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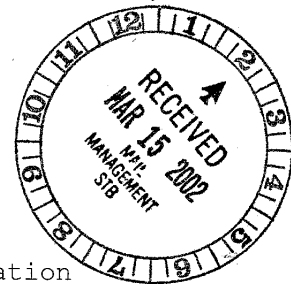
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March 15, 2002

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of Complainant Duke Energy Corporation's Reply to Norfolk Southern Railway Company's Motion to Compel Production of Documents.

We have enclosed electronic copies of this Reply in a WordPerfect format on three separate computer disks, and also have enclosed an additional hard copy to be date-stamped and returned to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills
An Attorney for Duke Energy
Corporation

ENTERED
Office of the Secretary
MAR 15 2002
Part of
Public Record

Enclosures

cc: Counsel for Defendant

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Defendant.

Docket No. 42069

DUKE ENERGY CORPORATION'S
REPLY TO MOTION TO COMPEL



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TABLE OF CONTENTS

SUMMARY	5
PROCEDURAL SCHEDULE ISSUES	6
BACKGROUND	8
ARGUMENT	11
I. The Board is Unwilling to Permit Broad Discovery Regarding Indirect Competition or to Engage in the Second-Guessing of Coal Burn Forecasts	13
II. Analysis of NS's Specific Requests	16
A. Forecasts and Projections	16
B. Environmental Considerations	18
C. Economic Dispatch Practices	20
D. Alternative Fuels and Technology Advances	21
E. Impacts of NS Rate Levels on Generation and Dispatch Ranking	22
F. Impacts of Ability to Recover Challenged Rates	23
G. Coal Supply Contracts	24
H. Other Information Governed by Confidentiality Restrictions	24
III. There is No Present Need to Extend the Procedural Schedule Previously Ordered in this Case	24
CONCLUSION	28

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DUKE ENERGY CORPORATION,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42069
	)	
NORFOLK SOUTHERN RAILWAY COMPANY,	)	
	)	
Defendant.	)	
	)	

**DUKE ENERGY CORPORATION'S
REPLY TO MOTION TO COMPEL**

Complainant Duke Energy Corporation ("Duke") hereby replies in opposition to the Motion to Compel that Defendant Norfolk Southern Railway Company ("NS") filed on March 4, 2002.

In *Ex Parte* No. 627,¹ the Board, after conducting a protracted rulemaking, concluded that resources should no longer be wasted considering product and geographic competition issues. NS's Motion would lead the Board down that same road under the guise of reviewing traffic volumes for stand-alone costs ("SAC"). What is impermissible for market dominance purposes does not become permissible when done for SAC purposes. NS's Motion therefore should be denied.

¹ *Ex Parte* No. 627, *Market Dominance Determinations -- Product and Geographic Competition*, Decisions served Dec. 21, 1998 and July 2, 1999, *pet. for review granted sub nom. Assoc. of Amer. Railroads v. U.S.*, 237 F.3d 676 (D.C. Cir. 2001), on remand, Decision served April 6, 2001, *pet. for review pending sub nom. Assoc. of Amer. Railroads v. U.S.*, No. 01-1213 (D.C. Cir.) (collectively, "*Ex Parte* No. 627").

SUMMARY

Before *Ex Parte No. 627*, defendants in coal rate cases routinely argued that the availability of alternate coals, fuels, generation, and/or purchased power effectively constrained the rates that they were able to charge captive shippers. In *Ex Parte No. 627*, Decision served December 21, 1998, the Board found that "the time and resources required for the parties to develop, and for us to analyze, whether it would be feasible for a shipper to change its business operations (by changing its suppliers, customers, or industrial processes) so as to avoid paying the challenged rate can be inordinate." *Id.* at 12. On that basis, the Board held that it would no longer "'second-guess' shipper management about issues of fuel supply, environmental compliance and plant design and operation." *Id.* at 11.

NS's Motion invokes those very same claims in seeking discovery designed to show that indirect forms of competition may reduce the volume of coal that the stand-alone railroad will transport to Duke's generating facilities. What NS has in mind is precisely the type of second-guessing that the Board soundly rejected in *Ex Parte No. 627*. NS's discovery will impose the same burdens upon Duke as if it were directed to market dominance factors, and it will entail the same squandering of resources (for a matter that has less importance since Duke's SARR traffic group will consist in large part of traffic from other shippers). NS's discovery cannot be reconciled with the Board's decisions in *Ex Parte No. 627*.

Notwithstanding the impermissibility of NS's "indirect competition" discovery, Duke has willingly produced information bearing directly on the issue of stand-alone volumes. In particular, Duke has already produced unit-specific, fifteen-year forecasts of its anticipated coal consumption (as well as even more detailed forecasts regarding Duke's estimated coal consumption during the more immediate future). While the results are unlikely to please NS (for its litigation purposes), the forecasts amply address Duke's future coal receipts and eliminate NS's need for a vast array of documents relating to product and/or geographic competition issues. The Board therefore should refuse to authorize the expansive fishing expedition in which NS hopes to engage.

PROCEDURAL SCHEDULE ISSUES

NS's Motion also requests an extension of the discovery period to permit resolution of its Motion to Compel and other discovery matters, and even suggests that the Board consider extending the evidentiary schedule. These requests are unconscionable given the abusive NS freight rates that Duke and its ratepayers must bear during the pendency of this proceeding. These rates are more than *50 mills* per ton-mile, and approximately *400 percent* of NS's variable service costs. They also represent huge increases over the contract rates previously applicable to Duke's coal movements -- demonstrating NS's desire and ability to punish shippers who are so bold as to file rate

cases (and its intent to "game" the SAC percentage-reduction methodology).

Given the oppressive rates it must pay for essential coal transportation services, Duke strongly opposes any lengthening of the procedural schedule for this case. Duke urges the Board to reject NS's inequitable attempt to induce the Board to delay the evidentiary due dates mandated in its order served February 5, 2002.²

For the reasons explained in Part III, *infra*, there is no need to extend the discovery period and there is certainly no reason to postpone the April 18, 2002 due date for opening evidence. NS's Motion to Compel relates to future SAC traffic volumes, for which NS's evidence is not due until the reply phase of this case (*i.e.*, July 17, 2002), over four months from now.

Based on representations made by NS concerning its continuing document production at a February 27, 2002 meet-and-confer between the parties, Duke intends -- and still expects to be able -- to file its opening evidence on market dominance, variable costs, and SAC issues on April 18, 2002, in accordance with the established procedural schedule for this case. There is no present reason why NS should be unable to file its reply evidence on SAC issues on July 17, 2002, the due date for reply

² NS waited three full weeks (nearly one-third of the discovery period) after receiving Duke's Complaint before serving its initial discovery on Duke. It would be unconscionable to allow NS to use its own delay as a bootstrap to extend the previously-ordered evidentiary schedule.

evidence. The Board should reject NS's transparent efforts to delay this case.

BACKGROUND

Duke filed its Complaint in this case on December 19, 2001. Under the Board's rules and the parties' agreed procedural schedule as adopted in the Decision served February 5, 2002, the parties had seventy-five days to engage in discovery. Duke served its initial discovery upon NS on December 27, 2001. NS, in turn, served its First Set of Interrogatories and Requests for Production of Documents ("First Discovery Requests") on January 17, 2002 and its Second Set of Interrogatories and Requests for Production of Documents ("Second Discovery Requests") on February 14, 2002. Duke's Responses and Objections to each set of requests are attached to NS's Motion.

NS's First and Second Discovery Requests primarily seek information regarding product and/or geographic competition. The requests are, if anything, broader and more detailed than those NS's current counsel (then representing CSXT) served in the *PEPCO* rate case, prior to *Ex Parte* No. 627.³

In responding to NS's extraordinarily broad discovery requests, Duke distinguished between: (i) documents bearing directly on the future coal traffic moving to Duke's plants; and

³ Docket No. 41989, *Potomac Electric Power Co. v. CSX Transportation, Inc.*, Complaint filed Jan. 3, 1997 ("*PEPCO*"). Exhibit Nos. 1 and 2 hereto include CSXT's First and Second Sets of Discovery Requests in *PEPCO*.

(ii) documents related to extraneous issues that could only indirectly affect Duke's future coal consumption. To that end, Duke produced forecasts of future coal traffic on as detailed a basis as possible (*i.e.*, unit-specific coal burn) for as long a time period as possible (*i.e.*, fifteen years).⁴ NS thus received Duke's own best estimates of future coal traffic levels. Accordingly, any attempt to challenge these forecasts involves the very sort of second-guessing that the Board, after careful balancing of burdens and relevance, abandoned in *Ex Parte* No. 627.

While producing the directly relevant information, Duke objected to the many, many NS discovery requests pertaining to matters that bore only indirectly on SARR traffic volumes. To that end, Duke declined to produce any documents regarding, *inter alia*: (1) transmission constraints (Int. No. 21; Req. Nos. 26 and 27); (2) potential participation in any proposed Regional Transmission Organization ("RTO") (Req. No. 74); (3) factors regarding Duke's mix of generation and purchased power (Int. No. 20; Request Nos. 20 and 23); (4) the hourly price over the past three years at which Duke would have chosen to purchase electricity from other electric generators (Req. No. 21); (5) Duke's contracts to sell or purchase electric power (Req. No. 14); (6) Duke's accounting practices with respect to Operation and Maintenance expenditures (Req. No. 19); (7) possible interconnections between Duke and new electric generators (Req. No. 73); and (8)

⁴ Duke also produced short-term burn forecasts that include additional detail as to future coal use.

the potential implications of the Amended Clean Air Act, the Kyoto Protocol, various EPA rules, pending North Carolina legislative proposals, competition in the wholesale power market, and the entire field of utility deregulation (Int. No. 27; Req. Nos. 32, 33, 38, 65, and 70). Most of these matters involve considerable complexity and invoke regulatory or legislative activities and expertise of other governmental bodies (e.g., the Federal Energy Regulatory Commission, North Carolina and South Carolina Public Utility Commissions, Environmental Protective Agency, United States Congress, etc.).

Despite its general objections, Duke nevertheless undertook to produce a range of responsive documents. This responsive information included Duke's FERC Form 1 Reports, its most recent Integrated Resource Plan, its Short-Term Action Plans, and the Annual Plans that it files with its state regulatory commissions. Duke also agreed to produce its FERC Form 580 Reports, three years of its NERC generating availability data system ("GADS") responses, and the dispatch ranking for its entire generation portfolio.

Additionally, in response to NS's specific requests at the parties' February 27, 2002 meet-and-confer session, Duke agreed to provide fourteen different categories of additional information, despite its continuing objection as to the relevance of each of those categories.⁵ Notably, Duke did so without

⁵ In a March 1, 2002 letter from Duke counsel to NS counsel,
(continued...)

receiving any reciprocal commitment from NS to narrow the scope of its discovery requests or refrain from moving to compel.

ARGUMENT

NS seeks to compel the production of eight different categories of documents (which are discussed in detail *infra*). NS's Motion should be denied as to all, except with respect to documents withheld solely on the basis of third-party confidentiality restrictions, as to which, as explained *infra*, Duke does not oppose NS's Motion.

The information requested by NS is no less comprehensive than what defendants previously had sought regarding product and geographic competition. In *Ex Parte No. 627*, Decision served December 21, 1998, the Board soundly decided that the burdens on the parties and the Board itself of producing and analyzing this type of information were not justified:

[T]here can be no question that the inclusion of these [indirect] factors imposes substantial burdens on both the parties and this agency. . . .

. . . [I]n several recent cases challenging the rates charged for transporting coal to a utility,[] the railroads asserted that a utility's ability to substitute power from different plants, either within or outside its immediate system, effectively disciplined

⁵(...continued)

Duke committed to producing, *inter alia*, its FERC Form 580 Reports from 1992 to the present, monthly dispatch "snapshots" showing the cost ranking of each of Duke's generating units from January 1, 1999 to the present, and information regarding the principles governing Duke's dispatch decisions.

the railroads' rates because a utility could in theory idle or reduce power production at the plant at issue. The argument was also made that a utility could switch coal types (e.g. from low sulfur coal to mid-sulfur coal, coupled with the purchase of emission allowances to comply with the Clean Air Act). These arguments required us to examine in depth the economics associated with producing and distributing electric power. It has also been suggested that, because utilities are interconnected via the power grid, the ability to burn fuel and produce power at various plants gives rise to effective geographic competition. Again, these arguments have required us to address complex non-transportation issues, such as the functioning of the power transmission grid, thus significantly complicating and prolonging an analysis of the record.

Ex Parte No. 627, Decision served December 21, 1998, at 10-11 (emphasis added).

