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April 17, 2002

By Hand Delivery

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



Re: STB Docket No. 42070, Duke Energy Corp. v. CSX Transportation, Inc.

Dear Mr. Williams:

Enclosed for filing on behalf of Defendant CSX Transportation, Inc. ("CSXT") in the above-referenced proceeding are a signed original and ten copies of CSXT's Answer to Supplement-Amendment to the Verified Complaint of Duke Energy Corporation. Also enclosed are three computer disks each 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.)

ENTERED
Office of the Secretary

APR 18 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.



STB Docket No. 42070

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

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Counsel for Defendant CSX Transportation, Inc.

DATED: April 17, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD



DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

STB Docket No. 42070

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

Pursuant to 49 C.F.R. §§ 1111.2 and 1111.4, Defendant CSX Transportation, Inc. ("CSXT") 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. CSXT answers the Amended Complaint as follows:

1. The original Complaint in this proceeding, filed by Duke on December 19, 2001, challenged the reasonableness of certain common carrier rates established by CSXT for the transportation of coal between various origins in Virginia, West Virginia and Kentucky, on the one hand, and Duke's Cliffside, Lee and Riverbend electric generating facilities in North Carolina and South Carolina, on the other hand. Prior to December 31, 2001, CSXT's coal transportation service to these Duke facilities was provided under a privately negotiated contract, which Duke elected to terminate approximately one year before its scheduled expiration.

2. Duke requested, and CSXT established, the common carrier coal rates challenged in the Complaint when the parties could not reach timely agreement on a mutually acceptable coal transportation contract to replace the contract that was terminated effective December 31, 2001. In response to Duke's request for common carrier coal rates, CSXT in letters to Duke dated November 30, 2001 and December 10, 2001, established a schedule of *interim* common carrier rates and service terms ("CSXT-CORE-105"), to be effective for application to coal shipments made during the period between January 1, 2002 and February 28, 2002. *See* Complaint, Exhibit C. These interim common carrier rates applied to Duke's coal shipments between various specified origins, on the one hand, and Duke's Cliffside, Lee, Marshall and Riverbend electric generating facilities, on the other hand. CSXT established these common carrier rates on an interim basis in order to provide the parties additional time in which to attempt to negotiate a mutually satisfactory replacement contract and to provide CSXT sufficient time to develop more appropriate common carrier rates to apply to Duke's coal shipments. *See* Complaint, Exhibit C at 2; Answer to Complaint (dated Jan. 8, 2002) ("Answer") ¶ 8.

3. Rather than await CSXT's establishment of long-term volume-based common carrier rates, Duke filed its Complaint on December 19, 2001. Duke's Complaint challenged, as "unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702," the interim common carrier rates established by CSXT in CSXT-CORE-105 insofar as they applied to Duke's Cliffside, Lee and Riverbend plants. Complaint ¶ 11 & Exhibit C. (Duke's Complaint did not challenge CSXT's common carrier rates applicable to coal shipments to Duke's Marshall facility.) The Complaint's prayer for relief requested that the Board find that the challenged

common carrier coal rates are unreasonably high, prescribe maximum reasonable rates, and award reparations for shipments made under the allegedly unreasonable rates. *Id.* at 6-7.

4. CSXT's November 30, 2001 letter specifically apprised Duke that its request for common carrier rates based on four-hour loading and unloading time was inconsistent with the operating conditions at certain of the origins and destinations for which Duke had requested the establishment of common carrier rates. CSXT offered to make appropriate adjustments in the common carrier rate publications to reflect these operating conditions, if Duke so desired. On January 8, 2002, at Duke's specific request, CSXT established and disclosed to Duke additional schedules of interim common carrier rates with loading and unloading parameters (4-hours or 24-hours) designed to accommodate Duke's specific needs. *See Answer ¶ 8 & Exhibit B* (attaching rate publications "CSXT-CORE-105," "CSXT-CORE-109," "CSXT-CORE-115" and "CSXT-CORE-117"). Each of these interim rate publications expired on February 28, 2002.

5. Consistent with its previously stated intention to establish long-term, volume-based common carrier rates to replace the interim common carrier rates challenged in Duke's Complaint, CSXT, by letter to Duke dated February 22, 2002 (Attachment A hereto), established a new schedule of common carrier coal rates to replace the interim rates established in CSXT-CORE-105, CSXT-CORE-109, CSXT-CORE-115 and CSXT-CORE-117 and to apply to Duke's common carrier coal shipments to the Cliffside, Lee, Marshall and Riverbend facilities on or after March 1, 2002. The new, non-interim coal rates are contained in a publication, "CSXT-CORE-120," which was attached to CSXT's letter. The CSXT-CORE-120 publication expressly provides that the coal rates established in the publication "do not apply to chemically altered coal,

or synthetic fuel within the meaning of Internal Revenue Code Section 29.” By letter dated February 26, 2002 (Attachment B hereto), CSXT amended CORE-120 (with certain provisions having an effective date of March 14, 2002).

6. In a letter dated March 12, 2002 (Attachment C hereto), CSXT established and disclosed to Duke a schedule of common carrier rates and associated service terms applicable to the transportation of synthetic fuel derived from coal (“synfuel”) between various specified origins, on the one hand, and Duke’s Cliffside, Lee, Marshall and Riverbend electric generating facilities, on the other hand. This schedule of common carrier synfuel rates was contained in a publication denominated “CSXT-CORE-128,” with an effective date of March 12, 2002.

7. On April 5, 2002, Duke filed what it styled as a "Supplement-Amendment" to its original Complaint. The Amended Complaint attaches copies of the common carrier rate publications issued by CSXT since the filing of the original Complaint. These publications include the amended interim rates that CSXT established to accommodate Duke’s operating requirements (CSXT-CORE-109, -115 and -117), the coal common carrier rates that CSXT established to replace the interim rates challenged in the Complaint (CSXT-CORE-120), and the common carrier rates that CSXT established for application to Duke’s synfuel shipments (CSXT-CORE-128). Amended Complaint, Exhibits D-H. The Amended Complaint alleges that the “new and/or changed rates, charges, practices, and other provisions” contained in these rate publications “are unlawfully high and/or constitute unreasonable practices.” *Id.* at 4. Duke prayed that its Complaint be “supplemented and amended so that allegations of unlawfulness and unreasonable practices extend to all of the schedules” attached to the Amended Complaint. *Id.* at 5.

