 18, 21, 23. CSXT also sought to discover information relating to the historical dispatch order and dispatch price of Duke's existing facilities (CSXT Interrogatory Nos. 12(o) and 12(p); CSXT Document Request Nos. 19 and 22). CSXT Document Request No. 24 sought all studies or analyses of Duke's decision whether to generate or purchase electric power to meet its native or jurisdictional load requirements. CSXT Document Request Nos. 31 and 32 were directed to computer models or software used by Duke to determine dispatch order.

Duke has refused to provide an adequate response to these highly relevant discovery requests. Thus far, the only responsive document produced by Duke is a monthly dispatch "snapshot" for January 2002. By letter dated March 1, 2002, Duke agreed to produce additional "snapshots" for the period January 1, 1999 to the present. However, Duke continues to refuse to produce any of the other materials requested by CSXT regarding Duke's dispatch practices (including any policies and procedures followed by Duke dispatchers, as well as Duke's dispatch model and the data inputs and assumptions for, or output runs generated by, that model).

Factors affecting the relative cost and capacity of all sources of generation available to Duke will (by Duke's own admission) affect the amount of power produced (and

hence the amount of coal consumed) at the Issue Plants (and at Marshall). For that reason, the information CSXT seeks is relevant to the central issue of the volumes of coal that the SARR may potentially carry to the Duke plants. If (as CSXT has shown) dispatch order and priority are relevant to the issue of projecting SARR coal traffic and revenues, and Duke takes the position that dispatch order is influenced by a variety of these factors, then CSXT should be entitled to obtain discovery concerning all of the factors that affect dispatch order.

As with Duke's burden objection to other CSXT discovery requests, Duke's assertion that compliance with CSXT's dispatch-related requests is unpersuasive. The monthly dispatch "snapshot" produced by Duke consists of a single sheet of paper. The burden associated with producing such "snapshots" for the entire period from January 1, 1999 to the present (as promised by Duke's counsel) should be minuscule. In order to minimize any burden imposed on Duke in responding to CSXT's other dispatch-related requests, CSXT is willing to confine its requests to the following items (in addition to the dispatch "snapshots" that Duke has agreed to produce): (1) written policy statements, directives or guidelines (or directions of a general nature issued to dispatchers) addressing the dispatch practices followed by Duke; and (2) Duke's dispatch computer model or, at a minimum, an identification of the data inputs and assumptions used in the model.

Duke has offered no persuasive basis for withholding such relevant, responsive information from CSXT. CSXT therefore requests that the Board order Duke to produce the dispatch-related information specified above.

II. THE BOARD SHOULD COMPEL PRODUCTION OF RESPONSIVE INFORMATION SUBJECT TO THIRD-PARTY CONFIDENTIALITY RESTRICTIONS

Among the materials sought by CSXT's discovery requests are Duke's existing long-term coal supply contracts, as well as documents reflecting negotiations between Duke and its coal suppliers over possible amendments or termination of existing contracts, documents assessing potential future sources of coal supply, and information about coal prices. CSXT Interrogatory Nos. 13(d), 23; CSXT Document Request Nos. 11-13. The terms of those contracts will clearly influence the volumes of coal delivered to the Issue Plants and other generating facilities potentially served by the SARR. Although Duke lodged pro forma objections to these requests on the grounds of relevance and burden, Duke's responses indicate that it is willing to produce its coal supply contracts notwithstanding those objections. Duke also indicated that its coal supply contracts (and information relating to the negotiation of such contracts) may be subject to contractual restrictions on disclosure to third parties. However, Duke has advised CSXT that it would agree to produce coal supply contract information pursuant to a Board order compelling such discovery, and that Duke would not oppose such an order. *See, e.g.*, Duke Response to CSXT Document Production Request No. 11.¹⁷

The procedure proposed by Duke is consistent with that followed by the parties with respect to Duke's request for production of CSXT's rail transportation contracts with coal shippers.¹⁸ Duke's motion to compel discovery of CSXT's coal rail transportation contracts (to which CSXT did not object) was granted by the STB today. CSXT hereby requests that the Board enter an order compelling Duke to produce the requested coal supply contract information

¹⁷ Duke's counsel confirmed this understanding during the parties' recent meeting to discuss discovery issues.

¹⁸ *See* Defendant's Reply to Complainant's First Motion to Compel Production of Documents

(including contracts, coal price information and renegotiation documents).

Duke has also asserted, in response to a number of CSXT discovery requests relating to various other subjects, an objection that production of the requested information would violate certain unspecified third-party confidentiality restrictions. *See, e.g.*, Duke Response to CSXT Interrogatory Nos. 13(d), 13(g), 25(l), 25(m); Duke Response to CSXT Document Production Request Nos. 13, 44, 61, 62, 69, 73, 75, and 77. In view of the protections afforded by the Protective Order that the Board has entered in this case, Duke's confidentiality objections are without merit. CSXT understands Duke's position to be merely that it objects to the production of the requested information (unless withheld on the basis of another objection) unless the Board enters an order – which Duke will not oppose – requiring production. Accordingly, CSXT requests that the Board specifically overrule Duke's confidentiality objections with respect to these requests, and order production of responsive documents.

III. THE BOARD SHOULD MODIFY THE DISCOVERY SCHEDULE TO PERMIT AN ORDERLY RESOLUTION OF CSXT'S MOTION AND COMPLETION OF OUTSTANDING DISCOVERY.

The procedural schedule proposed jointly by the parties, and approved by the Board in its February 5, 2002 decision, adopted the "default" 75-day discovery period set forth in the Board's rules governing SAC cases. 49 C.F.R. § 1111.8. Under that schedule, all discovery was supposed to be completed by **today**, March 4, 2002. However, even in proposing the current schedule, the parties alerted the Board to the possibility that the discovery period might need to be expanded.¹⁹ At the time the parties submitted their proposed schedule to the Board, the only pending discovery requests were Duke's voluminous initial set of interrogatories and document

(dated Feb. 11, 2002).

¹⁹ *See February 5 Order* at 2 n.4.

production requests. The scope of Duke's initial requests alone led the parties to express concern over the possible inadequacy of the prescribed 75-day discovery period.

The course of the parties' discovery activities since they submitted their proposed schedule nearly two months ago confirms that the discovery period (and, potentially, the schedule for the filing of evidence) need to be extended. Neither Duke nor CSXT has completed its discovery. Duke has produced little material in response to CSXT's discovery requests, necessitating the filing of this Motion. The Board will require some amount of time to resolve the discovery issues raised in the instant Motion (and any additional motions to compel that may be filed). If the Board grants some or all of the relief requested in CSXT's Motion, Duke will need a reasonable amount of time to produce the documents and information as to which production is compelled by the Board. Thereafter, CSXT will need time to assess the adequacy of Duke's responses in light of the terms of the Board's order.

Duke has also agreed (at the parties' discovery meeting on February 27, and in a letter to CSXT counsel dated March 1, 2002) to produce certain categories of additional documents and materials in response to CSXT's discovery requests. These include documents relating to the anticipated service lives of Duke's generating facilities, coal inventory levels at Duke's coal-fired plants, documents regarding assessment of future coal supply alternatives, and land appraisals. Duke stated that it expects to complete such production within the next ten days to two weeks. Disputes may arise with respect to the adequacy of the materials furnished by Duke pursuant to these commitments, potentially requiring additional motions to, and action by, the Board.

As described above, CSXT has dedicated massive amounts of manpower and resources to responding to Duke's initial discovery requests. While CSXT has provided full

responses to the majority of Duke's initial requests, a significant amount of work remains to complete CSXT's responses to the remaining Duke requests. Moreover, Duke served a new set of discovery requests on CSXT at the close of business on Friday, March 1, 2002 -- the second to last business day before the scheduled completion of discovery under the current schedule. These new discovery requests -- over 35 in number (including subparts) -- request detailed information about the accounting for the acquisition of control and operation of Conrail and the accounts comprising CSXT's Annual Report Form R-1. Responding to these new requests will require considerable time and effort.²⁰ CSXT is prepared to assume that burden provided that the discovery schedule is extended to enable it to do so.

In addition, at the parties' recent discovery meeting, Duke counsel indicated that Duke might elect to review various categories of business records and other documents (including locomotive leases, joint facility agreements, engineering records and car inspection reports) at various locations on CSXT's system. (Rather than copy all of these voluminous materials, CSXT offered to make them available for Duke representatives to review on-site at the locations where they are maintained in the normal course of business.) The decision whether, and when, to conduct such on-site inspections was a matter within the control of Duke in the first instance. Until the meeting last week, Duke had given CSXT no indication that it intended to pursue these materials. While CSXT is prepared to fulfill its commitment to make the subject business records available for on-site inspection, it should not be required to devote resources to such an effort unless the Board grants an appropriate extension of the discovery schedule.²¹

²⁰ CSXT objects to responding to any of Duke's second set of discovery requests unless the discovery schedule is expanded to afford CSXT adequate time to prepare such responses.

²¹ During the period in which it has responded to Duke's broad discovery requests and pursued its own discovery to Duke, CSXT has also fulfilled its commitment to publish revised tariff rates for the challenged coal movements (which rates became effective on March 1, 2002). Duke has

For these reasons, CSXT respectfully requests that the Board extend the discovery schedule in this proceeding indefinitely, until the issues raised in the pending motions to compel have been fully resolved (including the production of all documents and information required by the Board) and all outstanding discovery has been completed. The time required to resolve outstanding discovery issues may well warrant an adjustment in the scheduled dates for the filing of evidence, particularly if ongoing discovery efforts interfere with the parties' ability to prepare their evidentiary submissions.²² At a minimum, however, the Board should extend the discovery cut-off date until all discovery issues have been resolved and discovery completed.

CONCLUSION

For all of the foregoing reasons, the Board should grant CSXT's motion to compel answers to interrogatories and production of documents, and require Duke to provide full and complete responses to the items discussed herein promptly upon issuance of the Board's order compelling such production. In addition, CSXT requests that the Board extend the discovery schedule in this proceeding until the issues raised by the instant Motion have been resolved and all outstanding discovery has been concluded.

also requested that CSXT now publish common carrier rates for synfuel movements to Duke's facilities. CSXT is in the process of evaluating, and preparing a response to, Duke's latest rate request.

²²The information requested in Duke's just-served set of discovery requests appear to implicate information and issues that relate to the proper calculation of variable costs, which are supposed to be addressed in the parties' opening evidence, presently due on April 18, 2002.

Respectfully submitted,



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DATED: March 4, 2002

DUKE ENERGY CORPORATION,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42070
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	
	)	

Complainant Duke Energy Corporation (“Duke”), pursuant to 49 C.F.R. Part 1114, hereby responds to the First Set of Interrogatories and Requests for Production of Documents (the “Requests”) served by CSX Transportation, Inc. (“CSXT”) on January 17, 2002.

GENERAL OBJECTIONS

In addition to the Specific Objections raised below, Duke objects generally to CSXT's Requests as follows:

1. Product and/or Geographic Competition Information. Duke objects to the Requests on grounds of relevance and burden to the extent that they seek information that is relevant principally (if not solely) to the subject of indirect competition (*i.e.*, product and/or geographic competition) for CSXT's service to Cliffside, Lee, and Riverbend. This inquiry is no longer part of the Board's market dominance analysis. *See Ex Parte No. 627, Market Dominance*

Determinations -- Product and Geographic Competition, Decisions served December 21, 1998, July 2, 1999, and April 6, 2001. Moreover, even assuming *arguendo* that documents containing such information were marginally relevant to some issue actually in dispute in this case (*e.g.*, stand-alone traffic volumes for Duke plants), the burden of producing such documents would exceed their evidentiary value, particularly to the extent that Duke will produce information directly relevant to the question of future coal deliveries by CSXT to the Duke plants. *See* Ex Parte No. 627, Decision served December 21, 1998 (referring to burdens associated with production and consideration of product and geographic competition evidence).

Notwithstanding this General Objection, Duke will produce a variety of different materials to CSXT that contain information called for in CSXT's various product and/or geographic competition requests. These materials will include Duke's FERC Form 1, FERC Form 580, Annual Plan, Integrated Resource Plan, and Short-Term Action Plan. Duke objects on grounds of burden to identifying which information included within these materials is responsive to the many individual CSXT Requests (and subparts of individual CSXT Requests) which relate to product and/or geographic competition. As such, citations to this General Objection should be understood as referring CSXT to these materials to investigate whether and what responsive information is included therein.

2. Non-Waiver. Duke's willingness to produce some or all of the information sought by a particular Request should not be interpreted either as a waiver of Duke's objections (particularly General Objection No. 1) or as an admission that information derived therefrom is relevant to this case. Duke hereby reserves all rights to contest the relevance or admissibility in this proceeding of any information produced or generated in discovery.

Moreover, the assertion of certain objections by Duke to the Requests is not intended to, and shall not, waive any other objections not expressly asserted herein. Duke reserves the right to assert other objections, or to otherwise amend or revise its objections and responses as necessary or appropriate.

3. Burden. Duke objects to the "Definitions" and "Instructions" contained in the Requests to the extent they would impose burdens or obligations on Duke exceeding those specified in applicable provisions of the Surface Transportation Board's Rules of Practice at 49 C.F.R. Part 1114.

4. Privilege. Duke objects to the Requests to the extent that they seek documents or information that are protected by the attorney-client privilege and/or are subject to the attorney work-product protection. In addition, Duke objects to CSXT's Instruction No. 8 insofar as it requests the production of a privilege log.

5. Compliance with Protective Order. Duke's willingness to provide answers and produce documents containing commercially sensitive, proprietary, and/or trade secret information is conditioned upon compliance with the Protective Order served by the Board in this proceeding on February 5, 2002.

6. Special Studies. Duke objects to CSXT's Requests as unduly burdensome and oppressive to the extent they require Duke to conduct a special study or analysis to produce the information sought.

7. Availability. Duke objects to CSXT's Requests as unduly burdensome and oppressive to the extent that they seek documents or information either contained in CSXT's own files or otherwise in its possession, or readily available from public sources, including but

not limited to materials on public file at the STB, the Federal Energy Regulatory Commission, or any court or government agency.

8. Definition of Duke. Duke objects to CSXT's Definition No. 9 on grounds of overbreadth, burden, and relevance to the extent that it may be interpreted to request production of documents that are not in the possession, custody, or control of the Complainant.