The Board's approach to this information should not change simply because defendant railroads seek the information for SAC purposes. The requested documents are even less relevant to the present context (than such documents had been to the market dominance context) because Duke's traffic will constitute only a minor percentage of the total traffic handled by Duke's SARR. Production and analysis are just as burdensome, and the Board's resources currently are just as (if not more) constrained. Moreover, Duke already has produced the internal coal consumption forecasts that it prepares in the ordinary course of its business.

Absent a particularly convincing showing, which NS has not remotely made, there is no reason to burden this case with

the production and analysis of additional data, all of which is designed to induce the Board to "second-guess" Duke's forecasts. NS's Motion should thus be denied.

I. The Board is Unwilling to Permit Broad Discovery Regarding Indirect Competition or to Engage in the Second-Guessing of Coal Burn Forecasts

In *Ex Parte* No. 627, the Board found that the burdens associated with delving into product and geographic competition issues (particularly in coal rate cases) outweighed the limited relevance of indirect competition evidence. The Board was particularly mindful of the burdens on shipper-complainants of the railroads' overbroad and far-reaching discovery requests on such issues.

Even before the *Ex Parte* No. 627 decision, however, the Board was fully aware that defendant railroads could use discovery to harass and abuse captive shippers. Accordingly, as was noted in the *FMC* case, the Board required specific showings of relevance before authorizing the sort of discovery that NS seeks here.⁶ In *FMC*, the Board held that a railroad:

⁶ In Docket No. 42022, *FMC Wyoming, Corp. v. Union Pacific Railroad Co.*, Decision served April 17, 1998 ("*FMC*"), the Board identified as problematic UP requests for information regarding "alternative sources, possible substitute products, and end-product uses for each of the commodities at issue," and "all products or processes that have or could be substituted for coke in the production of phosphorus." *Id.* at 1 n.3. Notably, UP had asserted in its December 12, 1997 Motion to Compel that the indirect competition materials that it sought for market dominance purposes "may also be relevant to the projections of traffic volume for FMC's stand-alone railroad." The Board

(continued...)

. . . is not entitled to any discovery on matters relating to product and geographic competition unless it (1) first identifies, with specificity, the product and geographic competition it asserts is effective; (2) explains the basis for that assertion (so as to ensure against the use of discovery requests as a general fishing expedition); and (3) narrowly tailors its discovery requests to information needed to assist in proving the effectiveness of the specific competition that it has identified.

Id. at 3.

Therefore, even apart from *Ex Parte* No. 627, NS's discovery must fail for the same reasons set forth in *FMC*. NS's Motion provides no *prima facie* justification for second-guessing Duke's coal forecasts, and is devoid of specific contentions regarding the reversal of Duke's historic dispatch order and/or how and why Duke's forecasts do not reflect these supposed influences. Moreover, NS's Motion, which lacks a verified statement by any expert, merely sets forth vague generalities as to the manner in which an extremely long list of factors "could" or "may" impact Duke in the future.⁷ This does not constitute

⁶(...continued)
implicitly rejected this argument by denying UP's requests as propounded.

⁷ See NS Motion at 4 (various environmental restrictions "could" have an impact on the volume and type of coal consumed in the future); *id.* at 19 ("projections of decreases in purchased power prices or increases in the availability of purchased power could dramatically affect the future volumes of coal burned at the NS plants . . ."); *id.* at 24 ("emissions restrictions may alter significantly the volume of electricity produced at the Duke coal plants . . .").

the degree of specificity that the Board mandated in its *FMC* decision.

Notably, in *Wisconsin*,⁸ a post-*Ex Parte* No. 627 case, Union Pacific contended that future stand-alone traffic levels should be reduced because of the impact of environmental pressures, global warming, competition from BNSF, and alternate fuels. The Board rejected each of these indirect factors and instead found it sufficient to rely on the shipper's and other independent traffic forecasts, which "should reflect" all of the indirect factors that Union Pacific identified in its evidence:

We reject UP's forecast of declining coal traffic predicated on the possible implementation of the Kyoto Protocol . . .

. . . Moreover, while there may be a point when an older plant will be retired, UP's assertion that all plants would be retired after 50 years of service lacks support.[] And even if older plants are retired, UP ignores the possibility that replacement coal-fired capacity may be brought on-line. Thus, we see no reason to adjust the traffic forecasts to reflect the retirement of coal-burning plants.

In addition to arguing that coal production in general would decline, UP asserts that competition from BNSF on a large number of direct, single-lines moves, as well as on many other moves on which BNSF could compete using an interchange partner, would exert downward pressure on EWRR's traffic volumes. . . . [W]e see no reason to adjust the traffic forecasts based on competition from BNSF.

⁸ Docket No. 42051, *Wisconsin Power and Light Co. v. Union Pacific Railroad Co.*, Decision served September 13, 2001.

Finally, UP asserts that competition from alternative fuels (including eastern coal, synfuels, and natural gas) could significantly reduce the predicted coal traffic from the PRB. However, these potential sources of competition, which are common knowledge, should be reflected in the independent coal forecasts upon which the parties rely. Therefore, we see no reason to further adjust the forecasts.

Id. at 19-21 (emphasis added).⁹

As with Union Pacific's effort in *Wisconsin*, NS's Motion to Compel rests, at its core, on the desire to obtain documents to be used to "adjust" the long-term, unit-specific forecasts that have been prepared by Duke in the normal course of its business. The Board's precedent holds that this type of inquiry is not to be pursued. As such, there is no reason to award far-reaching, burdensome discovery to NS merely to support this line of argument.

II. Analysis of NS's Specific Requests

NS's specific requests fall into eight categories. Each is discussed below.

A. Forecasts and Projections

NS seeks the production of forecasts and projections regarding a list of approximately two dozen different topics,

⁹ While *Wisconsin* involved a decision on the merits rather than a discovery dispute, its treatment of the SARR volume issue reflects the same conclusion as in *Ex Parte No. 627* that the second-guessing of shippers' regular business forecasts is not a worthwhile use of the Board's resources.

some of which are proper (and already have been provided)¹⁰ and some of which are improper (and thus have not been provided).

NS also seeks production of Duke's computerized forecasting model. As NS's Motion acknowledges, licensing restrictions preclude Duke from producing that model.¹¹ Following the filing of NS's Motion, Duke identified the types of data inputs used by its forecasting model, and produced the aforementioned fifteen-year, unit-specific coal burn forecasts derived from that model. As such, Duke has provided all of the information that NS needs regarding coal use forecasts.

NS also seeks detailed forecasts of ancillary information, such as: (a) electric power generating capacity; (b) total net generation; (c) capacity factor; (d) native or jurisdictional load requirements or commitments; (e) the volume of demand for electric power to be produced or sold; (f) the volume of sales (in dollars) of electric power to be produced or sold by elec-

¹⁰ As noted, Duke has produced its detailed 1999, 2000, and 2001 unit-specific, fifteen-year forecasts regarding Duke's anticipated coal burn, which constitute Duke's best estimate as to its long-term future coal use. Duke also has produced its shorter-term forecasts of coal consumption (see NS Motion at 10), and has produced information regarding its projections of railroad rates. Finally, Duke has agreed to produce any forecasts in its possession regarding changes in the Rail Cost Adjustment Factor and regarding measures of inflation. See NS Int. No. 24 (p) and (q).

¹¹ See NS Motion at 20 ("NS also has advised Duke that, if its computer forecasting model is governed by third-party licensing restrictions or for some reason is otherwise burdensome to produce, NS would accept a print-out or listing of the material data inputs and assumptions that produce the forecast results, as well as copies of data output from the model.").

tricity generators, power marketers, or Duke; (g) the level of prices of electric power likely to be available in the wholesale electricity market; (h) the location, amount, and duration of any transmission constraints affecting or potentially affecting the transportation, transmission, or distribution of electric power; (i) the volume of fuels other than coal to be burned by Duke or any other entity; and (j) the anticipated price of coal to be purchased by Duke or any other entity.

NS has not demonstrated any valid need for this additional information. NS's only plausible purpose is to "second-guess" Duke's forecasts, and, consistent with its determination in *Ex Parte No. 627*, the Board should decline that invitation.

B. Environmental Considerations

NS also seeks all documents regarding the "impact or potential impact" of a long list of different "environmental regulations and emissions restrictions" on a broad variety of topics, including the Amended Clean Air Act, the introduction of competition in the generation and sales of electric power, the October 1998 Environmental Protection Agency ("EPA") rule in regional ozone control, the January 2000 EPA rule on emission control, the Kyoto Protocol of 1997 and subsequent developments related to the initial Protocol, and the 2001 North Carolina legislative proposals regarding the recovery of investment in

environmental upgrades at coal-fired plants. See NS Motion at 20-25 (and Requests cited therein).¹²

NS claims that these matters may affect Duke's reliance on coal-fired generation.¹³ In other words, NS seeks to assert that Duke somehow erred in generating its long-term, unit-specific coal consumption forecasts. Again, consistent with *Ex Parte No. 627* and *Wisconsin*, the Board should decline the invitation.

¹² NS seeks documents assessing the impact or potential impact of these environmental restrictions and/or deregulation proposals on: (i) the amount of power generated at any Duke plant; (ii) the volume or amount of power sold by Duke to persons other than Duke's retail electric power customers; (iii) the amount of coal burned by Duke; (iv) the relative cost to generate or produce electric power at any Duke plant as compared with other entities' costs of producing power; and (v) Duke's ability or potential ability to compete for present or future sales of electric power with other electric power producers or sellers. *Id.*

NS's Motion is unclear as to the type of documents that NS is seeking. In particular, NS first claims to have assured Duke that it only sought the production of "formal studies or analyses" (which claim is inconsistent with Duke's recollection of any past communications with NS), but NS then complains that since Duke has "not identified any responsive studies," the Board should order Duke to "respond fully" to NS's various Requests. *Id.* at 25. These Requests seek documents of any sort (including workpapers, all supporting documents and data, and any other documents), rather than merely formal studies.

¹³ See NS Motion at 22 (claiming that these environmental considerations "may (indeed are likely to) affect Duke's decisions concerning the amount of electric power it produces at its coal-fired plants The impacts of these regulations likely will also affect Duke's decision whether to convert these plants to alternative fuels (e.g., natural gas), utilize different types of coal from different sources than those used currently, or shift power production from the NS-served plants to generating facilities that use other means of generation.").

C. Economic Dispatch Practices

NS also seeks a large amount of material related to the dispatch of Duke's generating system, including how Duke employs the resources in its generating portfolio, and how Duke buys and sells electric power. See NS Motion at 26.

While Duke declined to produce dispatch information of the scope and breadth sought by NS, Duke did provide a recent dispatch ranking of its generating units and, following the parties' February 27, 2002 meeting, Duke agreed to produce all versions of this dispatch ranking that Duke has prepared from January 1, 1999 to the present. In response to NS's February 27 inquiry concerning Duke's dispatch policies, Duke also reported to NS that its dispatchers use a commercially licensed "Window-Couger" program (which Duke is not at liberty to produce) to make dispatch decisions, and that Duke's dispatchers are held accountable to the principles and standards of the NERC Operating Manual, which is available at www.nerc.com.

NS, however, is not content and seeks still more; namely, the identification of each and every input and assumption used to make dispatch decisions, as well as all output from Duke's "dispatch computer model." See NS Motion at 27-28. Although NS attempts to characterize this demand as a "narrowing" of the parties' dispute regarding economic dispatch, close scrutiny reveals that NS simply has rephrased its demand for the same documents that were encompassed within its Requests.

As Duke has demonstrated *supra*, the Board has balanced the burdens and relevance of such information and concluded that the "second-guessing" of utility operations does not constitute a sound expenditure of resources. See *Ex Parte No. 627; FMC; Wisconsin*. NS's request for additional dispatch information should be denied.

D. Alternative Fuels and Technology Advances

NS next seeks an extremely long list of documents related to alternative fuels or advances in technology.¹⁴ The requests are not confined to Duke's coal-fired plants and, in fact, are drawn so broadly as to seek information regarding the impact of "technology advances" of any sort whatsoever.¹⁵

¹⁴ NS's Request No. 24 seeks 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)" referring to: (1) the use of "alternative fuels" at any of Duke's existing coal-fired or non-coal-fired plants; (2) the use of "alternative fuels" at any future Duke plant; (3) the "impact of potential advances in technology" on the volume or amount of coal or alternative fuels used at any existing Duke coal-fired or non-coal-fired plant; (4) the "impact of potential advances in technology" on the volume or amount of coal or alternative fuels used at any future Duke coal-fired or non-coal-fired plant; and (5) the "feasibility, costs and benefits of converting" any Duke coal-fired plant to allow it to use "alternative fuels."

¹⁵ Although NS does not provide adequate explanation of this issue in its Motion, NS's Request No. 24 presumably seeks information regarding technological improvements at coal-fired or non-coal-fired plants, or even information regarding advances in the manner in which coal is mined or transported by railroads. To the extent that NS seeks information regarding technological

(continued...)