8. CSXT specifically denies all allegations contained in Duke's Amended Complaint that the common carrier rates and associated service conditions established in the schedules attached as exhibits to the Complaint and the Amended Complaint are unreasonable or otherwise unlawful.¹ Except as modified here, CSXT hereby incorporates by reference herein its prior Answer to Duke's original Complaint.

Respectfully submitted,



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Counsel for Defendant CSX Transportation, Inc.

DATED: April 17, 2002

¹ Duke's Amended Complaint includes an allegation, not included in its original Complaint, that "the rates, charges, practices, and other provisions" provided in the common carrier rate schedules attached as exhibits to the Complaint and the Amended Complaint constitute "unreasonable practices." Amended Complaint at 4. Because Duke's Amended Complaint furnishes no facts or legal authority identifying, much less supporting, this "unreasonable practice" claim, CSXT has no factual or legal basis on which to provide a meaningful answer to the claim or to fashion an appropriate defense. CSXT has therefore moved to strike Duke's "unreasonable practice" claim or, in the alternative, for a more definite statement by Duke of the factual and legal basis of this claim. To the extent CSXT is required to answer the allegation of an "unreasonable practice," CSXT hereby denies it.

ATTACHMENT A



T. J. Carollo
Director-Utility South

500 Water Street - J842
Jacksonville, FL 32202-4057
Phone: (904) 359-1870
Fax: (904) 359-1744

February 22, 2002

Mr. D. G. McIntyre
Manager, Coal Transportation
Duke Energy
526 South Church Street
P. O. Box 1006
Charlotte, NC 28201-1006

Dear D. G.,

In your letter of February 19th and our phone conversations, you've made a convincing case for Duke's administrative need to have some lead time to enter rates in your purchasing system. We certainly want to accommodate those needs, and since it seems to be taking longer to set up the meeting than we had expected, I talked to our legal group and secured their agreement to provide the volume-base common carrier rates in advance of the meeting.

This letter responds to Duke's request for CSXT to establish common carrier rates for more than an interim period. The attached common carrier price quotation establishes volume-based pricing for transportation to Duke's four power plants served by CSXT. With the encouraging sign that we were able to complete a contract for Marshall in 2002, CSXT remains hopeful that Duke will reconsider its position and open discussions around a commercial agreement covering all CSXT served Duke plants reflecting market conditions.

We have structured the rate quotation so that, if Duke takes the necessary steps to qualify for all available incentives/ discounts, Duke's effective common carrier rates will generally reflect an increase above the contract rates that applied in 2001. While Duke has indicated its intent to dispute any rate which does not reflect a considerable reduction from our 2001 contract levels, Duke should recognize that the net common carrier rates, adjusted for inflation, are nearly half of their 1982 levels which was the last time Duke utilized common carrier rates for all its plants.

General Description of Refunds / Incentive Payments

Volume: CSXT will provide Duke with incentives for volume consistent with CSXT's needs to ensure that the volume reflects a ratable and consistent pattern over a defined period.

Lading: As an incentive for Duke to promote more efficient loading and thereby reduce CSXT and Duke costs, CSXT will pay a refund for each full net ton in excess of 90 net tons lading weight shipped per car up to the load limit.

Loading/Unloading Time: If loading and unloading is completed within the current 8200 Free Time provisions for 4 or 24 hour facilities, CSXT will pay an incentive refund. In addition these rates will provide for extended Free Time on demurrage beyond normal 8200 Tariff provisions.

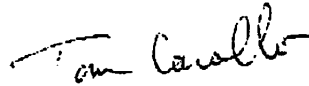
Trainsize: CSXT offers Duke an incentive for trains ordered and actually loaded as 75 or 90 car trains within the new extended Free Time.

With Duke's continued commitment to efficient operating practices and 2001 volume levels, the net rates resulting from this publication produce market competitive rates and results for Duke. For example, the current published rate from Sarah, KY to Lee (Pelzer) is \$17.05, the rate as published in the attached before incentives will be \$16.00. After rebates, Duke's net rate could be \$12.90. Obviously, this rate structure, while different than our past contractual arrangements, reflects CSXT's assessment of the competitive nature of Duke's business. As a matter of fact in 1982, a year in which Duke moved greater volume than 2001, Duke would have paid \$14.22 under common carriage provisions for this O-D pair.

Please note CSXT will require two new protections: Alternative Route Rate Adjustment; and a Capital Improvement Recovery Charge.

Also find attached the formal Common Carrier Rate Publication, the Refund Claim Form for submitting required data/information for the year end refund and the Volume Incentive Declaration Form. This common carrier quotation and its terms can be altered only by a subsequent common carrier quotation, denominated as such, or by an executed transportation contract. If you have any questions, please feel free to contact me at (904) 359-1870.