9. Definition of Duke Plant. Duke objects to CSXT's Definition No. 10 on grounds of overbreadth, burden, and relevance to the extent that it includes plants other than Cliffside, Lee, and Riverbend (hereinafter referred to as the "issue plants" or the "plants at issue in this case"), particularly to the extent that it includes "any and all" generating plants or facilities which, although not owned or operated by Duke, nevertheless "produce power that is purchased or used by Duke." See Docket No. 42038, *Minnesota Power v. Duluth, Missabe & Iron Range Ry. Co.*, Decision served May 11, 1999.

10. Requests for Information/Documents regarding Non-Complaint Origins and Destinations. Except as otherwise noted, Duke objects on grounds of relevance to providing information and/or producing documents regarding movements between origins not at issue in this case (*i.e.*, non-complaint origins) and/or destinations not at issue in this case. See Docket No. 42038, *Minnesota Power v. Duluth, Missabe & Iron Range Ry. Co.*, Decision served May 11, 1999.

11. Separate Responses to Sub-Parts. Duke objects to CSXT's Instruction No. 1 on grounds of burden.

12. Verifications. Consistent with past practice in cases of this nature (including CSXT's practice in this case itself), Duke has not secured verifications of the answers

to Interrogatories herein. To that end, Duke objects to CSXT's Instruction No. 2 on grounds of burden.

13. Computer Layout Information. Duke objects to Instruction No. 4 on grounds of burden.

14. Computer-Readable Format Priority. Duke objects to Instruction No. 10 on grounds of burden.

15. Continuing Nature of Requests. Duke objects to Instruction No. 11 on grounds that it is inconsistent with the procedural schedule in stand-alone rate cases, and with the Board's governing regulations.

16. Non-Waiver/Date. The production by Duke of some documents that pre-date January 1, 1999 shall not be construed as an agreement by Duke to produce other documents that pre-date January 1, 1999 in response to the same or other Requests, to which Duke hereby objects on grounds of burden and relevance.

17. Response Deadline. Duke objects to the 30-day response deadline set forth in the Requests as unreasonable and unduly burdensome in light of the volume and complexity of the information and documents requested by CSXT. Duke's search for responsive documents and information is ongoing, and such materials (if otherwise not subject to an objection) will be produced as expeditiously as reasonably possible under the circumstances.

Duke's following Specific Objections and Responses to CSXT's Requests are subject to and without waiver of the foregoing General Objections.

A. INTERROGATORIES

Interrogatory No. 1: State the basis of the allegation, contained in Paragraph 2 of the Complaint, that the eight coal-fired electric generating stations referred to in such Paragraph are "baseload" generating stations.

Response:

Duke objects to this Interrogatory as premature and inconsistent with the Board's procedural rules regarding stand-alone cost proceedings. See Docket No. 42038, *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, Decision served May 11, 1999.

Interrogatory No. 2: State the basis of the allegation, contained in Paragraph 4 of the Complaint, that rail constitutes the only practicable method of transporting to the coal-fired Duke Plants the volumes of coal burned at such plants.

Response:

See Response to Interrogatory No. 1 (regarding prematurity).

Interrogatory No. 3: State the basis for Duke's decision to terminate the rail transportation contract identified in Paragraph 5 of the Complaint, including all reasons for such decision and all factors relied on or considered by Duke in making such decision.

Response:

Duke objects to this Interrogatory on grounds of relevance.

Interrogatory No. 4: State the basis of the allegation, contained in Paragraph 10 of the Complaint, that the challenged common carrier rates of CSXT generate revenue-to-variable cost ratios in excess of 180 percent for the transportation of coal between the origins covered by Duke's Complaint, on the one hand, and Cliffside, Lee, Marshall and Riverbend, on the other hand.

Response:

See Response to Interrogatory No. 1 (regarding prematurity). Duke also objects to this Interrogatory to the extent that it suggests that Duke is challenging CSXT's rate for service to Marshall.

Interrogatory No. 5: State the basis of the allegation, contained in Paragraph 11 of the Complaint, that CSXT possesses "market dominance" (as defined in 49 U.S.C. § 10707) with respect to the transportation of coal between the origins covered by Duke's Complaint, on the one hand, and Cliffside, Lee, Marshall and Riverbend, on the other hand.

Response:

See Response to Interrogatory No. 1 (regarding prematurity). Duke also objects to this Interrogatory to the extent that it suggests that Duke is challenging CSXT's rate for service to Marshall.

Interrogatory No. 6: State the basis of the allegation, contained in Paragraph 12 of the Complaint, that the challenged common carrier rates established by CSXT for the transportation of coal between the origins covered by Duke's Complaint, on the one hand, and Cliffside, Lee, Marshall and Riverbend, on the other hand, are unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702.

Response:

See Response to Interrogatory No. 1 (regarding prematurity). Duke also objects to this Interrogatory to the extent that it suggests that Duke is challenging CSXT's rate for service to Marshall.

Interrogatory No. 7: State the basis of the allegation, contained in Paragraph 14 of the Complaint, that Duke should be entitled, if it prevails in proving that the challenged common carrier rates of CSXT exceed a maximum reasonable level, to (a) interest on reparations in excess of that specified in 49

C.F.R. § 1141.1 and (b) a modification of or alternative to the percentage-reduction methodology used by the STB to determine reparations or a rate prescription.

Response:

See Response to Interrogatory No. 1 (regarding prematurity).

Interrogatory No. 8: State whether, during the period from January 1, 1999 to the present, Duke has considered, analyzed or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to provide transportation of coal to any Duke Plant. If the answer to this Interrogatory is affirmative, identify separately for each such proposal to acquire or construct rail facilities the following:

- (a) The name and location (city and state) of the Duke Plant to which transportation by more than one rail carrier would be enabled as a result of such acquisition or construction of rail facilities;
- (b) The date or time period during which the proposal to acquire or construct such rail facilities was (or is) under consideration, analysis or study;
- (c) The rail carrier (or carriers) that would be enabled to provide transportation of coal to the Duke Plant, or that would be enabled to participate in the rail transportation of coal to the Duke Plant, as a result of such acquisition or construction of rail facilities;
- (d) The estimated costs of constructing, maintaining and operating the rail facilities proposed to be acquired or constructed;
- (e) The anticipated design, location and operation of the rail facilities proposed to be acquired or constructed; and
- (f) The reasons why the proposed rail facilities were not acquired or constructed or, if such facilities are currently under construction, the current status of the proposal.

Response:

Duke objects to this Interrogatory on grounds of relevance and overbreadth to the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. See General Objection No. 10 (regarding

the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, Duke states during the period from January 1, 1999 to the present, it has not considered, analyzed, or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to transport coal to any of the issue plants.

Interrogatory No. 9: State whether, during the period from January 1, 1999 to the present, Duke has considered, analyzed or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to provide transportation of coal from any mine or source used (or that could be used) to supply coal for use at any Duke Plant. If the answer to this Interrogatory is affirmative, identify separately for each such proposal to acquire or construct rail facilities the following:

- (a) The name and location (city and state) of the mine or source from which transportation by more than one rail carrier would be enabled as a result of such acquisition or construction of rail facilities;
- (b) The date or time period during which the proposal to acquire or construct such rail facilities was (or is) under consideration, analysis or study;
- (c) The rail carrier (or carriers) that would be enabled to provide transportation of coal from the mine or source, or that would be enabled to participate in the rail transportation of coal from the mine or source, as a result of such acquisition or construction of rail facilities;
- (d) The estimated costs of constructing, maintaining and operating the rail facilities proposed to be acquired or constructed;
- (e) The anticipated design, location and operation of the rail facilities proposed to be acquired or constructed; and
- (f) The reasons why the proposed rail facilities were not acquired or constructed or, if such facilities are currently under construction, the current status of the proposal.

Response:

Duke objects to this Interrogatory on grounds of relevance and overbreadth to the extent that it seeks information regarding movements or potential movements between origin and

destination pairs that are not at issue in the Complaint. *See* General Objection No. 10 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that during the period from January 1, 1999 to the present, it has not considered, analyzed or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to transport coal from any mine or source at issue in this case (*i.e.*, origins from which CSXT has provided rates that Duke has challenged in the Complaint) to any of the issue plants.

Interrogatory No. 10: State whether, during the period from January 1, 1999 to the present, any carrier (other than CSXT) has solicited the transportation of coal for all or part of the movement from any coal mine or coal producing facility to Cliffside, Lee, Marshall or Riverbend. For purposes of this Interrogatory, "solicited" means any oral or written communication relating to the subject of the actual or possible transportation of coal to Cliffside, Lee, Marshall or Riverbend.

- (a) If the answer to this Interrogatory is affirmative, identify separately for each such solicitation the following:
 - (1) The mode of transportation involved;
 - (2) The name and business address of each carrier involved;
 - (3) The amount of coal tonnage sought in the solicitation;
 - (4) The origins and destinations involved in the solicitation;
 - (5) The dates and means of the solicitation, whether by telephone, letter, personal visit or other means;
 - (6) The full name, job title and corporate affiliation of each person who solicited the coal tonnage;
 - (7) The rates quoted or rate estimates offered and the transportation services offered by each carrier identified in the answer to subpart (2) hereof for each amount of tonnage identified in the answer to subpart (3) hereof;

- (8) For each amount of coal tonnage identified in the answer to subpart (3) hereof, whether the carrier represented that it had adequate equipment to transport all of the tonnage involved in the solicitation and, if not, the portion of the tonnage for which it represented such equipment was available; and
 - (9) Whether the carrier possessed operating authority, or did not need specific operating authority, to allow it to transport all or any portion of each amount of tonnage identified in the answer to subpart (3) hereof.
- (b) For each solicitation identified in the answer to this Interrogatory, identify the following:
- (1) Duke's response to the solicitation;
 - (2) The reasons for such response;
 - (3) Whether Duke used any transportation service of the soliciting carrier and, if so, indicate the amounts of tonnage for which Duke used such service separately for each calendar month, origin and destination; and
 - (4) If Duke decided not to use any service of such carrier, the reasons for that decision.

Response:

Duke objects to this Interrogatory to the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. *See* General Objection No. 10 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that during the period from January 1, 1999 to the present, no carrier (other than CSXT) has solicited the transportation of coal from any mine or source at issue in this case for use at any Duke Plant at issue in this case.

Interrogatory No. 11: State whether, during the period from January 1, 1999 to the present, Duke has solicited the transportation service of any carrier (other than CSXT) for the transportation of coal for all or part of the movement from any coal mine or coal producing facility to Cliffside, Lee, Marshall or Riverbend. For purposes of this Interrogatory, "solicited" means any oral or written communication relating to the subject of the actual or possible transportation of coal to Cliffside, Lee, Marshall or Riverbend.

- (a) If the answer to this Interrogatory is affirmative, identify separately for each such solicitation the following:
 - (1) The mode of transportation involved;
 - (2) The name and business address of each carrier involved;
 - (3) The amount of coal tonnage sought in the solicitation;
 - (4) The origins and destinations involved in the solicitation;
 - (5) The dates and means of the solicitation, whether by telephone, letter, personal visit or other means;
 - (6) The full name, job title and corporate affiliation of each person who solicited the coal tonnage;
 - (7) The rates quoted or rate estimates offered and the transportation services offered by each carrier identified in the answer to subpart (2) hereof for each amount of tonnage identified in the answer to subpart (3) hereof;
 - (8) For each amount of coal tonnage identified in the answer to subpart (3) hereof, whether the carrier represented that it had adequate equipment to transport all of the tonnage involved in the solicitation and, if not, the portion of the tonnage for which it represented such equipment was available; and
 - (9) Whether the carrier possessed operating authority, or did not need specific operating authority, to allow it to transport all or any portion of each amount of tonnage identified in the answer to subpart (3) hereof.
- (b) For each solicitation identified in the answer to this Interrogatory, identify the following:

- (1) The carrier's response to the solicitation;
- (2) The reasons stated by the carrier for such response;
- (3) Whether Duke used any transportation service of the carrier and, if so, indicate the amounts of tonnage for which Duke used such service separately for each calendar month, origin and destination; and
- (4) If Duke decided not to use any service of such carrier, the reasons for that decision.

Response:

Duke objects to this Interrogatory to the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. *See* General Objection No. 10 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that during the period from January 1, 1999 to the present, it has not solicited the transportation of coal by any carrier other than CSXT from any mine or source at issue in this case for use at any Duke Plant at issue in this case.

Interrogatory No. 12: Identify each electric power generating unit, plant or facility (referred to herein as "unit") included in or comprising any Duke Plant. For each such unit:

- (a) Identify the name and location (city and state) of the unit;
- (b) Identify the owner or owners of the unit and, in the case of multiple ownership interests, the nature, type and size of each owner's ownership interest in the unit;
- (c) Identify the operator or operators of the unit, if different than the owner(s) of the unit;

- (d) Identify the person that arranges or is responsible for arranging the procurement of fuel and fuel transportation for the unit, if different than the owner(s) or operator(s) of the unit, and the corporate, contractual or other relationship between such person and the owner(s) and/or operator(s) of the unit;
- (e) Identify the date on which construction of the unit was commenced, the date on which construction of the unit was completed, and the date on which the unit was placed into service;
- (f) Identify (i) the original expected service life of the unit, including the date on which electric generating operations at the unit originally were expected or anticipated to end and, if different, (ii) the current expected service life of the unit, including the date on which electric generating operations at the unit currently are expected or anticipated to end;
- (g) Identify any future planned, contemplated or anticipated construction or modification of facilities at the unit that might affect the service life of the unit, including the date on which electric generating operations at the unit are expected or anticipated to end;
- (h) Identify the electric power generating capacity of the unit (in megawatts), including the date, amount and causes of any change in such capacity since the original construction of the unit;
- (i) Identify any anticipated future change in the electric power generating capacity of the unit (in megawatts) and the date, amount and causes of such change;
- (j) Describe in detail the electric power generating operations at and organization of the unit;
- (k) Describe in detail how fuel and other supplies are transported and delivered to the unit;
- (l) Describe in detail all transportation, loading and unloading facilities (including rail, truck and/or coal handling facilities) for the delivery of fuel and other supplies to the unit;
- (m) Identify the total net generation (in kilowatt hours) of electricity of the unit during each calendar month from January 1, 1999 to the present;
- (n) Identify the total operation and maintenance expenses of the unit during each calendar month from January 1, 1999 to the present;

- (o) Identify the dispatch priority of the unit, in relation to other electric power generating units of Duke Plants, and the comparative cost per unit of output (as used in determining the relative dispatch priority) of the unit, during each calendar month (or other time period for which records of such dispatch priority are maintained) from January 1, 1999 to the present;
- (p) Identify the dispatch price (*i.e.*, the price or cost per unit of output used by Duke in determining whether to dispatch a unit or generate electric power from a unit) of the unit during each calendar month (or other time period for which records of such dispatch price are maintained) from January 1, 1999 to the present;
- (q) Identify the native or jurisdictional load requirements or commitments (in kilowatt hours) of the unit during each calendar month from January 1, 1999 to the present;
- (r) Identify the date, time and duration (in hours) of each scheduled outage or shutdown of the unit during each calendar month from January 1, 1999 to the present;
- (s) Identify the date, time and duration (in hours) of each actual outage or shutdown of the unit during each calendar month from January 1, 1999 to the present;
- (t) Identify the Capacity Factor of the unit during (i) each calendar month from January 1, 1999 to the present and (ii) each calendar year from January 1, 1999 to the present;
- (u) Identify the total volume or amount of each type of fuel (*i.e.*, coal, gas, oil, nuclear, etc.) burned or used in the unit during each calendar month from January 1, 1999 to the present;
- (v) Identify any future planned, contemplated or anticipated construction or modification of facilities (including scrubbers) at the unit that might affect the type and/or volume or amount of fuel burned or used in the unit, and how such construction or modification of facilities would affect the type and/or volume or amount of fuel burned or used in the unit; and
- (w) The average delivered cost (per Btu) of each type of fuel burned or used in the unit during each calendar month from January 1, 1999 to the present.