Once again, NS's discovery cannot be reconciled with the Board's holding in *Ex Parte* No. 627. NS has failed to offer any basis whatsoever for the Board to believe that the purported impacts of alternative fuels and/or new technology -- even if realistic -- would not be known to those individuals responsible for preparing Duke's coal consumption forecasts. What NS seeks is simply a fishing expedition.

Finally, Duke notes that in its March 1 letter, Duke confirmed that it does not plan to convert any of its coal-fired plants to permit the use of "alternative fuels." Both this confirmation and the detailed coal burn projections that Duke already has produced in this case give NS all of the information to which it is entitled. There is no reason for the Board to order Duke to produce the all-encompassing set of additional materials that NS seeks in its Motion.

E. Impacts of NS Rate Levels on
Generation and Dispatch Ranking

NS's Motion also seeks "genuine studies and analyses" regarding the impact of changes in NS's rate levels on the volume of Duke's electricity output, Duke's relative dispatch priority, and sales of power by Duke. Given the narrowing of this Request

¹⁵(...continued)
advances in the use of coal, those advances, by definition, would have the effect of reducing the cost of coal consumption. To the extent that NS seeks information regarding technological advances with respect to alternative fuels, inquiry regarding those advances amounts to the type of product competition analysis that the Board terminated in *Ex Parte* No. 627.

by NS in its Motion to Compel, Duke is now prepared to state that it does not prepare sensitivity analyses regarding changes in rail rates, and therefore has no responsive documents.

F. Impacts of Ability to Recover Challenged Rates

NS's Interrogatory Nos. 36 and 37 and NS Request No. 59 seek information regarding Duke's ability to recover rail transportation costs from its ratepayers. Duke objected to these various requests on grounds of relevance. In its Motion to Compel, NS suggests for the first time that these requests are relevant to the "possible contention by Duke that NS' rates should be limited by the 'phasing' constraint of the Board's Constrained Market Pricing coal maximum rate reasonableness standards" See NS Motion at 31.

NS's claim is defective. The *Coal Rate Guidelines* adopted a phasing constraint on otherwise justified rate increases to prevent "significant economic dislocations."¹⁶ The ICC found that such dislocation was in no way mitigated by the passing-through of coal transportation costs by utilities to their customers via fuel surcharge adjustments, and the Commission emphasized that the phasing constraint would be an appropriate means of ensuring the "public need for smooth, orderly economic transitions." *Id.* As such, the application of the Board's phasing constraint is not undermined by the presence of

¹⁶ See *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 546 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987).

pass-through arrangements. NS has not shown the relevance of the requested information.

G. Coal Supply Contracts

NS also seeks Duke's coal supply contracts that are subject to confidentiality restrictions with third parties. NS correctly reports that Duke does not oppose the entry of such an order. Cf. Decision served March 4, 2002 in the instant docket (compelling NS to produce its third-party coal transportation contracts).

H. Other Information Governed
by Confidentiality Restrictions

Duke also does not oppose NS's request for the entry of an order compelling the production of other documents withheld solely on the basis of third-party confidentiality restrictions.

Once the Board enters its order regarding the coal supply contracts and these other materials, Duke will be in a position to complete its production within a relatively short time period.

**III. There is No Present Need to Extend the Procedural
Schedule Previously Ordered for this Case**

NS's Motion further requests that the Board extend the discovery period to provide time for the Board to rule on the Motion and for Duke to comply with any required discovery. NS further suggests that the evidentiary due dates may also need to be extended because discovery has not been completed. NS's

effort to induce the Board to postpone the evidentiary schedule is unconscionable given the extraordinarily high level of the common carrier rates it chose to impose following the expiration of Duke's rail transportation contract on December 31, 2001. See pp. 6-7, *supra*.

NS has not demonstrated why an extension of the discovery period is necessary, and it has utterly failed to show that any change in the present evidentiary due dates is warranted at this time. Duke strongly opposes any extension of the established evidentiary schedule for this case.

The Board's decision served February 5, 2002 provides that the discovery period in this case ends on March 4, 2002 -- a date that, of course, has already passed. For all practical purposes, the discovery cut-off date means that no further discovery requests may now be served by either party. It does not mean that document production in response to earlier discovery requests, and follow-up thereto, cannot continue. Counsel for Duke has been involved in several SAC coal rate cases filed after the Board adopted its procedural rules governing such cases,¹⁷ and in all of them discovery-follow up and document production continued after the close of the formal discovery period in the Board-mandated procedural schedule.

¹⁷ See Ex Parte No. 527, *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, Decision served October 1, 1996.

The same is true in this case. At the parties' February 27, 2002 meeting to discuss discovery matters, counsel for NS acknowledged that NS's responses to Duke's First Discovery Requests served December 27, 2002 were incomplete, and represented that Duke would be receiving responsive documents after the March 4, 2002 formal discovery cut-off date. Similarly, Duke's counsel informed NS's counsel that the production of documents responsive to NS's First Discovery Requests and NS's Second Discovery Requests (served two weeks before the meeting) would not be completed until after the discovery cut-off date. Consistent with past practice in other rate cases, neither side raised any objection.

There is simply no need for a formal extension of the discovery period in this case. The parties can proceed to complete outstanding discovery with or without such an extension. Duke does not plan to file any additional motions to compel,¹⁸ and if the Board orders Duke to produce additional documents in response to NS's Motion, Duke intends to comply fully and promptly with any such order.

In addition to requesting an extension of the discovery period, NS's Motion suggests that the schedule for filing evidence may also "possibly" need to be extended so discovery can be completed. See NS Motion at 34. NS's *chutzpah* is amazing, given

¹⁸ Duke's motion to compel the production of confidential NS coal transportation contracts was granted by the Board's decision served March 4, 2002.

the oppressive level of the common carrier rates in issue and NS's own delay in serving the discovery requests that are the subject of its Motion.

In support of its request for delay, NS points out that Duke may be conducting on-site inspections of NS records at the locations where they are maintained in the normal course of business, and that additional time will be required for NS to respond to Duke discovery requests (served March 1, 2002) pertaining to NS's R-1 treatment of the Conrail control transaction and post-transaction operations. *Id.* at 35-36.

Neither of these factors necessitates any postponement of the present evidentiary due dates. Duke is prepared to conduct on-site document inspections in a timely manner, and does not need a postponement of the due date for opening evidence (April 18, 2002) for this purpose. Similarly, NS has represented that it is prepared to respond to Duke's discovery requests with respect to its accounting for the Conrail transaction, and Duke intends to proceed with its opening evidence presentation on variable costs on April 18th.

Nor is any postponement of evidentiary due dates warranted because the Board may order Duke to produce additional information in its ruling on NS's Motion to Compel. The information requested by NS relates to future Duke coal traffic that would be included in its stand-alone traffic group (which Duke will present in its opening SAC evidence due April 18th). NS will not submit any SAC evidence until its reply filing on July

17, 2002. There is ample time -- more than four months from the date of this reply filing -- for the Board to rule on NS's Motion and for Duke to produce (and NS to analyze) any additional documents if the Board so orders.

If for some reason the Board delays its decision on NS's Motion, to the extent that NS would be unable to prepare reply SAC evidence that reflects additional information (if any) provided by Duke in compliance with the decision, that is an issue that can be addressed at the appropriate time (*i.e.*, a few weeks before reply evidence is due).¹⁹ Certainly the Board should not change the evidentiary schedule now, when there is no reason to believe that any postponement will be necessary. Any premature postponement would reward NS for its decision to impose oppressive rate increases on a captive shipper that has the temerity to bring a rate case against it.

CONCLUSION

For the foregoing reasons, Duke respectfully requests that the Board deny NS's Motion to Compel (except as to documents

¹⁹ Under the Board-mandated procedural schedule for this case, three full months have been provided between the due dates for opening and reply evidence.

subject to third-party confidentiality restrictions) and reject
NS's invitation to extend the procedural schedule in this case.

Respectfully submitted,

DUKE ENERGY CORPORATION

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Dated: March 15, 2002

Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of March,
2002 served copies of the foregoing Reply to Motion to Compel by
hand upon:

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

and by overnight courier to:

George A. Aspatore, Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191



Andrew B. Kolesar III

BEFORE THE
SURFACE TRANSPORTATION BOARD

POTOMAC ELECTRIC POWER COMPANY,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

Docket No. 41989

**DEFENDANT'S FIRST SET OF INTERROGATORIES,
DOCUMENT PRODUCTION REQUESTS AND REQUESTS FOR ADMISSION**

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Attorneys for Defendant CSX Transportation, Inc.

DATED: January 23, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

POTOMAC ELECTRIC POWER COMPANY,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

Docket No. 41989

**DEFENDANT'S FIRST SET OF INTERROGATORIES,
DOCUMENT PRODUCTION REQUESTS AND REQUESTS FOR ADMISSION**

Pursuant to 49 C.F.R. §§ 1114.21, 1114.26, 1114.26 and 1111.30, Defendant CSX Transportation, Inc. ("CSXT") hereby submits its first set of interrogatories, document production requests and requests for admission addressed to Complainant Potomac Electric Power Company ("Pepco"). These discovery requests are to be answered by Pepco, separately and fully in writing, within 30 days after service of this document.

CSXT is prepared to cooperate with Pepco to facilitate the expeditious production of documents and information responsive to these discovery requests with the minimum practicable burden. CSXT requests that Pepco promptly contact CSXT's counsel should there be any questions concerning the meaning and scope of any of the following discovery requests, the nature of the information and documents responsive to them, or the procedure for producing responsive material.

I.

DEFINITIONS

1. "Affiliate" means any person (as defined herein) who, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under common ownership or control with Pepco. "Affiliate" also means any person who is a partner, joint venturer or who is otherwise engaged in a joint undertaking or business with Pepco, or any person who, directly or indirectly, in whole or in part, owns or controls, is owned or controlled by, or is under common ownership or control with Pepco.

2. "Communication" means the transmittal or exchange of information of any kind in oral, written or electronic form.

3. "Conrail" means Consolidated Rail Corporation.

4. "1986 Contract" means the rail transportation contract between CSXT and Pepco designated as Contract No. ICC-CSXT-C-00006.

5. "CSXT" means CSX Transportation, Inc.

6. "Date" means the exact day, month and year, if ascertainable, or, if not, the best approximation (including relationship to other events).

7. "Dickerson Station" means the electric power generating facilities owned and/or operated by Pepco and located at or near Dickerson, Maryland.

8. "Document" means any writing or other compilation of information, whether handwritten, typewritten, printed, recorded, or produced or reproduced by any process, including but not limited to: intra-company or other communications; business records; files; agreements; statements; pleadings; contracts; correspondence; letters; messages; telex messages; telegrams; facsimile transmissions; memoranda; studies; directives; manuals; printed forms; bulletins; tabulations; projections; summaries or records of telephone or personal conversations or interviews; reports; calendars; scrapbooks; journals; diaries; log books; notes; notebooks; forecasts; photocopies; photographs; photographic negatives; maps; tape recordings; wire recordings; computer tapes; computer discs; computer programs; computer data; computer printouts; electronic mail messages; data processing cards; all other photographic and retrievable data (whether encoded, taped or coded electronically, electromagnetically or otherwise); computer models; all stored data compilations of any kind that may be retrievable or machine-readable produced in reasonably usable form including any descriptions, indices or other interpretative materials necessary or useful to access the stored information; statistical or financial statements; accounts; data sheets; forms; graphs; charts; sketches; note charts; plans; drawings; tracings; blueprints; minutes or records or summaries of meetings or conferences; expressions or statements of policy; lists of persons attending meetings or conferences; opinions or reports or summaries of negotiations or

investigations; brochures; newspapers; newsletters; magazines; periodicals; books; opinions or reports of consultants; pamphlets; advertisements; circulars; trade or other letters; press releases; comments; catalogues; drafts; revisions of drafts; invoices; vouchers; receipts; orders; and, original or preliminary notes and any marginal notes or comments on any of the foregoing items.

Further, the term "document" includes:

- (a) Basic records and summaries of such records (including computer runs);
- (b) Original versions and copies that differ in any respect from original versions; and
- (c) Documents in the possession, custody or control of Pepco and documents in the possession, custody or control of consultants or other persons that have assisted Pepco in connection with this proceeding.

9. "FERC" means the Federal Energy Regulatory Commission.

10. "ICC" means the Interstate Commerce Commission.

