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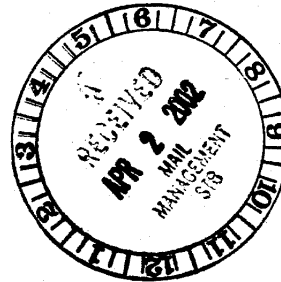
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April 2, 2002

Via Courier

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



Re: STB Docket No. NOR 42072, *Carolina Power & Light Company v. Norfolk Southern Railway Company*

Dear Mr. Williams:

On April 1, 2002, Norfolk Southern Railway Company ("NS") filed Defendant's First Motion to Compel Answers to Interrogatories and Production of Documents. NS also filed separately under seal Attachment B to that motion, which contained documents designated as "Highly Confidential" pursuant to the protective order issued in this case on March 12, 2002. Inadvertently omitted from both filings was an executed signature page. Therefore, enclosed please find a an original and twenty copies of the signature page for inclusion with the motion and with Attachment B. Also enclosed please find an original and ten copies of a certificate of service indicating that Attachment B had been delivered to counsel for Complainants. Should you have any questions, please do not hesitate to contact me.

ENTERED
Office of the Secretary

APR 03 2002

Part of
Public Record

Very truly yours,

Alexandra R. Gelber

Enclosures

cc: Counsel for Complainants (w/encls.)

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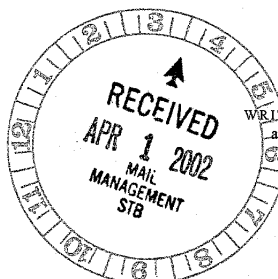
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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. NOR 42072, *Carolina Power & Light Company v. Norfolk Southern Railway Company*

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are a signed original and ten copies of Defendant's First Motion to Compel Answers to Interrogatories and Production of Documents. 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,

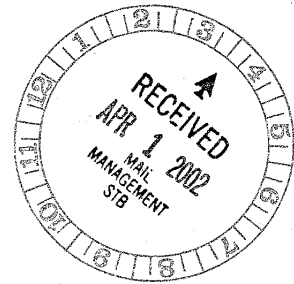
A handwritten signature in cursive script, appearing to read 'Alexandra R. Gelber'.

Alexandra R. Gelber

Enclosures

cc: Counsel for Complainants (w/encls.)

BEFORE THE
SURFACE TRANSPORTATION BOARD



CAROLINA POWER & LIGHT COMPANY,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

STB Docket No. 42072

**DEFENDANT'S FIRST MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

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DATED: April 1, 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD

CAROLINA POWER & LIGHT COMPANY,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

STB Docket No. 42072

**DEFENDANT'S FIRST MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. §§ 1114.30 and 1114.31, Defendant Norfolk Southern Railway Company ("NS") hereby moves the Board for an order compelling Complainant Carolina Power & Light Company ("CP&L") to provide adequate responses to NS' First Set of Interrogatories and Requests for Production of Documents, and extending the current deadline for completion of discovery as necessary for the Board to rule on this motion.

INTRODUCTION AND SUMMARY

CP&L, an energy producer and seller and subsidiary of Progress Energy, Inc., a large diversified energy and transportation corporation, is challenging in this proceeding the reasonableness of NS' rail rates for the transportation of coal between a variety of Central Appalachian coal origins and two electric generating plants located in North Carolina and served by NS. Through its Complaint, CP&L seeks significant Board-prescribed reductions in NS' rates. Consistent with the practice in stand-alone cost ("SAC") coal rate reasonableness proceedings, CP&L served extraordinarily broad and burdensome discovery requests, which NS at great time and expense is working diligently to answer.

This motion is necessary because CP&L has yet to respond fully and substantially to many of NS' requests. CP&L has refused to produce important categories of requested documents and information that are relevant to the issues in this case and that are necessary to NS' defense. In addition to other issues relating to intramodal and intermodal competition, variable costs and SAC, NS' discovery requests seek information bearing on the increasingly contentious (and important) issue of the estimated future coal traffic volumes and revenues of the stand-alone railroad ("SARR") used to test the reasonableness of the challenged rail rates.

CP&L has objected to virtually all of the latter discovery requests, seeking information bearing on SARR traffic volume and revenue issues, on relevance and burdensomeness grounds. In some instances, CP&L has produced what it vaguely suggests "may be" responsive information, but the referenced materials consist almost entirely of readily available public reports filed with the Federal Energy Regulatory Commission ("FERC") or state regulatory agencies. CP&L has also produced summaries of short-term coal consumption (or "burn") and electricity generation forecasts for CP&L's coal-fired electric generating facilities. The large preponderance of the documents produced thus far by CP&L, however, consist of reports publicly filed with state regulatory agencies, and routine train operating records.

NS and CP&L discussed these (and other) discovery issues at a meeting held on March 21, 2002. Although CP&L had objected to a large number of NS' discovery requests on various grounds, NS sought to narrow the scope of the parties' disputes by identifying during the meeting a discrete number of areas in which it would seek additional information which CP&L had objected to producing. Although CP&L agreed to reconsider its position on several of NS'

requests, the parties have not resolved their differences. As relevant here, the parties' dispute relates to the following areas:¹

- **Forecasts**: NS requested internal CP&L forecasts or projections of future fuel usage, electricity generation and other factors (including electricity demand, fuel prices, generating capacity, rail rate levels, relative fuel costs, power purchase prices, inflation and other economic indicators) that would affect the future volume of electricity generated (and therefore the future volume of coal consumed) at the CP&L coal-fired plants at issue in this proceeding. Such information is unquestionably relevant to the future coal traffic volumes and revenues of the SARR. To date, CP&L has produced limited short-term "burn" forecasts for its coal-fired plants, but it has refused to produce forecasts of other relevant economic indicators that would affect future coal burn. CP&L also has refused to produce any information regarding the inputs or assumptions underlying the limited coal "burn" forecasts that it did produce.
- **Environmental Regulation and Emissions Restrictions**: NS requested, but CP&L has refused to produce, any studies or analyses of the actual or possible impact of CP&L's compliance with the Clean Air Act or other environmental regulations on the level or costs of electricity generation and on the future volume, quality and sources of coal consumed at its coal-fired generating plants. These environmental restrictions will necessarily have a direct and dramatic impact on the costs of coal-fired electricity generation relative to other sources of electricity and the volume and type of coal consumed in the future at the issue plants and, therefore, the volume of coal available to the SARR.
- **Economic Dispatch Practices**: Like most integrated electric utilities, CP&L meets its demand for electricity from among a variety of sources of electricity supply (including generation from coal-fired and non-coal facilities and purchased power) on the basis of the relative costs of each available source. How much electricity CP&L produces (and in the future will produce) at the issue coal-fired plants and how much coal will be transported to those plants are thus heavily dependent on the relative costs

¹ Issues substantially similar to those raised in this motion are currently pending before the Board in two other coal rate complaint cases recently filed by Duke Energy Corporation (represented by the same counsel who represent CP&L here) against NS and CSX Transportation, Inc. ("CSXT"). STB Docket No. 42069, *Duke Energy Corp. v. Norfolk Southern Railway Co.*; STB Docket No. 42070, *Duke Energy Corp. v. CSX Transportation, Inc.* On March 4, 2002, NS and CSXT filed motions to compel in those cases, raising discovery issues very similar to those raised here. Those motions are pending.

and availability of power produced at other CP&L facilities and available on the wholesale power market. NS therefore asked CP&L for information about its current dispatch practices. CP&L has produced no information concerning its economic dispatch practices or the actual dispatch order (and dispatch "prices") of its generating units and facilities, and has refused to produce the computer model it uses to determine dispatch order and level, or even the input data and assumptions used in that model.

- **Alternative Fuels/Technological Changes:** NS requested, but CP&L has refused to produce, studies and analyses by CP&L assessing the possible use of alternative fuels and the impact of changes in electric generating technology on future generating output and fuel consumption at its generating plants. Although these studies would directly bear on the likely future electricity production (and, hence, coal consumption) at the plants served by the SARR, CP&L has refused to produce responsive information—even with respect to the coal-fired CP&L plants served by NS.
- **Impact of Rail Rates on Electricity Generation:** NS requested studies or analyses of the impact or possible impact that changes in the level of railroad coal transportation rates would have on the volume of coal consumed at particular electric generating plants. Because SAC analysis requires an assessment of the future rate levels of the SARR as well as its coal traffic volume, and changes in rail rates (and therefore electricity generation costs) necessarily affect the relative fuel costs and therefore the volume of electric power produced at a particular facility, such information is directly relevant to the proper calculation of stand-alone costs. CP&L has advised NS that it possesses at least one document responsive to NS's discovery requests, but is declining to produce it.
- **Coal Supply Contracts and Transportation Contracts:** Because CP&L's future coal purchase obligations for particular coal sources could have an impact on the coal volumes available to the SARR, NS asked CP&L to produce its current long-term coal supply contracts. Similarly, CP&L's obligations under rail transportation contracts with carriers other than NS to transport specified coal volumes to coal-fired CP&L plants could affect the coal volumes at the NS-served plants included in the SARR. CP&L has indicated that, apart from confidentiality considerations, it is willing to produce these contracts but has requested a Board order compelling production of these contracts.

With the exception of the last item, CP&L's objections to NS' discovery requests in these areas amount, at bottom, to the claim that because the Board expressed concern about the burden of railroad discovery requests in deciding to exclude consideration of product and

geographic competition in market dominance determinations,² and because some of the information requested by NS in discovery could potentially be relevant to the issue of product and geographic competition, CP&L should not have to answer NS's requests even though the requested information is relevant to SAC issues.³ The Board should squarely reject any such assertion. Even if some of the information NS is requesting might also have been relevant to the issues of product and geographic competition prior to the Board's decision in *Ex Parte 627*, the requested information is unquestionably relevant to SAC issues, and the *Ex Parte 627* furnishes CP&L no immunity from discovery.

It is undisputed, and CP&L's discovery responses expressly confirm, that CP&L determines the amount of electricity produced (and therefore the volume of coal consumed) at the issue coal-fired plants based on the relative costs of all of the available sources of electricity, including non-coal generation and purchased power. For this reason, the future volume of coal that will be consumed by the coal-fired plants served by the SARR is necessarily dependent on the relative costs and capacity of all such electricity sources, as well as on other economic factors affecting future demand for electricity. CP&L documents assessing these economic factors, and their potential impact on the future level of electricity demand, electricity generation and coal

² STB Ex Parte No. 627, *Market Dominance Determinations—Product & Geographic Competition* (served Dec. 21, 1998 & July 2, 1999) ("*Ex Parte 627*"), *pet. for review granted sub nom. Association of American Railroads v. United States*, 237 F.3d 676 (D.C. Cir. 2001), *on remand* (served April 6, 2001), *pet. for review pending sub nom. Association of American Railroads v. United States*, No. 01-1213 (D.C. Cir.).

³ NS disagrees with the Board's decision in *Ex Parte 627*, which the railroads are challenging in a pending petition for judicial review. However, NS is not claiming here that the requested information is discoverable because it is relevant to product and geographic competition.

consumption are thus squarely, and critically, relevant to a sound projection of future SARR traffic volumes and revenues.