Response:

Duke objects to subparts (n), (o), (p), and (q) of this Interrogatory on grounds of relevance. See General Objection No. 1 (regarding product and/or geographic competition).

Duke also objects to this Interrogatory on grounds of relevance to the extent that it seeks information regarding plants not at issue in this case, and information regarding any fuel other than coal. See General Objection No. 10 (regarding the limited scope of inquiry into intra- and intermodal competition).

Without waiving these objections, Duke states that it will produce documents containing information responsive to subparts (a) - (m) and (r) - (w) with respect to Duke's coal-fired plants (with the exception of information regarding the loading, transportation, unloading, or use of fuels other than coal), to the extent that such documents can be identified and produced without undue burden. Moreover, in response to subpart (o), Duke states that it will produce a snapshot of the 2002 dispatch priorities of each of Duke's generating resources, but Duke cautions CSXT that factors other than cost (*e.g.*, ramping constraints) may play a role in determining whether to employ a given generating resource. Finally, Duke states that information responsive to other subparts of this Interrogatory may be contained in the documents that Duke references in General Objection No. 1.

Interrogatory No. 13: Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Interrogatory No. 12, and for each calendar month from January 1, 1999 to the present, the following:

- (a) The name and location (city and state) of each mine or source that supplied coal to the unit;

- (b) The name of the owner(s) and/or operator(s) of each such mine or source that supplied coal to the unit;
- (c) The total number of tons of coal that was supplied by each such mine or source to the unit;
- (d) The purchase price (excluding the cost of transporting the coal from such mine or source to the unit) per ton of coal supplied by each such mine or source to the unit;
- (e) The name and transportation mode of the carrier (or carriers) that transported coal from each such mine or source to the unit and the total number of tons of coal transported by each such carrier (or carriers) from each such mine or source to the unit;
- (f) The location (city and state) of any interchange or exchange of the shipment between the carriers that participated in the transportation of the shipment between the mine or source and the unit;
- (g) The rates and total charges per ton for such transportation of coal by each such carrier (or carriers) from each such mine or source to the unit; and
- (h) Whether Duke provided equipment for the transportation of the shipment between each such mine or source and the unit and, if so, (i) the number of each type of such equipment and (ii) the number of each type of such equipment that was (a) owned or (b) leased by Duke.

Response:

Duke objects to this Interrogatory to the extent that it seeks information about origins and/or destinations that are not at issue in this case. *See* General Objection No. 10 (regarding the limited scope on inquiry into intra- and intermodal competition). In addition, Duke objects to subparts (d) and (g) of this Interrogatory on grounds of relevance and confidentiality, and as to subpart (g) to the extent that it seeks information that is readily available to CSXT from its own files. Without waiving these objections, Duke states that it will produce documents including the information requested in subparts (a), (b), and (c) of this Interrogatory with respect to each of its coal-fired plants. *See also* Duke FERC Form 423 Reports. As to subparts (e) and

(f), Duke states that all tons were transported via CSXT or Norfolk Southern Railway Company ("NS") in single-line service. Finally, as to subpart (h), Duke states that all of the referenced coal moved in carrier-supplied equipment.

Interrogatory No. 14: Identify each electric power generating unit, plant or facility (referred to herein as "unit") planned or under construction by or for Duke (including any unit that will produce electric power for Duke's use or benefit). For each such unit:

- (a) Identify the name and location (city and state) of the unit;
- (b) Identify the owner(s) of the unit and, in the case of multiple ownership interests, the nature, type and size of each owner's ownership interest in the unit;
- (c) Identify the operator or operators of the unit, if different than the owner(s) of the unit;
- (d) Identify the person that is expected or anticipated to arrange or be responsible for arranging the procurement of fuel and fuel transportation for the unit, if different than the owner(s) or operator(s) of the unit, and the corporate, contractual or other relationship between such person and the owner(s) and/or operator(s) of the unit;
- (e) Identify the date on which construction of the unit was or is expected or anticipated to be commenced, the date on which construction of the unit is expected or anticipated to be completed, and the date on which the unit is expected or anticipated to be placed into service;
- (f) Identify the expected or anticipated service life of the unit, including the date on which electric generating operations at the unit are expected or anticipated to end;
- (g) Identify the expected or anticipated electric power generating capacity of the unit (in megawatts);
- (h) Describe in detail the expected or anticipated electric power generating operations at and organization of the unit;
- (i) Describe in detail how fuel and other supplies are expected or anticipated to be transported and delivered to the unit;

- (j) Describe in detail all expected or anticipated transportation, loading and unloading facilities (including rail, truck and/or coal handling facilities) for the delivery of fuel and other supplies to the unit;
- (k) Identify the expected or anticipated total annual net generation (in kilowatt hours) of electricity of the unit;
- (l) Identify the expected or anticipated total operation and maintenance expenses of the unit by calendar month, year or other time period for which Duke has calculated estimates of such expenses;
- (m) Identify the expected or anticipated dispatch priority of the unit, in relation to other electric power generating units of Duke Plants, and the expected or anticipated comparative cost per unit of output (as used in determining the relative dispatch priority) of the unit, by calendar month, year or other time period for which Duke has calculated estimates of such dispatch priority;
- (n) Identify the expected or anticipated dispatch price (*i.e.*, the price or cost per unit of output used by Duke in determining whether to dispatch a unit or generate electric power from a unit) of the unit, by calendar month, year or other time period for which Duke has calculated estimates of such dispatch price;
- (o) Identify the expected or anticipated native or jurisdictional load requirements or commitments (in kilowatt hours) of the unit by calendar month, year or other time period for which Duke has calculated estimates of such requirements or commitments;
- (p) Identify the expected or anticipated Capacity Factor of the unit by calendar month, year or other time period for which Duke has calculated estimates of such Capacity Factors;
- (q) Identify the total volume or amount of each type of fuel (*i.e.*, coal, gas, oil, nuclear, etc.) expected or anticipated to be burned or used in the unit by calendar month, year or other time period for which Duke has calculated estimates of such volumes or amounts; and
- (r) Identify the average delivered cost (per Btu) of each type of fuel expected or anticipated to be burned or used in the unit by calendar month or other time period for which Duke has calculated estimates of such costs.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden (*see* General Objection No. 1 (regarding product and/or geographic competition)) and to the extent that it relates to movements of coal to plants not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that there are no units, plants, or facilities planned or under construction by or for Duke that would consume coal.

Interrogatory No. 15: Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Interrogatory No. 14, the following:

- (a) The name and location (city and state) of each coal producer or supplier that is expected or anticipated to supply fuel to the unit or that Duke and/or its consultants or contractors have identified or considered as a possible supplier of fuel to the unit;
- (b) The name and location (city and state) of each coal mine or coal producing facility that is expected or anticipated to supply fuel to the unit or that Duke and/or its consultants or contractors have identified or considered as a possible source of fuel for the unit;
- (c) The total number of tons of coal that is expected or anticipated to be supplied by each such mine or source to the unit by calendar month, year or other time period for which Duke has calculated estimates of such coal supply;
- (d) The purchase price (excluding the cost of transporting the coal from such mine or source to the unit) per ton of coal that is expected or anticipated to be supplied by each such mine or source to the unit by calendar month, year or other time period for which Duke has calculated estimates of such coal supply;
- (e) The name and transportation mode of each carrier (or carriers) that is expected or anticipated to supply fuel to the unit or that Duke and/or its consultants or contractors have identified or considered as a possible transporter of fuel to the unit, and the total number of tons of coal ex-

pected or anticipated to be transported by each such carrier (or carriers) from each such mine or source to the unit by calendar month, year or other time period for which Duke has calculated estimates of such coal shipment volume; and

- (f) The estimated, expected or anticipated rates and total charges per ton for such transportation of coal by each such carrier (or carriers) from each such mine or source to the unit by calendar month, year or other time period for which Duke has calculated estimates of such coal shipment rates or charges.

Response:

There are no coal-fired units, plants, or facilities that have been identified in response to Interrogatory No. 14.

Interrogatory No. 16: Identify, separately for each coal producer or supplier and for each mine or source identified in response to Interrogatory No. 13 and No. 15, and for each mine or source that Duke has considered as a possible future source of coal for use at any Duke Plant, the following:

- (a) The total number of tons of coal produced by the mine or source during each calendar month from January 1, 1999 to the present;
- (b) The total number of tons of coal expected or anticipated to be produced by the mine or source in the future for supply to any Duke Plant;
- (c) The total monthly and annual coal production capacity of the mine or source;
- (d) Any expected or anticipated future change in the monthly and annual coal production capacity of the mine or source and the date, amount and causes of such change;
- (e) (i) The original expected service life of the mine or source, including the date on which coal production operations at the mine or source are expected or anticipated to end and, if different, (ii) the current expected service life of the mine or source, including the date on which coal production operations at the mine or source are expected or anticipated to end; and

- (f) The total amount (in number of tons) of coal reserves recoverable from the mine or source.

Response:

Duke objects to this Interrogatory on grounds of relevance to the extent that it seeks information regarding coal origins and/or destinations not at issue in this case. *See* General Objection No. 10 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving this objection, Duke states that it will produce documents containing responsive information with respect to the issue plants and the Marshall plant, to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 17: Identify, separately for each coal-fired Duke Plant, and for each calendar day or calendar month (or, if not available for such time periods, for the smallest increment of time for which Duke maintains records) from January 1, 1999 to the present, the following:

- (a) The coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a Duke Plant for use in generating electric power) authorized by regulatory authorities to be maintained at the Duke Plant;
- (b) The coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a Duke Plant for use in generating electric power) forecast in advance or projected or targeted by Duke to be maintained at the Duke Plant; and
- (c) The coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a Duke Plant for use in generating electric power) actually maintained at the Duke Plant.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden, both to the extent that it seeks information regarding plants not at issue in this case (*see* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition)) and with respect to

the substance of the information sought. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that it will produce documents containing responsive information with respect to the issue plants and the Marshall plant, to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 18: Identify any proposed, planned, expected or anticipated changes in the authorized, targeted or actual coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a Duke Plant for use in generating electric power) for any Duke Plant.

Response:

See Response to Interrogatory No. 17.

Interrogatory No. 19: Identify and describe in detail Duke's current policies and procedures for fuel and/or fuel procurement for any Duke Plant.

Response:

Duke objects to this Interrogatory on grounds of vagueness to the extent that it does not adequately distinguish: (i) procedures for fuel; and (ii) procedures for fuel procurement. Duke also objects to this Interrogatory to the extent that it seeks information regarding plants that are not at issue in this case (*see* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition)), and regarding fuels other than coal. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that it will produce responsive documents, to the extent that they can be identified and produced without undue burden, that set forth Duke's formal policies and procedures regarding the procurement of coal.

Interrogatory No. 20: Identify and describe in detail Duke's current policies and procedures for determining the relative order in which power will be generated or dispatched from particular electric generating units, plants or facilities owned and/or operated by Duke.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that, in determining the relative order in which power will be generated or dispatched, it generally follows an economic dispatch policy in which generating resources are ranked in terms of operating costs. Duke further states that it will produce a snapshot of the 2002 dispatch priorities of each of Duke's generating resources, but Duke cautions CSXT that factors in addition to cost (*e.g.*, ramping constraints) may play a role in determining whether to employ a given generating resource.

Interrogatory No. 21: Identify and describe in detail Duke's current policies and procedures for determining whether, and to what extent, native or jurisdictional load electric power requirements of Duke's retail electric customers are, should be or could be satisfied by (a) electric power generated or produced by Duke or (b) electric power purchased or obtained by Duke from persons not affiliated with Duke.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that information responsive to this Interrogatory may be contained in the documents that Duke references in General Objection No. 1.

Interrogatory No. 22: Identify, for each calendar month from January 1, 1999 to the present, any transmission constraints affecting the transportation, transmission or distribution of electric power:

- (a) Within the Duke system;
- (b) Between the Duke system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which Duke or its service territory is or is proposed to be a part; and
- (c) Between or among different NERC Regional Councils.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that information responsive to this Interrogatory may be contained in the documents that Duke references in General Objection No. 1.

Interrogatory No. 23: Identify and describe any negotiations or communications that have occurred during the period from January 1, 1999 to the present, or are contemplated by Duke to occur in the future, between Duke and any other person with respect to the actual, proposed or possible (a) amendment, modification, supplementation, replacement or alteration of the terms of any coal supply contract produced in response to Document Request No. 11 or (b) arrangement for the supply of coal to any Duke Plant.

Response:

Duke objects to this Interrogatory on grounds of confidentiality and on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Moreover, Duke objects to this Interrogatory to the extent that it seeks information regarding origins and/or destinations that are not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these

objections, Duke states that it will produce documents containing responsive information, to the extent that such documents can be identified and produced without undue burden, and to the extent that they are not subject to confidentiality restrictions with third parties.