11. "Identify" or "state the identity of" means:

- (a) When used with respect to a natural person (whether as part of an identification of a document or oral communication or otherwise), to state his or her full name, present or last known address, present or last known place of employment and present or last known job title;

(b) When used with respect to a corporation or other legal entity, to state the full name, address and State of incorporation or formation, and the identity of the person(s) who acted on behalf of such entity with respect to the subject matter of the discovery request;

(c) When used with respect to a document, to state (i) the type of document (e.g., letter, memorandum, telex, contract, calendar pad, report), (ii) the number of pages, title, author, all addressees and actual recipients (including "cc:" and "bcc:" recipients), date, subject line or "re:" line, and (iii) a description of the subject matter and content of the document;

(d) When used with respect to a document:

(1) Known to have existed but no longer existing, to state the identity of its last known custodian, and the date on and circumstances under which the document was lost, destroyed or otherwise became unavailable;

(2) Once but no longer in the possession, custody and control of Pepco, to state the date on and circumstances under which the document was disposed of, destroyed, surrendered by or otherwise left the possession, custody and control of Pepco, the identity of its present (or last known)

custodian and the location of such document, if known;

(e) When used with respect to documents, to provide information in sufficient detail to enable a party or person to whom a subpoena is directed to identify fully the document to be produced, and to enable CSXT to determine that such document, when produced, is in fact the document so described; and

(f) When used with respect to oral communications, to state the date of such communications, the identity of each party to the communication, the place at which each party was located, the substance thereof and the method of such communication (e.g., in person or by telephone).

12. "Party" means the parties to this proceeding (i.e., CSXT and Pepco).

13. "Pepco" means Potomac Electric Power Company, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors, subsidiaries and affiliates, or any of them, and all other persons acting (or who have acted) on its behalf.

14. "Person" means any natural person, any business entity (whether partnership, association, cooperative, proprietorship, corporation or joint venture), and any government entity, department, administration, agency, bureau or political

subdivision thereof and every other type of organization or entity.

15. "Possession, custody or control" means, with respect to a document, any documents within the possession, custody or control of Pepco, and each employee, consultant, agent, officer, director, partner, or representative, including attorneys, of Pepco; or each former employee of Pepco; or each other person acting for or in concert with Pepco; and refers to and includes documents prepared by, obtained, or placed in the possession, custody or control of any such person within the scope of his or her duties or relationship to Pepco; and further refers to and includes documents having been placed in the temporary possession, custody or control of any third party by any of the foregoing persons of Pepco. Documents are deemed to be in the possession, custody or control of Pepco if Pepco has the right to secure the document, or a copy thereof from another person or entity, whether public or private, having such actual physical possession, custody or control

16. Wherever a "price" or "prices" are requested, state the price per ton and state whether it is f.o.b. or f.a.s. a railroad car, vessel, destination, port or other.

17. "Produce" means to make legible, complete and exact copies of all responsive documents in the possession, custody or control of Pepco, which documents are to be delivered to G. Paul Moates, Sidley & Austin, Ninth Floor, 1722 Eye Street, N.W., Washington, D.C. 20006. In all cases where a discovery

request calls for a document to be identified or described, production of a true and legible copy of the document itself will be deemed a sufficient answer.

18. "Referring to" or "relating to" or "related" mean and include making a statement about, discussing, describing, reflecting, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

19. "STB" means the Surface Transportation Board.

20. "Transport" or "transportation" means the carriage of freight products or commodities by any carrier, whether regulated by the ICC or STB or unregulated, for-hire or private (including a carrier owned in whole or in part or operated by Pepco or any affiliate thereof), by rail, motor, water, pipeline, or otherwise.

INSTRUCTIONS

1. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa. Pronouns shall be construed as gender-neutral. Dates are inclusive unless stated otherwise. Each discovery request shall be accorded a separate answer,, and each subpart of a discovery request shall be accorded a separate answer. Discovery requests or subparts thereof shall not be combined for the purpose of supplying a common answer thereto.

2. If exact data cannot be supplied in answering any discovery request that calls for a numerical response, Pepco

should provide its best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.

3. If Pepco cannot answer any part of any discovery request in full, after exercising due diligence to secure the information to do so, Pepco should so state and answer to the extent possible, specifying its inability to answer the remainder, and stating whatever information or knowledge it has of each unanswered part.

4. Should Pepco assert a privilege or work product protection for any documents or communications about which information is requested by any of the following discovery requests, Pepco shall identify such documents and communications (including a brief description of the subject matter of any such document or communication), state the ground on which the asserted privilege rests, and state facts establishing the foundation of the asserted privilege.

5. These discovery requests are continuing in character, so as to require Pepco to file supplementary answers under the circumstances described in 49 C.F.R. § 1114.29(a)-(b). Where knowledge or information in the possession of Pepco is requested,

such requests include knowledge of its employees, agents, representatives and consultants.

6. Where these discovery requests seek information as to the existence or content of any document, the furnishing of a true and legible copy of such document will be accepted as an adequate reply to the request.

7. Where these discovery requests seek information that exists in computer-readable format, such information should be produced in that format whether or not it also exists in paper or other non-computerized format.

8. CSXT reserves the right to serve further discovery requests in this proceeding.

II.

INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

1. With respect to CSXT's transportation of coal to the Dickerson Station, produce all documents, created or in the possession, custody or control of Pepco at any time during the period January 1, 1994 to the present, referring to any of the following:

- (A) The negotiation, establishment or modification of the rates and other terms governing CSXT's performance of such coal transportation services;
- (B) The availability or unavailability to Pepco of effective competitive transportation alternatives to CSXT's coal transportation services;

- (C) The nature and source of any competitive or business leverage Pepco possesses or might possess in negotiating with CSXT reasonable rail rates for CSXT's coal transportation services;
 - (D) The negotiations between the parties concerning a possible new or amended rail transportation contract to govern CSXT's coal transportation services to the Dickerson Station following the scheduled December 31, 1996 expiration of the 1986 Contract; and
 - (E) The rate levels and other terms and conditions of service that CSXT or Pepco proposed, offered, considered, analyzed or, in Pepco's view, could or should have proposed or offered to govern CSXT's coal transportation services to the Dickerson Station following the scheduled December 31, 1996 expiration of the 1986 Contract.
- 2. Produce all documents that underlie, support or relate to the allegation contained in Paragraph 13 of the Complaint in this proceeding that CSXT possesses "market dominance" over the transportation of coal to the Dickerson Station.
 - 3. Produce all documents that underlie, support or relate to the allegation contained in Paragraph 12 of the Complaint in this proceeding that the challenged common carrier rates generate revenue-to-variable cost ratios in excess of 180 percent for coal movements between the specified origins and the Dickerson Station.

4. (A) To the extent not produced in response to Request No. 3, identify and produce (i) all studies or analyses conducted by Pepco, or by any person retained or employed by Pepco, during the time period between January 1, 1994 and the present, and (ii) all studies or analyses in the possession, custody or control of Pepco during the time period between January 1, 1994 and the present, relating to the variable costs of service or to the revenue-to-variable cost ratios for coal movements over CSXT's lines to the Dickerson Station.
(B) For each study or analysis identified in response to Request No. 4(A), 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.
5. Produce all documents that underlie, support or relate to the allegation contained in Paragraph 14 of the Complaint in this proceeding that the challenged common carrier rates exceed maximum reasonable levels for coal movements over CSXT's lines to the Dickerson Station.
6. (A) To the extent not identified and produced in response to Request No. 5, produce (i) all studies or analyses conducted by Pepco, or by any person retained or employed by Pepco, during the time period between January 1, 1994 and the present, and (ii) all studies or analyses in the possession, custody or control of Pepco

during the time period between January 1, 1994 and the present, relating to the maximum reasonableness of the rates charged by CSXT for the transportation of coal over CSXT's lines to the Dickerson Station or to the stand-alone costs of service for the transportation of coal over CSXT's lines to the Dickerson Station.

- (B) For each study or analysis identified in response to Request No. 6(A), 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.
7. Produce all documents that underlie, support or relate to the allegation contained in Paragraph 15 of the Complaint in this proceeding that CSXT is required to establish common carrier rates for the movement of coal from the Elk River-North and Elk River-South mine districts to the Dickerson Station.
 8. Produce all documents that underlie, support or relate to the allegation contained in Paragraph 16 of the Complaint in this proceeding that CSXT is required to establish common carrier rates for the movement of coal from CSXT's interchange with Conrail at Lurgan, Pennsylvania (or from any other CSXT/Conrail interchange point) to the Dickerson Station.
 9. Identify each electric power generating unit, plant or facility (referred to herein as "unit") owned in whole or in

part and/or operated by Pepco including, but not limited to, each unit included in or comprising the Dickerson Station.

For each such unit:

- (A) Identify the name and location (city and state) of the unit;
- (B) Describe in detail the electric power generating operations at and organization of the unit;
- (C) Describe in detail how fuel and other supplies are transported and delivered to the unit; and
- (D) 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 for the unit.

10. Identify, separately for each electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 9, the following:

- (A) 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;
- (B) The operator or operators of the unit, if different than the owner of the unit;
- (C) 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;

- (D) The total cost of construction of the unit, the total cost of any significant (i.e., in excess of \$1,000,000) capital improvements, rehabilitations, renovations or investments made in or of such unit subsequent to its original construction, and a description of each such capital improvement, rehabilitation, renovation or investment;
- (E) The undepreciated book value, annual depreciation expense, accrued depreciation (in dollars), annual amortization expense, income taxes and other taxes, deferred income tax and other deferred credits as of December 31st of each calendar year since the original construction of the unit;
- (F) The total operation and maintenance ("O&M") expense during each calendar month from January 1, 1994 to the present, separated into each of the following categories (or, if not maintained by such categories in the regular course of business, other specific categories for which such expenses are recorded in the regular course of business):
- (1) Operation expenses: supervision and engineering; fuel; steam; steam from other sources; steam transferred; electric; miscellaneous; rents; allowances; total; and

- (2) Maintenance expenses: supervision and engineering; boiler plant; structures; electric plant; miscellaneous plant; total;
- (G) The total net generation (in kWh) of electricity of the unit during each calendar month from January 1, 1994 to the present;
- (H) The dispatch priority of the unit, in relation to other electric power generating units of Pepco, during each calendar month from January 1, 1994 to the present;
- (I) The base load requirements or commitments (in kW) of the unit during each calendar month from January 1, 1994 to the present;
- (J) The date, time and duration (in hours) of each scheduled outage or shutdown of the unit during each calendar month from January 1, 1994 to the present;
- (K) The date, time and duration (in hours) of each actual outage or shutdown of the unit during each calendar month from January 1, 1994 to the present;
- (L) The type or types of fuel (i.e., coal, gas, oil, nuclear, etc.) burned or used in the unit during each calendar month from January 1, 1994 to the present;
- (M) The total volume or amount of each type of fuel burned or used in the unit during each calendar month from January 1, 1994 to the present; and

(N) The average delivered cost (per Btu) of each type of fuel burned or used in the unit during each calendar month from January 1, 1994 to the present.

11. Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 9, and for each calendar year from 1994 through 1996, the minimum, maximum and weighted average coal quality requirements and specifications for such unit, including the requirements and specifications relating to each of the following coal characteristics (based on the standards of the American Society of Testing Materials and on an "as received" basis):

(A) Gross calorific value (Btu per pound);

(B) Moisture content;

(C) Volatile matter;

(D) Fixed carbon content;

(E) Ash content;

(F) Sulfur content;

(G) Size;

(H) Grindability;

(I) Fusion (reducing) values:

(1) Initial deformation;

(2) First softening;

(3) Hemisphere;

(4) Fluid;

(J) Oxidizing values:

- (1) Initial deformation;
- (2) First softening;
- (3) Hemisphere;
- (4) Fluid;
- (K) Carbon content;
- (L) Hydrogen content;
- (M) Nitrogen content;
- (N) Chlorine content;
- (O) Oxygen content;
- (P) Ash analysis (for each applicable chemical for which standards are set).

If no minimum or maximum requirements or specifications are used or are available, so indicate. If target requirements or specifications are employed, rather than minimum/maximum requirements or specifications, identify such target requirements or specifications. State whether the requirements or specifications apply to coal after blending or for each individual coal supply source.

12. Identify and describe, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 9, the basis or source of each of the coal quality requirements or specifications identified in response to Request No. 11. State whether such requirements or specifications are imposed by law or regulatory requirement or by operational or technical requirements (including, without limitation,

requirements imposed by the Clean Air Act Amendments or administrative orders implementing such amendments), and in each instance describe the nature of such legal or regulatory requirements and/or such operational or technical requirements.

13. (A) Identify, separately for each coal-fired electric power generating unit, plant or facility identified in response to Request No. 9, any future planned, contemplated or anticipated changes in coal quality requirements or specifications. For each such change, identify whether such change is the result of legal or regulatory requirements and/or operational or technical requirements (including, without limitation, requirements imposed by the Clean Air Act Amendments or administrative orders implementing such amendments). Describe the nature of such legal or regulatory requirements and/or such operational or technical requirements and how they would affect the coal quality requirements or specifications.
- (B) Produce all documents referring to any changes in coal quality requirements or specifications identified in response to Request No. 13(A).
14. (A) Identify and describe, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 9, any future planned, contemplated or

anticipated construction or modification of facilities (including scrubbers) at the unit that might affect the coal quality requirements and/or volume of coal burned or used at the unit. Describe each such construction or modification and how it would affect the coal quality requirements or volume of coal burned or used at the plant.

