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By Hand

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

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

Dear Secretary Williams:

In accordance with the Decision served in the above-referenced case on October 17, 2003, Norfolk Southern Railway Company ("NS") hereby submits its written summary of points that it wishes to raise at the oral argument scheduled for November 19, 2003. In addition, as specified by that Decision, NS informs the Board that it will be represented at the argument by the undersigned counsel.

Sincerely,



G. Paul Moates

Enclosure

cc: C. Michael Loftus, Esq.

Norfolk Southern's Written Summary of Oral Argument Points in STB Docket No. 42072

1. CP&L's failure to meet its burden of proof with respect to numerous essential elements of its SAC presentation requires dismissal of the Complaint. CP&L's evidence regarding such critical SAC components as the P&SH's configuration and capacity, locomotive and car fleets, crew requirements, and operating statistics are all dependent on the output of a string diagram model that simply does not work – a recurring yet unremedied failure with the made-for-litigation model created by its consultants. CP&L's inputs to that defective model are also unsupported and wholly unrealistic. Moreover, CP&L's made-for-litigation train size assumptions and operating plan wholly disregard – and are irreconcilable with – the real world requirements of the customers and traffic CP&L selected.

1. NS designed the least-cost, most efficient, feasible stand-alone railroad capable of handling the traffic CP&L selected. Because it is the Complainant's prerogative to select the traffic, origins, destinations, and routes served by the SARR, NS accepted CP&L's configuration to the greatest extent possible, making modifications only as necessary to handle the selected traffic safely and efficiently. By any measure, the SARR NS designed would be substantially more efficient and less costly than the existing NS network that it would replace. NS' SARR configuration and operating plan — unlike those proffered by CP&L — take into account both the physical limitations and operational requirements an optimally efficient railroad would face in the real world.

3. NS' SAC evidence is well-documented and based upon realistic and consistent traffic and revenue projections, and on fully-supported evidence relating to efficient construction and operation (including extensive, well-documented location-specific field inspections and evaluations by NS's witnesses) of a coal-hauling railroad in the Central Appalachian region. NS' configuration and capacity analyses are by far the best evidence of record on the SARR's track and facility requirements.

4. CP&L's SARR is demonstrably not feasible, and could not be constructed in the rugged terrain of Central Appalachia in the manner and for the costs CP&L claims.

a. The P&SH could not be constructed in the manner and for the costs claimed by CP&L – many of which CP&L improperly raised or materially revised for the first time on Rebuttal, denying NS an opportunity to reply. CP&L's SAC construction costs are grossly understated, largely because they are based upon an unrealistic proposal for earthwork, including the type of equipment required, the productive capacity of that equipment, and earthwork quantities. CP&L's evidence regarding other construction costs is inconsistent and unsupported in important respects.

b. NS' realistic construction cost evidence directly responds to CP&L's infeasible Opening case-in-chief. NS had no opportunity to reply to CP&L's dramatically changed Rebuttal proposal, but that evidence is fatally flawed as well. Equipment of the type first proposed by CP&L on Rebuttal (including a crawler crane rather than a power shovel) for use in the construction of the P&SH is infeasible.

5. CP&L's operating plan is demonstrably not feasible – P&SH's "homogeneous" unit trains take no account of real-world operations (based upon mine origin capabilities and practices; customer demands, including customer-designed and built loading and unloading facilities; and the practices of P&SH's only connection, NS); some of its trains are longer than the yards and sidings designed by CP&L to hold them; trains are unrealistically assumed to materialize fully loaded and in uniform "unit train" lengths (without gathering yards or other necessary train assembly facilities) for line haul movement by the P&SH, in total disregard of the extensive evidence offered by NS about the operating complexities and costs of mine loading and gathering, and train assembly operations; and CP&L's locomotive and car fleets are woefully inadequate to handle all of the trains its own evidence indicates the P&SH would operate. Duke's entire SARR design and operating plan are based on the assumption that the P&SH would be an all unit-train railroad, yet fully 18 percent of the traffic it would handle does not – and cannot – move in unit trains.

6. NS' operating plan for the P&SH is well-supported, efficient, and feasible. It is based upon

detailed, location-specific expert analysis and testimony, and it is confirmed by evidence derived from a separate and independent capacity model.

7. CP&L's made-for-litigation projections of P&SH traffic and revenues are demonstrably overstated for 2002, use mismatched sources to project volume, on the one hand, and rates on the other hand, and are contradicted by its own expert's normal course-of-business forecasts.

8. NS' traffic and revenue projections (which themselves substantially overstate the volume of traffic that actually moved along the lines of the SARR in 2002 and 2003) are supported by the normal course-of-business forecasts of several independent experts and demonstrate that CP&L has overstated P&SH revenues by more than \$363 million in comparison to NS' base case (and by more than \$536 million compared to NS' more realistic alternative case) over the 20-year DCF period.

9. After CP&L terminated the parties' last contract, NS negotiated in good faith to continue the contractual relationship. CP&L, however, refused to engage in meaningful contract negotiations, insisting that it was only willing to discuss a reduction in NS' already depressed rates, which NS repeatedly explained it could not afford. The SAC evidence confirms that NS' negotiating position was reasonable. CP&L is seeking to obtain, through regulatory intervention, rate reductions that it could not obtain through good faith commercial bargaining, and which the evidence unequivocally demonstrates are unwarranted as a matter of sound economics, fundamental differential pricing principles, and SAC analysis.

10. CP&L's request for a rate prescription for origin-destination pairs to which it did not build its SARR and for which it did not submit origin-specific cost evidence must be denied, because it violates established Board precedent and the fundamental tenets of SAC methodology.