Interrogatory No. 24: For each calendar month (or other time period for which Duke maintains records) during the period from January 1, 1999 to the present, identify the following:

- (a) The total native or jurisdictional load electric power requirements of Duke's retail electric power customers;
- (b) The total actual consumption by Duke's retail electric power customers of electric power sold or distributed by Duke;
- (c) The total amount of electric power generated or produced by Duke (excluding purchases or exchanges of electric power generated or produced by persons other than Duke);
- (d) The total average cost (per kilowatt hour) of the electric power generated or produced by Duke (excluding purchases or exchanges of electric power generated or produced by persons other than Duke);
- (e) The total amount of electric power purchased or acquired by Duke from any person not affiliated with Duke;
- (f) The total average cost (per kilowatt hour) of the electric power purchased or acquired by Duke from any person not affiliated with Duke;
- (g) The total amount of electric power sold or distributed by Duke to any person not affiliated with Duke (excluding sales or distribution of electric power to Duke's retail electric power customers);
- (h) The total average sales price or revenue (per kilowatt hour) received by Duke for the electric power sold or distributed by Duke to any person not affiliated with Duke (excluding sales or distribution of electric power to Duke's retail electric power customers);
- (i) The total average profit (per kilowatt hour) earned by Duke for the electric power sold or distributed by Duke to any person not affiliated with Duke (excluding sales or distribution of electric power to Duke's retail electric power customers);

- (j) The relative share of electric power that, to meet native or jurisdictional load requirements, was (i) purchased by Duke to meet native or jurisdictional load or other electric generating requirements or (ii) produced by Duke to meet native or jurisdictional load or other electric generating requirements;
- (k) The relative share of electric power generated at each Duke Plant that was used to meet native or jurisdictional load or other electric generating requirements of Duke Plants, or that was used to complete off-system and/or wholesale electric power sales or transfers; and
- (l) The revenues, net income and/or profits generated by Duke in connection with the sale or transfer of electric power generated at any Duke Plant.

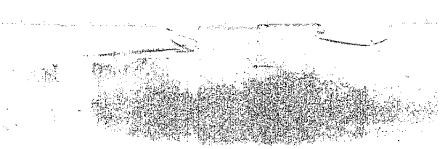
Response:

Duke objects to this Interrogatory on grounds of relevance and burden. See General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that information responsive to this Interrogatory may be contained in the documents that Duke references in General Objection No. 1.

Interrogatory No. 25: Identify all Forecasts prepared by or for Duke or in Duke's possession, custody or control during the period from January 1, 1999 to the present (including any breakdowns of any such forecasts, projections or estimates by commodity classification, geographic region, NERC Regional Council, coal mine or source, coal producer or supplier, generator or producer of electric power, railroad, year or other time period, Duke Plant, or any other category) referring to the level, volume or rate of change in any of the following:

- (a) The expected or anticipated electric power generating capacity of Duke or of any electric power generating unit, plant or facility (referred to herein as "unit") included in or comprising any Duke Plant by calendar month, year or other time period;
- (b) The expected or anticipated total net generation (in kilowatt hours) of electric power of electricity generators or producers, Duke or any unit by calendar month, year or other time period;

- (c) The expected or anticipated Capacity Factor of electricity generators or producers, Duke or any unit by calendar month, year or other time period;
- (d) The expected or anticipated native or jurisdictional load requirements or commitments (in kilowatt hours) of electricity generators or producers, Duke or any unit by calendar month, year or other time period;
- (e) The expected or anticipated volume of demand for electric power produced or sold by electricity generators or producers, power marketers, Duke or any unit by calendar month, year or other time period;
- (f) The expected or anticipated volume of sales (in dollars) of electric power produced or sold by electricity generators or producers, power marketers, Duke or any unit by calendar month, year or other time period;
- (g) The expected or anticipated level of the prices of electric power available for purchase or sale in the wholesale electricity market by electricity generators or producers, power marketers, Duke or any unit by calendar month, year or other time period;
- (h) The location, amount and duration of any transmission constraints affecting or potentially affecting the transportation, transmission or distribution of electric power;
- (i) The expected or anticipated volume or amount of each type of fuel to be burned or used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (j) The expected or anticipated number of tons of coal to be burned or used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (k) The expected or anticipated number of tons of coal to be purchased or acquired by electricity generators, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (l) The expected or anticipated price or cost of coal to be purchased or used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (m) The expected or anticipated level of prices of coal that could be used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;

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- (n) The expected or anticipated number of tons of coal to be transported by rail by, for or to electricity generators or producers, Duke or any unit by calendar month, year or other time period;
 - (o) The expected or anticipated level of railroad rates for the transportation of coal that could be used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
 - (p) The expected or anticipated level or rate of change in the Rail Cost Adjustment Factor (with or without an adjustment for railroad productivity) published by the STB, or any other measure of the level or rate of change in the costs of providing rail freight transportation services, by calendar month, year or other time period; and
 - (q) The expected or anticipated level or rate of change in the Consumer Price Index, the Producer Price Index, the Gross Domestic Product-Implicit Price Deflator, or any other measure of inflation or rate of change in the level of prices, by calendar month, year or other time period.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden to the extent that it seeks information regarding plants that are not at issue in this case (*see* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition), and with respect to the substance of subparts (a) - (h), (i) (to the extent that it relates to fuel other than coal), (l), and (m). *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to subparts (l) and (m) on grounds that they seek information that is subject to confidentiality restrictions with third parties.

Without waiving these objections, Duke states that it will produce documents containing information that is responsive to subparts (i) (as to coal), (j), (k), (n), and (o) as to the issue plants and the Marshall plant, to the extent that such documents can be identified and produced without undue burden, and (as to subpart (o)) to the extent that Duke may do so

without violating confidentiality restrictions with third parties. Duke also states that it will produce documents containing information that is responsive to subparts (p) and (q) to the extent that such documents can be identified and produced without undue burden. Finally, Duke states that information responsive to other subparts of this Interrogatory may be contained in the documents that Duke references in General Objection No. 1.

Interrogatory No. 26: For each Forecast identified in response to Interrogatory No. 25, identify and describe in detail the methodology used to develop or prepare the Forecast including, but not limited to, the following:

- (a) All assumptions utilized in preparing or developing such Forecast; and
- (b) All data bases and sources of information used or relied upon to develop or prepare such Forecast.

Response:

See Response to Interrogatory No. 25. Duke also objects to this Interrogatory on grounds of burden to the extent that it seeks information in a raw form that would be duplicative of the information produced in response to Interrogatory No. 25 without conveying additional relevant information. Without waiving these objections, Duke states that it will produce documents including information responsive to this Interrogatory (as limited by Duke's response to Interrogatory No. 25), to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 27: Identify each consultant, expert or research firm employed by or for Duke during the period from January 1, 1999 to the present in relation to coal procurement and/or coal transportation. For each person identified in response to this Interrogatory, identify the following:

- (a) The person employing such consultant, expert or research firm;

- (b) The date or dates of each such employment;
- (c) The stated purpose of each such employment; and
- (d) The report or other written communications made pursuant to such employment.

Response:

Duke objects to this Interrogatory to the extent that it seeks information regarding coal to be utilized at plants that are not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Interrogatory on grounds that it is premature. Without waiving these objections, Duke states that with the exception of its preparation for and prosecution of the instant case, no consultants, experts, or research firms have been employed by or for it in relation to coal procurement for and/or coal transportation to the issue plants.

Interrogatory No. 28: Identify, by docket number and agency name, each state or federal regulatory proceeding (a) to which Duke has been a party during the period from January 1, 1999 to the present and (b) which has involved the question of Duke's compliance with the Amended Clean Air Act or any other existing or proposed law or regulation restricting emissions from electric generating facilities at any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Duke.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that information responsive to this Interrogatory may be contained in the documents that Duke references in General Objection No. 1.

Interrogatory No. 29: State whether Duke has conducted, caused to be conducted, or has access to any studies, reports or other documents describing or analyzing the costs of utilizing privately owned or leased rail cars for the movement of coal or the costs of maintaining privately owned or leased rail cars for the movement of coal. If the answer to this Interrogatory is affirmative, describe in detail the scope of each such study, report or other document, the methodology utilized therein and the detailed results thereof.

Response:

Duke will produce documents which include information that is responsive to this Interrogatory, to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 30: For each hopper car or gondola owned or leased by Duke, and for each of the calendar years 1999 to the present, identify the following:

- (a) The owner or lessee of the car;
- (b) The location(s) from which the hoppers or gondolas are assigned;
- (c) Car initial and number;
- (d) Source of car;
- (e) Car model or type;
- (f) Tare weight;
- (g) Date of purchase or lease;
- (h) Original cost plus additions and betterments;
- (i) Description of financing vehicle (e.g., equipment trust);
- (j) Debt rate as a percent;
- (k) Finance terms (in years);

- (l) Annual depreciation;
- (m) Accrued depreciation;
- (n) If leased, whether capital or operating lease;
- (o) If capital lease, the capitalized value of the lease by car or car group. If group of cars, identify the number (by initial and number) and aggregate dollars;
- (p) If an operating lease, the quarterly, semi-annual, annual, etc. lease payment by car or car group covering the term of the lease. If a group of cars, identify the number (by initial and number) and aggregate dollars;
- (q) The movement history of each car, including location, miles traveled between stations (loaded and empty), and the time and date of arrival at each station; and
- (r) The history (on a year-to-year basis) of per diem payments received by Duke or other owner or lessor for the use of each car.

Response:

Duke will produce documents containing responsive information to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 31: For each of the hopper or gondola cars identified in response to Interrogatory No. 30, identify maintenance and/or repair expenses by individual hopper or gondola car initial and number (owned and leased), incurred by Duke for each of the calendar years 1999 to the present.

Response:

Duke will produce documents containing responsive information to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 32: For each of the hopper or gondola cars identified in response to Interrogatory No. 30, identify the total car unit-miles corresponding to the maintenance and repair expenses identified in Interrogatory No. 31 (*i.e.*, by

individual hopper or gondola car initial and number, or car type or car series) for each of the calendar years 1999 to the present.

Response:

Duke will produce documents containing responsive information to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 33: Identify the individual days during the period January 1, 1999 to the present on which coal unloading operations at Cliffside, Lee, Marshall or Riverbend were suspended because of employee vacations or holidays or for any other reason and, for each such closing, the reason or reasons for such closing.

Response:

Duke objects to this Interrogatory on grounds of relevance to the extent that it seeks information regarding coal unloading operations at Marshall. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving this objection, Duke states that it will produce documents containing responsive information for the listed plants to the extent that such documents can be identified and produced without undue burden.

Interrogatory No. 34: Identify each weekend (*i.e.*, Saturday and following Sunday) during the period from January 1, 1999 to the present on which coal unloading operations at Cliffside, Lee, Marshall or Riverbend were suspended and, for each such suspension, the reasons for such suspension.

Response:

See Response to Interrogatory No. 33.

Interrogatory No. 35: State whether coal is or can be unloaded from CSXT's railroad cars at Cliffside, Lee, Marshall or Riverbend 24 hours per day. If

the response to this Interrogatory is less than 24 hours per day, identify all circumstances which prevent 24-hour per day unloading.

Response:

See Response to Interrogatory No. 33.

Interrogatory No. 36: Identify, separately for each calendar month from January 1, 1999 to the present, the date, time and duration of any period in which coal unloading operations at Cliffside, Lee, Marshall or Riverbend could not be carried out continuously, and the reasons why such coal unloading operations could not be carried out continuously.

Response:

See Response to Interrogatory No. 33.

B. DOCUMENT PRODUCTION REQUESTS

1. Produce all documents referring to Duke's decision to terminate the rail transportation contract identified in Paragraph 5 of the Complaint, including documents referring to all reasons for such decision and all factors considered by Duke in making such decision.

Response:

Duke objects to this Request on grounds of relevance.

2. Produce all documents that underlie, support or relate to the allegation, contained in Paragraph 11 of the Complaint, that CSXT possesses "market dominance" (as defined in 49 U.S.C. § 10707) with respect to the transportation of coal between the origins covered by Duke's Complaint, on the one hand, and Cliffside, Lee, Marshall and Riverbend, on the other hand.

Response:

Duke objects to this Request to the extent that it characterizes Duke's Complaint as referring to "market dominance" regarding movements to Marshall. Duke also objects to this Request for the reasons set forth in response to Interrogatory No. 1 (regarding prematurity).

3. Produce all documents that underlie, support or relate to the allegation, contained in Paragraph 10 of the Complaint, that the challenged common carrier rates of CSXT generate revenue-to-variable cost ratios in excess of 180 percent for the transportation of coal between the origins covered by Duke's Complaint, on the one hand, and Cliffside, Lee, Marshall and Riverbend, on the other hand.

Response:

Duke objects to this Request to the extent that it characterizes Duke's Complaint as referring to rates for movements to Marshall. Duke also objects to this Request for the reasons set forth in response to Interrogatory No. 1 (regarding prematurity).

4. To the extent not produced in response to Document Request No. 3, produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to the variable costs of service or to the revenue-to-variable cost ratios for the transportation of coal by rail between any origin and any Duke Plant. For each such study or analysis, produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study or analysis.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks information regarding the cost of service to plants not at issue in this case. Without waiving this objection, Duke states that no non-privileged, responsive documents exist regarding service to the issue plants.

5. Produce all documents that underlie, support or relate to the allegation, contained in Paragraph 12 of the Complaint, that the challenged common carrier rates established by CSXT for the transportation of coal between the origins covered by Duke's Complaint, on the one hand, and Cliffside, Lee,

Marshall and Riverbend, on the other hand, are unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702.

Response:

Duke objects to this Request to the extent that it characterizes Duke's Complaint as referring to rates for movements to Marshall. Duke also objects to this Request for the reasons set forth in response to Interrogatory No. 1 (regarding prematurity).

6. To the extent not produced in response to Document Request No. 5, produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to the maximum reasonableness of the rates charged (or proposed to be charged) by CSXT or to the stand-alone costs of service for the transportation of coal by rail between any origin and any Duke Plant. For each such study or analysis, produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study or analysis.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks information regarding the rates and/or costs for service between origins and/or destinations not at issue in this case. Without waiving this objection, Duke states that no non-privileged, responsive documents exist regarding service between the issue origins and the issue plants.

7. Produce all documents referring to any of the following:
 - (a) The feasibility and/or costs of receiving coal at Cliffside, Lee, Marshall or Riverbend by means of motor carriers, water carriers, conveyors or any other non-rail transportation mode;
 - (b) The feasibility and/or costs of receiving coal at Cliffside, Lee, Marshall or Riverbend by means of any rail carrier other than CSXT;

- (c) The feasibility and/or costs of constructing or acquiring transportation facilities so as to receive coal at Cliffside, Lee, Marshall or Riverbend transported in whole or in part by means of any rail carrier other than CSXT;
- (d) The feasibility and/or costs of constructing or acquiring transportation facilities so as to receive coal at Cliffside, Lee, Marshall or Riverbend transported in whole or in part by means of any non-rail carrier;
- (e) The availability or unavailability to Duke of effective competitive transportation alternatives to CSXT's coal transportation services for delivery of coal to Cliffside, Lee, Marshall or Riverbend;
- (f) The nature and source of any competitive or business leverage Duke possesses or might possess in negotiating with CSXT reasonable rail rates for CSXT's coal transportation services for delivery of coal to Cliffside, Lee, Marshall or Riverbend; and
- (g) The costs incurred by CSXT in transporting coal between any mine or source and any Duke Plant.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks information regarding Marshall and to the extent that it seeks information regarding the competitive leverage that supposedly would be created by indirect forms of competition. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition) and General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that no non-privileged, responsive documents exist regarding service to the issue plants.

