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May 8, 2003

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

MAY - 8 2003

Part of
Public Record

Re: Docket No. 42069, Duke Energy Corp. v. NS -207767
Docket No. 42070, Duke Energy Corp. v. CSXT- 207769
Docket No. 42072, Carolina Power & Light Co. v. NS 207770

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceedings are the original and ten copies of the parties' Joint Proposal to Modify Protective Orders In Eastern Rail Rate Cases. This filing is being submitted in response to the Board's directive in its Decision served April 25, 2003, in Ex Parte No. 638 and embraced rail rate proceedings.

Sincerely,

Christopher A. Mills

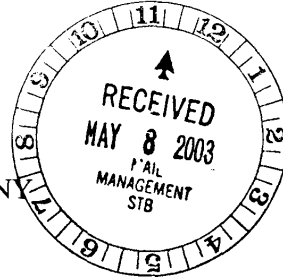
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Enclosures

cc: G. Paul Moates, Esq.
Paul A. Hemmersbaugh, Esq.
(Counsel for NS and CSXT)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. 42069

DUKE ENERGY CORPORATION
v.
NORFOLK SOUTHERN RAILWAY COMPANY



Docket No. 42070

DUKE ENERGY CORPORATION
v.
CSX TRANSPORTATION, INC.

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Docket No. 42072

CAROLINA POWER & LIGHT COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

**JOINT PROPOSAL TO MODIFY PROTECTIVE ORDERS
IN EASTERN RAIL RATE CASES**

The parties to the above proceedings, through their undersigned counsel, have agreed on certain modifications to the existing protective orders in these proceedings which they believe are appropriate to comply with the Board's Decision served April 3, 2003, in Ex Parte No. 638, Procedures to Expedite Resolution of Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology ("April 3 Decision"). Accordingly, and pursuant to the Board's Decision in Ex Parte No. 638 and

embraced rate proceedings served April 25, 2003, these parties jointly propose that the protective orders in these three proceedings be modified to include the following new paragraphs:

16. Each party has a right to view its own data, information and documentation (i.e., information originally generated or compiled by or for that party), even if that data, information and documentation has been designated as Highly Confidential by a producing party, without securing prior permission from the producing party. If a party (the "filing party") files and serves upon the other party (the "reviewing party") a pleading or evidence containing the filing party's Highly Confidential material, the filing party shall also prepare and serve upon the reviewing party a Confidential Version of the pleading or evidence from which the filing party's Highly Confidential material has been redacted. The Confidential Version may be provided in hardcopy or electronic format at the option of the filing party, and may be disclosed to those personnel employed by the reviewing party who have read a copy of this Protective Order and executed the attached Undertaking for Confidential Material ("In-house Personnel"). Alternatively, in lieu of preparing and serving a Confidential Version of any such pleading or evidence, the filing party may provide to outside counsel for the reviewing party a list of the filing party's own Highly Confidential information that must be redacted from its Highly Confidential Version prior to review by the reviewing party's In-house Personnel. If the filing party chooses this latter option, it shall provide the list to outside counsel for the reviewing party contemporaneously with the filing of the Highly Confidential version, and such outside counsel shall redact the designated material prior to review of the pleading or evidence by the reviewing party's In-house Personnel.¹

17. If a party files with the Board a pleading or evidence containing Confidential and/or Highly Confidential material in accordance with this Protective Order, that party shall[, within three (3) business days after the filing of

¹ The first sentence of this paragraph is already included as paragraph 16 of each of the protective orders in Docket Nos. 42069, 42070 and 42072. The new paragraph 16, including this sentence, would replace paragraph 16 of each of the present protective orders. Except for the modified paragraph 16 and the two new paragraphs 17 and 18, all other provisions of these protective orders would remain the same.

such pleading or evidence] [contemporaneously] file with the Board a public version of such pleading or evidence from which all Confidential and Highly Confidential material has been redacted. Workpapers accompanying such pleading or evidence need not be included in the public version.

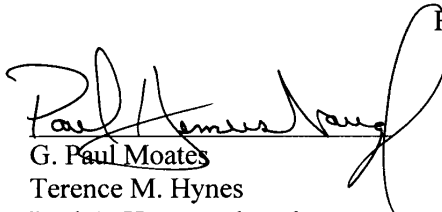
18. Workpapers accompanying a pleading or evidence and containing the filing party's Highly Confidential material need not be included in a Confidential Version (or substitute list) of the pleading or evidence provided to the reviewing party. To ensure that each party can respond with appropriate input from In-house Personnel to evidence or other material or information filed by another party, the parties shall cooperate to redact or otherwise identify, within seven (7) business days of the filing of such evidence or material, portions of such workpapers filed as Highly Confidential so that redacted versions thereof can be disclosed to a party's In-house Personnel. If the parties are unable to reach agreement on appropriate redactions of Highly Confidential information or materials within seven (7) business days of filing such workpapers, either party may seek appropriate relief from the Board.

Please note that the first additional proposed paragraph (new paragraph 16) presents two (bracketed) alternatives with respect to the timing of submission of public versions of pleadings or evidence containing Confidential and/or Highly Confidential material. The parties to these proceedings prefer the first bracketed alternative, which would enable them to defer the filing of public versions for three business days. Preparation of the Highly Confidential version of an evidentiary filing in a SAC rate case already requires extended effort by outside counsel during the days and hours before filing is accomplished, and that version must be completed before counsel can undertake the preparation of either a Confidential or a public version.

The Board's April 3 Decision, however, requires that the public version of submissions in these cases be filed simultaneously with the Highly Confidential/ Confidential version. Id. at 10. The Complainants in these cases intend to request the

Board to reconsider this aspect of the April 3 Decision in their comments which are due June 9, 2003. If the Board is unwilling to accept the first bracketed alternative (providing for a three-business-day delay in the filing of public versions), then the second bracketed alternative (providing for contemporaneous filings) would apply.

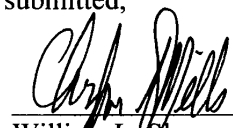
Respectfully submitted,



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May 8, 2003

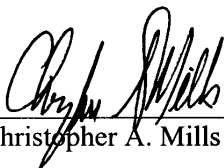


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Attorneys for Duke Energy Corporation
and Carolina Power & Light Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2003, I caused a copy of the foregoing Joint Proposal to Modify Protective Orders in Eastern Rail rate Cases to be served by First Class United States mail upon all known parties of record in Ex Parte No. 638 and upon all parties of record in the rail rate proceedings listed in the Board's Decision served April 25, 2003, in Ex Parte No. 638 et al.



Christopher A. Mills