- (B) Produce all documents referring to any construction or modification of facilities identified in response to Request No. 14(A).

15. Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 9, the following:

- (A) The number of tons of coal burned or used in the unit during each calendar month from January 1, 1994 to the present;
- (B) The weighted average quality of coal burned or used in the unit during each calendar month from January 1, 1994 to the present, including values for each of the coal quality characteristics identified in Request Nos. 11(A)-(P).

16. Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 9, and for

each calendar month from January 1, 1994 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 and/or operator 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 weighted average quality of coal (including values for each of the coal quality characteristics identified in Request Nos. 11(A)-(P)) supplied by each such mine or source to the unit;
- (E) 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;
- (F) 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;
- (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;
- (H) The tariff, contract rate provisions or other source of the applicable rate level for such transportation of

coal by each such carrier (or carriers) from each such mine or source to the unit;

(I) Whether title to the coal supplied by each such mine or source to the unit was transferred f.o.b. origin, f.o.b. destination or other (and identify if other); and

(J) Whether Pepco provided rail equipment for the transportation of the coal from each such mine or source to 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 Pepco.

17. Identify, separately for each electric power generating unit, plant or facility (referred to herein as "unit") planned or under construction by or for Pepco (including any unit that will produce power for Pepco's use or benefit):

- (A) The name and location (city and state) of the unit;
- (B) 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) The operator or operators of the unit, if different than the owner of the unit;
- (D) The date on which construction of the unit was or will be commenced, the date on which construction of the unit is expected to be completed, and the date on which the unit is expected to be placed into service;
- (E) The total expected cost of construction of the unit;

- (F) The total expected annual net generation (in kWh) of electricity generated by the unit;
- (G) The total expected annual depreciation expense, income tax expense and other tax expense of the unit;
- (H) The total expected annual operation and maintenance ("O&M") expense of electricity generated by the unit, separated into each of the following categories (or, if not maintained by such categories in the regular course of business, other specific categories for which such expenses are recorded in the regular course of business):
 - (1) Operation expenses: supervision and engineering; fuel; steam; steam from other sources; steam transferred; electric; miscellaneous; rents; allowances; total; and
 - (2) Maintenance expenses: supervision and engineering; boiler plant; structures; electric plant; miscellaneous plant; total;
- (I) The expected dispatch priority of the unit, in relation to other electric power generating units Pepco, during its first calendar year of operation or during any subsequent years for which Pepco has calculated estimates of such costs;
- (J) The expected base load requirements or commitments (in kW) of the unit during its first calendar year of

- operation or during any subsequent years for which
Pepco has calculated estimates of such costs; and
- (K) The type or types of fuel (i.e., coal, gas, oil, nuclear, etc.) to be burned or used in the unit.
18. Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 17, the minimum, maximum and weighted average coal quality requirements and specifications for such unit, including values for each of the coal quality characteristics identified in Request Nos. 11(A)-(P).
19. Identify, separately for each electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 17:
- (A) The name and location (city and state) of each fuel producer or supplier that Pepco and/or its consultants or contractors have identified or considered as a possible supplier of fuel to the unit;
- (B) The name and transportation mode of each carrier (or carriers) that Pepco and/or its consultants or contractors have identified or considered as a possible transporter of fuel to the unit.
20. (A) State whether Pepco has conducted any studies or analyses, has retained any other person to conduct any studies or analyses, or has in its possession, custody or control, any studies or analyses, concerning any

electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Request No. 17 and relating to any of the following subjects:

- (1) The feasibility and/or costs of alternative sources or supplies of fuel for use at the unit;
- (2) The feasibility and/or costs of alternative carriers and transportation modes for delivery of fuel to the unit; or
- (3) The feasibility and/or costs of utilizing coal having differing coal quality characteristics at the unit.

(B) Produce each study or analysis identified in response to Request No. 20(A) and each document referring to each such study or analysis.

21. Produce each coal supply contract (including, without limitation, the coal supply "agreements" referred to in Paragraph 4 of the Complaint in this proceeding) to which Pepco is or was a party and which was in effect at any time between January 1, 1994 and the present. The response to this 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 request, the applicable seller, mine origin or source, price, volume and quality of the coal supplied under the contract.

22. (A) Identify and describe any negotiations or discussions that have occurred during the period from January 1, 1994 to the present, or are contemplated by Pepco to occur, between Pepco and any other person for purpose of amending, modifying, supplementing, replacing or altering the terms of any coal supply contract identified in response to Request No. 21.
- (B) Produce all documents referring to any negotiations or discussions identified in response to Request No. 22(A).
23. Produce each contract or other written documentation governing each spot purchase (i.e., a purchase not under a contract with a term of 12 months or more) of coal made by Pepco for use at any electric power generating unit, plant or facility (including, but not limited to, the Dickerson Station) during the period from January 1, 1994 to the present. The response to this request should include all supplements and amendments to each such spot coal contract or other written documentation, as well as all documents necessary to determine, during the entire period covered by this request, the applicable seller, mine origin or source, price, volume and quality of the coal supplied under the contract or other written documentation.
24. Produce each contract in effect during the period from January 1, 1994 to the present between Pepco, on the one hand, and any carrier (other than CSXT), on the other hand,

for the transportation of coal or other fuel to any electric power generating unit, plant or facility.

25. (A) State whether, during the period from January 1, 1994 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 the Dickerson Station. For purposes of this Request, "solicited" means any oral or written communication relating to the subject of the actual or possible transportation of coal to the Dickerson Station.
- (B) If the answer to Request No. 25(A) 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.
- (C) For each solicitation identified in the answer to Request No. 25(B), identify the following:
- (1) Pepco's response to the solicitation;
 - (2) The reasons for such response;
 - (3) Whether Pepco used any transportation service of the soliciting carrier and, if so, indicate for which of the amounts of tonnage identified in the answer to Request No. 15 each rate and service was so used; and

- (4) If Pepco decided not to use any service of such carrier, the reasons for that decision.

26. (A) State whether, during the period from January 1, 1994 to the present, Pepco 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 the Dickerson Station. For purposes of this Request, "solicited" means any oral or written communication relating to the subject of the actual or possible transportation of coal to the Dickerson Station.

(B) If the answer to Request No. 26(A) 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.
- (C) For each solicitation identified in the answer to Request No. 26(B), identify the following:
- (1) The carrier's response to the solicitation;
 - (2) The reasons stated by the carrier for such response;
 - (3) Whether Pepco used any transportation service of the carrier and, if so, indicate for which of the amounts of tonnage identified in the answer to

Request No. 15 each rate and service was so used;
and

- (4) If Pepco decided not to use any service of such carrier, the reasons for that decision.

27. Produce all documents, created or in the possession, custody or control of Pepco at any time during the period January 1, 1994 to the present, referring to any of the following:

- (A) The feasibility or desirability to Pepco of obtaining coal for use at the Dickerson Station from mine origins or sources for which Pepco could obtain coal transportation service from CSXT pursuant to the common carrier rates at issue in this proceeding;
- (B) Pepco's evaluation of possible alternative sources of coal that could be obtained for use at the Dickerson Station from mine origins or sources for which Pepco could obtain coal transportation service from CSXT pursuant to the common carrier rates at issue in this proceeding;
- (C) Pepco's communications with any seller or supplier of coal regarding arrangements or possible arrangements for the future supply of coal to the Dickerson Station from mine origins or sources from which Pepco could obtain coal transportation service from CSXT pursuant to the common carrier rates at issue in this proceeding; and

- (D) The impact or possible impact that an STB decision prescribing maximum reasonable rates in this proceeding could have on Pepco's selection of particular sources of coal for use at the Dickerson Station.
28. (A) Identify and describe in detail Pepco's current policies, procedures, arrangements and agreements for the purchase, sale, exchange or transfer of electric power from, to or with other sources, including other utilities, power pools, independent power producers, cogeneration facilities or any other electric power generating facilities (including (a) purchases, sales, exchanges or transfers between utilities or other electric power generating facilities within Pepco system, and (b) purchases and sharing between (i) utilities or electric power generating facilities within the Pepco system and (ii) those outside the Pepco system). Produce all documents relating to such policies, procedures, arrangements and agreements.
- (B) Identify and describe in detail the standards or methodologies that Pepco applies in deciding whether and when to purchase, sell, exchange or transfer electric power from, to or with other sources, including a description of the application and/or significance to such methodology of the following:

- (1) The costs involved in the generation and transmission of electricity, including capital, fuel and operating costs on a system, plant and unit basis;
 - (2) Reliability, economic, contractual, regulatory, outage schedules, and operating considerations in determining the timing, duration, quantity and pricing of purchases, sales, exchanges, or transfers of electric power between Pepco and other parties;
 - (3) Base load, reliability, economic, contractual, regulatory, and operating considerations in determining the timing and order of dispatch of Pepco plants and units;
 - (4) Electric power generated in-system and/or available from outside sources, including power from nuclear, hydroelectric, coal-fired, gas-fired and oil-fired plants and units; and
 - (5) Variations in in-system electrical demand on an instantaneous, daily, monthly, seasonal and annual basis.
- (C) Identify and/or produce for Pepco, separately for each calendar month from January 1, 1994 to the present:
- (1) The hourly electrical demand separately for all firm sales;
 - (2) The "System Lambda" on an hourly basis;

- (3) The complete dispatch log, including all bid and ask quotes for all power transactions and offers of power transactions;
 - (4) Hourly net generation for all units, including fuel use if other than primary fuel; and
 - (5) Hourly electrical demand aggregated for all Pepco (as applicable) customers.
- (D) For each purchase, sale, exchange or transfer of power made by Pepco during the period January 1, 1994 to the present, identify the following:
- (1) The type of transaction involved (e.g., purchase, sale, exchange or transfer);
 - (2) The agreement or agreements under which the purchase, sale, exchange or transfer was made and effected;
 - (3) The date of the purchase, sale, exchange or transfer;
 - (4) The source of power purchased, sold, exchanged or transferred, including the names of the parties involved in the purchase, sale, exchange or transfer, the name(s) and location(s) (city and state) of the plant(s) generating the power and the owner(s) and operator(s) of such plant(s);
 - (5) The recipient or user of power purchased, sold, exchanged or transferred, including the name and

location (city and state) of the utility receiving or using the power;

- (6) The amount of power purchased, sold, exchanged or transferred during each calendar month;
- (7) The statistical classification or type of power purchased, sold, exchanged or transferred (economy, firm power, dump or surplus power, or other (describe other)) during each calendar month (to classify the type of power purchased, sold, exchanged or transferred, refer to the FERC classifications as defined in Account 447 and Account 555 of FERC Form 1, pages 310-11 and 326-27, respectively);
- (8) The terms (including price, demand charges, energy charges, and other charges) of the purchase, sale, exchange or transfer during each calendar month;
- (9) The volume of scheduled and, if different, actual deliveries of power under any contract and the reason(s) for any difference between scheduled and actual deliveries;
- (10) The costs of transmission of the power purchased, sold, exchanged or transferred between the point of generation and the point of receipt by the recipient or user during each calendar month;

- (11) The availability of additional power for purchase, sale, exchange or transfer during each calendar month;
 - (12) The actual calculations reflecting the application to the purchase, sale, exchange or transfer of the standards and methodologies identified in response to Request No. 28(B);
 - (13) The regulatory authority or approval needed or obtained for the purchase, sale, exchange or transfer; and
 - (14) The financial and regulatory treatment of the purchase, sale, exchange or transfer as it relates to Pepco's rate of return, profit or other gain associated with such purchase, sale, exchange or transfer.
- (E) Produce all computer models and programs that Pepco utilizes in deciding whether and when to purchase, sell, exchange or transfer electric power from, to or with other sources, including computer models and programs that incorporate actual values, costs, prices and any other financial and operating data used in the application of the standards and methodologies identified in response to Request No. 28(B).
- (F) Produce all documents relating to or summarizing such purchases, sales, exchanges or transfers. Identify and describe in detail all other known sources of power

available for purchase, sale, exchange or transfer during the period January 1, 1994 to present. Produce all documents relating to such sources.

29. (A) Identify and describe in detail Pepco's current policies and procedures for determining the relative order in which power will be generated or dispatched from particular electric power generating units, plants or facilities within its system. Produce all documents describing or evidencing such policies and procedures.
- (B) Identify, separately for each calendar month during the period January 1, 1994 to the present, the relative dispatch priority and comparative cost per unit of output (as used in determining relative dispatch priority) for each electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Pepco.
- (C) Identify, by docket number and agency name, each state or federal regulatory proceeding (i) to which Pepco has been a party during the period January 1, 1994 to the present and (ii) which has involved the question of Pepco's policies and procedures for determining the relative order in which power will be generated or dispatched from particular electric power generating units, plants or facilities within its system.