8. Produce, separately for each proposal to acquire or construct rail facilities identified in response to Interrogatory No. 8 or No. 9, each document referring to such proposal, including (but not limited to) the following:

- (a) All studies and analyses of the feasibility and/or costs of constructing, maintaining or operating the rail facilities proposed to be acquired or constructed;
- (b) All studies and analyses relating to the engineering, design or operation of the rail facilities proposed to be acquired or constructed;
- (c) All documents referring to the use of the rail facilities proposed to be acquired or constructed by any rail carrier, the terms of such use, and the rates and charges for transportation over such facilities;
- (d) All correspondence relating to such proposal; and
- (e) All regulatory filings made by Duke with Federal, state or municipal governmental agencies or departments in connection with such proposal.

Response:

See Responses to Interrogatory Nos. 8 and 9. Without waiving the objections set forth therein, Duke states that no non-privileged, responsive documents exist regarding service between the issue origins and issue plants.

9. Produce all documents referring to any solicitation identified in response to Interrogatory No. 10 or No. 11.

Response:

See Responses to Interrogatory Nos. 10 and 11. Without waiving the objections set forth therein, Duke states that no non-privileged, responsive documents exist regarding service between the issue origins and the issue plants.

10. Produce each contract in effect at any time during the period from January 1, 1999 to the present between Duke, on the one hand, and any carrier (other than CSXT), on the other hand, for the transportation of coal to any Duke Plant. The response to this Document Request should include all supplements and amendments to each such coal transportation contract, as well as all documents necessary to determine, during the entire time period covered by this Document Request, the applicable carrier, mine or source, Duke Plant, transporta-

tion rate or charges, and volume of coal transported or to be transported under such contract.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks coal transportation contracts for service to plants other than Cliffside, Lee, and Riverbend. See General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Request to the extent that it seeks production of contracts that are subject to confidentiality agreements with third parties. Without waiving these objections, Duke states that there are no responsive coal transportation contracts between Duke and a carrier other than CSXT for service to the plants at issue in this case. Moreover, Duke states that it would not object to the production of responsive contracts regarding coal transportation service to Marshall if the Board were to order such production.

11. Produce each coal supply contract to which Duke is or was a party and which was in effect at any time during the period from January 1, 2001 to the present. The response to this Document Request should include all supplements and amendments to each such coal supply contract, as well as all documents necessary to determine, during the entire period covered by this Document Request, the applicable seller, mine or source, price and volume of the coal supplied under the contract.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks coal supply contracts from origins not at issue in this case and/or to the extent that it seeks contracts for the supply of coal to be used at plants that are not at issue in this case. See General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke

also objects to this Request on grounds that the requested materials are confidential and contain provisions that expressly prohibit Duke from disclosing the terms of such contracts to third parties without the consent of the other contracting party, or when compelled to do so by a court or government order. Without waiving these objections, Duke states that it would not object to the production of the requested materials if the Board were to require such production in this case.

12. Produce all documents referring to any negotiations or discussions that have occurred during the period from January 1, 1999 to the present, or are contemplated by Duke to occur, between Duke and any other person for the purpose of (a) amending, modifying, supplementing, replacing or altering the terms of any coal supply contract produced in response to Document Request No. 11 or (b) arranging for the supply of coal to any Duke Plant.

Response:

See Response to Request No. 11. In addition, Duke objects to the production of documents reflecting the negotiation of a coal supply contract or an amendment to a coal supply contract that either: (i) has expired; or (ii) is currently effective, on grounds that such documents would be duplicative of information that is contained in the contracts that CSXT has requested.

13. Produce all documents referring to the actual, contemplated or possible supply of coal by any producer or supplier of coal to any Duke Plant during any future time period, including all studies or analyses prepared by or for Duke referring to any such actual, contemplated or possible future supply of coal and all documents containing communications between Duke and any coal producer or supplier referring to any such actual, contemplated or possible future supply of coal.

Response:

See Response to Interrogatory No. 23 and Request No. 11.

14. Produce all fuel supply contracts (other than coal supply contracts identified in Document Request No. 11) to which Duke is a party and which has an effective term of more than one year. The response to this Document Request should include all supplements and amendments to each such fuel supply contract, as well as all documents necessary to determine, during the entire period covered by this Document Request, the applicable seller, source, price and volume of the fuel supplied under the contract.

Response:

Duke objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition).

15. Produce all contracts for the purchase and/or sale of electric power or electric generating capacity (other than contracts for the purchase and/or sale of electric power to/from Duke's retail electric customers) to which Duke is a party and which has an effective term of more than one year. The response to this Document Request should include all supplements and amendments to each such purchase and/or sale contract, as well as all documents necessary to determine, during the entire time period covered by this Document Request, the applicable purchasers and/or sellers, the source of the electric power or generating capacity covered by such contract, the volume or amount of electric power or generating capacity covered by such contract, the duration of such contract, and the prices or other charges specified in such contract.

Response:

Duke objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition).

16. Produce all documents referring to the present or future authorized, targeted or actual coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a Duke Plant for use in generating electric power) for any Duke Plant.

Response:

Duke objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition). Duke also objects to this

Request to the extent that it seeks information regarding inventory levels at plants that are not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that it will produce documents containing responsive information regarding the issue plants and the Marshall plant to the extent that such documents can be identified and produced without undue burden.

17. Produce all documents comprising or referring to Duke's current policies and procedures for fuel and/or fuel procurement for any Duke Plant.

Response:

Duke objects to this Request to the extent that it seeks documents related to fuel other than coal (*see* General Objection No. 1 (regarding product and/or geographic competition)), and related to origins and/or destinations that are not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Request on grounds of burden in that a large number of documents in Duke's files arguably may comprise or refer to Duke's policies and procedures for fuel and/or fuel procurement. Finally, Duke objects to this Request as vague and ambiguous in that Duke is unaware of whatever distinction CSXT may be making as between "fuel" and "fuel procurement."

Without waiving these objections, Duke states that it will produce formal statements of its coal acquisition policy (if any exist), to the extent that such statements can be identified and produced without undue burden.

18. Produce all documents comprising or referring to Duke's current policies and procedures for determining the relative order in which power will be generated or dispatched from particular electric generating units, plants or facilities owned and/or operated by Duke.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1. *See also* Duke's Response to Interrogatory No. 20.

19. Produce all documents supporting or explaining the calculation or development of each dispatch price identified in response to Interrogatory No. 12(p), including documents identifying the fuel expense, variable operation and maintenance expense and heat rate component by output segment for each unit.

Response:

See Response to Request No. 18.

20. Produce documents identifying, separately for each electric power generating unit, plant or facility included in or comprising any Duke Plant and for each calendar month, day, hour or block of hours (the smallest increment of time for which Duke maintains records) from January 1, 1999 to the present, the amounts of operation and maintenance expenditures determined or assigned as variable costs as opposed to fixed costs, including all documents supporting or explaining the calculation or development of such determination or assignment.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

21. Produce all documents comprising or referring to Duke's current policies and procedures for determining whether, and to what extent, native or jurisdictional load electric power requirements of Duke's retail electric customers are, should be or could be satisfied by (a) electric power generated or produced by Duke or (b) electric power purchased or obtained by Duke from persons not affiliated with Duke.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

22. Produce documents identifying, separately for each electric power generating unit, plant or facility included in or comprising any Duke Plant and for each calendar month, day, hour or block of hours (the smallest increment of time for which Duke maintains records) from January 1, 1999 to the present, the electric power purchase price at which Duke would purchase electric power from a person not affiliated with Duke rather than generating or producing such power at the unit or another Duke Plant, including all documents supporting or explaining the calculation or development of such price.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

23. Produce all documents referring to any instructions, guidelines or policies provided to or used by Duke personnel in determining the relative order in which electric power will be generated or dispatched from particular electric generating units, plants or facilities owned and/or operated by Duke and the volume or amount of electric power to be generated by such units.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1. *See* Response to Interrogatory No. 20.

24. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the period from January 1, 1999 to the present, referring to the extent to which native or jurisdictional load electric power requirements of Duke's retail electric customers in the future will be, or could be, satisfied by (a) electric power generated or produced by Duke or (b) electric power purchased or obtained by Duke from persons not affiliated with Duke.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

25. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports, and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the period from January 1, 1999 to the present, referring to any of the following:

- (a) The possibility that alternative fuels (including, but not limited to, gas, oil, nuclear, coal-based synthetic fuels or solar) might or could be used in the future to generate electricity at any existing Duke Plant;
- (b) The possibility that alternative fuels (including, but not limited to, gas, oil, nuclear, coal-based synthetic fuels or solar) might or could be used in the future to generate electricity at any Duke Plant to be constructed or operated in the future;
- (c) The impact of potential advances in technology on the volume or amount of coal (or alternative fuels) required or used in the future to generate electricity at any existing Duke Plant;
- (d) The impact of potential advances in technology on the volume or amount of coal (or alternative fuels) required or used in the future to generate electricity at any Duke Plant to be constructed or operated in the future; and
- (e) The feasibility, costs and benefits of converting any coal-fired Duke Plant to allow it to use alternative fuels (including, but not limited to, gas, oil, nuclear, coal-based synthetic fuels or solar) to generate electricity.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

26. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports, and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the period from January 1, 1999 to the present, referring to the actual, planned, proposed or possible (a) shutdown or closure of any Duke Plant or (b) extension of the service life of any Duke Plant as a result of construction or modification of facilities or modification of operating practices.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Request on grounds of relevance to the extent that it seeks documents related to plants that are not at issue in this case. Without waiving these objections, Duke states that it will produce documents sufficient to show the anticipated service life of the issue plants and the Marshall plant.

27. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the period from January 1, 1999 to the present, referring to any existing or actual or potential future transmission constraints affecting the transportation, transmission or distribution of electric power:

- (a) Within the Duke system;
- (b) Between the Duke system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which Duke or its service territory is or is proposed to be a part; and
- (c) Between or among different NERC Regional Councils.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

28. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the period from January 1, 1999 to the present, referring to any proposed or planned investment or project related to the removal or alleviation of any existing or actual or potential future transmission constraints affecting the transportation, transmission or distribution of electric power:

- (a) Within the Duke system;
- (b) Between the Duke system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which Duke or its service territory is or is proposed to be a part; and
- (c) Between or among different NERC Regional Councils.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

29. Produce all documents referring to or comprising any Forecast identified in response to Interrogatory No. 25 including (but not limited to) all documents referring to the methodologies identified in response to Interrogatory No. 26.

Response:

Subject to the objections set forth in response to Interrogatory Nos. 25 and 26, Duke states that it will produce materials responsive to the Requests.

30. Produce all documents referring to any of the following subjects:
- (a) The reasonableness of the level of the rates charged by CSXT for the transportation of coal to Cliffside, Lee, Marshall and Riverbend;
 - (b) The impact of the level of the rates charged by CSXT for the transportation of coal to the Cliffside, Lee, Marshall and Riverbend on the volume of electricity output generated at any unit, plant or facility included in or comprising Cliffside, Lee, Marshall or Riverbend; and
 - (c) The effect that actual or hypothetical changes in the level of the rates charged by CSXT for the transportation of coal to Cliffside, Lee, Marshall or Riverbend might or would have on:
 - (1) The volume of electricity output generated at any unit, plant or facility included in or comprising Cliffside, Lee, Marshall and Riverbend;
 - (2) The relative dispatch priority of Cliffside, Lee, Marshall and Riverbend within the Duke electric generating systems;
 - (3) The amount and type of electricity output that could be sold, exchanged or transferred by Duke to third parties and the amount of revenue or profit potentially earned from such power transactions; and
 - (4) The feasibility, costs and benefits of reducing the level of electricity produced at any unit, plant or facility included in or comprising Cliffside, Lee, Marshall and Riverbend and of closing or shutting down power generation activities at any such unit, plant or facility on a temporary or permanent basis.

Response:

Duke objects to this Request on grounds of relevance and burden to the extent that it seeks documents regarding Marshall (*see* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition)), and with respect to the substance of subparts (b) and (c). *See* General Objection No. 1 (regarding product and/or geographic competition).

Without waiving these objections, Duke states as to subpart (a) that no non-privileged, responsive documents exist regarding rates for service to the issue plants.

31. Produce (in computer-readable format to the extent available) any computer model, computer program, software or other system, maintained and/or used by or for Duke during the period January 1, 1999 to the present, or that was or could be used to forecast, project or estimate:

- (a) The costs of transporting coal or other fuels to any Duke Plant;
- (b) The delivered costs of obtaining coal or other fuels for use at any Duke Plant;
- (c) The electric power generating capacity of Duke or of any electric power generating unit, plant or facility (referred to herein as "unit") included in or comprising any Duke Plant by calendar month, year or other time period;
- (d) The total net generation (in kilowatt hours) of electric power of electricity generators or producers, Duke or any unit by calendar month, year or other time period;
- (e) The Capacity Factor of electricity generators or producers, Duke or any unit by calendar month, year or other time period;
- (f) The native or jurisdictional load requirements or commitments (in kilowatt hours) of electricity generators or producers, Duke or any unit by calendar month, year or other time period;
- (g) The volume of demand for electric power produced or sold by electricity generators or producers, power marketers, Duke or any unit by calendar month, year or other time period;
- (h) The volume of sales (in dollars) of electric power produced or sold by electricity generators or producers, power marketers, Duke or any unit by calendar month, year or other time period;
- (i) The level of the prices of electric power available for purchase or sale in the wholesale electricity market by electricity generators or producers, power marketers, Duke or any unit by calendar month, year or other time period;

- (j) The location, amount and duration of any transmission constraints affecting or potentially affecting the transportation, transmission or distribution of electric power;
- (k) The volume or amount of each type of fuel to be burned or used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (l) The number of tons of coal to be burned or used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (m) The number of tons of coal to be purchased or acquired by electricity generators, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (n) The price or cost of coal to be purchased or used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (o) The level of prices of coal that could be used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (p) The number of tons of coal to be transported by rail by, for or to electricity generators or producers, Duke or any unit by calendar month, year or other time period;
- (q) The level of railroad rates for the transportation of coal that could be used by electricity generators or producers, Duke or any unit for purposes of generating electric power by calendar month, year or other time period;
- (r) The level or rate of change in the Rail Cost Adjustment Factor (with or without an adjustment for railroad productivity) published by the STB, or any other measure of the level or rate of change in the costs of providing rail freight transportation services, by calendar month, year or other time period; and
- (s) The level or rate of change in the Consumer Price Index, the Producer Price Index, the Gross Domestic Product-Implicit Price Deflator, or any other measure of inflation or rate of change in the level of prices, by calendar month, year or other time period.