The Board's *Ex Parte* 627 decision was founded on the proposition that the burden of discovery on product and geographic competition outweighed its relevance, given that (according to the Board) it was unlikely that a complainant would bring a rate complaint if there were effective indirect competitive constraints on the railroad's rates. Here, by contrast, the burden of NS's discovery requests covered by this motion is not unreasonable (particularly compared with the discovery burdens CP&L's requests impose on NS), and the requested information is directly relevant to a key, and frequently disputed, SAC issue. Contrary to the argument made by CP&L's counsel in its recent opposition to NS' motion to compel in the *Duke Energy* case,⁴ discovery into the factors affecting the likely future volume of electricity generated and coal consumed at CP&L's coal-fired plants, and the factors affecting future electricity demand and fuel consumption, are not a fishing expedition and, given the central importance of traffic and revenue forecasts to the outcome of a SAC analysis, cannot reasonably be characterized as a "waste" of resources. Unless the Board is prepared to do away with the practice of estimating the future traffic volumes and revenues available to the SARR, the discovery NS seeks here cannot be characterized as wasteful or peripheral to the key disputed issues in the case.⁵

⁴ STB Docket No. 42069, *Duke Energy Corp. v. Norfolk Southern Railway Co.*, Duke Energy Corporation's Reply to Motion to Compel (dated Mar. 15, 2002) ("Duke Reply"), at 4, 6.

⁵ There is also no merit to Duke's argument (repeated by CP&L) that, in STB Docket No. 42022, *FMC Wyoming Corp. v. Union Pacific Railroad Co.* (served April 17, 1998) ("*FMC*"), the Board "implicitly" rejected railroad discovery of information similar to that sought by NS despite its claimed relevance to SAC issues. Duke Reply at 13-14 & n.6. The disputed discovery requests in *FMC* were justified by the railroad primarily on the ground that they sought information relevant to product and geographic competition. Although the railroad in its motion to compel made a vague reference to the possibility that some unspecified portion of the requested information

(continued...)

Nor are NS' discovery requests here subject to attack on the ground that they seek information to support evidence "second-guessing"—and requiring the Board to assess—CP&L's decisions regarding the selection of its sources of electricity to meet demand, a concern the Board cited in *Ex Parte* 627. See Duke Reply at 13. NS does not seek by its disputed discovery requests here to question CP&L's decisions about the operation of its system or how it "dispatches" its generating facilities. The issue is information that bears (or may bear) on the *future* level of electricity generated and coal consumed at CP&L's coal-fired plants, an issue that inherently involves predictive judgments and an issue that the Board must decide. Although predictive judgments about CP&L's future coal consumption may involve the Board in examining evidence about electric utility operations in which the Board has relatively little independent expertise, that is no reason to prevent the development of evidence that would inform a decision the Board cannot avoid making or to close off inquiry into a matter that has direct relevance to the resolution of disputed SAC issues.⁶ NS is entitled to review CP&L's

internal assessments of the factors affecting future electricity generation and coal consumption,
(...continued)

might possibly be relevant to SAC issues, the thrust of its defense (and of the Board's decision refusing to allow the discovery) was its claimed relevance to market dominance. In resolving the discovery issue, the Board (at 1 n.1) emphasized that the "specific elements of disputed discovery are not discussed in the parties' submissions," and that its decision was "based on our market dominance guidelines" The Board's decision in *FMC* was thus based solely on the discoverability of the requested information for purposes of product and geographic competition. The decision nowhere suggests that information of the type sought by NS in this case would not be relevant to SAC issues or that it would not be discoverable for that reason. The types of information at issue in the *FMC* case also go well beyond the limited categories of information that NS is seeking to compel CP&L to produce.

⁶ In *Ex Parte* 627, the Board concluded that it could dispense with consideration of product and geographic competition (and related discovery) in order to reduce practical litigation burdens because the market dominance statute did not require the Board to consider product and geographic competition at all. Here, by contrast, the Board does not have discretion, based on relative litigation burdens, to close off inquiry into the likely future volume of coal shipments to the SARR plants because, given the manner in which the Board calculates stand-alone costs, estimates of

(continued...)

factors affecting future electricity generation and coal consumption, including information (such as the effect of future environmental regulation of coal-fired emissions) that CP&L has considered and assessed, but which may not be reflected in the limited coal "burn" forecast information CP&L has produced to NS.⁷ It is fundamentally inconsistent with any principle of fair adjudication and of appropriate discovery to permit a party (such as CP&L) to submit evidence on a disputed issue (the future traffic volumes and revenues of the SARR) while resisting production of internal information that bears (or could bear) on the validity of that evidence.

CP&L's other principal basis of objection—that NS' requests are burdensome—should be rejected out of hand. Discovery is necessarily a two-way street: when a complaining shipper comes before this Board asking for potentially millions of dollars in Board-ordered rate relief, and in the process serves discovery requests requiring the defendant railroad to produce voluminous internal records about virtually every aspect of its business and operations, it is not asking too much to require the complainant to answer legitimate discovery requests directed to relevant and critically important issues on which the outcome of the proceeding may turn. Indeed, NS is entitled to review the requested CP&L documents and information to make sure that

(...continued)

such future traffic volumes are directly relevant to a proper application of the SAC standard. The Board cannot rationally rely on a standard that makes estimates of future traffic volumes and revenues relevant to the outcome of the SAC analysis and, simultaneously, deny parties the opportunity to obtain discovery of information relevant to that issue.

⁷ In this regard, it bears noting that there is no evidence that the coal "burn" forecasts produced by CP&L take into account at all the impact of future emissions regulations, much less consider the effect of electricity deregulation, the growth of wholesale power markets or any of a variety of other economic factors. Thus, there is no basis for any presumption that the summary coal "burn" forecasts produced by CP&L reflect consideration of all relevant factors affecting future coal consumption. Any suggestion to the contrary based on the Board's recent decision in STB Docket No. 42051, *Wisconsin Power & Light Co. v. Union Pacific Railroad Co.* (served Sept. 13, 2001) ("WP&L"), at 19-21, would be wholly without evidentiary basis.

the claims advanced in its SAC evidence in this proceeding are not inconsistent with the facts and positions reflected in its own internal business records. Requiring CP&L to bear reasonable burdens in responding to appropriate discovery requests directed to SAC and other central issues is essential if there is to be fairness in the respective burdens of shippers and railroads in maximum rate reasonableness litigation.

Thus, as explained more fully below, CP&L should be compelled to provide more complete discovery responses on the discrete subjects described below.

PROCEDURAL BACKGROUND

The Complaint in this proceeding, filed by CP&L on February 1, 2002, challenges the maximum reasonableness of common carrier rates established by NS for application to the transportation of coal between a variety of Central Appalachian coal origins and two of CP&L's coal-fired electric generating stations located in North Carolina (Roxboro and Mayo). CP&L filed the Complaint when the parties were unsuccessful in negotiating a new rail transportation contract to replace a contract that governed NS' service to the two plants and that expired on March 31, 2002. CP&L has made it clear to NS that its Complaint seeks a substantial reduction in the common carrier rates applicable to its coal shipments.

Both CP&L and NS have served discovery requests. Consistent with the recent practice of shippers in SAC cases, CP&L's discovery requests are extremely broad and burdensome, seeking voluminous data and information from NS involving virtually every aspect of its rail business and operations (including detailed traffic and train operating data, confidential rail transportation contracts, internal strategic business plans and forecasts of rail traffic volumes and revenues, operating statistics, detailed roadway and equipment investment and maintenance costs, inventories and construction costs, land sale transactions, joint facility agreements, and

information and data concerning numerous other topics). Despite the enormous burden imposed by CP&L's discovery requests—which number over 550 separate requests (including sub-parts)—NS has worked diligently to locate, in some cases to develop, and to produce responsive information.

NS served its first set of interrogatories and document production requests on February 6, 2002, five days after the filing of the Complaint. Those requests sought various types of information and documents from CP&L concerning intramodal and intermodal competition, variable costs and SAC issues. More specifically, in light of the fact that CP&L dispatches its electric generating resources (including coal-fired generating facilities served by NS, as well as non-coal plants and purchases of electric power generated by sources outside the CP&L system) on the basis of relative cost, and that factors affecting relative costs and availability of power from all sources materially affect the amount of power produced (and, therefore, coal consumed) at the specific plants at issue in this proceeding, NS requested that CP&L produce information concerning power generation and operations at all CP&L plants and other sources of power available to CP&L. For similar reasons, NS requested forecasts and projections (and underlying data and assumptions) for electric power generation, coal consumption, rail transportation rates and other factors (such as coal prices and availability) directly affecting future power generation, “burn” rates and revenues to rail carriers transporting coal. Similarly, NS asked CP&L to produce copies of its coal supply contracts and rail transportation contracts, each of which potentially affects the volumes of coal that would be available for transportation by the SARR. NS also requested that CP&L produce any analyses or studies regarding the effect of technological changes, environmental regulations and litigation, and potential changes in avail-

ability or cost of fuels that might affect the operating levels and coal consumption of generating plants potentially served by the SARR.

CP&L's responses to NS' first discovery requests, served March 8, 2002, objected on various grounds to the vast majority of NS' requests.⁸ Attempting to avoid meaningful discovery on central issues, CP&L characterized a large proportion of NS' discovery requests as "relevant only or primarily to the subject of indirect competition (*i.e.*, product and/or geographic competition)," which the Board has ruled in *Ex Parte 627* it will no longer consider in making market dominance determinations. *See, e.g.*, CP&L Responses, General Objection No. 1. Apparently recognizing that NS' requests were directed to issues other than product and geographic competition (including, notably, SARR traffic volumes and revenues), CP&L repeated its relevance objection, and also asserted a blanket burden objection, alleging that the burden of producing responsive documents would outweigh their evidentiary value. *Id.*

The documents CP&L has produced consist primarily of publicly filed reports (including electricity demand and supply forecasts). These include FERC Annual Report Form 580 reports (describing fuel and fuel transportation information), FERC Form 423 data (reporting monthly coal deliveries by plant), and Integrated Resource Plans, Annual Plans and/or

⁸ A copy of CP&L's responses to NS' first set of discovery requests is included as Attachment A hereto. Many of CP&L's responses and objections are so vague and opaque that it is difficult to determine whether CP&L intends to produce any responsive documents or information and, if so, what types or categories of documents it intends to produce and when. For example, in response to several specific document requests and interrogatories, CP&L simply refers to one of its general objections. That general objection, in turn, generically states that CP&L will produce a few selected documents (primarily public FERC and state agency filings), which "may" contain responsive information, directing NS to review those materials "to investigate whether and what responsive information is included therein." *See* CP&L Responses, General Objection No. 1; CP&L Response to NS Interrogatory Nos. 19, 20, 22-24; Response to NS Document Production Request Nos. 17, 19-24, 26, 27, 32 (all incorporating General Objection No. 1).

Short-Term Action Plans filed with state regulatory agencies detailing system-wide load forecasts and plans to meet those load requirements. CP&L also produced summaries of its internal short-term coal consumption, electricity generation and fuel cost forecasts for each of its coal-fired plants (extending to 2006 only). But CP&L produced no information supporting these summaries, or indicating how the forecasts were developed or what assumptions they employed. CP&L also has produced no forecasts (internal or otherwise) for non-fossil fuel fired electricity generation or other sources of electricity or, apart from the public reports, any other longer-term forecasts. CP&L has produced no internal studies or analyses of the effects of environmental regulations on generating output or coal consumption, analyses of future coal supply, or other similar internal analyses bearing on future coal usage. CP&L has provided no materials concerning its economic dispatch practices or the dispatch priority of its generating sources, and has refused to produce its dispatch model or assumptions or even the inputs to or outputs from such model. CP&L agreed to produce coal supply agreements, coal transportation agreements, and certain other requested materials governed by third-party confidentiality restrictions if NS obtained a Board order (which CP&L will not oppose) compelling their production.