- (D) Produce all testimony and other written submissions filed by or on behalf of Pepco in each regulatory proceeding identified in response to Request No. 29(C).
30. (A) Produce all documents comprising or constituting the presently effective agreement or agreements governing the operation of the Pennsylvania-New Jersey-Maryland Interconnection pool (referred to herein as "PJM"), and Pepco's membership or participation in PJM.
- (B) Produce all documents referring to or summarizing the procedures and rules governing the purchase, sale, exchange or transfer of power between and among members or participants of PJM.
- (C) Produce all documents referring to the impact or possible impact that membership or participation in PJM could have on the competitive fuel source and transportation alternatives available to any electric utility that is a member or participant in PJM.
31. (A) Produce all documents referring to the content, applicability, methodology, quantification or implementation of Pepco's "fuel clause," including all documents referring to any changes therein during the period January 1, 1992 to the present.
- (B) To the extent not otherwise provided in response to Request No. 31(A), produce all documents referring to the financial and regulatory treatment of Pepco's fuel

expenses, including fuel balancing accounts and deferred accounting procedures and conventions.

32. Produce all documents, created or in the possession, custody or control of Pepco at any time during the period January 1, 1994 to the present, referring to any of the following:

- (A) The feasibility and/or costs of receiving coal at the Dickerson Station 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 the Dickerson Station by means of any rail carrier other than CSXT;
- (C) The feasibility and/or costs of constructing or acquiring rail transportation facilities so as to receive coal at the Dickerson Station by means of any rail carrier other than CSXT;
- (D) The feasibility and/or costs of utilizing coal having differing coal quality characteristics at the Dickerson Station;
- (E) The feasibility and/or costs of utilizing coal at and/or transporting coal to the Dickerson Station from any mine or coal source other than the Patriot, Sentinal and Deep Hollow mines;
- (F) The feasibility and/or costs of transporting coal from the Patriot, Sentinal and Deep Hollow mines by means of

motor carriers, water carriers, conveyors or any other non-rail transportation mode;

- (G) The feasibility and/or costs of transporting coal from the Patriot, Sentinal and Deep Hollow mines by means of any rail carrier other than CSXT;
 - (H) The feasibility and/or costs of constructing or acquiring rail transportation facilities so as to transport coal from the Patriot, Sentinal and Deep Hollow mines by means of any rail carrier other than CSXT;
 - (I) The feasibility and/or costs of producing and/or transporting coal from the Patriot, Sentinal and Deep Hollow mines for use by any electric power generating unit, plant or facility owned or operated by Pepco (other than the Dickerson Station);
 - (J) The feasibility and/or costs of producing and/or transporting coal from the Patriot, Sentinal and Deep Hollow mines for any purchaser or end-user other than Pepco;
 - (K) The costs incurred by CSXT in transporting coal between any mine origin or source and the Dickerson Station;
and
 - (L) The feasibility and/or costs of utilizing petroleum coke and/or other alternate fuels at the Dickerson Station.
33. (A) State whether Pepco during the period 1992 to the present has considered, analyzed or studied the possibility of acquiring or constructing rail facilities in

order to enable more than one rail carrier to provide direct transportation of coal to any electric power generating unit, plant or facility (referred to herein as "unit") owned (in whole or in part) and/or operated by Pepco.

- (B) If the answer to Request No. 33(A) is affirmative, identify separately for each such proposal to acquire or construct rail facilities the following:
- (1) The name and location (city and state) of the unit to which direct access by more than one rail carrier would be permitted as a result of such acquisition or construction of rail facilities;
 - (2) The date or time period during which the proposal to acquire or construct such rail facilities was under consideration, analysis or study;
 - (3) The rail carrier (or carriers) that would be afforded direct access to the unit as a result of such acquisition or construction of rail facilities;
 - (4) The estimated costs of constructing, maintaining and operating the rail facilities proposed to be acquired or constructed;
 - (5) The anticipated design, location and operation of the rail facilities proposed to be acquired or constructed; and

- (6) The reasons why the proposed rail facilities were not acquired or constructed.
- (C) Produce, separately for each proposal to acquire or construct rail facilities identified in response to Request No. 33(B), each document referring to such proposal, including (but not limited to) the following:
- (1) All studies and analyses of the feasibility and/or costs of constructing, maintaining or operating the rail facilities proposed to be acquired or constructed;
 - (2) All studies and analyses relating to the engineering, design or operation of the rail facilities proposed to be acquired or constructed;
 - (3) 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;
 - (4) All correspondence relating to such proposal; and
 - (5) All regulatory filings made by Pepco with Federal, state or municipal governmental agencies or departments in connection with such proposal.
34. 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 Pepco during the period January 1, 1994 to the present, that can be used

to estimate or project (ii) the costs of transporting coal or other fuels from alternative sources or (ii) the delivered costs of obtaining coal or other fuels from alternative sources. Identify and produce all documents referring to any such model, program or system.

35. (A) Identify each consultant, expert or research firm employed by or for Pepco during the period January 1, 1992 to the present in relation to coal procurement and/or coal transportation.
- (B) For each person identified in response to Request No. 35(A), identify the following:
- (1) The person employing such consultant, expert or research firm;
 - (2) The date or dates of each such employment;
 - (3) The stated purpose of each such employment; and
 - (4) The report or other written communications made pursuant to such employment.
- (C) For each employment of a consultant, expert or research firm identified in response to Request No. 35(A), produce all documents prepared by such consultant, expert or research firm in connection with such employment.
36. Produce each study, analysis or report (including, but not limited to, strategic studies, long range planning studies, analysis of options, and management audit studies or reports) relating to Pepco's fuel management, fuel procurement

and/or fuel transportation functions performed by Pepco or by any consultant, expert or research firm during the period January 1, 1992 to the present including, without limitation, any studies or reports prepared in connection with Pepco's compliance with the requirements of the Amended Clean Air Act.

37. Produce each Integrated Resource Plan or other similar report or study prepared by or for Pepco during the period January 1, 1992 to the present, including all underlying supporting materials and workpapers.
38. (A) Produce all studies or analyses, and all workpapers and other supporting documents and data (including machine-readable data) relating to any studies or analyses, prepared by or for Pepco or in the possession, custody or control of Pepco during the period January 1, 1992 to the present, concerning Pepco's compliance with the Amended Clean Air Act at any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Pepco.
- (B) Identify, by docket number and agency name, each state or federal regulatory proceeding (i) to which Pepco has been a party during the period January 1, 1992 to the present and (ii) which has involved the question of Pepco's compliance with the Amended Clean Air Act at any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Pepco.

- (C) Produce all testimony and other written submissions filed by or on behalf of Pepco in each regulatory proceeding identified in response to Request No. 38(B).
39. (A) 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, 1994 to the present and relating to any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Pepco.
- (B) For each FERC Report Form 423 produced in response to Request No. 39(A), produce a detailed breakdown of the cost components reports on such form, including a breakdown of the costs associated with the coal, transportation, equipment, handling, preparation, inventory and dust suppression.
40. Produce each separate response to interrogatories provided by Pepco 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, 1992 to the present.
41. To the extent not otherwise provided in response to any other Request, identify and produce, for the period from January 1, 1994 to the present, each official form periodically filed by Pepco with state regulatory commissions or agencies in the District of Columbia and Maryland and containing data (including volume and cost) on coal procurement

for, or coal transportation of coal consumed at, the
Dickerson Station.

42. (A) Identify, by docket number and name of agency or court, each federal or state judicial or administrative proceeding (i) to which Pepco was or is a party during the period from January 1, 1992 to the present and (ii) in which Pepco or any person representing it made any statements concerning any of the following subjects:
- (1) The degree of competition for the generation, transmission and sale of electric power in the areas or markets served by Pepco or in which Pepco participates;
 - (2) The cost of fuel at the Dickerson Station or at any other electric power generating unit, plant or facility owned in whole or in part and/or operated by Pepco;
 - (3) The cost of transporting fuel to the Dickerson Station or to any other electric power generating unit, plant or facility owned in whole or in part and/or operated by Pepco;
 - (4) The ability of Pepco to secure alternative sources of fuel or transportation of fuel for the Dickerson Station or any other electric power generating unit, plant or facility owned in whole or in part and/or operated by Pepco;

- (5) The relative dispatch order of any electric power generating unit, plant or facility included in or comprising the Dickerson Station, and/or the effects of relative fuel and fuel transportation costs on such relative dispatch order;
 - (6) The relative cost and availability of electric power purchased from independent sources and electric power generated within the Pepco system; and
 - (7) The transportation services (and rates) provided by CSXT to the Dickerson Station.
- (B) Produce all documents (including testimony and pleadings) containing or referring to any statements identified in response to Request No. 42(A).
43. (A) State whether Pepco has conducted, caused to be conducted, or has access to any studies, reports or other documents describing or analyzing:
- (1) The costs of utilizing privately-owned or leased rail cars for the movement of coal; or
 - (2) The costs of maintaining privately-owned or leased rail cars for the movement of coal.
- (B) If the answer to Request No. 43(A) is affirmative, describe in detail the scope of each such study, report or other document, the methodology utilized therein and the detailed results thereof. Produce all of such studies, reports or other documents, as well as the

workpapers and explanation of procedures relating to such studies, reports or other documents.

44. For each hopper car or gondola owned or leased by Pepco, and for each of the calendar years 1994 to the present, identify the following:

- (1) The owner or lessee of the car;
- (2) The location(s) from which the hoppers or gondolas are assigned;
- (3) Car initial and number;
- (4) Source of car;
- (5) Car model or type;
- (6) Tare weight;
- (7) Date of purchase or lease;
- (8) Original cost plus additions and betterments;
- (9) Description of financing vehicle (e.g., equipment trust);
- (10) Debt rate as a percent;
- (11) Finance terms (in years);
- (12) Annual depreciation;
- (13) Accrued depreciation;
- (14) If leased, whether capital or operating lease;
- (15) 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;

- (16) 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;
 - (17) 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
 - (18) The history (on a year-to-year basis) of per diem payments received by Pepco or other owner or lessor for the use of each car.
45. For each of the hopper or gondola cars identified in response to Request No. 44, identify maintenance and/or repair expenses by individual hopper or gondola car initial and number (owned and leased), incurred by Pepco for each of the calendar years 1994 to the present.
46. For each of the hopper or gondola cars identified in response to Request No. 44, identify the total car unit-miles corresponding to the maintenance and repair expenses identified in Request No. 45 (i.e., by individual hopper or gondola car initial and number, or car type or car series) for each of the calendar years 1994 to the present.
47. (A) Identify the individual days during the period January 1, 1994 to the present on which coal unloading opera-

tions at the Dickerson Station were closed because of employee vacations or holidays or for any other reason.

- (B) Produce each document referring to the temporary closing of coal unloading operations at the Dickerson Station during the period January 1, 1994 to the present because of employee vacations or holidays or for any other reason.

48. (A) Identify each weekend (i.e., Saturday and following Sunday) during the period January 1, 1994 to the present on which coal unloading operations at the Dickerson Station were closed.

- (B) Produce each document referring to the incidence or frequency of coal unloading operations on weekends at the Dickerson Station during the period January 1, 1994 to the present.

49. (A) State whether coal is or can be unloaded from CSXT's railroad cars at the Dickerson Station 24 hours per day.

- (B) If the response to Request No. 49(A) is less than 24 hours per day, identify all circumstances which prevent 24-hour per day unloading.
- (C) Identify, separately for each calendar month from January 1, 1994 to the present, the date, time and duration of any period in which coal unloading operations at the Dickerson Station could not be carried out continuously.

- (D) Produce all documents identified in response to this Request or on which the response to this Request is based.

50. Produce all documents referring to the following:

- (A) The extent to which railroad cars carrying coal traffic to the Dickerson Station have been or are loaded to their full physical capacity; and
- (B) The average load of coal per railroad car carrying coal traffic to the Dickerson Station.

51. (A) Identify all projections or estimates, made by or for Pepco during the period from January 1, 1994 to the present, of the volume of Pepco's future electric power generating requirements or output, sales of electric power, or consumption of coal or other fuels at any particular electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Pepco or for the Pepco system as a whole.

- (B) With respect to any projection or estimate identified in response to Request No. 51(A), identify and describe in detail the methodology utilized to develop the projections including, but not limited to, the following:

- (1) All assumptions utilized in preparing such projection or estimate; and
- (2) All data bases relied on to develop such projection or estimate.

(C) Produce all documents referring to any projection or estimate identified in response to Request No. 51(A) including, but not limited to, all documents referring to the methodologies identified in response to Request No. 51(B).