Sincerely,



T. J. Carollo

Cc: M. P. Sullivan

Attachments: Common Carrier Rate Publication
Refund Claim Form
Volume Incentive Declaration Form

**CSX TRANSPORTATION
CSXT-CORE-120**

Common Carrier Rate on Coal
For Duke Energy

Effective Date: March 1, 2002
Termination Date: February 28, 2003

I. Transportation Particulars:

Origin	State	Rates per net ton to:			
		<u>Brice, NC</u>	<u>Riverbend, NC</u>	<u>Terrell, NC</u>	<u>Pelzer, SC</u>
Apex 2	KY	\$16.25	\$16.30	\$17.25	\$16.30
Arnold Fork	KY	\$16.45	\$16.70	\$17.65	\$16.70
Bates Branch	KY	\$16.45	\$16.70	\$17.65	\$16.70
Benedict	VA	\$15.65	\$15.70	\$16.65	\$15.70
Beth	WV	\$17.15	\$17.20	\$18.25	\$17.20
Blue Grass 4	KY	\$16.85	\$16.90	\$17.85	\$16.90
Brookside	KY	\$15.95	\$16.00	\$16.95	\$16.00
Buckeye 1	KY	\$16.85	\$16.90	\$17.85	\$16.90
Cheyenne 1	KY	\$16.45	\$16.70	\$17.65	\$16.70
Clover	KY	\$16.15	\$16.20	\$17.15	\$16.20
Colico	VA	\$15.70	\$15.75	\$16.70	\$15.75
Creech	KY	\$15.95	\$16.00	\$16.95	\$16.00
Damron Fork	KY	\$16.25	\$16.30	\$17.25	\$16.30
Democrat 1	KY	\$16.45	\$16.70	\$17.65	\$16.70
Fanco	WV	\$17.35	\$17.40	\$18.45	\$17.40
Fola	WV	\$17.65	\$17.70	\$18.75	\$17.70
Fork Creek	WV	\$17.15	\$17.20	\$18.25	\$17.20
Gatliff	KY	\$16.15	\$16.20	\$17.15	\$16.20
Goff	KY	\$16.25	\$16.30	\$17.25	\$16.30
Guaranty	KY	\$16.45	\$16.50	\$17.45	\$16.50
Hamilton 2	KY	\$16.15	\$16.20	\$17.15	\$16.20
Hampton 3	WV	\$17.40	\$17.45	\$18.50	\$17.45
Hilo	KY	\$15.95	\$16.00	\$16.95	\$16.00
Holbrook	WV	\$17.15	\$17.20	\$18.25	\$17.20
Hutchinson	WV	\$17.22	\$17.27	\$18.32	\$17.27
Ivel	KY	\$16.45	\$16.50	\$17.45	\$16.50
Jesse Branch	KY	\$16.25	\$16.30	\$17.25	\$16.30
Kohlsast	WV	\$17.40	\$17.45	\$18.50	\$17.45
Leatherwood 1	KY	\$16.85	\$16.90	\$17.85	\$16.90
Lick	WV	\$17.40	\$17.45	\$18.50	\$17.45
Lynch 3	KY	\$15.95	\$16.00	\$16.95	\$16.00
Marfork	WV	\$17.40	\$17.45	\$18.50	\$17.45
Mayflower	VA	\$15.65	\$15.70	\$16.65	\$15.70
McVicker	KY	\$16.25	\$16.30	\$17.25	\$16.30
Mousie	KY	\$16.45	\$16.50	\$17.45	\$16.50
Myra	KY	\$16.25	\$16.30	\$17.25	\$16.30
Neece Creek	VA	\$15.70	\$15.75	\$16.70	\$15.75
NRG	KY	\$15.95	\$16.00	\$16.95	\$16.00

1. Transportation Particulars continued:

<u>Origin</u>	<u>State</u>	<u>Rates per net ton to:</u>			
		<u>Brice, NC</u>	<u>Riverbend, NC</u>	<u>Terrell, NC</u>	<u>Pelzer, SC</u>
Patton	KY	\$16.25	\$16.30	\$17.25	\$16.30
Pitco	VA	\$15.70	\$15.75	\$16.70	\$15.75
Praise	KY	\$16.25	\$16.30	\$17.25	\$16.30
Prenter	WV	\$17.15	\$17.20	\$18.25	\$17.20
Raccoon	KY	\$16.25	\$16.30	\$17.25	\$16.30
Ramsey	KY	\$16.25	\$16.30	\$17.25	\$16.30
Rapid Loader	KY	\$16.45	\$16.70	\$17.65	\$16.70
Roxanna	KY	\$16.85	\$16.90	\$17.85	\$16.90
Sapphire	KY	\$16.85	\$16.90	\$17.85	\$16.90
Sarah	KY	\$15.95	\$16.00	\$16.95	\$16.00
Scotts Branch	KY	\$16.25	\$16.30	\$17.25	\$16.30
Slones Branch	KY	\$16.25	\$16.30	\$17.25	\$16.30
Sunny Knott	KY	\$16.45	\$16.50	\$17.45	\$16.50
Sylvester	WV	\$17.40	\$17.45	\$18.30	\$17.45
Toms Fork	WV	\$17.20	\$17.25	\$18.30	\$17.25
Typo	KY	\$16.85	\$16.90	\$17.85	\$16.90

Commodity: Steam Coal (STCC NO. 11-212-90)
Synthetic Fuel: Rates herein do not apply to chemically altered coal, or synthetic fuel within the meaning of Internal Revenue Code Section 29
Route: CSXT Direct
Equipment: Railroad supplied gondolas and bottom drop hoppers
Train Size: 55 car unit train (Minimum)
Loading/Unloading: Refer to Items 10 and 11
Demurrage: Subject to the provisions of CSXT 8200-series except as amended in CSXT-CORE-120, Item 11
Fuel Surcharge: Subject to Fuel Surcharge as published in CSXT 8200-series
Volume Incentive Year: As used herein, Year shall mean a 12 month period commencing on March 1

2. Incorporation of Tariffs, Rules, ETC:

This Price Sheet incorporates all tariffs (i.e. Common Carrier Rates, including CSXT 8200-series and other service terms), statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any direct and express conflict.

3. Payment:

Payment of all rates and charges must be received by CSXT from industry within fifteen (15) days of the date of each bill. CSXT finance charges for late payment will apply (refer to CSXT-8200 series). CSXT may cancel these credit provisions at any time. Industry may not set off payment in any dispute with Carrier.

4. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein reference. Industry will add the following to each bill of Lading:

"Subject to CSXT-CORE-120"

5. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by the 49 USC 11707 and 49 CFR 1005.

6. Reservation System – Trainload/Unit Train Service:

The reservation system for trainload/unit train service as detailed in the CSXT-8200 series publication will apply.

