



The Ohio River Terminals Company

A Subsidiary of Midland Enterprises Inc.

Ohio River Terminals Company
300 Pike Street
P.O. Box 1460
Cincinnati, Ohio 45201
(513) 721-4000

204945

March 8, 2002

VIA AIRBORNE EXPRESS

Surface Transportation Board
Docket No. 42070
1925 K Street, N.W.
Washington, DC 20423

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Office of the Secretary

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Public Record



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

Dear Sir or Madam:

The Ohio River Terminals Company ("ORTCO") has been advised in writing by CSX Transportation, Inc. ("CSXT") that the Surface Transportation Board ("STB") is considering a motion by Duke Energy Corporation ("Duke Energy") seeking production of all CSXT coal transportation contracts and tariffs governing shipments (made 2001 to present) traversing a portion of the route used for the CSXT movements to Duke Energy's electric generating facilities (Request No. 44). CSXT has advised ORTCO that it considers Contracts CSXT 66262 and CSXT 68468 ("Contracts") between CSXT and ORTCO as responsive to Request No. 44. Be advised that ORTCO strongly objects to the release of the Contracts. The Contracts contain confidentiality provisions that require ORTCO's consent prior to any release to a nonparty. We do not believe the motion for disclosure applies to our Contracts and we have not granted consent for their release to CSXT.

The ORTCO Contracts do not in any way relate to movements to the Duke Energy power plants. Further, Duke Energy has not been, nor could it ever be, a customer of ORTCO. The ORTCO Contracts relate only to coal that is delivered by CSXT by rail to ORTCO's Huntington, West Virginia rail-to-barge transfer terminal. The ORTCO terminal may only transfer coal from rail cars to barges; it cannot do the reverse and transfer from barges to rail cars and it cannot transfer from barge or rail to truck (or vice versa). Duke Energy's power plants are located in North Carolina and South Carolina and are not capable of receiving coal by barge. The ORTCO Contracts cannot be utilized for any purpose other than rail deliveries to a barge terminal that cannot serve Duke Energy.

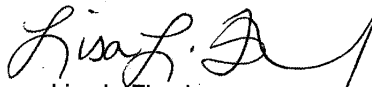
ORTCO reiterates its objection to the production of the Contracts as irrelevant to the Duke Energy matter and to any attempt to establish a "stand-alone railroad" for analysis. However, should you order CSXT to produce the Contracts, despite ORTCO's objections, CSXT has been advised that the Contracts must be marked "HIGHLY CONFIDENTIAL" on each and every page of each document and further, must be treated as Highly Confidential pursuant to the Protective Order issued by the STB in Docket No. 42070 and served on February 5, 2002. Any release of these confidential Contracts into the public domain, or to any person other than a person who may receive a copy pursuant to the Highly Confidential provisions of the Protective

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Order, will be considered a breach of both the Contracts and the provisions of the Protective Order by ORTCO.

ORTCO will appreciate your immediate review of these matters and compliance with our direction as outlined above. If you have any questions, do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa L. Fleming", with a long, sweeping flourish extending to the right.

Lisa L. Fleming
Associate General Counsel

cc: Michael Monahan
Vice President Operations Support

Gilbert L. Feltel, Jr.
Senior Counsel
CSX Transportation Inc.



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VIA FACSIMILE 904-245-3843

Mr. Gilbert L. Feltel, Jr.
Senior Counsel
CSX Transportation
Law Department
500 Water Street (J150)
Jacksonville, FL 32202



Re: Duke Energy Corporation v. CSX Transportation, Inc. - STB Docket No. 42070; and Contracts CSXT 66262; CSXT 68468 ("Contracts").

Dear Mr. Feltel:

Pursuant to our conversation, please be advised that The Ohio River Terminals Company ("ORTCO") strongly objects to the release of the contracts between CSX Transportation, Inc. ("CSXT") and ORTCO. The Contracts CSXT 66262 and 68468 each contain confidentiality provisions that require ORTCO's consent prior to any release to a nonparty. You have advised that CSXT has been served with a motion to disclose these contracts in the above-referenced dispute before the Surface Transportation Board ("STB"). We do not believe the motion for disclosure applies to our contracts.

The Duke Energy discovery Request No. 44 seeks production of all CSXT coal transportation contracts and tariffs governing shipments (made 2001 to present) traversing a portion of the route used for the CSXT movements to Duke Energy's electric generating facilities. The ORTCO Contracts do not in any way relate to movements to the Duke Energy power plants. Further, Duke Energy has not been, nor could it ever be, a customer of ORTCO. The ORTCO Contracts relate only to coal that is delivered by CSXT railcars to ORTCO's Huntington, West Virginia rail-to-barge transfer terminal. The ORTCO terminal may only transfer coal from rail cars to barges; it cannot do the reverse and transfer from barges to railcars and it cannot transfer from barge or rail to truck (or vice versa). Duke Energy's power plants are located in North Carolina and South Carolina and are not capable of receiving coal by barge. The ORTCO Contracts cannot be utilized for any purpose other than rail deliveries to a barge terminal that cannot serve Duke Energy.

Mr. Gilbert L. Feltel, Jr.
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ORTCO reiterates its objection to the production of the Contracts as irrelevant to the Duke Energy matter and to any attempt to establish a "stand-alone railroad" for analysis. We will submit our objections to the STB as well. However, should CSX be ordered by the STB to produce the Contracts, despite ORTCO's objections, be advised that the Contracts must be marked "HIGHLY CONFIDENTIAL" on each and every page of each document and further, must be treated as Highly Confidential pursuant to the Protective Order issued by the STB in Docket No. 42070 and served on February 5, 2002.

Please advise me at your earliest convenience if CSX is ordered to produce the Contracts, and indicate that they will be submitted as Highly Confidential pursuant to our request. If you have any questions, do not hesitate to contact me.

Very truly yours, ,



Lisa L. Fleming
Associate General Counsel

cc: Michael Monahan
Vice President Operations Support

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