Response:

Duke objects to subparts (b) (as to all fuel except coal), (c) - (j), (n), and (o) on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks documents regarding plants other than those at issue in this case (*see* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition)). Finally, Duke objects to this Request to the extent that it seeks documents that are subject to licensing restrictions, and objects to this Request as vague and ambiguous in its use of the term "other system."

32. Produce all documents (including, but not limited to, all data inputs, all data runs, all intermediate and final output and results) referring to any application or use by Duke, during the period from January 1, 1999 to the present, of any computer model, computer program, software or other system identified in Document Request No. 31.

Response:

See Response to Request No. 31. Without waiving the objections set forth therein, Duke states that the documents that it references in General Objection No. 1 reflect Duke's formal forecasts of many, if not all, of the topics listed in Request No. 31. In addition, Duke states that it will produce documents containing forecasts of the nature sought in subparts (r) and (s) of Request No. 31 to the extent that such documents can be identified and produced without undue burden.

33. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to any of the following subjects:

- (a) The wholesale market for the purchase and/or sale of electric power;
- (b) Competition for the purchase and/or sale of electric power in the wholesale market;
- (c) Duke's actual or potential expenses, revenues or profits from the purchase and/or sale of electric power in the wholesale market; and
- (d) Any of the subjects identified in Document Request No. 31(a) through No. 31(s).

Response:

Duke objects to subparts (a), (b), and (c) of this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that documents responsive to subparts (a), (b) and (c) of this Request may be included within the documents that Duke references in General Objection No. 1.

Duke objects to subpart (d) of this Request for the reasons set forth in response to Request No. 31. In addition, Duke objects to subpart (d) of this Request on grounds of burden to the extent that it seeks production of "all workpapers and other supporting documents and data (including machine-readable data)," since this material is likely to be duplicative of the requested studies or analyses and unlikely to yield additional relevant information. Without waiving these objections, Duke refers CSXT to Duke's response to Request No. 32.

34. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to the impact or potential impact of (i) Duke's compliance with the Amended Clean Air Act or any other existing or proposed law or regulation restricting emissions from electric generating facilities, (ii)

deregulation of the electric utility industry and/or (iii) the introduction of competition in the generation and sales of electric power on any of the following:

- (a) Duke;
- (b) Any Duke Plant;
- (c) The volume or amount of electric power generated or produced at any Duke Plant;
- (d) The volume or amount of electric power sold by Duke to persons other than Duke's retail electric power customers;
- (e) The revenues or profits earned by Duke from the sale of electric power to persons other than Duke's retail electric power customers;
- (f) The volume or amount of coal burned or used at any Duke Plant;
- (g) The relative cost to generate or produce electric power at any Duke Plant as compared with the generation or production costs of electric power producers or sellers other than Duke;
- (h) The relative cost to generate or produce electric power at any Duke Plant as compared with the cost of purchasing or acquiring electric power from producers or sellers other than Duke; and
- (i) Duke's ability or potential ability to compete for present or future sales of electric power with electric power producers or sellers other than Duke.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

35. Produce all documents governing or referring to the authority or participation of Duke Energy Corporation in negotiating or arranging the procure-

ment of fuel and/or fuel transportation for any Duke Plant (including, without limitation, any Duke Plant owned by Duke Power Company or Duke/Fluor Daniel).

Response:

Duke objects to this Request on grounds of relevance. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition).

36. Produce all documents referring to any proposed, planned, contemplated or possible transaction involving any of the following:

- (a) The sale or transfer by Duke of the ownership and/or operation of any Duke Plant to any other entity (including shareholders of any affiliate of Duke)
- (b) The purchase by Duke of the ownership and/or operation of any electric generating plant or facility from any other entity;
- (c) The acquisition by Duke of any person that engages in the generation, sale or distribution of electric power; and
- (d) The merger or consolidation of Duke with any person that engages in the generation, sale or distribution of electric power.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that it will produce responsive documents, if any exist and can be identified and produced without undue burden, regarding the sale or transfer by Duke of any of the issue plants or the Marshall plant.

37. For each employment of a consultant, expert or research firm identified in response to Interrogatory No. 27, produce the following:

- (a) All documents prepared by such consultant, expert or research firm in connection with such employment; and
- (b) All documents containing communications between Duke and such consultant, expert or research firm in connection with such employment.

Response:

No consultants, experts, or research firms were identified in response to Interrogatory No. 27.

38. Produce each Integrated Resource Plan or other similar report or study prepared by or for Duke during the period January 1, 1999 to the present, including all underlying supporting materials and workpapers.

Response:

Duke objects to this Request on grounds of relevance. *See* General Objection No. 1 (regarding product and/or geographic competition). In addition, Duke objects to this Request as vague and ambiguous in its use of the phrase "similar report." Finally, Duke objects to this Request on grounds of burden to the extent that it seeks production of "all underlying supporting materials and workpapers."

Without waiving these objections, Duke states that it will produce its most recent Integrated Resource Plan and will produce the Short-Term Action Plans that it now prepares in lieu of an Integrated Resource Plan. As indicated in General Objection No. 1, Duke will also produce its "Annual Plans," which may be "similar" to its Integrated Resource Plan. Finally, Duke's willingness to produce its pre-January 1, 1999 Integrated Resource Plan should not be interpreted as a waiver of Duke's objection to producing documents created before that date.

39. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to any of the following:

- (a) Duke's fuel management, fuel procurement and/or fuel transportation functions;
- (b) Duke's compliance with the Amended Clean Air Act or any other existing or proposed law or regulation restricting emissions from electric generating facilities at any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Duke; and
- (c) Duke's preparations for or compliance with deregulation of the electric utility industry and/or the introduction of competition in the generation and sales of electric power.

Response:

Duke objects to subpart (a) of this Request on grounds of relevance and burden to the extent that it seeks information regarding fuels other than coal, and to the extent that it seeks production of "all workpapers and other supporting documents and data (including machine-readable data)." Without waiving these objections, Duke states that it will produce documents, if any exist and can be identified and produced without undue burden, that are responsive to subpart (a) of this Request.

Duke objects to subparts (b) and (c) of this Request on grounds of relevance and burden. See General Objection No. 1 (regarding product and/or geographic competition).

Without waiving these objections, Duke states that documents responsive to subparts (b) and (c) of this Request may be included within the documents that Duke references in General Objection No. 1.

40. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to transmission constraints or limitations on transmission capacity affecting the transportation, transmission or distribution of electric power:

- (a) Within the Duke system;
- (b) Between the Duke system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which Duke or its service territory is or is proposed to be a part; and
- (c) Between or among different NERC Regional Councils.

Response:

By letter dated January 18, 2002, NS withdrew this Request.

41. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by Duke (or by any person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to the removal or alleviation of transmission constraints relevant to the movement of power:

- (a) Within the Duke system;
- (b) Between the Duke system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which Duke or its service territory is or is proposed to be a part; and
- (c) Between or among different NERC Regional Councils.

Response:

By letter dated January 18, 2002, NS withdrew this Request.

42. Produce each monthly Form 423 ("Monthly Report of Cost and Quality of Fuels for Electric Plants") filed with the FERC during the period from January 1, 1999 to the present and relating to any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Duke.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks documents related to Duke plants that CSXT does not serve. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Request to the extent that it seeks information regarding fuel other than coal. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request on grounds that the information sought is readily available to CSXT from public sources. Without waiving these objections, Duke states that it will produce the requested documents.

43. Produce each separate response to interrogatories provided by Duke to the FERC under Docket No. IN79-6 (Fuel and Energy Purchase Practices pursuant to Section 205(f)(2) of the Federal Power Act) during the period from January 1, 1999 to the present.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks documents related to Duke plants that CSXT does not serve. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Request to the extent that it seeks information regarding fuel other than coal. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that it will produce its most recent FERC Form 580.

44. To the extent not otherwise provided in response to any other Document Request, produce, for the period from January 1, 1999 to the present, each official form periodically filed by Duke with state regulatory commissions or agencies having jurisdiction to regulate the generation, sale and distribution of electric power and containing data (including volume and cost) on coal procurement for, or coal transportation of coal consumed or projected to be consumed at, any Duke Plant (including Cliffside, Lee, Marshall and Riverbend).

Response:

Duke objects to this Request to the extent that it seeks documents regarding origins and/or destinations that are not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Moreover, Duke objects to this Request on grounds of confidentiality in that it seeks information regarding Duke's coal and coal transportation expenditures. Duke also objects to this Request on grounds of burden in that volume and delivered cost information regarding coal consumed at the issue plants exists in Duke's FERC Form 423's. Without waiving these objections, Duke states that it will produce responsive documents regarding the issue plants and the Marshall plant, to the extent that such documents can be identified and produced without undue burden (or the violation of a confidentiality restriction with a third party).

45. Produce all studies, reports or other documents identified in response to Interrogatory No. 29, as well as the workpapers and explanation of procedures relating to such studies, reports or other documents.

Response:

Duke objects on grounds of burden and relevance to producing "the workpapers and explanation of procedures relating to such studies, reports or other documents." Without

waiving these objections, Duke states that it will produce the requested studies, to the extent that such documents can be identified and produced without undue burden.

46. Produce documents sufficient to identify the dates, from January 1, 1999 to the present, on which coal unloading operations at any Duke Plant (including Cliffside, Lee, Marshall and Riverbend) were suspended because of employee vacations or holidays or for any reason and, in the case of each such suspension, the duration and reason for such suspension.

Response:

Duke will produce responsive documents regarding the issue plants and the Marshall plant, to the extent that such documents can be identified and produced without undue burden.

47. Produce documents sufficient to identify the incidence or frequency of coal unloading operations on weekends at any Duke Plant (including Cliffside, Lee, Marshall and Riverbend) during the period from January 1, 1999 to the present.

Response:

See Response to Request No. 46.

48. Produce documents sufficient to identify the dates, from January 1, 1999 to the present, on which coal unloading operations at any Duke Plant (including Cliffside, Lee, Marshall and Riverbend) could not be carried out continuously on a 24-hour per day basis and, in the case of each such instance, the duration and reason for such failure to carry out coal unloading operations continuously on a 24-hour per day basis.

Response:

See Response to Request No. 46.

49. Produce all mine loading permits relating to any shipment of coal between any mine origin or source, on the one hand, and Cliffside, Lee, Marshall

and Riverbend, on the other hand, during the period from January 1, 1999 to the present, and all documents referring to any change in such mine loading permits (including changes in scheduled loading date or destination of the shipment) and the nature of and reasons for any such change.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks documents regarding coal to be delivered to Marshall by NS. Duke also objects to this Request on grounds of burden in that it seeks production of a large number of routine, transactional documents which, to the extent that they are relevant, merely include information that is already in CSXT's possession by virtue of the fact that CSXT has transported all of Duke's relevant coal. Without waiving these objections, Duke states that it will produce documents containing information regarding coal transported by CSXT for the period of time from January 1, 2002 to the present, to the extent that such documents can be identified and produced without undue burden.

50. Produce all documents in Duke's possession, custody or control, at any time during the period from January 1, 1999 to the present (including, without limitation, documents containing communications between Duke and any coal mine operator or coal supplier), referring to any of the following:

- (a) The extent to which coal loading operations at any origin or source that supplies coal to Cliffside, Lee, Marshall or Riverbend are or could be carried out on particular days of the week (including weekends and holidays);
- (b) The extent to which coal loading operations at any origin or source that supplies coal to Cliffside, Lee, Marshall or Riverbend are or could be carried out during particular hours of the day;
- (c) The extent to which coal unloading operations at Cliffside, Lee, Marshall or Riverbend are or could be carried out on particular days of the week (including weekends and holidays); and

- (d) The extent to which coal unloading operations at Cliffside, Lee, Marshall or Riverbend are or could be carried out on particular hours of the day.

Response:

Duke objects to this Request on grounds of burden to the extent that potentially responsive documents could be found in routine correspondence between: (i) Duke and a large number of third party coal suppliers; or (ii) a number of different individuals at Duke, over a three-year period. Without waiving these objections, Duke states that it will produce documents that set forth formal policies with respect to loading or unloading operations, to the extent that such documents can be identified and produced without undue burden.

51. Produce all documents referring to, or sufficient to identify, the following:

- (a) The extent to which railroad cars carrying coal traffic to any Duke Plant (including Cliffside, Lee, Marshall or Riverbend) have been or are loaded to their full physical capacity; and
- (b) The average load of coal per railroad car carrying coal traffic to any Duke Plant (including Cliffside, Lee, Marshall and Riverbend).

Response:

See Response to Request No. 49.

52. Produce documents identifying, or that could be used to identify, for each railroad freight car used for the shipment of coal between any mine or source (hereinafter referred to as "Origin"), on the one hand, and Cliffside, Lee, Marshall or Riverbend (hereinafter referred to as "Destination"), on the other hand, from January 1, 1999 to the present, the following:

- (a) The name and location (city and state) of the Origin from which the shipment originated;
- (b) The name and location (city and state) of the Destination at which the shipment was delivered;

- (c) The date and time when the empty rail car used for the shipment was placed at the Origin and made available by the serving railroad for loading;
- (d) The date and time when loading of the rail car used for the shipment was completed at the Origin and the loaded car was made available to the serving railroad for movement to Destination;
- (e) The date and time when, if at all, the loaded rail car used for the shipment was interchanged or transferred to another railroad at an intermediate point between Origin and Destination;
- (f) The date and time when the loaded rail car used for the shipment was placed at the Destination and made available by the serving railroad for unloading;
- (g) The date and time when the rail car used for the shipment, after unloading at the Destination, was made available to the serving railroad for movement to the same or a different Destination; and
- (h) The date and time when the rail car used for the shipment was placed at the same or a different Destination for reloading.

Response:

See Response to Request No. 49.