7. Car Supply:

Carrier car supply is not guaranteed but will be supplied subject to Carrier's availability and distribution considerations.

8. Volume Incentives:

Volume incentives for ratable, consistent shipment patterns will be paid on: (a) One Year basis (current Year) and (b) a rolling consecutive Three Year basis. Volume incentives will be paid on an annual basis in the form of a refund and are subject to the following terms and conditions:

a.) Volume Incentive Refund:

Discount on Net Freight Paid on Net Tons
Qualifying for Volume Refund

<u>Volume Incentive Band</u> <u>Annual Net Tons (MM)</u>	<u>One Year Refund</u>	<u>Three Year Refund</u>
2.0 – 2.49	0.50%	0.17%
2.5 – 2.99	0.75%	0.25%
3.0 – 3.49	1.00%	0.33%
3.5 – 3.99	2.75%	0.92%
4.0 – 4.49	4.05%	1.35%
4.5 – 4.99	5.25%	1.75%
5.0 – 5.49	6.10%	2.03%
5.5 – 5.99	6.10%	2.03%
6.0 – 6.49	6.10%	2.03%

Note: CSXT will pay refunds as a percentage of the net freight paid by Duke. (any freight paid minus any other applicable discounts, rebates, or refunds paid on Duke shipments).

*Prior to each January 15th, Duke shall elect a Volume Incentive Band for the Three Years moving forward. Duke will be eligible for a volume incentive refund for the One Year Refund at the end of each Year. Duke shall specify its election by submitting the Volume Incentive Declaration Form.

In addition Duke will be eligible for the rolling Three Year Refund at the end of Year Three, and then each Year thereafter.

For Year 2002 only, CSXT will waive the January 15 election requirement and will change the election date to March 15, 2002.

8. Volume Incentives (continued)

b) General Terms and Conditions:

- *Volume Bands elected for the rolling consecutive Three Year period shall be within 500,000 net tons (plus or minus) from one election Year to the next.
- *Duke may elect a Volume Band by January 15 for the next Year that is independent from prior election i.e. revised from prior rolling Three Year elections.
- *Duke will qualify for the Three Year volume refund only if Duke actually ships its elected volume band for each individual Year over a consecutive Three Year period and it did not change its election for any Year in the Three Year period.
- *Total net tons qualifying for the volume incentive refunds will include net tons shipped on CSXT-CORE-120 via CSXT to Brice, NC, Riverbend, NC, Terrell, NC and Polzer, SC.
- *Shipments must be a minimum of 75 cars per unit train in order to be included in the Volume Incentive calculation.

c) Ratable Shipment Requirement - Volume Incentives:

The volume incentive refunds are offered with the requirement that shipments be "ratable" on a daily and monthly basis, i.e. a relatively smooth shipping pattern.

For the purposes of calculating volume to any of the four individual Duke plants served by CSXT, the following constraints and or adjustments will apply:

***Daily Volume Counter - Adjusted for Ratability**

If the sum of net tons loaded on any weekday (Sunday through Saturday) exceeds 16% of the total net tons for the month, the number of net tons loaded on the weekday in question shall be reduced to 16% of the monthly total. A new monthly total will be developed by summing the lessor of 16% or the net tons actually loaded for each day of the month.

***Monthly Volume Counter- Adjusted for Ratability**

The number of net tons eligible for the volume incentive on a monthly basis will be the lessor of the adjusted month's tonnage (per Daily Volume Counter-Adjustment) or 105% of the prior month. This calculation is intended to minimize volume fluctuations from month to month.

***Annual Volume Counter- Adjusted for Ratability**

The annual volume calculated for purposes of the volume incentive refund will be the sum of the Monthly Volumes as adjusted above.

9. Lading Incentives:

As an incentive for Duke to influence producers to load efficiently, CSXT will pay a refund of \$.02 per net ton for each full ton in excess of 90 net tons lading weight shipped per car, up to the applicable load limit for that car. The refund calculation only applies to the tonnage in excess of 90 net tons in each car. The refund will be paid on all net tons in the car. To ensure safe loading practices, the refund will not apply to any train if any car in the train is loaded in excess of 286,000 pounds gross weight on rail or greater than its load limit.

Example: 110 net tons in car

110	20 x \$0.02=\$0.40
<u>-90</u>	\$0.40 Refunded on
20	all net tons in car

10. Loading/Unloading Incentives:

The following incentive refund will be available to Duke if the actual loading and unloading times of railroad owned equipment for movements under this Tariff meet the following parameters:

Load/Unload Incentives Per Net Ton

<u>Origin</u>	<u>Destination</u>	<u>Incentive Refund</u>
4 Hour	4 Hour	\$0.50
4 Hour	24 Hour	\$0.40
24 Hour	4 Hour	\$0.40
24 Hour	24 Hour	\$0.30

11. Demurrage - Origin & Destination:

Origin and Destinations will be rated as either a 24 hour or a 4 hour facility as stated in the Tariff-CSXT-8200. As stated in Item 10, above, CSXT will offer incentives for actual loading and unloading consistent within the allotted time. In addition, the applicable free time will be doubled such that a 4 hour facility will be changed to 8 hours and the free time for a 24 hour facility will be changed to 48 hours. If loading/unloading is in excess of the applicable free time, CSXT Tariff 8200 demurrage charges will be applied. While demurrage at origin will remain for the account of the shipper, Duke will receive as a benefit through this incentive the efficiencies created by the producer for loading within the 4 hour or 24 hour window, whichever is applicable.

12. Trainsize Incentive:

CSXT will provide Duke an incentive for trains ordered and actually loaded as 75 or 90 car trains. If a train is ordered as a 75 car train and loaded within the Free Time provided in this Publication as 75 or more cars, CSXT will refund \$1,875 per train. If a train is ordered as a 90 car train and is loaded within the Free Time provided in this publication as 90 cars or more, CSXT will refund \$3,600 per train.