52. Produce all documents, created or in the possession, custody or control of Pepco at any time during the period from January 1, 1994 to the present, 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 the Dickerson Station;

(B) The impact of the level of the rates charged by CSXT for the transportation of coal to the Dickerson Station on the volume of electricity output generated at any unit, plant or facility included in or comprising the Dickerson Station;

(C) The effect that actual or hypothetical changes in the level of the rates charged by CSXT for the transportation of coal to the Dickerson Station might or would have on:

(1) The volume of electricity output of the power generated at any unit, plant or facility included in or comprising the Dickerson Station;

- (2) The relative dispatch priority of the Dickerson Station within the Pepco electric power generating systems;
 - (3) The amount and type of electricity output that could be sold, exchanged or transferred by Pepco 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 the Dickerson Station and of closing or shutting down power generation activities at any such unit, plant or facility on a temporary or permanent basis.
53. Produce all documents, created or in the possession, custody or control of Pepco at any time during the period from January 1, 1994 to the present, referring to any efforts by Pepco to control or manage its fuel costs through fuel diversification and/or system integration.
54. Produce all documents, created or in the possession, custody or control of Pepco at any time during the period from January 1, 1994 to the present, that were prepared or submitted by or on behalf of Pepco to any state regulatory authority and that refer to the costs of fuel and fuel transportation for the Dickerson Station.

III.

REQUESTS FOR ADMISSION

1. There is no presently effective rail transportation contract between Pepco and Conrail governing the actual or potential transportation by Conrail of coal shipments interchanged with CSXT at Lurgan, Pennsylvania (or at any other CSXT/-Conrail interchange point) and delivered to the Dickerson Station.

Respectfully submitted,

Vincent Prada

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(904) 359-3673

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(202) 736-8000

Attorneys for Defendant CSX Transportation, Inc.

DATED: January 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that, on this 23d day of January, 1997, I served the foregoing "Defendants' First Set of Interrogatories, Document Production Requests and Requests for Admission" by causing a copy thereof to be delivered by hand to the following:

C. Michael Loftus
Christopher A. Mills
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

John J. Sullivan
Potomac Electric Power Company
1900 Pennsylvania Avenue, N.W.
Washington, D.C. 20068



Vincent F. Prada

BEFORE THE
SURFACE TRANSPORTATION BOARD

POTOMAC ELECTRIC POWER COMPANY,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

Docket No. 41989

DEFENDANT'S SECOND SET OF
INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

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Attorneys for Defendant CSX Transportation, Inc.

DATED: February 5, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

POTOMAC ELECTRIC POWER COMPANY,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

Docket No. 41989

**DEFENDANT'S SECOND SET OF
INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS**

Pursuant to 49 C.F.R. §§ 1114.21, 1114.26, 1114.26 and 1111.30, Defendant CSX Transportation, Inc. ("CSXT") hereby submits its second set of interrogatories and document production requests addressed to Complainant Potomac Electric Power Company ("Pepco"). These discovery requests are to be answered by Pepco, separately and fully in writing, within 30 days after service of this document.

CSXT is prepared to cooperate with Pepco to facilitate the expeditious production of documents and information responsive to these discovery requests with the minimum practicable burden. CSXT requests that Pepco promptly contact CSXT's counsel should there be any questions concerning the meaning and scope of any of the following discovery requests, the nature of the information and documents responsive to them, or the procedure for producing responsive material.

I.

DEFINITIONS AND INSTRUCTIONS

CSXT incorporates herein by reference the Definitions and Instructions contained in Defendant's First Set of Interrogatories, Document Production Requests and Requests for Admission, served January 23, 1997 in this proceeding. CSXT submits the following additional definitions:¹

21. "ECAR" means the East Central Area Reliability Coordination Agreement and/or East Central Area Reliability Council.

22. "NERC" means the North American Electric Reliability Council.

23. "NYPP" means the New York Power Pool.

24. "PJM" means the Pennsylvania-New Jersey-Maryland Interconnection.

25. "VACAR" means the Virginia-Carolina subregion of the Southeastern Electric Reliability Council.

¹ Definition Nos. 1 through 20 are contained in Defendant's First Set of Interrogatories, Document Production Requests and Requests for Admission, served January 23, 1997 in this proceeding.

II.

INTERROGATORIES AND
DOCUMENT PRODUCTION REQUESTS²

55. Identify any transmission constraints relevant to the movement of power from January 1, 1994 to the present:
- (A) Within the Pepco system;
 - (B) Between the Pepco system and the other utilities comprising the PJM system;
 - (C) Within the PJM system (other than between the Pepco system and the PJM system); and/or
 - (D) Between the PJM system and adjacent NERC reliability council regions and/or adjacent power pools, including the NYPP system, the ECAR system, and the VACAR system.
56. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco, PJM members, PJM staff or by any consultant, expert or research firm discussing transmission constraints relevant to the movement of power from January 1, 1994 to the present:
- (1) Within the Pepco system;
 - (2) Between the Pepco system and the other utilities comprising the PJM system;

² Interrogatory and Document Production Request Nos. 1 through 54 are contained in Defendant's First Set of Interrogatories, Document Production Requests and Requests for Admission, served January 23, 1997 in this proceeding.

- (3) Within the PJM system (other than between the Pepco system and the PJM system); and/or
 - (4) Between the PJM system and adjacent NERC reliability council regions and/or adjacent power pools, including the NYPP system, the ECAR system, and the VACAR system.
- (B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 56(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation and assessment.
57. Identify any investment or project proposed or planned by Pepco, PJM members, PJM staff, or by any consultant, expert or research firm, related to the removal or alleviation of transmission constraints relevant to the movement of power:
- (A) Within the Pepco system;
 - (B) Between the Pepco system and the other utilities comprising the PJM system;
 - (C) Within the PJM system (other than between the Pepco system and the PJM system); and/or
 - (D) Between the PJM system and adjacent NERC reliability council regions and/or adjacent power pools, including the NYPP system, the ECAR system, and the VACAR system.

58. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco, PJM members, PJM staff, or by any consultant, expert or research firm, discussing any proposed or planned investment or project related to the removal or alleviation of transmission constraints relevant to the movement of power:

- (1) Within the Pepco system;
- (2) Between the Pepco system and the other utilities comprising the PJM system;
- (3) Within the PJM system (other than between the Pepco system and the PJM system); and/or
- (4) Between the PJM system and adjacent NERC reliability council regions and/or adjacent power pools, including the NYPP system, the ECAR system, and the VACAR system.

(B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 58(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation and assessment.

59. (A) Identify, separately for each electric power generating unit, plant or facility (referred to herein as "unit") owned in whole or in part and/or operated by Pepco, the

dispatch priority of the unit, in relation to other electric power generating units within the PJM system, during each calendar month from January 1, 1994 to the present.

- (B) For each unit identified in response to Request No. 59(A), provide supporting data, including estimated delivered fuel costs, estimated Operation and Maintenance costs, applicable heat rate (including incremental heat rates) and capacity factor.
60. (A) Identify each bid offered or received for the sale of energy and/or capacity by Pepco to other members of the PJM system made by Pepco into PJM for the calendar years 1995 to the present.
- (B) For each bid identified in response to Request No. 60(A), provide the information concerning the particulars of the bid including:
 - (1) The bid price;
 - (2) The amount of energy (in Mwhts) and/or capacity (in Mws) included in the bid;
 - (3) The time reserved for and location of any capacity included in the bid;
 - (4) The time for and place of delivery or receipt for any energy included in the bid;
 - (5) Any owner or owners (other than Pepco) of the electric power generating unit, plant or facility

(referred to herein as "unit") supplying the energy and/or capacity included in the bid;

- (6) The name and location (city and state) of the unit;
- (7) The fuel used to supply the capacity and/or energy included in the bid;
- (8) How fuel and other supplies are delivered to the unit; and
- (9) The details concerning transportation, loading and unloading facilities (including rail, truck, water carrier and/or coal handling facilities) for the delivery of fuel and other supplies for the unit.

(C) For each bid identified in response to Request No. 60(A), provide supporting data needed to satisfy the bid, including:

- (1) Estimated delivered fuel costs;
- (2) Estimated Operation and Maintenance costs; and
- (3) The applicable heat rate (including incremental heat rates) and capacity factor for the unit.

61. (A) Identify each bid for the purchase of energy and/or capacity by Pepco from other members of the PJM system made by Pepco into the PJM system or received by Pepco from other members of the PJM system for the calendar years 1995 to the present.

(B) For each bid identified in response to Request No. 61(A), provide the information concerning the particulars of the bid including:

- (1) The bid price;
- (2) The amount of energy (in Mw) and/or capacity (in Mw) included in the bid;
- (3) The time reserved for and location of any capacity included in the bid;
- (4) The time for and place of delivery or receipt for any energy included in the bid;
- (5) The owner or owners of the electric power generating unit, plant or facility (referred to herein as "unit") supplying the energy and/or capacity included in the bid;
- (6) The name and location (city and state) of the unit;
- (7) The fuel used to supply the capacity and/or energy included in the bid;
- (8) How fuel and other supplies are delivered to the unit; and
- (9) The details concerning transportation, loading and unloading facilities (including rail, truck, water carrier and/or coal handling facilities) for the delivery of fuel and other supplies for the unit.

62. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco

or by any consultant, expert or research firm during the period 1995 to the present relating to transmission constraints within the PJM system potentially affecting the ability to fulfill transactions concerning:

- (1) Bids offered or received by Pepco for the sale of energy and/or capacity to other members of the PJM system; and/or
- (2) Bids offered or received by Pepco for the purchase of energy and/or capacity from other members of the PJM system.

(B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 62(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

63. (A) Identify each bid offered or solicitation received by Pepco for the sale of energy and/or capacity by Pepco to utilities (other than members of the PJM system) and power marketers or power brokers for the period 1995 to the present.

(B) For each bid identified in response to Request No. 63(A), provide the information concerning the particulars of the bid including:

- (1) The bid price;

- (2) The amount of energy (in MWs) and/or capacity (in MWs) included in the bid;
 - (3) The time reserved for and location of any capacity included in the bid;
 - (4) The time for and place of delivery or receipt for any energy included in the bid;
 - (5) The owner or owners of the electric power generating unit, plant or facility (referred to herein as "unit") supplying the energy and/or capacity included in the bid;
 - (6) The name and location (city and state) of the unit;
 - (7) The fuel used to supply the capacity and/or energy included in the bid;
 - (8) How fuel and other supplies are delivered to the unit; and
 - (9) The details concerning transportation, loading and unloading facilities (including rail, truck, water carrier and/or coal handling facilities) for the delivery of fuel and other supplies for the unit.
- (C) For each bid identified in response to Request No. 63(A), provide supporting data for each unit owned in whole or in part and/or operated by Pepco needed to satisfy the bid, including:
- (1) Estimated delivered fuel costs;
 - (2) Estimated Operation and Maintenance costs; and

- (3) The applicable heat rate (including incremental heat rates) and capacity factor for the unit.
64. (A) Identify each bid offered or received by Pepco for the purchase by Pepco of energy and/or capacity from utilities (other than members of the PJM system) and independent power producers, cogeneration facilities or any other non-utility electric power generating facilities, or power marketers or power brokers for the period 1995 to the present.
- (B) For each bid identified in response to Request No. 64(A), provide the information concerning the particulars of the bid including:
- (1) The bid price;
 - (2) The amount of energy (in MWhs) and/or capacity (in Mws) included in the bid;
 - (3) The time reserved for and location of any capacity included in the bid;
 - (4) The time for and place of delivery or receipt for any energy included in the bid;
 - (5) The owner or owners of the electric power generating unit, plant or facility (referred to herein as "unit") supplying the energy and/or capacity included in the bid;
 - (6) The name and location (city and state) of the unit;

- (7) The fuel used to supply the capacity and/or energy included in the bid;
 - (8) How fuel and other supplies are delivered to the unit; and
 - (9) The details concerning transportation, loading and unloading facilities (including rail, truck, water carrier and/or coal handling facilities) for the delivery of fuel and other supplies for the unit.
65. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period 1995 to the present relating to transmission constraints potentially affecting the ability to fulfill transactions concerning:
- (1) Bids offered or received by Pepco for the sale of energy and/or capacity to utilities (other than members of the PJM system), and power marketers or power brokers; and/or
 - (2) Bids offered or received by Pepco for the purchase of energy and/or capacity from utilities (other than members of PJM), independent power producers, cogeneration facilities or any other non-utility electric power generating facilities, or power marketers or power brokers.
- (B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to

Request No. 65(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

66. (A) Identify each purchase of generating capacity and/or energy from independent power producer and other non-utility generating units, plants or facilities (referred to herein as "unit") that are located within or are available to the Pepco and/or the PJM systems.
- (B) For each purchase identified in response to Request No. 66(A), provide information concerning the particulars of the purchase including:
- (1) The purchase price;
 - (2) The amount of energy (in MWs) and/or capacity (in MWs) included in the purchase;
 - (3) The time reserved for and location of any capacity included in the purchase;
 - (4) The time for and place of delivery or receipt for any energy included in the purchase;
 - (5) The owner or owners of the independent power project unit;
 - (6) The name and location (city and state) of the independent power project unit;
 - (7) The fuel used to supply the capacity and/or energy included in the purchase;

- (8) How fuel and other supplies are delivered to the independent power project unit; and
 - (9) The details concerning transportation, loading and unloading facilities (including rail, truck, water carrier and/or coal handling facilities) for the delivery of fuel and other supplies for the independent power project unit.
67. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period January 1, 1994 to the present, referring to the purchase of generating capacity and/or energy from planned or proposed independent merchant electric generating units, plants or facilities that are located within or are available to the Pepco and/or the PJM systems.
- (B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 67(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.
68. Produce all relevant data (including machine-readable and/or computer readable data) concerning the movement by truck of anthracite coal, bituminous coal and/or petroleum coke from

the period January 1, 1994 to the present to any electric power generating unit, plant or facility owned in whole or in part and/or operated by Pepco.

