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By Hand Delivery

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

205206



Re: STB Docket No. 42069, Duke Energy Corp. v. Norfolk Southern Railway Co.

Dear Mr. Williams:

Enclosed for filing on behalf of Defendant Norfolk Southern Railway Company ("NS") in the above-referenced proceeding are a signed original and ten copies of an Answer to Supplement-Amendment to the Verified Complaint of Duke Energy Corporation. Also enclosed is a computer disk containing a copy of this submission in WordPerfect 9.0 format.

Please acknowledge receipt of these papers for filing by date-stamping the enclosed duplicate paper copy and returning it with our messenger. Thank you for your attention to this matter.

Very truly yours,

Vincent F. Prada

G. Paul Moates
Vincent F. Prada

Enclosures

cc: Counsel for Complainant (w/encls.)

BEFORE THE
SURFACE TRANSPORTATION BOARD



DUKE ENERGY CORPORATION,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant.

STB Docket No. 42069

**ANSWER TO SUPPLEMENT-AMENDMENT TO THE
VERIFIED COMPLAINT OF DUKE ENERGY CORPORATION**

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Counsel for Defendant Norfolk Southern Railway Company

DATED: April 18, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	STB Docket No. 42069
	)	
NORFOLK SOUTHERN RAILWAY COMPANY	)	
	)	
<i>Defendant.</i>	)	

**ANSWER TO SUPPLEMENT-AMENDMENT TO THE
VERIFIED COMPLAINT OF DUKE ENERGY CORPORATION**

Pursuant to 49 C.F.R. §§ 1111.2 and 1111.4, Defendant Norfolk Southern Railway Company ("NS") respectfully submits this Answer to the "Supplement-Amendment" to the Verified Complaint (the "Amended Complaint") filed by Complainant Duke Energy Corporation ("Duke") on April 5, 2002. NS answers the Amended Complaint as follows:

1. On November 19, 2001, in response to a request by Duke made under 49 U.S.C. § 11101 and 49 C.F.R. § 1300, NS established a schedule of common carrier rates and associated service conditions for application to Duke's coal shipments between a variety of coal origins located in Virginia, West Virginia and Kentucky, on the one hand, and Duke's Allen, Belews Creek, Buck and Dan River electric generating plants located in North Carolina, on the other hand. See Verified Complaint of Duke Energy Corporation (filed Dec. 19, 2001) ("Complaint"), Exhibit A; Answer to Complaint (filed Jan. 8, 2002) ("NS Answer"), ¶ 6. These common carrier rates became effective on January 1, 2002, following the expiration on December 31, 2001

of a privately negotiated rail transportation contract that previously governed NS' transportation of coal for Duke to the Allen, Belews Creek, Buck and Dan River plants. *Id.*

2. On December 19, 2001, Duke filed a "Verified Complaint" alleging that the common carrier rates established by NS in its November 19, 2001 letter are "unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702." Complaint ¶ 10. Duke's prayer for relief requested a Board order finding the challenged common carrier rates to be "unreasonably high," prescribing "the maximum reasonable rates" that NS may collect from Duke and awarding reparations (with interest) to compensate Duke for its alleged payment of common carrier rates exceeding a maximum reasonable level. *Id.* at 6.

3. On March 22, 2002, NS established and disclosed to Duke an amendment to the common carrier rate and service terms applicable to Duke's coal shipments to the Allen, Belews Creek, Buck and Dan River plants. Entitled "Norfolk Southern Price Authority NSRQ 61880 Section 1A00," the amended common carrier rate schedule incorporated the identical rate levels and service terms contained in NS' November 19, 2001 letter to Duke, but added a new provision establishing a methodology for quarterly adjustments of the rate levels over time, beginning on April 1, 2002. *See* Amended Complaint, Exhibit B at 11-12. Other than the addition of this rate-adjustment provision, the new rate publication made no other changes in the rate and other service terms established in NS' November 19, 2001 letter to Duke. *Id.*, Exhibit B at 1.

4. On April 5, 2002, Duke filed what it styled as a "Supplement-Amendment" to its original Complaint in this case. The Amended Complaint recites Duke's receipt of NS' NSRQ 61880 Section 1A00 publication (which Duke attached), and states that Duke "amends

and supplements its Complaint of December 19, 2001 so as to include the schedule now denominated as NSRQ 61880.” Amended Complaint at 4. Duke further alleged, without any supporting facts or citation of any statutes or regulations allegedly violated by NS, that “the rates, charges, and service terms set forth in NSRQ 61880 are unreasonable, unlawful, and/or constitute unreasonable practices.” *Id.* Duke then prayed that its original Complaint “be supplemented and amended so as to challenge NSRQ 61880 on the grounds that the rates, charges, practices, and service terms set forth therein are unlawful and unreasonable.” *Id.*

5. NS specifically denies all allegations contained in Duke’s Amended Complaint that the common carrier rates and associated service conditions established in NSRQ 61880 Section 1A00 are unreasonable or otherwise unlawful. Except as modified here, NS hereby incorporates by reference herein its prior Answer to Duke’s original Complaint.

Respectfully submitted,



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Counsel for Defendant Norfolk Southern Railway Company

DATED: April 18, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of April, 2002, I served the foregoing
“Answer to Supplement-Amendment to the Verified Complaint of Duke Energy Corporation” by
causing a copy thereof to be delivered, in the manner indicated, to each of the following:

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