13. Quarterly Rate Adjustments:

All rates are subject to quarterly increase or decrease with the Rail Cost Adjustment Factor-Unadjusted. Rates will not be adjusted below the base rates as detailed in CSXT-CORE-120.

14. Alternative Route Rate Adjustment:

From time to time, due to capacity constraints, weather and other acts of God, CSXT may reroute Duke trains over Richmond, VA in which event the rates specified in Item One will be increased by \$4.50 per net ton to offset additional costs.

15. Capital Improvement Recovery Charge:

With the fluctuations in volume and demands put on the CSXT infrastructure, CSXT has or is making significant investments in the Terrell Subdivisions serving the Marshall and Riverbend Plants and the Pelzer/Belton Subdivisions serving the Lee Plant. Over the past two Years, 100% of the moves over the Terrell subdivision and 93% of the moves over the Belton subdivisions were for Duke's benefit. Subject to the annual cap described below, CSXT will apply a Capital Improvement Recovery Charge (CIRC) on an annual basis to all Duke traffic moving under CSXT-CORE-120 at the rate of \$1 per net ton until investments made on the subdivision (Investment Amount) are recouped (currently estimated to be \$6.6 million). The Investment Amount will be adjusted to reflect the actual investments made by CSXT. Note: Once this work is completed CSXT will notify Duke of the actual Investment Amount.

In lieu of billing Duke, CSXT will retain the amount due under the CIRC from any amounts otherwise due to Duke by CSXT as incentives, discounts, rebates or refunds payable under this publication. The CIRC will be subject to an annual cap of one fifth of the Investment Amount and will terminate when the Investment Amount has been recouped.

16. Submission of Refund Claim Form:

Within ten days of the end of each month, Duke may submit a refund claim using the attached Refund Claim Form detailing the information necessary by train reservation number to determine Duke's eligibility for refunds. CSXT recommends, but this common carrier quotation does not require, that Duke submit the information on a diskette. Duke may request reasonable extensions of time to submit the forms, should the ten day limit prove difficult to meet. All incentives/refunds/rebates as described in CSXT-CORE-120 will be paid within 20 days of the end of each Year or receipt of Duke's claim whichever is later.

17. Common Carriage Application:

The rates, terms, and conditions as published herein (CSXT-CORE-120) are established for the use and benefit of the Duke Power Company in the production of electricity from the coal transported and subsequently burned as pulverized coal purchased by Duke Power Company and may not be used by any other entity, transferred to any other entity or used in combination with any other movement, including without limitation subsequent transportation by rail or truck from any of the stated destinations.

In addition, CSXT-CORE-120 is only applicable to the origins as specifically listed in this publication. Intermediate applications of origins not listed in CSXT-CORE-120 will not apply.

The rates, terms and conditions herein may be modified from time to time by supplements upon statutory notice.

Refund Claim Form
Duke/CST Traffic

[illegible]

Volume Incentive Declaration Form

- 17 -

2002 Declaration
2003 Declaration
2004 Declaration

(Due Prior to March 15th, 2002)
(Due Prior to January 15th, 2003)
(Due Prior to January 15th, 2004)

Tons (MM)				
2002	2003	2004	2005	2006

ATTACHMENT B



T. J. Carollo
Director-Utility South

500 Water Street - J842
Jacksonville, FL 32202-4057
Phone: (904) 359-1870
Fax: (904) 359-1744

February 28, 2002

Mr. D. G. McIntyre
Manager, Coal Transportation
Duke Energy
526 South Church Street
P. O. Box 1006
Charlotte, NC 28201-1006

Dear D. G.,

Confirming your conversation with Mike Sullivan this morning, the attached CSXT-CORE-120 details an effective date of March 14, 2002 for Items 14 and 15 (Alternative Route Rate Adjustment and Capital Improvement Recovery Charge). All other items in the tariff are effective March 1, 2002.

Additionally, when submitting the monthly Refund Claim Form (item 16) please send to: Director-Utility South, CSX Transportation, J842, 500 Water Street, Jacksonville, FL 32202.

If you have any questions, please give me a call at 904-359-1870.

Sincerely,

A handwritten signature in black ink, appearing to be "T. J. Carollo", written over a horizontal line.