(A) Relevant data responsive to Request No. 68 includes truck transportation price per ton for each movement of anthracite coal, bituminous coal and/or petroleum coke by:

- (1) Mine source (including name of mine and city and state location of mine) and coal type (anthracite, bituminous, and/or petroleum coke);
- (2) Volume of coal (in tons);
- (3) Destination (including name of unit and city and state location of unit);
- (4) Haulage distance (from origin mine to destination unit); and
- (5) Year.

(B) For truck movements of anthracite coal, bituminous coal and/or petroleum coke to destination units that involve movement from mine origin by a mode of transport other than truck, such as rail or barge, relevant data responsive to Request No. 68 includes:

- (1) The truck carriers' transportation price per ton for each movement of anthracite coal, bituminous coal and/or petroleum coke by:
 - a. Mine source (including name of mine and city and state location of mine) and coal type

(anthracite, bituminous, and/or petroleum coke);

- b. Volume of coal (in tons);
- c. Destination (including name of unit and city and state location of unit);
- d. Point of interchange with non-truck origin carrier;
- e. Haulage distance (from point of interchange with non-truck origin carrier to unit destination); and
- f. Year; and

(2) The non-truck origin carriers' transportation price per ton for each movement of anthracite coal, bituminous coal and/or petroleum coke by:

- a. The type of non-truck mode of transport, including but not limited to rail, barge and conveyor belt;
- b. Mine source (including name of mine and city and state location of mine) and coal type (anthracite, bituminous, and/or petroleum coke);
- c. Volume of coal (in tons);
- d. Destination (including name of unit and city and state location of unit);
- e. Point of interchange with destination truck carrier;

f. Haulage distance (from origin mine to point of interchange with destination truck carrier); and

g. Year.

69. (A) Identify each bid and/or proposal offered or received for the movement by truck of anthracite coal, bituminous coal and/or petroleum coke from the period January 1, 1994 to the present to any electric power generating unit, plant or facility (referred to herein as "unit") owned in whole or in part and/or operated by Pepco.
- (B) For each bid and/or proposal identified in response to Request No. 69(A) that concerns truck movements of anthracite coal, bituminous coal and/or petroleum coke from origin mine to destination units, provide information concerning the particulars of the bid, including:
- (1) The truck transport bid price per ton;
 - (2) Mine source (including name of mine and city and state location of mine) and coal type (anthracite, bituminous, and/or petroleum coke);
 - (3) Volume of coal (in tons);
 - (4) Destination (including name of unit and city and state location of unit);
 - (5) Haulage distance (from origin mine to unit destination); and
 - (6) Time period for truck transport of coal covered in bid.

(C) For each bid and/or proposal identified in response to Request No. 69(A) that concerns truck movements of anthracite coal, bituminous coal and/or petroleum coke to destination units that involve movement from mine origin by a mode of transport other than truck, such as rail or barge, provide information concerning the particulars of the bid, including:

- (1) The truck transport bid price per ton (for transport from point of interchange with non-truck origin carrier to unit destination);
- (2) Estimates of the non-truck origin carriers' transportation costs or price bids for each movement from origin mine to point of interchange with truck carrier;
- (3) Mine source (including name of mine and city and state location of mine) and coal type (anthracite, bituminous, and/or petroleum coke);
- (4) Volume of coal (in tons);
- (5) Destination (including name of unit and city and state location of unit);
- (6) Haulage distance for truck carrier from point of interchange with non-truck origin carrier to unit destination;
- (7) Haulage distance for non-truck carrier from origin mine to point of interchange with truck carrier;
and

(8) Time period for truck transport of coal covered in bid.

70. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period January 1, 1994 to the present, referring to the proposed or planned movement by truck of anthracite coal, bituminous coal and/or petroleum coke to any electric power generating unit, plant or facility owned in whole or in part and/or operated by Pepco.

(B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 70(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

71. Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period January 1, 1994 to the present, referring to any of the following:

(A) Any consideration or evaluation of proposals to or from Pepco to purchase ownership rights (full or partial) or generating capacity or energy (in any amount) from minemouth coal-fired electric power generating units, plants or facilities (referred to herein as "unit").

- (1) For each minemouth coal-fired unit identified in response to Request 71(A), provide the following:
 - a. the expected dispatch priority of the minemouth coal-fired unit, in relation to other electric power generating units within the Pepco system and/or the PJM system, during its first calendar year of operation or during any subsequent years for which estimates of the unit's dispatch priority has been calculated; and
 - b. the expected base load requirements or commitments (in MW) of the minemouth coal-fired unit during its first calendar year of operation or during any subsequent years for which estimates of the unit's base load requirements or commitments has been calculated.
- (B) Any consideration or evaluation of proposals to or from Pepco to purchase ownership rights (full or partial) or generating capacity or energy (in any amount) from coal-fired electric generating units that receive coal shipments carried by trucks.
 - (1) For each truck-served coal-fired unit identified in response to Request 71(B), provide the following:
 - a. the expected dispatch priority of the truck-served coal-fired unit, in relation to other

electric power generating units within the Pepco system and/or the PJM system, during its first calendar year of operation or during any subsequent years for which estimates of the unit's dispatch priority has been calculated; and

- b. the expected base load requirements or commitments (in MW) of the truck-served coal-fired unit during its first calendar year of operation or during any subsequent years for which estimates of the unit's base load requirements or commitments has been calculated.

- (C) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request Nos. 71(A)-(B), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

- 72. Describe in detail Pepco's SO₂ emissions allowance program from January 1, 1994 to the present, including Pepco's annual allowance accounts and its policies and financial criteria for allowance sales and purchases.* Produce all documents referring to such program, accounts, policies and criteria.

73. Describe in detail and produce all documents referring to the treatment of SO₂ emissions allowances for rate purposes by the state regulatory commissions or agencies in Maryland and the District of Columbia having jurisdiction over Pepco.
74. Produce Pepco's most recent SO₂ emissions allowance forecast.
75. Provide any estimates and/or forecasts of expected coal use by calendar year through the year 2022 at all existing Pepco coal-fired plants and any proposed or planned coal-fired electric generating unit, plant or facility (referred to herein as "unit") to be owned in whole or in part and/or operated by Pepco. For each such Pepco coal-fired plant and proposed or planned coal-fired unit:
- (A) Provide any such estimates and/or forecasts of such coal usage by unit by calendar year; and
 - (B) Provide the source of such coal by unit by calendar year including the name and location of the mine expected to provide such coal.
76. (A) Identify all projections or estimates, made by or for Pepco during the period from January 1, 1994 to the present, of the volume of Pepco's future electric power generating requirements or output, sales of electric power, or consumption of coal or other fuels at any particular electric power generating unit, plant or facility owned (in whole or in part) and/or operated by Pepco, and all assumptions used in preparing such

projections or estimates. Also identify the generation dispatch model that is the basis for such projections or estimates and provide complete documentation, including all data inputs and assumptions, used in any such dispatch model.

- (B) Identify all projections or estimates, made by or for Pepco during the period from January 1, 1994 to the present, of the volume of Pepco's future electric power generating requirements or output, sales of electric power, or consumption of coal or other fuels or for the Pepco system as a whole and all assumptions used in preparing such projections or estimates.
- (C) Produce Pepco's proposed base-case forecast (e.g., PROMOD model forecast) for the period 1997-2006, including but not limited to annual estimated coal costs, annual estimated delivered fuel costs, annual generation estimates, and annual system power purchases and sales.
- (D) Produce all documents referring to any projections or estimate identified in response to Request Nos. 76(A)-(C) including, but not limited to, all documents referring to the assumptions and methodologies identified in response to Request No. 76(A).

77. (A) Identify and describe in detail any gas co-firing or gas burning capabilities at any Pepco coal-fired plants. Produce each study, analysis, report, fore-

cast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period January 1, 1994 to the present, referring to gas co-firing or gas burning capabilities at any Pepco coal-fired plants.

- (B) Produce each contract in effect during the period from January 1, 1994 to the present for the provision of gas to any Pepco electric power generating unit, plant or facility.
- (C) Identify each gas line operated by a local distribution company or interstate gas transporter that runs within five miles of any Pepco coal-fired plants. Produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period January 1, 1994 to the present referring to the feasibility of connecting such gas lines with any Pepco coal-fired plants.

78. Identify and produce each study, analysis, report forecast, evaluation or assessment performed by Pepco or by any consultant, expert or research firm during the period January 1, 1994 to the present, referring to any of the following:

- (A) Any consideration or evaluation of proposals to or from Pepco to purchase, install or construct combined-cycle gas turbines at any existing or proposed or planned electric power generating unit, plant or facility

(referred to herein as "unit") to be owned in whole or in part and/or operated by Pepco;

- (B) The cost to purchase, install or construct combined-cycle gas turbines at any existing or proposed or planned unit to be owned in whole or in part and/or operated by Pepco;
- (C) The cost to purchase, lease or otherwise acquire the property required for the installation or construction of combined-cycle gas turbines at any existing or proposed or planned unit to be owned in whole or in part and/or operated by Pepco;
- (D) Fuel price forecasts relevant to any consideration or evaluation of proposals to or from Pepco to purchase, install or construct combined-cycle gas turbines at any existing or proposed or planned unit to be owned in whole or in part and/or operated by Pepco;
- (E) The expected dispatch priority of any such combined-cycle gas turbine powered unit, in relation to other electric power generating units within the Pepco system and/or the PJM system, during its first calendar year of operation or during any subsequent years for which estimates of the unit's dispatch priority has been calculated; and/or
- (F) The expected base load requirements or commitments (in MW) of any such combined-cycle gas turbine powered unit during its first calendar year of operation or during

any subsequent years for which estimates of the unit's base load requirements or commitments has been calculated.

- (G) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request Nos. 78(A)-(F), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

- 79. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco's Fossil Fuels Division during the period January 1, 1994 to the present, referring to any of the following:

- (1) Fuel prices;
- (2) Coal transportation costs;
- (3) Clean Air Act SO₂ emission allowance prices; and
- (4) Purchased power prices.

- (B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 79(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

80. Produce all documents referring to, comprising or constituting proposed agreements governing the operation of a PJM Independent Systems Operator.

81. (A) Identify and produce each study, analysis, report, forecast, evaluation or assessment performed by Pepco, PJM members, PJM staff or by any consultant, expert or research firm discussing the impact or potential impact that the proposed formation of a PJM Independent System Operator (referred to herein as "PJM ISO") could have on:

- (1) The competitive fuel source and fuel transportation alternatives available to Pepco and other members of the PJM ISO;
- (2) The expected dispatch priority of each electric power generating unit, plant or facility (referred to herein as "unit") owned in whole or in part and/or operated by Pepco, in relation to other electric power generating units within the Pepco system and/or the PJM ISO system, during the PJM ISO's first calendar year of operation or during any subsequent years for which estimates of the dispatch priority of these units has been calculated; and/or
- (3) The expected base load requirements or commitments (in MW) of each unit owned in whole or in part and/or operated by Pepco during the PJM ISO's

first calendar year of operation or during any subsequent years for which estimates of the base load requirements or commitments of these units has been calculated.

- (B) For each study, analysis, report, forecast, evaluation or assessment identified and produced in response to Request No. 81(A), produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study, analysis, report, forecast, evaluation or assessment.

Respectfully submitted,

Vincent F. Prada

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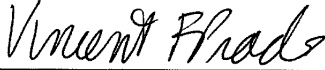
DATED: February 5, 1997

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of February, 1997, I served the foregoing "Defendants' Second Set of Interrogatories and Document Production Requests" by causing a copy thereof to be delivered by hand to the following:

C. Michael Loftus
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