Although CP&L has stated that it will consider producing limited additional documents, it has not advised NS of the specific nature of those documents or when they will be produced. As of the filing of this motion, CP&L's entire document production comprises approximately four boxes of documents, the majority of which consist of photocopies of public filings, including voluminous monthly "fuel reports" submitted to state public utilities commissions (reporting fuel costs), and routine train operating reports not relevant to SARR traffic volume and revenue issues.

On March 21, 2002, the parties met to discuss discovery issues, including NS' concerns about CP&L's discovery responses. CP&L agreed to reconsider its refusal to produce a few limited categories of documents, but adhered to its stated objections with regard to the categories of requests addressed in this motion.⁹

CP&L's continued refusal to produce relevant materials bearing on central issues in this case, including the core issues of future traffic and revenues potentially available to the SARR, impedes both NS' ability to defend this case and the Board's ability to make decisions based on the best available evidence. Because NS believes such information is vitally important to this rate case, it is forced to file this motion to compel.

ARGUMENT

The Board's rules authorize broad discovery, providing in part that a party "may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a). Decisions of the Board have repeatedly affirmed the broad scope of discovery. *See, e.g.,* STB Docket No. 42022, *FMC Corp. v. Union Pacific Railroad Co.* (served Feb. 5, 1998), at 8 ("parties may obtain discovery regarding any non-privileged matter which is relevant to the subject matter"); STB Docket No. WCC-104, *Trailer Bridge, Inc. v. Sea Star Lines* (served Oct. 27, 2000), 2000 STB LEXIS 627 at *18. Moreover, under the liberal discovery rules governing this proceeding, a party must produce all responsive non-privileged information so long as the request for that information is reasonably calculated to lead to the discovery of admissible evidence. *E.g., Trailer Bridge, Inc.*, 2000 STB

⁹ This motion is filed within ten days of the parties' meet-and-confer conference. *Cf.*, 49 C.F.R. § 1114.31(a); *Arizona Public Service Co. v. Atchison, Topeka & Santa Fe Railway Co.*, 2 S.T.B. 367, 371 n.8 (1997) (allowing, notwithstanding Section 1114.31(a), motion to compel filed within reasonable time after parties' efforts to resolve discovery dispute voluntarily).

LEXIS 627, at *18; *see* 49 C.F.R. § 1114.21(a)(2) (“It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”).

This motion seeks an order compelling CP&L to produce full and complete responses to NS’ discovery requests in the following areas: (1) projections and forecasts of electricity demand and generation, coal consumption and rail rates; (2) analyses of costs and effects of compliance with applicable environmental laws, regulations and requirements; (3) CP&L’s “economic dispatch” policies and practices and related assumptions, inputs and output; (4) studies or analyses of the impact of possible use of alternative fuels (including Western coal) or changes in technology on CP&L’s electricity generation; (5) the impact of changes in rail rates for coal transportation on electricity generation and coal consumption; and (6) coal supply and coal transportation contract information. NS also seeks an extension of the discovery period—currently scheduled to close on April 17, 2002—to the extent necessary to permit consideration and decision of this motion.

I. THE BOARD SHOULD COMPEL CP&L TO PROVIDE MORE COMPLETE RESPONSES TO NS’ INTERROGATORIES AND DOCUMENT REQUESTS.

A. Projections and Forecasts

As the Board knows, an important element of any SAC calculation under the 20-year Discounted Cash Flow (“DCF”) model currently employed by the agency is the estimation of the future traffic volumes and revenues of the SARR. In recent years, this element of the SAC analysis has assumed increasing importance as a disputed evidentiary issue, to the point that the issue of forecasts has a major (if not controlling) impact on the outcome of a SAC case. *See, e.g., WP&L* at 14-28; STB Docket No. 42022, *FMC Wyoming Corp. v. Union Pacific Railroad*

Co. (served May 12, 2000), at 26-37; *West Texas Utilities Co. v. Burlington Northern Railroad Co.*, 1 S.T.B. 638, 660-64 (1996), *aff'd sub nom. Burlington Northern Railroad v. STB*, 114 F.3d 206 (D.C. Cir. 1997).¹⁰ Indeed, in the recent *WP&L* case, the Board's resolution of the forecast issue, along with its analysis of the SARR traffic grouping issues, were virtually outcome-determinative, as the Board found that the resolution of those issues made it unnecessary to resolve many disputed SAC construction and operating cost issues. *See WP&L* at 28-30.

Because of the paramount importance of traffic projections and forecasts to the SAC analysis, NS' discovery requests sought from CP&L its forecasts and projections of demand for electric power, electricity generation, coal and other fuel consumption, rail rate levels and other economic indicators (such as inflation factors, the costs and availability of alternative sources of electricity, including purchased power) that would have a bearing on the future level of electricity generation—and, therefore, coal consumption and coal transportation volumes—at the CP&L plants at issue in this proceeding and any other generating facilities potentially served by the SARR. For example, NS' Interrogatory No. 23 requested information concerning CP&L's forecasts of various relevant factors and indicators, including generating capacity, demand for power, transmission constraints, coal burn and other fuel burn, coal consumption, costs of coal, rail transportation costs and rates, and projected rates of inflation. Interrogatory No. 24 requested information concerning the assumptions and data used to prepare those forecasts. Document Production Request No. 28 sought documents comprising or related to the forecasts

¹⁰ *See, e.g.,* STB Docket No. 42056, *Texas Municipal Power Agency v. Burlington Northern & Santa Fe Railway Co.*, Defendants' Joint Motion for Limited Consolidation (dated July 5, 2001), at 7-16 (discussing importance of SARR traffic and revenue forecasts to SAC results, and the concerns about excessive reliance upon necessarily uncertain and speculative forecasts of economic events 20 years into the future).

identified in response to Interrogatory No. 24. Document Production Request Nos. 30 and 31, in turn, sought production of computer models that CP&L uses or could use to develop forecasts or estimates of the various economic measures bearing on future SARR traffic volumes and revenues, including input data and assumptions and previous output from such models.

CP&L objected to these discovery requests on various grounds. CP&L asserted that the requests were objectionable because: (1) the requested information was relevant only to the issue of product and geographic competition, which is no longer considered in market dominance determinations; (2) any requested information other than forecasts of coal tonnage volumes, coal prices and rail rates for coal shipments to the two issue CP&L plants is also irrelevant; (3) the requested coal price and rail rate forecast information is confidential; and (4) producing the requested information would be burdensome. *See, e.g.,* CP&L Response to Interrogatory Nos. 23-24.

In accordance with these objections, CP&L has produced certain limited forecast information. As of this date, CP&L has produced short-term projected coal burn forecasts for its coal-fired facilities (extending through the year 2006), and highly aggregated system-wide resource plans and reports submitted to state public utilities commissions summarizing CP&L's forecasts of system-wide electricity demand and sources of generation to meet such demand. (CP&L also produced a few pages of documents apparently including rail cost forecasts.) In a letter dated March 27, 2002 responding to issues raised during the parties' March 21 discovery conference, CP&L counsel advised NS that CP&L does not have any other additional (or longer-term) coal "burn" forecasts.

Despite this limited production, CP&L's responses to date are seriously incomplete in several respects, particularly given the importance of the SARR forecast issue in SAC

cases. CP&L's short-term coal "burn" forecasts (which include projections, by individual generating unit, of generating output, fuel consumption and fuel costs) are mere summaries, without any supporting documentation.¹¹ CP&L has refused to provide NS any information that would disclose the data sources or assumptions used or considered (and, importantly, not used or considered) by CP&L in arriving at these forecasts. It is thus impossible for NS to determine the basis for the forecast figures, or their components. For example, the forecast summaries project, for each coal-fired CP&L plant, both the amount and cost of fuel to be consumed at the facility, but do not disclose what assumptions CP&L made concerning future rail transportation costs (which are one component of the forecasted fuel costs), the source or sources of the forecasted coal, or any other information that would reveal how the forecast figures were developed.

The coal "burn" forecast materials produced by CP&L also leave NS unable to determine whether the forecasts considered all relevant factors (such as, for example, the possibility of increased costs due to emissions restrictions on coal-fired plants, the potential switch to Western coal sources, or the impact of electricity deregulation on the cost and availability of purchased power). The forecast summaries provide no basis on which to conclude that the forecast figures are based on consideration of all relevant factors or even whether the forecasts for internal business reasons deliberately excluded consideration of certain factors (such as future emissions restrictions) that would inevitably affect future coal "burn" at the CP&L plants. NS is en-

¹¹ An excerpt from the short-term coal "burn" forecast materials produced by CP&L, denominated the "2002 Budget Power Estimate Revision 1" to the "Monthly Fossil Unit Summary," is included as Attachment B to this motion (CPL-05445 to CPL-05446). Because these materials were designated "Highly Confidential" by CP&L, NS is filing Attachment B separately under seal, and designates this material as "Highly Confidential" under the Protective Order entered by the Board in this proceeding.

titled to probe the basis for these forecasts, and not to accept blindly the figures CP&L has chosen to make available.

CP&L also has not produced any plant-specific fuel consumption forecasts for any of its non-fossil fuel plants, nor any long-term fuel consumption or generation forecasts for any of its generating facilities. CP&L has refused to produce its forecast model (which is used to generate the aggregated forecasts described in the state-agency reports that CP&L produced), or even to produce information concerning the data inputs and assumptions that are used in the forecast model and that underlie the aggregated forecast results reported to the state agencies. And, apart from the publicly filed reports, CP&L has flatly refused to produce forecast information for any economic measure other than coal consumption and transportation volumes, rail rates and coal prices at CP&L's coal-fired generating plants, even though it does not (and cannot) deny that those economic factors would affect future coal consumption for electricity generation purposes.

CP&L's objections to the production of this requested information are groundless. Because NS is seeking the requested forecast information for purposes of assessing the future traffic volumes and revenues of the SARR, CP&L's objection based on the Board's exclusion of consideration of product and geographic competition is patently without merit. As previously discussed, the Board's decision in *Ex Parte 627* furnishes CP&L no immunity from appropriate discovery on issues relevant to SAC issues, whether or not the requested information might have been pertinent to product and geographic competition issues. NS is entitled to probe whether CP&L's forecasts are consistent with its views on other issues, such as the potential impact of emissions regulations. Indeed, that is the very purpose of discovery. NS need not prove in advance that CP&L's forecasts are wrong in order to be entitled to discovery on that issue. Nor can

NS reasonably be required to rebut any presumption that CP&L's coal "burn" forecast summaries did *not* consider all potentially relevant factors when CP&L has not disclosed what factors were considered or assumptions used in developing those forecasts.¹²

CP&L's separate confidentiality objection with respect to rail rate and coal price forecast information is similarly without merit in view of the Protective Order that has been entered in this case to safeguard confidential commercial data. CP&L has advised NS counsel that, as with NS' requests for production of coal supply contracts (*see* Section I-F below), CP&L would not oppose production of the requested rail rate and coal price forecast information (not otherwise covered by another objection) if the Board were to enter an order compelling such discovery, and CP&L would not oppose NS' motion to compel production of such materials.

