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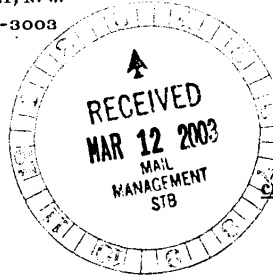
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March 12, 2003

VIA HAND-DELIVERY

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

ENTERED
Office of Proceedings

MAR 1 2003

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Public Record

Re: Docket No. 42072, Carolina Power & Light Company
v. Norfolk Southern Railway Company

Dear Secretary Williams:

In the Board's Decision served December 13, 2002 providing for the submission of briefs by the parties in the above-referenced proceeding, the Board instructed (at p. 2) that "[t]he parties are reminded that new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions."

On February 28, 2002, over two months after the close of the evidentiary phase of this proceeding and six weeks after the information had been filed in another proceeding (i.e., STB Docket No. 42069), NS filed unverified summary evidence on SARR traffic volumes for the fourth quarter of 2002 -- which new evidence NS relies upon extensively in its brief.¹ CP&L strongly opposes NS's attempt to belatedly file new evidence at this stage which clearly is unwarranted and deprives CP&L of any chance to evaluate the veracity of this new "evidence." See, e.g., Docket No. 41989, Potomac Electric Power Co. v. CSX Transportation, Inc. (STB served Nov. 24, 1997) at 7-8 (rejecting defendant railroad's post-evidentiary supplemental traffic and revenue pleading as prejudicial to complainant and in violation of the Board's procedural rules).

¹ Actual 4Q02 traffic data was filed by NS in the second week of January. See public letter to the STB from Paul A. Hemmersbaugh (STB Docket No. 42069), dated Jan. 24, 2003 ("Jan. 24 letter").

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NS has provided no reason why its belated traffic evidence should be accepted (nor has it sought leave to file such evidence out of time). It would be an abuse of the administrative process and notions of due process to allow a railroad defendant in a SAC proceeding, which is in sole possession of the data at issue, to be able to pick-and-choose new and unverified information that it desires to file on the record in a belated attempt to bolster its case. Indeed, in the Conrail control proceeding NS itself strongly protested attempts by a party to file new evidence after the close of the evidentiary phase of the proceeding for that party, noting that, even if the Applicants were allowed to respond, "such a point-counterpoint process would have no apparent conclusion, or purpose." See CSX/NS-198 (filed Jan. 27, 1998) at 6. The Board agreed and rejected the new evidence emphasizing the need for an orderly end to evidentiary submissions. See Finance Docket No. 33388 (Decision No. 66 served Feb. 3, 1998) at 2. The same result properly applies here.

Further, the manner in which NS chose to file this new evidence is highly objectionable. NS could have filed this data when it first became available (i.e., at the same time as when it filed similar evidence in STB Docket No. 42069). Instead, NS deliberately withheld the evidence in order to present this unverified, untested data in this proceeding without any opportunity for CP&L to address it in its brief. This deliberate sandbagging should not be permitted by the Board.

CP&L further notes that NS's brief contains other post-record unverified materials, as well as references to sealed records in another proceeding, that constitute improper new evidence. CP&L urges the Board, in accordance with its rules and precedents, to disregard all such new and improper evidence.

Thank you for your attention to this matter.

Sincerely,


C. Michael Loftus

CML/jwp

cc: Counsel for Defendant