T. J. Carollo

Cc: M. P. Sullivan

CSX TRANSPORTATION
CSXT-CORE-120
Common Carrier Rate on Coal
For Duke Energy

Effective Date: March 1, 2002
Termination Date: February 28, 2003

1. Transportation Particulars:

<u>Origin</u>	<u>State</u>	<u>Rates per net ton to:</u>			
		<u>Brice, NC</u>	<u>Riverbend, NC</u>	<u>Terrell, NC</u>	<u>Pelzer, SC</u>
Apex 2	KY	\$16.25	\$16.30	\$17.25	\$16.30
Arnold Fork	KY	\$16.45	\$16.70	\$17.65	\$16.70
Bates Branch	KY	\$16.45	\$16.70	\$17.65	\$16.70
Benedict	VA	\$15.65	\$15.70	\$16.65	\$15.70
Beth	WV	\$17.15	\$17.20	\$18.25	\$17.20
Blue Grass 4	KY	\$16.85	\$16.90	\$17.85	\$16.90
Brookside	KY	\$15.95	\$16.00	\$16.95	\$16.00
Buckeye 1	KY	\$16.85	\$16.90	\$17.85	\$16.90
Cheyenne 1	KY	\$16.45	\$16.70	\$17.65	\$16.70
Clover	KY	\$16.15	\$16.20	\$17.15	\$16.20
Collico	VA	\$15.70	\$15.75	\$16.70	\$15.75
Creech	KY	\$15.95	\$16.00	\$16.95	\$16.00
Damron Fork	KY	\$16.25	\$16.30	\$17.25	\$16.30
Democrat 1	KY	\$16.45	\$16.70	\$17.65	\$16.70
Fanco	WV	\$17.35	\$17.40	\$18.45	\$17.40
Fola	WV	\$17.65	\$17.70	\$18.75	\$17.70
Fork Creek	WV	\$17.15	\$17.20	\$18.25	\$17.20
Gatliff	KY	\$16.15	\$16.20	\$17.15	\$16.20
Goff	KY	\$16.25	\$16.30	\$17.25	\$16.30
Guaranty	KY	\$16.45	\$16.50	\$17.45	\$16.50
Hamilton 2	KY	\$16.15	\$16.20	\$17.15	\$16.20
Hampton 3	WV	\$17.40	\$17.45	\$18.50	\$17.45
Hilo	KY	\$15.95	\$16.00	\$16.95	\$16.00
Holbrook	WV	\$17.15	\$17.20	\$18.25	\$17.20
Hutchinson	WV	\$17.22	\$17.27	\$18.32	\$17.27
Ivel	KY	\$16.45	\$16.50	\$17.45	\$16.50
Jesse Branch	KY	\$16.25	\$16.30	\$17.25	\$16.30
Kohlsast	WV	\$17.40	\$17.45	\$18.50	\$17.45
Leatherwood 1	KY	\$16.85	\$16.90	\$17.85	\$16.90
Lick	WV	\$17.40	\$17.45	\$18.50	\$17.45
Lynch 3	KY	\$15.95	\$16.00	\$16.95	\$16.00
Marfork	WV	\$17.40	\$17.45	\$18.50	\$17.45
Mayflower	VA	\$15.65	\$15.70	\$16.65	\$15.70
McVicker	KY	\$16.25	\$16.30	\$17.25	\$16.30
Mousie	KY	\$16.45	\$16.50	\$17.45	\$16.50
Myra	KY	\$16.25	\$16.30	\$17.25	\$16.30
Neece Creek	VA	\$15.70	\$15.75	\$16.70	\$15.75
NRG	KY	\$15.95	\$16.00	\$16.95	\$16.00

1. Transportation Particulars continued:

Origin	State	Brice, NC	Rates per net ton to:		
			Riverbend, NC	Terrell, NC	Pelzer, SC
Patton	KY	\$16.25	\$16.30	\$17.25	\$16.30
Pitco	VA	\$15.70	\$15.75	\$16.70	\$15.75
Praise	KY	\$16.25	\$16.30	\$17.25	\$16.30
Prenter	WV	\$17.15	\$17.20	\$18.25	\$17.20
Raccoon	KY	\$16.25	\$16.30	\$17.25	\$16.30
Ramsey	KY	\$16.25	\$16.30	\$17.25	\$16.30
Rapid Loader	KY	\$16.45	\$16.70	\$17.65	\$16.70
Roxanna	KY	\$16.85	\$16.90	\$17.85	\$16.90
Sapphire	KY	\$16.85	\$16.90	\$17.85	\$16.90
Sarah	KY	\$15.95	\$16.00	\$16.95	\$16.00
Scotts Branch	KY	\$16.25	\$16.30	\$17.25	\$16.30
Slones Branch	KY	\$16.25	\$16.30	\$17.25	\$16.30
Sunny Knot	KY	\$16.45	\$16.50	\$17.45	\$16.50
Sylvester	WV	\$17.40	\$17.45	\$18.50	\$17.45
Toms Fork	WV	\$17.20	\$17.25	\$18.30	\$17.25
Type	KY	\$16.85	\$16.90	\$17.85	\$16.90

Commodity: Steam Coal (STCC NO. 11-212-90)
 Synthetic Fuel: Rates herein do not apply to chemically altered coal, or synthetic fuel within the meaning of Internal Revenue Code Section 29
 Route: CSXT Direct
 Equipment: Railroad supplied gondolas and bottom drop hoppers
 Train Size: 55 car unit train (Minimum)
 Loading/Unloading: Refer to Items 10 and 11
 Demurrage: Subject to the provisions of CSXT 8200-series except as amended in CSXT-CORE-120, Item 11
 Fuel Surcharge: Subject to Fuel Surcharge as published in CSXT 8200-series
 Volume Incentive Year: As used herein, Year shall mean a 12 month period commencing on March 1

2. Incorporation of Tariffs, Rules, ETC:

This Price Sheet incorporates all tariffs (i.e. Common Carrier Rates, including CSXT 8200-series and other service terms), statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any direct and express conflict.

3. Payment:

Payment of all rates and charges must be received by CSXT from industry within fifteen (15) days of the date of each bill. CSXT finance charges for late payment will apply (refer to CSXT-8200 series). CSXT may cancel these credit provisions at any time. Industry may not set off payment in any dispute with Carrier.

4. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein reference. Industry will add the following to each bill of Lading:
 "Subject to CSXT-CORE-120"

5. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by the 49 USC 11707 and 49 CFR 1005.

6. Reservation System - Trainload/Unit Train Service:

The reservation system for trainload/unit train service as detailed in the CSXT-8200 series publication will apply.

7. Car Supply:

Carrier car supply is not guaranteed but will be supplied subject to Carrier's availability and distribution considerations.

8. Volume Incentives:

Volume incentives for ratable, consistent shipment patterns will be paid on: (a) One Year basis (current Year) and (b) a rolling consecutive Three Year basis. Volume incentives will be paid on an annual basis in the form of a refund and are subject to the following terms and conditions:

a.) **Volume Incentive Refund:**

Discount on Net Freight Paid on Net Tons
Qualifying for Volume Refund

<u>Volume Incentive Band</u> <u>Annual Net Tons (MM)</u>	<u>One Year Refund</u>	<u>Three Year Refund</u>
2.0 - 2.49	0.50%	0.17%
2.5 - 2.99	0.75%	0.25%
3.0 - 3.49	1.00%	0.33%
3.5 - 3.99	2.75%	0.92%
4.0 - 4.49	4.05%	1.35%
4.5 - 4.99	5.25%	1.75%
5.0 - 5.49	6.10%	2.03%
5.5 - 5.99	6.10%	2.03%
6.0 - 6.49	6.10%	2.03%

Note: CSXT will pay refunds as a percentage of the net freight paid by Duke. (any freight paid minus any other applicable discounts, rebates, or refunds paid on Duke shipments).