CP&L's more fundamental objection to NS's requests for forecast information—that forecasts of any economic measure other than coal consumption, coal transportation volumes, coal price and rail rate information for CP&L's coal-fired generating plants are irrelevant—is also unsound. CP&L's position ignores the fact that the future volume of coal transported to and consumed at the two coal-fired plants served by NS (and presumably to be served by the SARR) is affected by a large number of other economic factors the forecasts of which would be directly relevant to the validity of any coal volume forecast prepared by CP&L

¹² In its recent reply to NS's motion to compel in the *Duke Energy* case, CP&L's counsel relied on the Board's statement in *WP&L* (at 21) that impacts of emissions restrictions and other factors "should be reflected" in the complaining utility's internal coal "burn" forecasts as a reason for the Board to deny NS discovery of the assumptions and factors used by Duke Energy in compiling its forecasts. Duke Reply at 15-16. Revealingly, however, Duke Energy did not affirm that such factors in fact *were* reflected or incorporated in its coal "burn" forecast summaries produced to NS, nor has Duke Energy offered to produce information disclosing how (if at all) these factors were reflected in the summary forecast materials produced to NS. Similarly, CP&L has furnished NS (and the Board) no basis on which to conclude that the coal "burn" forecast summaries CP&L has produced reflect factors relevant to future coal consumption or, if they are reflected, how they do so.

relevant to the validity of any coal volume forecast prepared by CP&L in the regular course of business or tendered in evidence in this proceeding. For example, future coal consumption at a generating plant such as Roxboro will depend on the level of electricity demand in CP&L's service territory, which in turn is dependent on various macroeconomic factors such as economic growth and energy conservation plans. Forecasts of electricity demand and generation in the region served by CP&L would also have relevance in assessing any projections of future coal consumption at the issue plants. NS is entitled to review any forecasts CP&L possesses on these economic measures to assess the validity of its SARR traffic and revenue projections.¹³

Similarly, the level of future coal consumption and transportation volumes at the two NS-served coal plants will be substantially affected by the future availability and relative cost of *alternative* sources of electric power available or potentially available to CP&L. Like most large electric utility systems, CP&L determines the amount of electricity to be generated at a particular generating facility following the practice of "economic dispatch"—under which it utilizes available electric power sources (including coal-fired generation, non-coal generation and purchased power) in order of their relative cost.¹⁴ Thus, the amount of electricity consumed

¹³ The argument made by CP&L's counsel in the *Duke Energy* case that the requested forecast information should be deemed non-discoverable because the complaining shipper's coal-fired plants will account for only a small share of the overall traffic volumes of the SARR (Duke Reply at 5) is also unfounded. As an initial matter, the possibility that the requested CP&L forecast information relates only to CP&L plants cannot obscure the fact that the future coal consumption of those very plants is a relevant issue in the SAC analysis of this case. In addition, CP&L's internal analyses of the various economic factors affecting future coal consumption and electricity generation at its NS-served coal plants likely would also be relevant to the future coal traffic volumes of the SARR in serving other potential non-issue coal traffic included in the SARR.

¹⁴ See CP&L Response to Interrogatory No. 18 ("CP&L states that, in determining the relative order in which power will be generated or dispatched, it generally follows an economic dispatch policy in which generating resources are ranked in terms of operating costs in a manner that will maintain system reliability.").

at a plant like Roxboro (and, as a result, the volume of coal delivered to and consumed at that plant) is affected by the availability and relative costs of electric power produced at other CP&L generating facilities not served by NS and of electric power available for purchase on the wholesale market. Forecasts of the future availability, capacity and cost of such sources of alternative power are, for this reason, highly relevant to the assessment of the future level of coal tonnages delivered to and consumed at the NS-served coal plants potentially included in the SARR in this case.

For example, if CP&L's internal forecasts projected a significant increase in gas-fired or nuclear generating capacity within the CP&L system in future years, or a significant reduction in the costs of producing gas-fired or nuclear power (including fuel prices), CP&L's "economic dispatch" practice would indicate that these projected changes would affect (indeed, all other things being equal, would reduce) the likely level of electricity generation and coal consumption at the two NS-served coal plants. Similarly, projections of decreases in purchased power prices or increases in the availability of purchased power could dramatically affect the future volumes of coal burned at the NS plants, or cast doubt on the validity of any forecasts produced by CP&L internally or for this litigation predicting significant coal traffic volume growth for the SARR. Forecast information suggesting that coal prices or rail rates for CP&L coal plants not served by NS would decline could similarly cast doubt on any projection of robust traffic growth for the SARR in this case.

In sum, forecast information of relevant economic factors measuring or affecting future electricity generation output at all of CP&L's generating facilities is unquestionably relevant to the estimate of the future coal traffic volumes of the SARR. If CP&L has prepared or

possesses forecasts on these economic factors (which are identified in Interrogatory No. 23), they are relevant and should be produced.

CP&L cannot argue that it is under no obligation to produce documents until NS makes an affirmative showing that these economic factors influence coal traffic. To hold otherwise would be contrary to the purpose of discovery. NS cannot be asked to accept CP&L's "burn" forecasts at face value with no opportunity to examine or test the validity of the assumptions on which they are based or the consistency of the forecasts when compared to other analyses by CP&L of factors that unquestionably influence future coal consumption.

CP&L's final objection to the production of the requested forecast information—that producing anything other than the aggregated public-agency reports would be unduly burdensome—also cannot be sustained. NS is willing to narrow the scope of its requests if the volume of responsive material is unduly burdensome to produce, and is not interested in every document tangentially related to the forecasting process, but only seeks information reflecting disaggregated forecasts and sufficient supporting information necessary to assess the forecasts' assumptions and conclusions. If CP&L's computer forecasting model is governed by third-party licensing restrictions or for some reason is otherwise burdensome to produce, NS would accept a print-out or listing of the material data inputs and assumptions that produce the forecast results, as well as copies of data output from the model. Because CP&L has not only refused to produce the requested forecast data, but has failed to identify what responsive information exists and what the burden would be in producing it, CP&L's claim of burden cannot be given credence.

Accordingly, the Board should compel CP&L to provide fuller responses to NS' discovery requests (Interrogatory Nos. 23-24 and Document Production Request Nos. 28, 30-31) seeking forecast information. In particular, NS asks that CP&L be required to produce the as-

assumptions and data underlying the short-term internal coal "burn" forecast summaries that CP&L has already produced. CP&L should also be required to produce, for *all* of the economic measures and indicators identified in Interrogatory No. 23, (1) forecasts and projections for all CP&L generating plants (including non-coal plants), (2) CP&L's forecasting model (or, at a minimum, a description of the input data and assumptions that affect forecast results under the model), and (3) any output or forecast results produced by CP&L's forecasting model.

B. Impacts of Environmental Regulations and Emissions Restrictions on Future Coal Consumption and Electricity Generation

CP&L's coal-fired electric generating plants (including the two NS-served coal plants) are subject to significant and extensive environmental laws and regulations, imposed by both federal and state governments. Most prominent among these provisions is the federal Clean Air Act and implementing regulations. The 1990 amendments to the Clean Air Act created significant additional limitations on power plant emissions of sulfur dioxide, nitrogen oxide, ozone and other products of combustion, to be phased in over a period of many years (the second phase of which commenced in 2000 and is scheduled to be fully phased-in by 2009).¹⁵ Significantly, the D.C. Circuit has just conclusively affirmed substantially more stringent air quality standards for particulate matter and ozone promulgated by the Environmental Protection Agency ("EPA") in 1997. *See American Trucking Assns., Inc. v. EPA*, No. 97-1441 (D.C. Cir. Mar. 26, 2002). These new standards will likely have a dramatic effect on permissible emissions from coal-fired power plants, which are significant sources of particulate matter and ozone precursors. Other Clean Air Act programs, including the "Prevention of Significant Deterioration" and "New

¹⁵ *See* Clean Air Act, Chapter IV, 42 U.S.C. §§ 7651-7651o; *id.*, § 7651d (Phase II sulfur dioxide limits).

Source Review” programs, impose significant compliance costs and limitations on coal-fired power plants.¹⁶ State laws impose additional regulatory costs and limitations on coal-fired power plants. All of these requirements, as well as others pending in proposed regulations and legislation, impose substantial—and, for the most part, increasingly restrictive—emissions limitations and compliance costs on coal burning power plants.¹⁷

Because these requirements and attendant costs are significant, they necessarily will affect CP&L’s decisions concerning the amount of electric power it produces at its coal-fired plants, including the two issue plants. The impacts of these regulations likely will also affect CP&L’s decision whether to convert these plants to alternative fuels (*e.g.*, natural gas), utilize different types of coal from different sources than those used currently, or shift power production from the NS-served coal plants to generating facilities that use other fuels or other means

¹⁶ See 42 U.S.C. §§ 7470-79 (PSD); *id.*, §§ 7501-7503 (non-attainment NSR).

¹⁷ For example, the “acid rain” provisions of the Clean Air Act Amendments impose increased limitations on coal plant emissions (phased in over 15 years). The EPA has recently initiated a process requiring states to re-write their implementation plans for compliance with National Ambient Air Quality Standards (“NAAQS”) (see 42 U.S.C. §§ 7409-7410), which will impose increased limitations on nitrogen oxide emissions at coal plants. Those new, more stringent limitations are due to go into effect in 2004. See 42 U.S.C. §§ 7410(k) (“SIP call” provision); 63 Fed. Reg. 57356 (Oct. 27, 1998) (NO_x SIP Call), *aff’d sub nom. Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000); 42 U.S.C. § 7426. EPA is also proposing new standards for fine particulate emissions which, when likely implemented in the next decade, will further reduce permissible emissions. EPA is considering, but has not yet formally proposed, emissions restrictions for mercury and carbon dioxide. Meanwhile, North Carolina (the location of the NS-served CP&L plants) last year considered legislation that would have imposed additional emissions restrictions on CP&L’s coal-fired plants and required the installation of “scrubbers” and other pollution abatement equipment to achieve compliance—facilities which, if installed, would affect the cost of burning coal as well as the quality (and, therefore, potential sources) of coal burned at CP&L’s plants. See Attachment C (summary of proposed North Carolina legislation).

of generation. They would also affect CP&L's consideration of the possible closure or retirement of one or more of the NS-served coal plants or units at those plants.¹⁸

Because of the significant potential effects of environmental laws and regulations on the future volume of coal consumed by (and hence transported to) the NS-served CP&L coal plants potentially included in the SARR, NS propounded several discovery requests seeking information concerning CP&L's assessment of the potential impacts of environmental regulation and emissions restrictions on the level and costs of both electricity generation and coal consumption at the NS-served plants. Interrogatory No. 26 asked CP&L to identify state or federal regulatory proceedings to which CP&L has been a party and in which CP&L's compliance with the amended Clean Air Act or other environmental regulations was at issue. Document Production Request Nos. 33 and 37(b) requested CP&L to produce studies or analyses concerning the impact or potential impact of CP&L's compliance with the amended Clean Air Act, or other existing or proposed environmental regulations or emissions restrictions, on the volume and type of coal consumed at CP&L's plants, the relative costs of producing electric power at such plants and the level of electricity generation at such plants.