53. Produce documents identifying, or that could be used to identify, for each shipment of coal between any mine or source (hereinafter referred to as "Origin"), on the one hand, and Cliffside, Lee, Marshall or Riverbend (hereinafter referred to as "Destination"), on the other hand, from January 1, 1999 to the present, the following:

- (a) The loaded transit time between each Origin and Destination;
- (b) The empty transit time between each Origin and Destination;
- (c) The round-trip transit time between each Origin and Destination;
- (d) The train cycle time for each shipment;
- (e) The freight car cycle time for each shipment; and
- (f) The locomotive cycle time for each shipment.

Response:

See Response to Request No. 49.

54. Produce documents identifying, or that could be used to identify, for each mine or source (hereinafter referred to as "Origin") that supplied coal to any Duke Plant from January 1, 1999 to the present or that could in the future be used to supply any Duke Plant, the following:

- (a) The name and location (city and state) of the Origin;
- (b) The track capacity in feet at each mine or source;
- (c) Schematics showing the trackage configuration at each mine with both the track that CSXT owns (or jointly owns) and the mine-owned track clearly identified;
- (d) Annual weeks, days per week, and hours per day, of mine coal loadout operation;
- (e) Average tons per car loaded; and
- (f) Loading capacity (tons per hour).

Response:

Duke objects to this Request on grounds of relevance and burden to the extent that it seeks information about coal movements between origins and destinations that are not at issue in this case. *See General Objection No. 10* (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that it will produce documents containing responsive information regarding coal that was or could be burned at any of the issue plants or the Marshall plant, to the extent that such documents can be identified and produced without undue burden.

55. Produce documents identifying, or that could be used to identify, for each Duke Plant (hereinafter referred to as "Destination") that received coal from January 1, 1999 to the present, the following:

- (a) The name and location (city and state) of the Destination;
- (b) The track capacity in feet at each Destination;
- (c) Schematics showing the trackage configuration at each Destination with both the track that CSXT owns (or jointly owns) and the track not owned (or jointly owned) by CSXT clearly identified;
- (d) Annual weeks, days per week, and hours per day, of coal unloading operations;
- (e) Average tons per car unloaded; and
- (f) Unloading capacity (tons per hour).

Response:

Duke objects to this Request on grounds of relevance and burden to the extent that it seeks documents regarding Duke plants not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that it will produce documents sufficient to show the information sought in this Request as to the issue plants and the Marshall plant, to the extent that such documents can be identified and produced without undue burden.

56. Produce all documents referring to any sale or acquisition of land (improved or unimproved) completed by Duke in the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Kentucky or Tennessee during the period from January 1, 1999 to the present including (but not limited to) documents showing the location of the parcel, size of the parcel, sale or acquisition price, a description of any improvements to the parcel, date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

Response:

Duke objects to this Request on grounds of relevance and burden to the extent that it seeks information regarding: (i) sales or acquisitions of land that is improved; (ii) sales or acquisitions of land by entities other than Duke Power; (iii) improvements to individual parcels; and (iv) characteristics of individual parcels. Without waiving these objections, Duke states that it will produce documents regarding Duke Power's sales and/or acquisitions of unimproved land in the listed states, to the extent that such documents can be identified and produced without undue burden.

57. Produce all appraisals prepared by or for Duke, or in Duke's possession, custody or control, at any time during the period from January 1, 1999 to the present, for any real estate parcels located in the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Kentucky or Tennessee.

Response:

Duke objects to this Request on grounds of relevance and burden to the extent that it seeks information regarding: (i) appraisals of land that is improved; and (ii) appraisals of land by or for any entity other than Duke Power. Without waiving these objections, Duke states that it will produce appraisals performed by or for Duke Power with respect to unimproved land in the listed states, to the extent that such appraisals can be identified and produced without undue burden.

58. Produce, to the extent not produced in response to any Document Request, all documents consulted or used in preparing Duke's response to any Interrogatory.

Response:

Duke will produce responsive, non-privileged documents to the extent that they can be identified and produced without undue burden or the violation of a confidentiality and/or licensing restriction with a third party.

DUKE ENERGY CORPORATION

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Dated: February 19, 2002

Attorneys for Complainant

DUKE ENERGY CORPORATION,
Complainant,
v.
CSX TRANSPORTATION, INC.
Defendant.

Complainant Duke Energy Corporation ("Duke"), pursuant to 49 C.F.R. Part 1114, hereby responds to the Second Set of Interrogatories and Requests for Production of Documents (the "Requests") served by CSX Transportation, Inc. ("CSXT") on February 14, 2002.

In addition to the Specific Objections raised below, Duke hereby incorporates the General Objections set forth in Duke's February 19, 2002 Responses and Objections to Defendant's First Set of Interrogatories and Requests for Production of Documents, and makes the additional following General Objections:

18. Response Deadline. Duke objects to the 15-day response deadline set forth in the Requests as unreasonable and unduly burdensome in light of the volume and

complexity of the information and documents requested by CSXT. Duke's search for responsive documents and information is ongoing, and such materials (if otherwise not subject to an objection) will be produced as expeditiously as reasonably possible under the circumstances.

Duke's following Specific Objections and Responses to CSXT's Requests are subject to and without waiver of the foregoing General Objections.

A. INTERROGATORIES

Interrogatory No. 37: Identify any constraints (legal or otherwise) that prevent Duke from recovering from its electricity ratepayers (wholesale or retail) any portion of the costs of transporting coal by rail to any coal-fired Duke Plant, including increases in such costs of rail transportation.

Response:

Duke objects to this Interrogatory on grounds of relevance and burden both as to its substance and to the extent that it seeks information regarding the cost of transporting coal to plants other than the issue plants.

Interrogatory No. 38: Identify, for each calendar year from January 1, 1999 to the present, the amount of any coal transportation costs that Duke did not recover from its electricity ratepayers (wholesale or retail), the reasons for such failure to recover such costs, and the circumstances of such failure.

Response:

Duke objects to this Interrogatory on grounds of relevance both as to its substance and to the extent that it seeks information regarding the cost of transporting coal to plants other than the issue plants.

Interrogatory No. 39: State whether Duke has, at any time since January 1, 1999, considered or discussed (or participated in discussions, presentations or

proposals relating to) the possibility of selling coal, or assigning any of Duke's rights under any of its coal supply contracts, to any other electric power generator. If the answer to this Interrogatory is anything other than an unqualified "no," identify separately for each such instance the following:

- (a) The power generator or other person involved in the consideration or discussion;
- (b) Whether the consideration or discussion involved a sale of coal, an assignment of coal supply contract rights, or both;
- (c) The amount or volume of coal tonnage involved in the consideration or discussion and the source of such coal;
- (d) The means used or proposed to be used for the transportation of the subject coal involved in the consideration or discussion, and who would bear the cost;
- (e) The origins and destinations of any coal shipments involved in the consideration or discussion;
- (f) Each communication referring to the consideration or discussion;
- (g) Each person that participated in any communication referring to the consideration or discussion;
- (h) The terms offered or considered for the sale or assignment involved in the consideration or discussion, and for any related transportation services; and
- (i) Whether Duke entered into any agreement with any third party to sell coal, or to assign any of Duke's rights under any of its coal supply contracts.

Response:

Duke objects to this Interrogatory on grounds of relevance both with respect to its substance and to the extent that it seeks information regarding coal that, even in the absence of the potential sale or assignment to a third party, would be consumed at plants other than the issue plants. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition).

Without waiving these objections, Duke states that it will produce documents containing information that is responsive to this Interrogatory regarding the sale or potential sale of coal intended for use at any of Duke's coal-fired plants, to the extent that such documents can be identified and produced without undue burden.

B. DOCUMENT PRODUCTION REQUESTS

59. Produce all documents referring to Duke's ability or right to recover from its electricity ratepayers (wholesale or retail) any portion of the costs of transporting coal by rail to any coal-fired Duke Plant, including increases in such costs of transportation.

Response:

Duke objects to this Request on grounds of relevance both as to its substance and to the extent that it seeks information regarding the cost of transporting coal to plants other than the issue plants.

60. Unless otherwise produced in response to Document Request No. 17, produce all documents comprising or referring to Duke's current policies and procedures for procurement of coal transportation.

Response:

See Response to Request No. 17. Without waiving the objections set forth therein, Duke states that it will produce formal statements of its policies and procedures for the procurement of coal transportation (if any exist), to the extent that such statements can be identified and produced without undue burden.

61. Produce all documents referring to any rail transportation contract negotiations (including negotiations involving supplements or amendments to existing contracts) between Duke and any rail carrier since January 1, 1990, in which Duke either proposed, discussed or considered alternative rate terms based

on the inclusion or exclusion of coal shipments to Duke's Marshall Plant from the contract.

Response:

Duke objects to this Request on grounds of relevance to the extent that it seeks information regarding service to plants other than the issue plants (see General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition)). Duke also objects to this Request to the extent that it seeks the production of documents that are subject to confidentiality restrictions with third parties. Finally, Duke objects to this Request on grounds of burden to the extent that it seeks information for a more than twelve year period, and to the extent that it seeks information regarding contract negotiations that: (a) were between Duke and CSXT; and/or (b) have already resulted in a currently effective or expired contract. Without waiving these objections, Duke states that it would not object to the entry of any order by the Board compelling the production of the requested materials.

62. Produce all documents referring to any instance in which Duke has, in any rail transportation contract negotiations (including negotiations involving supplements or amendments to existing contracts) between Duke and any rail carrier since January 1, 1990, proposed, discussed or considered "bundling" of shipments to multiple coal-fired Duke Plants. For purposes of this Document Request, the term "bundling" means to propose, discuss or consider rates based on the tender of traffic to multiple Duke Plants (rather than plant-specific rates from a single origination point to a single destination point without regard to volume tendered for shipment to/from other origin or destination points).

Response:

See Response to Request No. 61.

63. Produce each study or analysis (including, but not limited to, strategic studies or plans, long-range planning studies or plans, analyses of options, management audit studies or reports and testimony), and all work papers and other supporting documents and data (including machine-readable data), prepared by Duke (or by person retained or employed by Duke) during the time period from January 1, 1999 to the present, referring to the possibility of obtaining coal for any Duke Plant from any mine or source that did not at that time supply coal to that particular Duke Plant.

Response:

Duke objects to this Request on grounds of relevance. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding coal purchased or to be purchased from origins not at issue in this case and/or coal used or to be used at locations other than the issue plants. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Finally, Duke objects to this Request to the extent that it seeks the production of documents which contain information that is subject to confidentiality restrictions with third parties (i.e., coal suppliers and/or coal transporters). Without waiving these objections, Duke states that it will produce responsive studies or analyses of the possibility of obtaining coal for any Duke plant from any mine or source that did not at that time supply coal to that particular Duke plant, to the extent that such documents can be identified and produced without undue burden, and to the extent that such documents can be produced without violating any confidentiality restrictions with third parties.

64. Produce all documents referring to the possibility of replacing the coal currently being consumed at any coal-fired Duke Plant with coal having different coal quality specifications or coal supplied from any alternative source.

Response:

See Response to Request No. 63.

65. Produce all documents referring to competition that coal-fired electricity generation of Duke faces or could in the future face from gas-fired electric generating facilities for the production and sale of electricity at the retail or wholesale level including, but not limited to, wholesale customers producing their own electricity using gas-fired electric generating facilities.

Response:

Duke objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition). Duke also objects to this Request on grounds of relevance to the extent that it seeks information regarding coal and other fuels consumed at plants other than the issue plants, including other plants not owned or operated by Duke.

66. Produce any study or analysis (including, but not limited to, strategic, long-range planning studies or plans, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony) prepared by Duke (or by any person retained or employed by Duke) during the period January 1, 1999 to the present, referring to the actual, anticipated or projected share, in future electricity generation distributed to Duke's customers or through power sales by Duke, of the following means of electricity generation:

- (a) Nuclear;
- (b) Coal-fired;
- (c) Conventional hydro;
- (d) Oil-fired;
- (e) Gas-fired;

- (f) Petroleum coke; and
- (g) Pumped storage hydro.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding the use of coal from origins not at issue in this case at plants not at issue in this case. *See* General Objection No.1 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that the documents referenced in General Objection No. 1 (and other documents that Duke has produced or will produce in this case) include responsive information regarding Duke's historic and anticipated mix of generating resources.

67. Unless otherwise produced in response to Document Request Nos. 34 or 39, produce all documents, created at any time from January 1, 1999 to the present, referring to any actual or potential impact on the costs of operating any coal-fired Duke Plant resulting from actual or proposed changes in government laws or regulations including, but not limited to:

- (a) The Clean Air Act Amendments of 1990;
- (b) The October 1998 Environmental Protection Agency ("EPA") rule in regional ozone control;
- (c) The January 2000 EPA rule on emission control;
- (d) The Kyoto Protocol of 1997 and subsequent developments related to the initial Protocol; and
- (e) Modifications planned, assumed or considered by Duke in response to the lawsuit filed by the U.S. Department of Justice identified in Document Request No. 68.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding the cost of operating coal-fired plants other than the issue plants. Without waiving these objections, Duke states that documents responsive to this Request may be included within the documents that Duke references in General Objection No. 1.

68. Produce all documents referring to the 29 projects performed at 25 of Duke's coal-fired electric generating units that the U.S. Justice Department on behalf of the EPA has claimed were major modifications under the Clean Air Act including, but not limited to, documents referring to any of the following:

- (a) The nature of the projects;
- (b) The nature of the allegations made by the U.S. Justice Department regarding the modifications;
- (c) The costs of installing additional emission controls that the U.S. Justice Department is seeking to require Duke to implement; and
- (d) The impact on Duke's electricity generation should the relief requested by the U.S. Justice Department be granted.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding coal-fired plants other than the issue plants.

69. Produce all documents, created at any time from January 1, 1999 to the present, referring to actual or proposed coal tolling arrangements, including documents referring to and sufficient to identify any of the following:

- (a) Duke's coal tolling policies and criteria for engaging in coal tolling;
- (b) Duke's filings and communications with state utility regulatory commissions or agencies in North Carolina and South Carolina regarding coal tolling;
- (c) Duke's analysis of coal tolling economics;
- (d) Duke's coal tolling customers, including markets and other intermediates including Duke affiliates;
- (e) Duke's coal tolling accounting policies; and
- (f) The accounting basis for Duke's FERC Form 1 coal tolling entries.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding plants other than the issue plants. Finally, Duke objects to this Request to the extent that it seeks the production of documents containing information that is subject to confidentiality restrictions with third parties. Without waiving these objections, Duke states that it will produce documents containing responsive information regarding each of Duke's coal-fired plants, to the extent that such documents can be identified and produced without undue burden, and to the extent that such documents can be produced without violating confidentiality restrictions with third parties.

