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May 29, 2002

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EXPEDITED ACTION REQUESTED

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. 42072, Carolina Power & Light Company
v. Norfolk Southern Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of Complainant Carolina Power & Light Company's ("CP&L") Unopposed Petition for Extension of Procedural Schedule.

Because the present due date for opening evidence (June 3, 2002) is less than one week away, CP&L respectfully requests the Board to expedite its consideration of the enclosed Petition.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

CML:alp
Enclosures

cc: David M. Konschnik (Office of Proceedings)
G. Paul Moates, Esq. (Counsel for NS)

ENTERED
Office of the Secretary
MAY 29 2002
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CAROLINA POWER & LIGHT COMPANY,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42072
	)	
NORFOLK SOUTHERN RAILWAY COMPANY,	)	
	)	
Defendant.	)	
	)	

COMPLAINANT'S UNOPPOSED PETITION FOR
EXTENSION OF PROCEDURAL SCHEDULE

***** EXPEDITED ACTION REQUESTED *****

Complainant Carolina Power & Light Company ("CP&L") hereby petitions the Board to extend each of the due dates for opening, reply and rebuttal evidence by one week, as follows:

	<u>Present Due Date</u>	<u>Proposed Due Date</u>
Opening evidence	June 3, 2002	June 10, 2002
Reply evidence	August 30, 2002	September 6, 2002
Rebuttal evidence	September 30, 2002	October 7 2002

A brief extension of the evidentiary due dates, as described above, is necessary to enable CP&L to evaluate supplemental traffic and revenue data very recently produced by Defendant Norfolk Southern Railway Company ("NS"). NS has authorized CP&L to advise the Board that NS has no objection to the requested extensions.

On May 21, 2002 (slightly less than two weeks before the present due date for opening evidence in this case), counsel for NS advised counsel for CP&L by telephone that the NS traffic and revenue data previously produced in response to CP&L's discovery requests was incomplete, and that the provided traffic records omitted an undetermined amount of actual traffic that moved on NS. NS counsel confirmed this information in a letter sent later that day, a copy of which is attached hereto. In this letter NS indicated that it expected to provide CP&L with traffic and revenue data for all of its system-wide traffic as soon as practicable. NS provided complete traffic and revenue data for the entire NS system to CP&L at approximately 6:00 p.m. on May 28, 2002.

CP&L is extremely reluctant to request an extension of the procedural schedule given what will shown to be the exorbitant level of the challenged rates. However, due to the uncertainty created by the notice from NS, CP&L has concluded that a delay of one week should be requested to attempt to evaluate the significance of the new NS data. NS has advised that it has no objection to a one-week extension of all evidentiary due dates.¹

WHEREFORE, CP&L respectfully requests that the Board (1) waive the ten-day requirement of 49 CFR § 1104.7(b) given the unique circumstances presented by this petition, and (2) extend the due dates for opening, reply and rebuttal evidence as

¹ NS was not amenable to an extension that affected only the due date for the opening submissions due on June 3, 2002.

follows: opening evidence is to be due June 10, 2002; reply evidence is to be due September 6, 2002; and rebuttal evidence is to be due October 7, 2002.

Given the very short time (five days) remaining until the due date for opening evidence under the present procedural schedule, CP&L requests the Board to expedite its ruling on this Petition.

Respectfully submitted,

David T. Conley
Carolina Power & Light Company
410 South Wilmington Street
Raleigh, NC 27601

C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Daniel M. Jaffe

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Dated: May 29, 2002

Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of May, 2002, caused copies of the foregoing Petition to be served upon counsel for Defendant Norfolk Southern Railway Company, as follows:

By hand delivery: G. Paul Moates, Esq.
Vincent F. Prada, Esq.
Paul A. Hemmersbaugh, Esq.
Sidley Austin Brown & Wood
1501 K Street, N.W.
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By overnight mail: George Aspatore, Esq.
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Peter A. Fohl
An Attorney for Carolina
Power & Light Company

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May 21, 2002

Via Facsimile & First-Class Mail

Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

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

Dear Chris:

We are writing to memorialize the conversation we had with you this morning concerning the computerized traffic and revenue data that Norfolk Southern produced to CP&L during discovery in this case.

In response to CP&L's discovery requests for traffic and revenue data for movements traversing specified states, NS Information Technology personnel conducted a special main-frame computer study to retrieve traffic records for the requested traffic movements. In the course of preparing Norfolk Southern's opening evidence (which is currently due June 3, 2002), we identified a potential anomaly in the tonnage figures for CP&L's coal shipments as reported in the traffic database produced in discovery. Upon further investigation with our cost consultants and with the IT personnel late yesterday and this morning, we have determined that it is highly probable that the traffic records contained in the database produced in discovery are understated, and omit actual traffic that moved on Norfolk Southern. Although we are continuing to investigate the matter, it appears now that certain traffic records were omitted during the computerized "matching" process in which traffic records meeting the criteria for selection specified in CP&L's discovery requests were retrieved from the full-system traffic database. We do not know now exactly what programming or retrieval error caused the omissions, or the extent of the omissions.

Norfolk Southern is working now to reproduce for CP&L a copy of the requested traffic and revenue data for all of Norfolk Southern's system-wide traffic, and hope to be in a

SIDLEY AUSTIN BROWN & WOOD LLP

WASHINGTON, D.C.

Christopher A. Mills

May 21, 2002

Page 2

position to produce that data sometime in the next week. Given the data retrieval issues we have now identified, however, we want to make sure that the supplemental traffic data is correct and complete, and therefore cannot commit to a precise date for this production.

Obviously, the discovery of this data problem affects both parties, including their evidentiary filings currently due on June 3, 2002. In particular, it may affect CP&L's stand-alone railroad traffic group and revenues. It now appears, as we advised you this morning, that the tonnages and revenues reported in the database produced previously in discovery are understated. In view of the parties' mutual desire, and the Board's understandable preference, for accurate traffic and revenue data in supporting the evidentiary submissions, we indicated to you that Norfolk Southern would not object to a brief extension of the procedural schedule to enable the parties to resolve this data issue and substitute what we believe will be more accurate and reliable traffic and revenue information.

As we stressed this morning when we spoke, we deeply regret this data problem, the cause of which was entirely inadvertent and unknown us until just this week. Please advise us at your earliest convenience CP&L's position in addressing these issues.

Very truly yours,



G. Paul Moates

Vincent F. Prada

Paul A. Hemmersbaugh