CP&L has unequivocally refused to produce documents and information responsive to these requests, asserting objections based on relevance and burden. *See, e.g.*, CP&L Response to NS Interrogatory No. 26; CP&L Response to NS Document Production Request Nos. 33, 37(b). Contrary to CP&L's assertion, studies or analyses of the impacts or potential impacts of existing or proposed emissions restrictions on the volume of coal delivered to and

¹⁸ *See, e.g.*, Energy Information Administration, U.S. Department of Energy, THE EFFECTS OF TITLE IV OF THE CLEAN AIR ACT AMENDMENTS OF 1990 ON ELECTRIC UTILITIES: AN UPDATE (March 1997) (available at <http://www.eia.doe.gov/cneaf/electricity/clean_air_upd97>) (discussing emissions restrictions and electric utility compliance strategies).

consumed at the NS-served coal plants potentially included in the SARR are directly and centrally related to the issue of the future traffic volumes and revenues of the SARR. As indicated, emissions restrictions may alter significantly the volume of electricity produced at the CP&L coal plants and the volume, quality and sources of the coal that is consumed for electricity generation at those plants in the future. At the very least, internal CP&L studies or analyses that suggest or predict that environmental restrictions may require curtailment of electricity generation at CP&L's coal-fired plants, increase the relative costs of such coal-fired generation or cause CP&L to switch to lower-sulfur coal sources (such as Powder River Basin coal) or to entirely different fuels (such as natural gas), would be powerful relevant evidence rebutting any claim by CP&L that the SARR's traffic volumes and revenues will increase significantly over the anticipated DCF period used for SAC analysis in this case. Because the requested information is relevant to future SARR traffic volumes and revenues, CP&L's objection that it is relevant to the issues of product and geographic competition is misguided.

CP&L's burden objection is also unpersuasive, and furnishes no proper basis for CP&L to resist all discovery on this important issue. NS has assured CP&L counsel that NS is seeking production only of formal studies or analyses, and not every piece of correspondence or internal communications relating to emissions restrictions and their impacts on coal-fired electricity generation. Because CP&L has not identified *any* responsive studies, analyses or information that it would be willing to produce, and instead has adamantly stated that it will not produce *any* such responsive documents, NS cannot even assess whether its requests are unduly burdensome or fashion proposals to alleviate that burden. If there is any merit to CP&L's burden objection, the proper course is to require the parties to discuss proposed means of accommodating CP&L's concerns and NS' information needs, a process that requires CP&L to disclose the

nature and volume of documents responsive to NS' requests. It is not a proper course for CP&L to rely on the claimed burden of producing responsive documents while simultaneously refusing to identify the nature or volume of responsive documents.

CP&L's production of limited forecast information does not discharge its duty to respond to these requests. As previously discussed, there is no indication, and no basis to presume, that those forecasts incorporate the effects of possible emission restrictions, much less how and to what extent they might do so. In light of CP&L's refusal to produce any responsive documents assessing the impact of environmental regulations on current and future electricity generation at its coal-fired plants, and the unquestionable relevance of such information to the issue of the future SARR traffic volumes and revenues, the Board should order CP&L to respond fully to NS' Interrogatory No. 26 and Document Production Request Nos. 33 and 37(b).

CP&L cannot on the one hand include predictions of large increases in its coal consumption and "burn" at two plants, and possibly other plants included in the SARR, in its calculation of its SAC, and on the other hand withhold documents from NS that show CP&L's own internal assessment of the impact emission regulation will have on (1) the relative cost of coal-fired electricity and (2) CP&L's ability to run coal plants at existing or increased volumes. As the outcome of this case hinges on the future traffic volumes of the SARR, NS must be permitted discovery into relevant factors that affect future coal consumption.

C. Economic Dispatch Practices

Like most integrated electric utilities, CP&L meets its demand for electricity from a variety of sources of electricity supply (including generation from coal-fired and non-coal facilities and purchased power) on the basis of the relative costs of each available source. *See* CP&L Response to NS Interrogatory No. 18 (describing in general terms how CP&L applies

economic dispatch practices). How much electricity CP&L produces (and in the future will produce) at the issue coal-fired plants and how much coal will be delivered to and consumed at those plants are thus heavily dependent on the relative costs and availability of power produced at other CP&L facilities and available on the wholesale power market.

Moreover, information about how CP&L *today* applies economic dispatch practices to determine the order in which it draws upon particular generation sources to meet electricity load, and how it calculates the relative dispatch order and position of its coal-fired plants in that order, is of considerable relevance to the *future* dispatch order and, as a result, to the future level of electricity generation and coal consumption at the coal plants likely to be served by the proposed SARR. CP&L's economic dispatch practices—including the effects of differing fuel and operating costs, heat rates, and generation capacity at its coal and non-coal generating facilities—have a direct and strong bearing on the future traffic volumes and revenues of the SARR in this case.

NS therefore requested in discovery several types of documents and information relating to CP&L's economic dispatch practices, including formal policies or procedures CP&L has promulgated or instructions CP&L has given to its dispatchers regarding dispatch priorities and the selection of internal generation as opposed to off-system power purchases ("make or buy" decisions). NS Interrogatory Nos. 18, 19; NS Document Production Request Nos. 17, 20 & 22. In addition, NS requested information concerning the historical dispatch order and dispatch price of CP&L's existing generating facilities (NS Interrogatory Nos. 10(o)-(p); NS Document Production Request Nos. 18, 21), and studies or analyses of CP&L's decision whether to generate or purchase electric power to meet its load requirements. NS Document Production Request

No. 23. NS also requested production of computer models or software used by CP&L to determine dispatch order. NS Document Production Request Nos. 30-31.

CP&L objected on various general grounds (including relevance and burden) to all of these discovery requests, even as it acknowledged in response to Interrogatory No. 18 that it does follow an economic dispatch practice in deciding whether and when to generate electric power at the NS-served coal plants and how much to generate (decisions that have an obvious impact on coal deliveries and consumption). CP&L did produce monthly fuel cost reports that it is required to file with state regulatory agencies. These reports contain average fuel and other expense information by generating plant. But these public reports do not identify the dispatch order or priority of CP&L's generating facilities or the relevant measure of cost ("dispatch price") that CP&L uses to decide the relative dispatch priority of its generating facilities. Nor has CP&L produced any written policies or guidelines on dispatch practices. And it has refused to produce any information concerning its dispatch model, including data inputs and assumptions or output runs, which would reveal how changes in fuel costs and other factors would affect generating output at particular facilities from which CP&L draws electric power to meet its system electricity demand.

In response to CP&L's objections, NS has decided not to pursue all of the dispatch-related information that it sought in its written discovery requests. In order to narrow the parties' dispute and reduce any burden to CP&L, NS seeks an order compelling CP&L to produce CP&L's dispatch computer model or an identification of the data inputs and assumptions used in the model.¹⁹ At a minimum, NS seeks identification of the dispatch order of all generat-

¹⁹ If the computer model CP&L uses for determining the dispatch order of its generating facilities is governed by a software license that restricts disclosure of the model to third parties, CP&L
(continued...)

ing facilities in the CP&L system, the dispatch price, and a breakdown of elements of the dispatch price, on a monthly or shorter basis for the past three years.²⁰ In view of the relevance of economic dispatch practices to the future electricity generation output and coal consumption of the CP&L coal plants likely to be included in the SARR, and the minimal burden involved, the Board should require CP&L to produce this information.

D. Impacts of Alternative Fuels and Technological Advances on Future Coal Consumption and Electricity Generation

Related to its requests for documents and information concerning the potential impacts of emissions regulations on future coal consumption and electricity generation at CP&L generating plants, NS' Document Production Request No. 24 asked CP&L to produce studies or analyses relating to the possible future use of alternative (non-coal) fuels to generate electricity at any CP&L facility, the conversion of existing facilities to permit the use of alternative fuels, and the impacts of both on future coal consumption and electricity generation. The request further sought production of studies or analyses of the impact of technological changes in electricity generation on future coal consumption and electricity generation.

The information requested by NS is highly relevant to the issue of the likely future coal consumption and electricity generation levels of the issue CP&L coal plants and, thus, to the future traffic volumes and revenues of the SARR. Despite this, CP&L has unqualifiedly

(...continued)

should produce the inputs (data and assumptions) that CP&L employs in applying the dispatch model, and any data runs or output from the model—information that would not require CP&L to produce licensed software.

²⁰ It is worth noting that, in the pending *Duke Energy* case, the complainant has agreed to produce documents identifying the historical dispatch priority, dispatch price and dispatch price development for each of its generating facilities for a three-year period. Duke Reply at 10-11 & n.5. CP&L has declined to produce comparable information in this case.

refused to produce *any* responsive information, apparently on grounds of relevance and burden.²¹

CP&L Response to NS Document Production Request No. 24. CP&L's position cannot be sustained. If CP&L has conducted studies or analyses regarding the feasibility of converting issue coal-fired plants to the use of alternative fuels, or has studied possible technological changes or facilities modifications that would affect the level of electricity generation and coal consumption, at these plants, such information would be directly relevant to—and highly probative of—the issue of the future coal traffic volumes and revenues of the SARR designed to provide coal transportation service to these very plants.²²

CP&L has failed to explain, much less substantiate, its claim of undue burden in responding to this request. NS stands ready to discuss with CP&L ways to narrow the request if, indeed, the volume of responsive documents is so large as to impose an unreasonable burden of production. But CP&L should not be allowed to use a vague burden objection to prevent any discovery into the highly relevant subject matter of NS' document request. CP&L should be or-

²¹ CP&L's response refers to FERC and state-agency reports referenced in General Objection No. 1, but those reports do not contain anything more than generalized discussions having at best only peripheral connection to the subject matter of NS' request.

²² Similarly, CP&L has yet to produce any information concerning possible alternative sources of coal that it intends to use or has considered or contemplated using in the future. *See* Response to NS Interrogatory 14; Response to NS Document Production Request Nos. 12-13. Subsequent to the parties' recent discovery meeting, CP&L stated that while it has no documents specifically responsive to Document Request No. 12, it would be producing documents related to this subject in response to Document Request No. 11. Setting aside CP&L's contradictory and confusing statements that it has no responsive documents and yet will be producing responsive documents addressing the subject matter of the Request, NS has not received any documents to date. The use or potential use of alternative coal sources by CP&L power plants could have a very substantial effect on future volumes of coal carried on the SARR. Documents bearing on this subject are therefore directly relevant to SAC issues, and CP&L should produce them.

dered to produce documents responsive to NS Document Production Requests Nos. 12, 13 and 24.

E. Impacts of Rail Rate Levels on Future Coal Consumption and Electricity Generation

NS' Document Production Request Nos. 29(b) and 29(c) asked CP&L to produce any studies and analyses that considered the impact or potential impact that changes in the level of the rail rates charged by NS for the transportation of coal to the issue CP&L plants could have on the volume of electric power produced at those plants and the relative position of those plants in the dispatch order of CP&L generating facilities. Subsequent to the parties' recent discovery conference, CP&L counsel has advised NS that CP&L possesses at least one document responsive to this request, but objects to its production on relevance grounds.

CP&L's objection is without merit. The requested information is relevant to the estimated future traffic volumes and revenues of the SARR. In particular, NS' request seeks information concerning the relationship between rail rate levels for coal transportation service (which affects the costs of electric power produced at a given facility) and the electricity output of the generating plant. For example, if CP&L's internal studies suggest that increases in rail rate levels would adversely affect the volume of coal consumption and electricity generation at the CP&L facilities served by the SARR, that information would have direct relevance to (and rebut) any claim in this proceeding that the SARR could simultaneously enjoy increasing rail rate levels and consistently increasing utility coal traffic volumes. Therefore, the Board should compel CP&L to respond to NS Document Production Request Nos. 29(b) and 29(c).