*Prior to each January 15th, Duke shall elect a Volume Incentive Band for the Three Years moving forward. Duke will be eligible for a volume incentive refund for the One Year Refund at the end of each Year. Duke shall specify its election by submitting the Volume Incentive Declaration Form.

In addition Duke will be eligible for the rolling Three Year Refund at the end of Year Three, and then each Year thereafter.

For Year 2002 only, CSXT will waive the January 15 election requirement and will change the election date to March 15, 2002.

8. Volume Incentives (continued)

b) General Terms and Conditions:

- *Volume Bands elected for the rolling consecutive Three Year period shall be within 500,000 net tons (plus or minus) from one election Year to the next.
- *Duke may elect a Volume Band by January 15 for the next Year that is independent from prior election i.e. revised from prior rolling Three Year elections.
- *Duke will qualify for the Three Year volume refund only if Duke actually ships its elected volume band for each individual Year over a consecutive Three Year period and it did not change its election for any Year in the Three Year period.
- *Total net tons qualifying for the volume incentive refunds will include net tons shipped on CSXT-CORE-120 via CSXT to Brice, NC, Riverbend, NC, Terrell, NC and Pelzer, SC.
- *Shipments must be a minimum of 75 cars per unit train in order to be included in the Volume Incentive calculation.

c) Ratable Shipment Requirement – Volume Incentives:

The volume incentive refunds are offered with the requirement that shipments be "ratable" on a daily and monthly basis, i.e. a relatively smooth shipping pattern.

For the purposes of calculating volume to any of the four individual Duke plants served by CSXT, the following constraints and or adjustments will apply:

***Daily Volume Counter – Adjusted for Ratability**

If the sum of net tons loaded on any weekday (Sunday through Saturday) exceeds 16% of the total net tons for the month, the number of net tons loaded on the weekday in question shall be reduced to 16% of the monthly total. A new monthly total will be developed by summing the lessor of 16% or the net tons actually loaded for each day of the month.

***Monthly Volume Counter– Adjusted for Ratability**

The number of net tons eligible for the volume incentive on a monthly basis will be the lessor of the adjusted month's tonnage (per Daily Volume Counter-Adjustment) or 105% of the prior month. This calculation is intended to minimize volume fluctuations from month to month;

***Annual Volume Counter– Adjusted for Ratability**

The annual volume calculated for purposes of the volume incentive refund will be the sum of the Monthly Volumes as adjusted above.

9. Lading Incentives:

As an incentive for Duke to influence producers to load efficiently, CSXT will pay a refund of \$.02 per net ton for each full ton in excess of 90 net tons lading weight shipped per car, up to the applicable load limit for that car. The refund calculation only applies to the tonnage in excess of 90 net tons in each car. The refund will be paid on all net tons in the car. To ensure safe loading practices, the refund will not apply to any train if any car in the train is loaded in excess of 286,000 pounds gross weight on rail or greater than its load limit.

Example: 110 net tons in car

110	20 x \$.02=\$0.40
-90	\$0.40 Refunded on
20	all net tons in car

10. Loading/Unloading Incentives:

The following incentive refund will be available to Duke if the actual loading and unloading times of railroad owned equipment for movements under this Tariff meet the following parameters:

Load/Unload Incentives Per Net Ton

<u>Origin</u>	<u>Destination</u>	<u>Incentive Refund</u>
4 Hour	4 Hour	\$0.50
4 Hour	24 Hour	\$0.40
24 Hour	4 Hour	\$0.40
24 Hour	24 Hour	\$0.30

11. Demurrage - Origin & Destination:

Origin and Destinations will be rated as either a 24 hour or a 4 hour facility as stated in the Tariff-CSXT-8200. As stated in Item 10, above, CSXT will offer incentives for actual loading and unloading consistent within the allotted time. In addition, the applicable free time will be doubled such that a 4 hour facility will be changed to 8 hours and the free time for a 24 hour facility will be changed to 48 hours. If loading/unloading is in excess of the applicable free time, CSXT Tariff 8200 demurrage charges will be applied. While demurrage at origin will remain for the account of the shipper, Duke will receive as a benefit through this incentive the efficiencies created by the producer for loading within the 4 hour or 24 hour window, whichever is applicable.

12. Trainsize Incentive:

CSXT will provide Duke an incentive for trains ordered and actually loaded as 75 or 90 car trains. If a train is ordered as a 75 car train and loaded within the Free Time provided in this Publication as 75 or more cars, CSXT will refund \$1,875 per train. If a train is ordered as a 90 car train and is loaded within the Free Time provided in this publication as 90 cars or more, CSXT will refund \$3,600 per train.

13. Quarterly Rate Adjustments:

All rates are subject to quarterly increase or decrease with the Rail Cost Adjustment Factor-Unadjusted. Rates will not be adjusted below the base rates as detailed in CSXT-CORE-120.

14. Alternative Route Rate Adjustment: (Effective March 14, 2002)

From time to time, due to capacity constraints, weather and other acts of God, CSXT may reroute Duke trains over Richmond, VA in which event the rates specified in Item One will be increased by \$4.50 per net ton to offset additional costs.

15. Capital Improvement Recovery Charge: (Effective March 14, 2002)

With the fluctuations in volume and demands put on the CSXT infrastructure, CSXT has or is making significant investments in the Terrell Subdivisions serving the Marshall and Riverbend Plants and the Pelzer/Belton Subdivisions serving the Lee Plant. Over the past two Years, 100% of the moves over the Terrell subdivision and 93% of the moves over the Belton subdivisions were for Duke's benefit. Subject to the annual cap described below, CSXT will apply a Capital Improvement Recovery Charge (CIRC) on an annual basis to all Duke traffic moving under CSXT-CORE-120 at the rate of \$1 per net ton until investments made on the subdivision (Investment Amount) are recouped (currently estimated to be \$6.6 million). The Investment Amount will be adjusted to reflect the actual investments made by CSXT. Note: Once this work is completed CSXT will notify Duke of the actual Investment Amount.

