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BEFORE THE
SURFACE TRANSPORTATION BOARD



CAROLINA POWER & LIGHT
COMPANY,

Complainant,

v.

Docket No. 42072

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

ENTERED
Office of Proceedings

JUN - 4 2004

Part of
Public Record

JOINT STATEMENT OF DAMAGES

By decision served December 23, 2003, the Board found the rates for the transportation of coal by Norfolk Southern Railway Company ("NS") to Carolina Power & Light Company's ("CP&L's") Roxboro and Mayo electric generating facilities in North Carolina to be unreasonable. It prescribed maximum reasonable rates for the complaint traffic beginning with the second quarter of 2002, and ordered NS to establish and maintain rates that do not exceed the rates it prescribed. December 23 Decision at 34-36. The Board also ordered NS to pay reparations and interest for the issue traffic that moved before the maximum reasonable rates were established by NS. Id.

In compliance with 49 U.S.C. §§ 11704 (b) and (c)(2) and 49 C.F.R. § 1133.2, CP&L and NS have cooperated to identify the traffic entitled to reparations and

calculate reparations and interest. The parties have reached partial agreement over the calculation of reparations. With the exception of an issue concerning fuel surcharges, they have agreed on the amount of preliminary reparations and interest to be paid under the December 23 Decision.¹ In accordance with the Board's rules, the parties are submitting a statement of reparations for each mine that originated complaint traffic. They summarize calculation of the reparations and interest in the attached spreadsheets. As the spreadsheets reveal information about CP&L traffic volumes, the parties are designating them confidential and submitting them under seal.

The parties have discussed the treatment of fuel surcharges paid by CP&L between April 1, 2002 and the date when NS established maximum reasonable rates prescribed under the December 23 Decision for movements of the issue traffic. However, the parties have been unable to resolve the issue of the inclusion of fuel surcharge payments in reparations, and have agreed to each file with the Board on this date a statement of their respective positions on this issue. Whether the calculation of reparations in this case should include amounts that CP&L paid to NS as fuel surcharges upon the issue traffic will require resolution by the Board before the parties can resolve the proper calculation and payment of reparations due CP&L by NS. Nonetheless, upon the filing of this Joint Statement of Damages, NS has agreed to remit to CP&L the amount of reparations and interest stated in the Certification being filed under seal

¹ In the event the Board's prescription is revised after administrative and/or judicial review or the parties' further review of the calculations justifies revision of the reparations and interest calculations attached, the parties have also agreed to adjust the preliminary payment to reflect the final rate prescription order and any such revision.

herewith. Following a Board decision on the fuel surcharge issue, the parties will identify any additional reparations and interest that are required based upon the Board's decision.

The certification required by 49 C.F.R. § 1133.2 is attached.



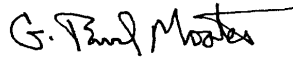
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Respectfully submitted,



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