F. Coal Supply and Coal Transportation Contract Information

Contractual commitments that CP&L may have to purchase specified volumes of coal from particular coal sources, or to transport specified volumes of coal via particular carriers between specified origins and destinations, would have a direct and significant effect on the coal traffic volumes available for movement by the proposed SARR in this case, both currently and during the future period covered by the Board's DCF analysis. Such agreements would be relevant to the issue of the SARR's traffic volumes not only with respect to agreements covering coal consumed at the issue coal plants, but at CP&L coal plants not served by NS. For example, if CP&L had long-term contractual commitments to purchase large volumes of coal for use at a CSXT-served coal plant not included in the SARR, that contractual obligation might well limit the coal volumes shipped to NS-served plants in the future. Coal supply agreements also are relevant to SARR traffic volumes because the contract coal price (and changes in the agreed price in the future) could affect the volume of coal CP&L elects to purchase for use at a plant served by the SARR. For similar reasons, contractual commitments CP&L has assumed to transport specified volumes of coal to plants not served by NS could limit or affect the volume of coal available in the future for shipment to the NS-served plants included in the SARR.

Because of the relevance of this information, NS' requests sought production of CP&L's existing long-term coal supply contracts and existing coal transportation contracts. *See* NS Document Production Request Nos. 9, 10. NS also requested documents assessing potential future sources of coal supply, and information about coal prices and coal transportation costs. NS Interrogatory Nos. 11(d) & 11(g), 21; NS Document Production Request Nos. 10, 12.

Although it raised a number of objections to the production of coal supply and coal transportation contracts, CP&L's only asserted basis for withholding them is that the coal

supply contract information is confidential, presumably meaning that the information is governed by contractual confidentiality provisions. CP&L's responses indicate (and CP&L counsel confirmed during the parties' recent conference) that, while CP&L would not produce this contract information without an order by the Board compelling discovery, CP&L would not oppose such an order. *See, e.g.*, CP&L Response to NS Document Production Request Nos. 9, 10. CP&L's position is, of course, consistent with the procedure that the parties followed with respect to CP&L's request for the production of NS' rail transportation contracts with coal shippers. Accordingly, NS requests that the Board enter an order compelling discovery with respect to the requested coal supply contract information (including contracts, coal price information and renegotiation documents) and coal transportation contract information.²³

II. THE BOARD SHOULD ADJUST THE PROCEDURAL SCHEDULE IN THIS CASE TO PERMIT ORDERLY RESOLUTION OF THIS MOTION AND COMPLETION OF DISCOVERY.

The procedural schedule proposed jointly by NS and CP&L in this proceeding, and adopted by the Board in its decision served March 12, 2002 (at 2), provides for the "default" 75-day discovery period set forth in the Board's rules governing SAC cases. 49 C.F.R. § 1111.8. Under this 75-day discovery schedule, all discovery is to be completed by April 17, 2002.

In light of the filing of the instant motion to compel, the discovery period (and possibly the schedule for the filing of evidence) should be extended in this proceeding to the extent necessary to permit CP&L adequate time to respond to this motion, to give the Board ade-

²³ NS understands that CP&L's position on coal supply contract information (requesting that NS obtain, but not opposing, an order compelling discovery) also applies to CP&L's confidentiality objections with respect to coal price and rail rate information responsive to NS Interrogatories 11(d) and (g) and Document Production Request Nos. 12 and 40. NS therefore requests that the
(continued...)

quate time in which to resolve the discovery issues raised in the instant motion (and any other motions to compel that may be filed), to allow CP&L a reasonable time to produce any documents or information it is ordered to produce as a result of this motion, and to enable NS to assess the adequacy of any such additional production of responsive documents and information. The outstanding discovery issues may well also warrant an adjustment in the scheduled dates for the filing of evidence, particularly if ongoing discovery efforts interfere with the parties' ability to prepare their evidentiary submissions. At a minimum, however, the Board should extend the discovery cut-off date until all discovery issues have been resolved and discovery completed.

(...continued)

Board's order specifically overrule CP&L's confidentiality objection with respect to these requests, and order production of responsive documents and information.

CONCLUSION

For all of the foregoing reasons, the Board should grant NS' motion to compel answers to interrogatories and production of documents.

Respectfully submitted,

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Counsel for Defendant Norfolk Southern Railway Company

DATED: April 1, 2002

CONCLUSION

For all of the foregoing reasons, the Board should grant NS' motion to compel answers to interrogatories and production of documents.

Respectfully submitted,

Alexandra R. Gelber

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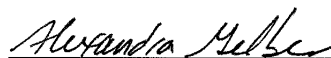


CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of April, 2002, I served the foregoing Defendant's First Motion to Compel Answers to Interrogatories and Production of Documents" by causing a copy thereof to be delivered, in the manner indicated, to each of the following:

C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(By Messenger)

David T. Conley
Carolina Power & Light Company
410 South Wilmington Street
Raleigh, North Carolina 27601
(By Overnight Express Courier)



Alexandra R. Gelber

BEFORE THE
SURFACE TRANSPORTATION BOARD

CAROLINA POWER & LIGHT COMPANY,

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

STB Docket No. 42072

**COMPLAINANT'S RESPONSES AND OBJECTIONS TO
NORFOLK SOUTHERN RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Complainant Carolina Power & Light Company ("CP&L"), pursuant to 49 C.F.R. Part 1114, hereby responds to the First Set of Interrogatories and Requests for Production of Documents (the "Requests") served by Norfolk Southern Railway Company ("NS") on February 6, 2002.

GENERAL RESPONSE

CP&L is conducting a reasonable search for non-privileged documents containing information responsive to the Requests. Subject to and without waiving the specific and general objections that follow, and to the extent reasonably available, responsive documents will be produced as soon as practicable and/or be made available for inspection. As noted in the general objections that follow, CP&L's willingness to provide responses and produce documents containing commercially sensitive, proprietary, and/or trade secret information is conditioned upon compliance with the Board's adoption of a Protective Order, and until such time as the Board enters a Protective Order, NS's agreement to be bound by the terms of the "Stipulated

Protective Order" as filed by the parties with the Board on February 12, 2002.

GENERAL OBJECTIONS

In addition to the Specific Objections raised below, the following general objections are made with respect to all of NS's Requests:

1. **Product and/or Geographic Competition Information.** CP&L objects to the Requests on grounds of relevance and burden to the extent that they seek information that is relevant only or primarily to the subject of indirect competition (*i.e.*, product and/or geographic competition) for NS's service to CP&L's Roxboro and Mayo electrical generating facilities. This inquiry is no longer part of the Board's market dominance analysis. *See* Ex Parte No. 627, *Market Dominance Determinations -- Product and Geographic Competition*, Decisions served Dec. 21, 1998, July 2, 1999, and Apr. 6, 2001. To the extent that NS may claim that such documents may have some relevance to some other issue actually in dispute in this case (*e.g.*, stand-alone traffic volumes for CP&L's plants), which CP&L strongly disputes, NS's requests likewise are irrelevant. *See* STB Docket No. 42022, *FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Co.*, Decision served Apr. 17, 1998 (denying Defendant's discovery requests related to product and geographic competition which also were alleged to address SAC volume and other information). Besides being irrelevant, the burden of producing such documents would exceed their evidentiary value, particularly to the extent that CP&L will produce detailed information directly relevant to the question of future coal deliveries by NS to the CP&L plants, including all responsive forecasts of coal consumption. *See* Ex Parte No. 627, Decision served December 21, 1998 (referring to burdens associated with production and consideration of product and geographic competition evidence).

Notwithstanding this General Objection, and subject to General Objection No. 2, CP&L will produce a variety of different materials to NS that contain information addressed in NS's various product and/or geographic competition requests. These materials will include CP&L's FERC Form 423, FERC Form 580, Integrated Resource Plan, and periodic regulatory submissions to North Carolina and South Carolina, as well as other documents. CP&L objects on grounds of burden to identifying which information included within these materials is responsive to the many individual NS Requests (and subparts of individual NS Requests) which relate to product and/or geographic competition. As such, citations to this General Objection should be understood as referring NS to these materials to investigate whether and what responsive information is included therein.

2. Non-Waiver. CP&L's willingness to produce some or all of the information sought by a particular Request should not be interpreted either as a waiver of CP&L's objections (particularly General Objection No. 1) or as an admission that information derived therefrom is relevant to this case. CP&L hereby reserves all rights to contest the relevance or admissibility in this proceeding of any information produced or generated in discovery. Moreover, the assertion of certain objections by CP&L to the Requests is not intended to, and shall not, waive any other objections not expressly asserted herein. CP&L is currently in the process of reviewing, analyzing, and searching for information on NS's expansive requests (consisting of 62 Document Requests, 37 Interrogatories, and dozens of subparts spanning 61 pages). CP&L reserves the right to assert other objections, or to otherwise amend or revise its objections and responses as necessary or appropriate based on its continuing review of the requests.

3. Burden. CP&L objects to the "Definitions" and "Instructions" contained

in the Requests to the extent they would impose burdens or obligations on CP&L exceeding those specified in applicable provisions of the Surface Transportation Board's Rules of Practice at 49 C.F.R. Part 1114.

4. Privilege. CP&L objects to the Requests to the extent that they seek documents or information that are protected by the attorney-client privilege and/or are subject to the attorney work-product protection. In addition, CP&L objects to NS's Instruction No. 8 insofar as it requests the production of a privilege log.

5. Compliance with Protective Order. CP&L's willingness to provide responses and produce documents containing commercially sensitive, proprietary, and/or trade secret information is conditioned upon compliance with the Board's adoption of a Protective Order, and until such time as the Board enters a Protective Order, NS's agreement to be bound by the terms of the "Stipulated Protective Order" as filed by the parties with the Board on February 12, 2002.

6. Special Studies. CP&L objects to NS's Requests as unduly burdensome and oppressive to the extent they require CP&L to conduct a special study or analysis to produce the information sought.

7. Availability. CP&L objects to NS's Requests as unduly burdensome and oppressive to the extent that they seek documents or information either contained in NS's own files or otherwise in its possession, or readily available from public sources, including but not limited to materials on public file at the STB, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, or any court or government agency.

8. Definition of CP&L. CP&L objects to NS's Definition No. 5 on grounds of overbreadth, burden, and relevance to the extent that it may be interpreted to request

production of documents that are not in the possession, custody, or control of the Complainant.

9. Definition of CP&L Plant. CP&L objects to NS's Definition No. 6 on grounds of overbreadth, burden, and relevance to the extent that it includes plants other than Roxboro or Mayo (hereinafter referred to as the "issue plants" or the "plants at issue in this case"), particularly to the extent that it includes "any and all" generating plants or facilities which, although not owned or operated by CP&L, nevertheless "produce power that is purchased or used by CP&L." See Docket No. 42038, *Minnesota Power v. Duluth, Missabe & Iron Range Ry. Co.*, Decision served May 11, 1999.

10. Definition of Identify. CP&L objects to NS's Definition Nos. 11, 12, and 13 as unduly burdensome.

11. Definition of Possession, Custody, or Control. CP&L objects to NS's Definition No. 23 as beyond the scope of permissible discovery to the extent that such definitions request discovery of information outside the possession, custody or control of Complainant, including, but not limited to, its outside counsel, consultants, and affiliates.

12. Requests for Information/Documents regarding Non-Complaint Origins and Destinations. Except as otherwise noted, CP&L objects on grounds of relevance to providing information and/or producing documents regarding movements between origins not at issue in this case (*i.e.*, non-complaint origins) and/or destinations not at issue in this case. See Docket No. 42038, *Minnesota Power v. Duluth, Missabe & Iron Range Ry. Co.*, Decision served May 11, 1999.