In lieu of billing Duke, CSXT will retain the amount due under the CIRC from any amounts otherwise due to Duke by CSXT as incentives, discounts, rebates or refunds payable under this publication. The CIRC will be subject to an annual cap of one fifth of the Investment Amount and will terminate when the Investment Amount has been recouped.

16. Submission of Refund Claim Form:

Within ten days of the end of each month, Duke may submit a refund claim using the attached Refund Claim Form detailing the information necessary by train reservation number to determine Duke's eligibility for refunds. CSXT recommends, but this common carrier quotation does not require, that Duke submit the information on a diskette. Duke may request reasonable extensions of time to submit the forms, should the ten day limit prove difficult to meet. All incentives/refunds/rebates as described in CSXT-CORE-120 will be paid within 20 days of the end of each Year or receipt of Duke's claim whichever is later.

17. Common Carriage Application:

The rates, terms, and conditions as published herein (CSXT-CORE-120) are established for the use and benefit of the Duke Power Company in the production of electricity from the coal transported and subsequently burned as pulverized coal purchased by Duke Power Company and may not be used by any other entity, transferred to any other entity or used in combination with any other movement, including without limitation subsequent transportation by rail or truck from any of the stated destinations.

In addition, CSXT-CORE-120 is only applicable to the origins as specifically listed in this publication. Intermediate applications of origins not listed in CSXT-CORE-120 will not apply.

The rates, terms and conditions herein may be modified from time to time by supplements upon statutory notice.



T. J. Carollo
Director-Utility South

500 Water Street - J842
Jacksonville, FL 32202-4057
Phone: (904) 358-1870
Fax: (904) 358-1744

March 12, 2002

Mr. D. G. McIntyre
Manager Coal Transportation
Duke Energy Corp.
526 South Church Street
P. O. Box 1008
Charlotte, NC 28201-1006

Dear D. G.,

This will respond to our phone conversation and your letter of March 1 concerning the CORE-120 Publication.

Duke seems to be saying that a longer notice period should have been provided before the effective date. CSXT does not agree. With only two exceptions, the rates provided effective March 1 represent decreases. The two items that could be characterized as an increase have separate effective dates and were issued with 20-day notification. At this time, Duke simply needs to load the base rates in the Publication (which are roughly six percent lower than the CORE-105) into its IT systems. Duke is not required to submit its declaration for volume incentives until March 15th, nor is it called upon to file its monthly rebates claim form until April.

CSXT also disagrees with Duke's description of the rates as not being "readily usable" and a "tremendous unnecessary administrative effort for both parties". The publication simply requires Duke to pay the base rates, (which, again, are a decrease from CORE-105), file monthly for rebates, and declare for volume incentives once per year.

You have expressed concerns that Duke should not be responsible for demurrage at origin. As we have indicated on the phone, CSXT considers the coal producer to be the "shipper" within the meaning of the rate publication and will look to the producer for demurrage charges at origin.

In response to Duke's request, CSXT is developing a proposal for synthetic fuel to Duke plants under a separate publication. CSXT recently became aware that Duke was moving synthetic fuel under STCC 11-212-90 as "bituminous coal." CSXT requests that Duke provide CSXT the amounts, origin-destination pairs, rate authority, and dates under which Duke has moved synthetic fuel. Our synthetic fuel publication will establish rates from six loading points where CSXT knows of synthetic fuel production facilities. If Duke believes that we have omitted any production facilities that Duke is using, or may soon use, please let us know right away. We want to have in place, as soon as possible, common carriage rates from the specific synthetic fuel production facilities from which Duke will be shipping to its plants over the next year.

You have voiced concern over CSXT's publication of origin-specific rates. Please understand that CSXT has published rates for each mine from which, to CSXT's best understanding, Duke has taken coal or has a reasonable expectation of taking coal. If Duke believes that an origin fitting that description has been omitted, please let me know. CSXT is not obligated to establish common carrier rates from every mine we serve, but rather only those mines Duke has used, or will likely soon use.

Your letter also referred to an overload "agreement." CSXT has not made any changes or modifications to its overload policies, procedures, rules, or charges by publication of the CORE-120. The lading incentive in CORE-120 simply states that the special rebate, unique to CORE-120, will not be paid on any train containing a car loaded above the lower of 286,000 lbs. or its mechanical load limit. All previously existing rules and tariffs covering overloads, safe loading practices, and mechanical limits are unaffected.

In closing your letter of March 1, you refer to "other changes that will require conversation between CSX and Duke". CSXT welcomes open dialogue between our companies. CSXT remains hopeful that Duke will decide to negotiate with CSXT on a reasonable commercial contract that recognizes the extraordinary efforts made by CSXT over the past two years and our successes in overcoming Duke's inventory and coal supply issues, as well as the current market conditions for CSXT services.

In sum, CSXT Tariff CORE-120 provides Duke with a volume-based decrease from the previously published rates. In addition, the Publication aligns incentives with CSXT and Duke costs and establishes common carrier terms to address important considerations in our commercial relationship.

D.G., at the same time that CSXT issued the CORE-120, Marketing Services under Joe McKenna's letter notified our billing groups of the new publication. CSXT anticipates a smooth transition in billing and is committed to working with Duke during the implementation phase. Along these lines, if you have any particular concerns on billing or administrative issues, please give me a call.


T. J. Carollo

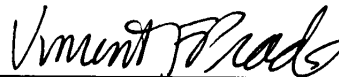
cc: M. P. Sullivan

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th 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:

William L. Slover
Robert D. Rosenberg
Christopher A. Mills
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(*By Hand Delivery*)

Paul R. Kinny
Duke Energy Corporation
Mail Code PB05E
422 South Church Street
Charlotte, North Carolina 28202-1904
(*By Overnight Express Courier*)



Vincent F. Prada