70. Produce documents sufficient to identify separately, for the period from January 1, 1999 to the present, the monthly and annual fuel and purchased power costs that were (a) incurred by Duke and (b) incurred by Duke and recov-

ered by Duke in its rates for its jurisdictional electricity customers in North Carolina and South Carolina.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that information responsive to this Request may be included within the documents that Duke references in General Objection No. 1 and/or Duke's FERC Form 423 Reports.

71. Produce documents sufficient to identify, for the period from January 1, 1999 to the present, and separately for each coal-fired Duke Plant and each state in which Duke conducts electric generation and sales operations, (a) Duke's actual coal inventory levels and costs by year and (b) Duke's coal inventory levels and costs authorized by state regulatory agencies for recovery of costs through rates charged to Duke's jurisdictional electricity customers.

Response:

Duke objects to this Request on grounds of relevance and burden, both to the extent that it seeks information regarding plants not at issue in this case (*see* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition)) and with respect to the substance of the information sought. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, Duke states that it will produce documents containing information regarding Duke's actual and authorized coal inventory levels (for each of its coal-fired plants) to the extent that such documents can be identified and produced without undue burden.

72. Produce any study or analysis (including, but not limited to, strategic, long-range planning studies or plans, feasibility studies, technical

analyses, analyses of options, management audit studies or reports and testimony) prepared by Duke (or by any person retained or employed by Duke) referring to the 2001 North Carolina legislative proposals and Duke's analysis of and position(s) thereon that would have provided for Duke's recovery of its investment in environmental upgrades at its coal-fired plants.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding fuel use at coal-fired plants other than the issue plants.

73. For each coal-fired Duke Plant, the Duke system and all Duke entities, produce the following documents regarding coal-based synthetic fuel (synfuel):

- (a) Studies on the use of synfuel;
- (b) Environmental applications and modifications required to use synfuel;
- (c) Studies on participation in synfuel projects;
- (d) Studies on the tax benefits of synfuel use and production by Duke; and
- (e) Communications with DTE regarding DTE's proposed synfuel project at any Duke Plant or any other plant.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding plants other than the issue plants. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Finally, Duke objects to this Request to the extent that it seeks the production of documents

containing information that is subject to confidentiality restrictions with third parties. Without waiving these objections, Duke states that it will produce documents containing responsive information regarding each of Duke's coal-fired plants, to the extent that such documents can be identified and produced without undue burden, and to the extent that such documents can be produced without violating confidentiality restrictions with third parties.

74. Produce all documents created or in Duke's possession, custody or control at any time during the period from January 1, 1999 to the present referring to the transmission capability of the VACAR grid to move power from and to Duke's service territory, including studies of the transmission ability to move power from new power generators owned by Duke and the others to Duke's service territory.

Response:

Duke objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition).

75. Produce all documents referring to interconnection studies and requests for interconnections for new electric generators to Duke's system.

Response:

Duke objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition).

76. Produce all documents, created during the period from January 1, 1999 to the present, that refer, in connection with Duke's consideration of participation in any proposed Regional Transmission Organization ("RTO") (including, without limitation, the Grid South RTO), to any of the following:

- (a) The utilization of Duke's coal-fired electric generating units for service to Duke's customers;

- (b) The sale of electric power produced at any coal-fired Duke Plant to non-jurisdictional customers; and
- (c) The availability of purchased power to Duke's system.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition).

77. Produce all documents referring to the possibility that any Duke Plant could utilize petroleum coke or coals obtained from (a) overseas, (b) Northern Appalachia or (c) the Powder River Basin.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Duke also objects to this Request to the extent that it seeks information regarding coal origins and/or coal-fired plants not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Finally, Duke objects to this Request to the extent that it seeks documents containing information that is subject to confidentiality restrictions with third parties. Without waiving these objections, Duke states that it will produce documents containing information that is responsive to this Request regarding the use of coal or petroleum coke from any of the listed origins at any of Duke's coal-fired plants, to the extent that such documents can be identified and produced without undue burden, and to the extent that such documents can be produced without violating confidentiality restrictions with third parties.

78. For Central Appalachian coal origins, produce any studies or analyses of:

- (a) Shifts in coal origin districts;
- (b) Reserve availability and depletion;
- (c) Coal suitability including, but not limited to, sulfur, ash, and ash fusion; and
- (d) The effects of environmental, mining and trucking restrictions on Central Appalachian coal availability and reserves.

Response:

Duke objects to subparts (a) and (d) of this Request as vague and ambiguous.

Duke also objects to this Request to the extent that it seeks information regarding coal origins and/or coal-fired plants not at issue in this case. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that it will produce studies or analyses containing information that is responsive to subparts (b) and (c) of this Request, to the extent that such documents can be identified and produced without undue burden.

79. Produce any study or analysis, and any document, referring to investments or potential investments by Duke or others for Duke in coal mines, coal docks, or any coal transportation facility (other than rail cars).

Response:

Duke objects to this Request on grounds of relevance and to the extent that it seeks information regarding coal use at plants other than the issue plants. *See* General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Duke also objects to this Request as duplicative of prior Requests in this case to the extent that it seeks information

regarding the development of rail spurs. Without waiving these objections, Duke states that it will produce responsive documents, to the extent that such documents can be identified and produced without undue burden.

80. Produce Duke's responses from 1999 to 2001 to NERC's generating availability data system (GADS) for each Duke Plant.

Response:

Duke objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 10 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, Duke states that it will produce its responses from 1999 to 2001 to NERC's generating availability data system for each of Duke's coal-fired units.

81. Produce all documents referring to (a) any communications between Duke, on the one hand, and any federal, state or local governmental agency, department or public official, on the other hand, concerning Duke's Complaint and/or the level of CSXT's rates for the transportation of coal to any Duke Plant, or (b) the effect or potential impact of the STB's resolution of Duke's Complaint on any federal, state or local regulation of Duke's business or operations.

Response:

Duke objects to this Request on grounds of relevance.

DUKE ENERGY CORPORATION

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Dated: March 1, 2002

Attorneys for Complainant

Summary of the NC Clean Smokestacks Bill

Bill Title: Improve Air Quality /Electric Utilities; SB 1078, HB 1015

~~Summary of the Clean Smokestacks Bill~~

On Monday April 23, the North Carolina Senate passed the North Carolina Clean Smokestacks Bill with an overwhelming 43 – 5 vote. The NC House of Representatives is currently considering an identical bill where it has over 50 co-sponsors and bipartisan support. Governor Easley has also indicated his support for the bill. The utilities, Duke Energy and Progress, Energy stated that they can and will meet the reductions called for in the bill.

The Clean Smokestacks bill would do the following:

- ♦ **NOx Cap.** Set a statewide cap to reduce NOx emissions year-round by 78% from 1998 levels. This cap essentially extends the NOx SIP call requirements year-round. The reduction would be phased in by 2009.
- ♦ **SO2 Cap.** Set a statewide cap to reduce SO2 emissions by 73% from 1998 levels. The reduction would be phased in by 2013.
- ♦ **Additional NOx and SO2 Reductions.** Direct the Environmental Management Commission, the state's rule-making body, to evaluate annually beginning in 2004, the need for further reductions of these pollutants.
- ♦ **Other States.** Direct the state to use its resources to compel other states to make similar reductions.
- ♦ **Study Carbon Dioxide.** Direct the state to study issues related to setting standards for carbon dioxide emissions.
- ♦ **Study Mercury.** Direct the state to study issues related to setting standards for mercury emissions.
- ♦ **Cost Recovery.** Allow utilities to recover the full cost of compliance for reductions pertaining solely to this bill.

Existing Requirements as Standard Proposed in the Clean Smokestacks Bill

Caps for SO ₂ (tons)				
	2000	2009	2010	2013
Federal Title IV Requirements (Acid Rain Program)	317,000		266,000	
NC Clean Smokestacks Bill		250,000		130,000

Caps for NO _x (tons)			
	2007 Summer	2007 Year-Round	2009
Federal NO _x SIP Call (5 months of year only)	28,000		
Clean Smokestacks Bill (year-round)		60,000	56,000

There is not a standard for mercury in the bill, but controlling NO_x and SO₂ also reduces mercury emissions.

- ♦ Estimated Incidental Mercury Reduction – 66% reduction from 1998 levels



Senate Bill 1078

Improve Air Quality/Electric Utilities. (= H 1015)

Bill Text: [Edition 1](#) [Edition 2](#)

Introduced by: [Allen H. Wellons](#), [Austin M. Allran](#), [Brad Miller](#), [Charles Carter](#), [Charles W. Albertson](#), [Daniel G. Clodfelter](#), [David F. Weinstein](#), [Eleanor Kinnaird](#), [Eric Miller Reeves](#), [Fletcher L. Hartsell, Jr.](#), [Frank W. Ballance, Jr.](#), [Hamilton C. Horton, Jr.](#), [Howard N. Lee](#), [James Calvin Cunningham](#), [James Forrester](#), [Jeanne H. Lucas](#), [John A. Garwood](#), [John H. Kerr III](#), [Kay R. Hagan](#), [Linda Garrou](#), [Patrick J. Ballantine](#), [Philip E. Berger](#), [Robert A. Rucho](#), [Robert C. Carpenter](#), [Stephen M. Metcalf](#), [T. LaFontaine Odom, Sr.](#), [Tony Rand](#), [Virginia Foxx](#), [Wib Gulley](#), [William R. Purcell](#)

P/L = Public/Local Bill | S = Affects Appropriations
* = Bill Text Has Changed

Session	2001 - 2002	Prime Sponsor	Stephen M. Metcalf
Fiscal Note	Available	Attributes	P

Date		Action
04/04/2001	S	Filed
04/05/2001	S	Ref To Com On Agriculture/Environment/Natural Resources
04/18/2001	S	Reptd Fav. Com Substitute
04/18/2001	SA	Com Substitute Adopted
04/19/2001	S	Withdrawn From Cal
04/19/2001	S	Placed On Cal For 4/23/2001
04/23/2001	S	Passed 2nd & 3rd Reading
04/25/2001	H	Rec From Senate
04/25/2001	H	Ref to the Com on Public Utilities and, if favorable, to the Com on Environment and Natural Resources
		[how a law is made]

Bill Look-Up

Enter a bill number to search for.

Example: Enter S7 to search for Senate Bill 7 or H7 to search for House Bill 7.

2001 - 2002 Session ☐ Bill Number: Look-Up

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

2

SENATE BILL 1078*
Agriculture/Environment/Natural Resources
Committee Substitute Adopted 4/18/01

Short Title: Improve Air Quality/Electric Utilities. (Public)
Sponsors:
Referred to:

April 5, 2001

A BILL TO BE ENTITLED
AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY REQUIRING
REDUCTIONS IN THE EMISSIONS OF CERTAIN POLLUTANTS FROM
CERTAIN FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.107 reads as rewritten:

"§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. - The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

- (6) To adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs a motor vehicle, all information necessary to fully make use of the on-board diagnostic equipment and the data compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions, inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.
- (8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide (SO₂) allowances and nitrogen oxides (NO_x) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.
- (8a) To develop and adopt standards and plans and to implement programs to control emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) as provided in G.S. 143-215.107D.
- (9) To regulate the content of motor fuels, as defined in G.S. 119-16, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.
- (10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.
- (11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.
- (12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.
- (13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.
- (14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or

other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. - In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g). Repealed by Session Laws 1995, c. 507, s. 27."

SECTION 2. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.107D. Emissions of oxides of nitrogen

(NOx) and sulfur dioxide (SO2) from
certain coal-fired electric generating units.

The Environmental Management Commission shall adopt rules to implement G.S. 143-215.107(a)(8a) as provided in this section. For emissions of oxides of nitrogen (NOx), the Commission shall develop and adopt standards and plans and implement programs to control emissions from coal-fired generating units, as those terms are defined in 40 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by an investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to generate 25 or more megawatts of electricity so that no later than 1 January 2007 these units will collectively emit no more than 60,000 tons of oxides of nitrogen (NOx) annually and no later than 1 January 2009 these units will collectively emit no more than 56,000 tons of oxides of nitrogen (NOx) annually. For emissions of sulfur dioxide (SO2), the Commission shall develop and adopt standards and plans and implement programs to control emissions from coal-fired generating units, as those terms are defined in 40 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by an investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to generate 25 or more megawatts of electricity so that no later than 1 January 2009 these units will collectively emit no more than 250,000 tons of sulfur dioxide (SO2) annually and no later than 1 January 2013 these units will collectively emit no more than 130,000 tons of sulfur dioxide (SO2) annually."

SECTION 3. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-133.6. Environmental compliance expenditure-
recovery.

(a) As used in this section, the term 'environmental compliance expenditures' means only those expenditures incurred after 1 July 2001 by an electric utility to comply with standards adopted pursuant to G.S. 143-215.107D that exceed the expenditures required to comply with the revisions to the State Implementation Plan (SIP) to reduce emissions of oxides of nitrogen (NOx) pursuant to the final notice published by the Administrator of the United States Environmental Protection Agency at 63 Federal Register 57491 (27 October 1998) codified at 40 Code of Federal Regulations § 51.121 (1 July 2000 Edition).

(b) The Commission shall hold a hearing and shall allow each electric utility to recover all just, reasonable, and prudently incurred environmental compliance expenditures through an environmental compliance expenditure-recovery factor that is separate from the electric utility's base rates.

(c) The Commission shall set the environmental compliance expenditure-recovery factor for each utility at least annually. The Commission shall base the environmental compliance expenditure-recovery factor on projections of environmental compliance expenditures for a future 12-month period. The Commission shall incorporate into the environmental compliance expenditure-recovery factor determination the experienced under-recovery or over-recovery of the electric utility's environmental compliance expenditures incurred during the previous 12-month period. Any refund or collection made as part of this process shall include interest at a rate to be determined by the Commission.

(d) The Commission shall adopt rules to implement this section."

SECTION 4. It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as enacted by Section 2 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

SECTION 5. The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as enacted by Section 2 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2004.

SECTION 6. The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as enacted by Section 2 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to

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implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report on its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 March 2002. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 March 2005.

SECTION 7. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide. The Division shall report its findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 March 2002.

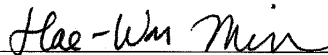
SECTION 8. This act is effective when it becomes law.

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of March, 2002, I served the foregoing CSX Transportation, Inc.'s Motion to Compel Production of Documents by causing a copy thereof to be delivered in the manner indicated to each of the following:

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Terence M. Hynes