13. Separate Responses to Sub-Parts. CP&L objects to NS's Instruction No. 1 on grounds of burden.

14. Verifications. Consistent with past practice in cases of this nature, CP&L

has not secured verifications of the responses to Interrogatories herein. To that end, CP&L objects to NS's Instruction No. 2 on grounds of burden.

15. Computer Layout Information. CP&L objects to Instruction No. 4 on grounds of burden.

16. Computer-Readable Format Priority. CP&L objects to Instruction No. 10 on grounds of burden.

17. Continuing Nature of Requests. CP&L objects to Instruction No. 11 on grounds that it is inconsistent with the procedural schedule in stand-alone rate cases, and with the Board's governing regulations.

18. Non-Waiver/Date. The production by CP&L of some documents that pre-date January 1, 1999 shall not be construed as an agreement by CP&L to produce other documents that pre-date January 1, 1999 in response to the same or other Requests, to which CP&L hereby objects on grounds of burden and relevance.

19. Response Deadline. CP&L objects to the 30-day response deadline set forth in the Requests as unreasonable and unduly burdensome in light of the volume and complexity of the information and documents requested by NS. CP&L's search for responsive documents and information is ongoing, and such materials (if otherwise not subject to an objection) will be produced as expeditiously as reasonably possible under the circumstances.

CP&L's following Specific Objections and Responses to NS's Requests are subject to and without waiver of the foregoing General Objections.

INTERROGATORIES

Interrogatory No. 1. State the basis of the allegation, contained in Paragraph 5 of the Complaint, that rail constitutes the only practicable method of transporting to Mayo and Roxboro the volumes of coal burned at such plants

Response:

CP&L objects to this Interrogatory as premature and inconsistent with the Board's procedural rules regarding stand-alone cost proceedings. See Docket No. 42038, *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, Decision served May 11, 1999.

Interrogatory No. 2. State the basis of the allegation, contained in Paragraph 10 of the Complaint, that the challenged common carrier rates of NS generate revenue-to-variable cost ratios in excess of 180 percent for the transportation of coal between the origins covered by CP&L's Complaint, on the one hand, and Mayo and Roxboro, on the other hand.

Response:

See Response to Interrogatory No. 1 (regarding prematurity).

Interrogatory No. 3. State the basis of the allegation, contained in Paragraph 11 of the Complaint, that NS possesses "market dominance" (as defined in 49 U.S.C. § 10707) with respect to the transportation of coal between the origins covered by CP&L's Complaint, on the one hand, and Mayo and Roxboro, on the other hand.

Response:

See Response to Interrogatory No. 1 (regarding prematurity).

Interrogatory No. 4. State the basis of the allegation, contained in Paragraph 12 of the Complaint, that the challenged common carrier rates established by NS for the transportation of coal between the origins covered by CP&L's Complaint, on the one hand, and Mayo and Roxboro, on the other hand, are unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702.

Response:

See Response to Interrogatory No. 1 (regarding prematurity).

Interrogatory No. 5. State the basis of the allegation, contained in Paragraph 14 of the Complaint, that CP&L should be entitled, if it prevails in proving that the challenged common carrier rates of NS exceed a maximum reasonable level, to (a) interest on reparations in excess of that specified in 49 C.F.R. § 1141.1 and (b) a modification of or alternative to the percentage-reduction methodology used by the STB to determine reparations or a rate prescription.

Response:

See Response to Interrogatory No. 1 (regarding prematurity).

Interrogatory No. 6. State whether, during the period from January 1, 1999 to the present, CP&L has considered, analyzed or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to provide transportation of coal to any CP&L Plant. If the answer to this Interrogatory is affirmative, identify separately for each such proposal to acquire or construct rail facilities the following:

- (a) The name and location (city and state) of the CP&L Plant to which transportation by more than one rail carrier would be enabled as a result of such acquisition or construction of rail facilities;
- (b) The date or time period during which the proposal to acquire or construct such rail facilities was (or is) under consideration, analysis or study;
- (c) The rail carrier (or carriers) that would be enabled to provide transportation of coal to the CP&L Plant, or that would be enabled to participate in the rail transportation of coal to the CP&L Plant, as a result of such acquisition or construction of rail facilities;
- (d) The estimated costs of constructing, maintaining and operating the rail facilities proposed to be acquired or constructed;
- (e) The anticipated design, location and operation of the rail facilities proposed to be acquired or constructed; and
- (f) The reasons why the proposed rail facilities were not acquired or constructed or, if such facilities are currently under construction, the current status of the proposal.

Response:

CP&L objects to this Interrogatory on grounds of relevance and overbreadth to

the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that it will produce documents containing responsive information, to the extent there are any, and to the extent that such information relates to the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to transport coal to either of the issue plants.

Interrogatory No. 7. State whether, during the period from January 1, 1999 to the present, CP&L has considered, analyzed or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to provide transportation of coal from any mine or source used (or that could be used) to supply coal for use at any CP&L Plant. If the answer to this Interrogatory is affirmative, identify separately for each such proposal to acquire or construct rail facilities the following:

- (a) The name and location (city and state) of the mine or source from which transportation by more than one rail carrier would be enabled as a result of such acquisition or construction of rail facilities;
- (b) The date or time period during which the proposal to acquire or construct such rail facilities was (or is) under consideration, analysis or study;
- (c) The rail carrier (or carriers) that would be enabled to provide transportation of coal from the mine or source, or that would be enabled to participate in the rail transportation of coal from the mine or source, as a result of such acquisition or construction of rail facilities;
- (d) The estimated costs of constructing, maintaining and operating the rail facilities proposed to be acquired or constructed;
- (e) The anticipated design, location and operation of the rail facilities proposed to be acquired or constructed; and
- (f) The reasons why the proposed rail facilities were not acquired or constructed or, if such facilities are currently under construction, the current status of the proposal.

Response:

CP&L objects to this Interrogatory on grounds of relevance and overbreadth to the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that during the period from January 1, 1999 to the present, it has not considered, analyzed or studied the possibility of acquiring or constructing rail facilities in order to enable more than one rail carrier to transport coal from any mine or source at issue in this case (*i.e.*, origins from which NS has provided rates that CP&L has challenged in the Complaint) to any of the issue plants.

Interrogatory No. 8. State whether, during the period from January 1, 1999 to the present, any carrier (other than NS) has solicited the transportation of coal for all or part of the movement from any coal mine or coal producing facility to Mayo or Roxboro. For purposes of this Interrogatory, "solicited" means any oral or written communication relating to the subject of the actual or possible transportation of coal to Mayo or Roxboro.

(a) If the answer to this Interrogatory is affirmative, identify separately for each such solicitation the following:

- (1) The mode of transportation involved;
- (2) The name and business address of each carrier involved;
- (3) The amount of coal tonnage sought in the solicitation;
- (4) The origins and destinations involved in the solicitation;
- (5) The dates and means of the solicitation, whether by telephone, letter, personal visit or other means;
- (6) The full name, job title and corporate affiliation of each person who solicited the coal tonnage;

(7) The rates quoted or rate estimates offered and the transportation services offered by each carrier identified in the answer to subpart (2) hereof for each amount of tonnage identified in the answer to subpart (3) hereof;

(8) For each amount of coal tonnage identified in the answer to subpart (3) hereof, whether the carrier represented that it had adequate equipment to transport all of the tonnage involved in the solicitation and, if not, the portion of the tonnage for which it represented such equipment was available; and

(9) Whether the carrier possessed operating authority, or did not need specific operating authority, to allow it to transport all or any portion of each amount of tonnage identified in the answer to subpart (3) hereof.

(b) For each solicitation identified in the answer to this Interrogatory, identify the following:

(1) CP&L's response to the solicitation;

(2) The reasons for such response;

(3) Whether CP&L used any transportation service of the soliciting carrier and, if so, indicate the amounts of tonnage for which CP&L used such service separately for each calendar month, origin and destination; and

(4) If CP&L decided not to use any service of such carrier, the reasons for that decision.

Response:

CP&L objects to this Interrogatory on grounds of relevance and overbreadth to the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that during the period from January 1, 1999 to the present, no carrier (other than NS) has solicited the transportation of coal from any mine or source at issue in this case for use at any CP&L Plant at issue in this case.

Interrogatory No. 9. State whether, during the period from January 1, 1999 to the present, CP&L has solicited the transportation service of any carrier (other than NS) for the transportation of coal for all or part of the movement from any coal mine or coal producing facility to Mayo or Roxboro. For purposes of this Interrogatory, "solicited" means any oral or written communication relating to the subject of the actual or possible transportation of coal to Mayo or Roxboro.

(a) If the answer to this Interrogatory is affirmative, identify separately for each such solicitation the following:

- (1) The mode of transportation involved;
- (2) The name and business address of each carrier involved;
- (3) The amount of coal tonnage sought in the solicitation;
- (4) The origins and destinations involved in the solicitation;
- (5) The dates and means of the solicitation, whether by telephone, letter, personal visit or other means;
- (6) The full name, job title and corporate affiliation of each person who solicited the coal tonnage;
- (7) The rates quoted or rate estimates offered and the transportation services offered by each carrier identified in the answer to subpart (2) hereof for each amount of tonnage identified in the answer to subpart (3) hereof;
- (8) For each amount of coal tonnage identified in the answer to subpart (3) hereof, whether the carrier represented that it had adequate equipment to transport all of the tonnage involved in the solicitation and, if not, the portion of the tonnage for which it represented such equipment was available; and
- (9) Whether the carrier possessed operating authority, or did not need specific operating authority, to allow it to transport all or any portion of each amount of tonnage identified in the answer to subpart (3) hereof.

(b) For each solicitation identified in the answer to this Interrogatory, identify the following:

- (1) The carrier's response to the solicitation;

(2) The reasons stated by the carrier for such response;

(3) Whether CP&L used any transportation service of the carrier and, if so, indicate the amounts of tonnage for which CP&L used such service separately for each calendar month, origin and destination; and

(4) If CP&L decided not to use any service of such carrier, the reasons for that decision.

Response:

CP&L objects to this Interrogatory on grounds of relevance and overbreadth to the extent that it seeks information regarding movements or potential movements between origin and destination pairs that are not at issue in the Complaint. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that during the period from January 1, 1999 to the present, it has not solicited the transportation of coal by any carrier other than NS from any mine or source at issue in this case for use at any CP&L Plant at issue in this case.

Interrogatory No. 10. Identify each electric power generating unit, plant or facility (referred to herein as "unit") included in or comprising any CP&L Plant. For each such unit:

(a) Identify the name and location (city and state) of the unit;

(b) Identify the owner or owners of the unit and, in the case of multiple ownership interests, the nature, type and size of each owner's ownership interest in the unit;

(c) Identify the operator or operators of the unit, if different than the owner(s) of the unit;

(d) Identify the person that arranges or is responsible for arranging the procurement of fuel and fuel transportation for the unit, if different than the owner(s) or operator(s) of the unit, and the corporate, contractual or other relationship between such person and the owner(s) and/or operator(s) of the unit;

(e) Identify the date on which construction of the unit was commenced, the date

on which construction of the unit was completed, and the date on which the unit was placed into service;

(f) Identify (i) the original expected service life of the unit, including the date on which electric generating operations at the unit originally were expected or anticipated to end and, if different, (ii) the current expected service life of the unit, including the date on which electric generating operations at the unit currently are expected or anticipated to end;

(g) Identify any future planned, contemplated or anticipated construction or modification of facilities at the unit that might affect the service life of the unit, including the date on which electric generating operations at the unit are expected or anticipated to end;

(h) Identify the electric power generating capacity of the unit (in megawatts), including the date, amount and causes of any change in such capacity since the original construction of the unit;

(i) Identify any anticipated future change in the electric power generating capacity of the unit (in megawatts) and the date, amount and causes of such change;

(j) Describe in detail the electric power generating operations at and organization of the unit;

(k) Describe in detail how fuel and other supplies are transported and delivered to the unit;

(l) Describe in detail all transportation, loading and unloading facilities (including rail, truck and/or coal handling facilities) for the delivery of fuel and other supplies to the unit;

(m) Identify the total net generation (in kilowatt hours) of electricity of the unit during each calendar month from January 1, 1999 to the present;

(n) Identify the total operation and maintenance expenses of the unit during each calendar month from January 1, 1999 to the present;

(o) Identify the dispatch priority of the unit, in relation to other electric power generating units of CP&L Plants, and the comparative cost per unit of output (as used in determining the relative dispatch priority) of the unit, during each calendar month (or other time period for which records of such dispatch priority are maintained) from January 1, 1999 to the present;

(p) Identify the dispatch price (*i.e.*, the price or cost per unit of output used by CP&L in determining whether to dispatch a unit or generate electric power from a

unit) of the unit during each calendar month (or other time period for which records of such dispatch price are maintained) from January 1, 1999 to the present;

(q) Identify the native or jurisdictional load requirements or commitments (in kilowatt hours) of the unit during each calendar month from January 1, 1999 to the present;

(r) Identify the date, time and duration (in hours) of each scheduled outage or shutdown of the unit during each calendar month from January 1, 1999 to the present;

(s) Identify the date, time and duration (in hours) of each actual outage or shutdown of the unit during each calendar month from January 1, 1999 to the present;

(t) Identify the Capacity Factor of the unit during (i) each calendar month from January 1, 1999 to the present and (ii) each calendar year from January 1, 1999 to the present;

(u) Identify the total volume or amount of each type of fuel (*i.e.*, coal, gas, oil, nuclear, etc.) burned or used in the unit during each calendar month from January 1, 1999 to the present;

(v) Identify any future planned, contemplated or anticipated construction or modification of facilities (including scrubbers) at the unit that might affect the type and/or volume or amount of fuel burned or used in the unit, and how such construction or modification of facilities would affect the type and/or volume or amount of fuel burned or used in the unit; and

(w) The average delivered cost (per Btu) of each type of fuel burned or used in the unit during each calendar month from January 1, 1999 to the present.

Response:

CP&L objects to subparts (m), (n), (o), (p), (q), (t), and (w) of this Interrogatory on grounds of relevance. *See* General Objection No. 1 (regarding product and/or geographic competition). CP&L also objects to this Interrogatory on grounds of relevance to the extent that it seeks information regarding plants not at issue in this case, and information regarding any fuel other than coal. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra-

and intermodal competition).

Without waiving these objections, CP&L states as follows to the remaining requests:

- (a) Roxboro units 1, 2, 3, and 4 and Mayo unit 1 are located in Person County, NC.
- (b) Roxboro units 1, 2, and 3 are fully owned by CP&L. The North Carolina Electric Municipal Power Agency owns 12.94% of Roxboro unit 4 and 16.17% of Mayo unit 1.
- (c) The operator of Roxboro units 1, 2, 3 and 4 and Mayo unit 1 is CP&L.
- (d) The person that arranges or is responsible for arranging the procurement of fuel and fuel transportation for Roxboro units 1, 2, 3 and 4 and Mayo unit 1 is CP&L.
- (e) CP&L is not currently aware of the exact dates when construction of Roxboro units 1, 2, 3 and 4 and Mayo unit 1 commenced. Construction was completed and the unit was placed into service for Roxboro unit 1 in 1966; Roxboro unit 2 in 1968; Roxboro unit 3 in 1973; Roxboro unit 4 in 1980; and Mayo unit 1 in 1983.
- (f) The original expected in-service life for Roxboro unit 1 was 47 years; Roxboro unit 2 was 45 years ; Roxboro unit 3 was 40 years; Roxboro unit 4 was 38 years; and Mayo unit 1 was 35 years. CP&L currently has no plans to end the service life of these units.
- (g) None.
- (h) The electric power generating capacity of Roxboro unit 1 is 390 MW; Roxboro unit 2 IS 675 MW; Roxboro unit 3 is 715 MW; Roxboro unit 4 is 710 MW; and Mayo unit 1 is 750 MW.
- (i) None.
- (j) CP&L will produce documents containing responsive information

pertaining to Roxboro and Mayo.

(k) CP&L will produce documents containing responsive information pertaining to Roxboro and Mayo.

(l) Coal is unloaded at Roxboro and Mayo by rotary railcar dumpers. Neither plant has the capability to load coal, nor is coal trucked to either plant. CP&L will produce responsive documents depicting the track layouts for Roxboro and Mayo.

(r) CP&L will produce documents containing responsive information pertaining to Roxboro and Mayo.

(s) CP&L will produce documents containing responsive information pertaining to Roxboro and Mayo.

(u) CP&L will produce documents containing responsive information pertaining to coal as to Roxboro and Mayo.

(v) None.

Interrogatory No. 11. Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Interrogatory No. 10, and for each calendar month from January 1, 1999 to the present, the following:

- (a) The name and location (city and state) of each mine or source that supplied coal to the unit;
- (b) The name of the owner(s) and/or operator(s) of each such mine or source that supplied coal to the unit;
- (c) The total number of tons of coal that was supplied by each such mine or source to the unit;
- (d) The purchase price (excluding the cost of transporting the coal from such mine or source to the unit) per ton of coal supplied by each such mine or source to the unit;

- (e) The name and transportation mode of the carrier (or carriers) that transported coal from each such mine or source to the unit and the total number of tons of coal transported by each such carrier (or carriers) from each such mine or source to the unit;
- (f) The location (city and state) of any interchange or exchange of the shipment between the carriers that participated in the transportation of the shipment between the mine or source and the unit;
- (g) The rates and total charges per ton for such transportation of coal by each such carrier (or carriers) from each such mine or source to the unit; and
- (h) Whether CP&L provided equipment for the transportation of the shipment between each such mine or source and the unit and, if so, (i) the number of each type of such equipment and (ii) the number of each type of such equipment that was (a) owned or (b) leased by CP&L.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information about origins and/or destinations that are not at issue in this case, and information other than coal. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra- and intermodal competition). In addition, CP&L objects to subparts (d) and (g) of this Interrogatory on grounds of relevance and confidentiality, and as to subpart (g) to the extent that it seeks information that is readily available to NS from its own files.

Without waiving these objections, and subject to its General Objections (*see* particularly, General Objection Nos. 1 and 2), CP&L states that it will produce documents containing the information requested in subparts (a), (b), and (c) and (e) of this Interrogatory with respect to each of its coal-fired plants. As to subparts (f), CP&L states that all tons were transported by NS in single-line service to its coal-fired plants served by NS. Finally, as to subpart (h), CP&L states that all of the referenced coal moved in carrier-supplied equipment to its coal-fired plants served by NS (except for an occasional and infrequent movement in private

cars), except for Asheville, where coal shipped by rail is moved in private cars (except for an occasional and infrequent movement in railroad cars). *See also* Response to Interrogatory No.

28.

Interrogatory No. 12. Identify each electric power generating unit, plant or facility (referred to herein as "unit") planned or under construction by or for CP&L (including any unit that will produce electric power for CP&L's use or benefit). For each such unit:

- (a) Identify the name and location (city and state) of the unit;
- (b) Identify the owner(s) of the unit and, in the case of multiple ownership interests, the nature, type and size of each owner's ownership interest in the unit;
- (c) Identify the operator or operators of the unit, if different than the owner(s) of the unit;
- (d) Identify the person that is expected or anticipated to arrange or be responsible for arranging the procurement of fuel and fuel transportation for the unit, if different than the owner(s) or operator(s) of the unit, and the corporate, contractual or other relationship between such person and the owner(s) and/or operator(s) of the unit;
- (e) Identify the date on which construction of the unit was or is expected or anticipated to be commenced, the date on which construction of the unit is expected or anticipated to be completed, and the date on which the unit is expected or anticipated to be placed into service;
- (f) Identify the expected or anticipated service life of the unit, including the date on which electric generating operations at the unit are expected or anticipated to end;
- (g) Identify the expected or anticipated electric power generating capacity of the unit (in megawatts);
- (h) Describe in detail the expected or anticipated electric power generating operations at and organization of the unit;
- (i) Describe in detail how fuel and other supplies are expected or anticipated to be transported and delivered to the unit;
- (j) Describe in detail all expected or anticipated transportation, loading and

unloading facilities (including rail, truck and/or coal handling facilities) for the delivery of fuel and other supplies to the unit;

(k) Identify the expected or anticipated total annual net generation (in kilowatt hours) of electricity of the unit;

(l) Identify the expected or anticipated total operation and maintenance expenses of the unit by calendar month, year or other time period for which CP&L has calculated estimates of such expenses;

(m) Identify the expected or anticipated dispatch priority of the unit, in relation to other electric power generating units of CP&L Plants, and the expected or anticipated comparative cost per unit of output (as used in determining the relative dispatch priority) of the unit, by calendar month, year or other time period for which CP&L has calculated estimates of such dispatch priority;

(n) Identify the expected or anticipated dispatch price (*i.e.*, the price or cost per unit of output used by CP&L in determining whether to dispatch a unit or generate electric power from a unit) of the unit, by calendar month, year or other time period for which CP&L has calculated estimates of such dispatch price;

(o) Identify the expected or anticipated native or jurisdictional load requirements or commitments (in kilowatt hours) of the unit by calendar month, year or other time period for which CP&L has calculated estimates of such requirements or commitments;

(p) Identify the expected or anticipated Capacity Factor of the unit by calendar month, year or other time period for which CP&L has calculated estimates of such Capacity Factors;

(q) Identify the total volume or amount of each type of fuel (*i.e.*, coal, gas, oil, nuclear, etc.) expected or anticipated to be burned or used in the unit by calendar month, year or other time period for which CP&L has calculated estimates of such volumes or amounts; and

(r) Identify the average delivered cost (per Btu) of each type of fuel expected or anticipated to be burned or used in the unit by calendar month or other time period for which CP&L has calculated estimates of such costs.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden (*see* General Objection No. 1 (regarding product and/or geographic competition)) and to the extent

that it relates to movements of coal to plants not at issue in this case. See General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that there are no units, plants, or facilities planned or under construction by or for CP&L that would consume coal.

Interrogatory No. 13. Identify, separately for each coal-fired electric power generating unit, plant or facility (referred to herein as "unit") identified in response to Interrogatory No. 12, the following:

- (a) The name and location (city and state) of each coal producer or supplier that is expected or anticipated to supply fuel to the unit or that CP&L and/or its consultants or contractors have identified or considered as a possible supplier of fuel to the unit;
- (b) The name and location (city and state) of each coal mine or coal producing facility that is expected or anticipated to supply fuel to the unit or that CP&L and/or its consultants or contractors have identified or considered as a possible source of fuel for the unit;
- (c) The total number of tons of coal that is expected or anticipated to be supplied by each such mine or source to the unit by calendar month, year or other time period for which CP&L has calculated estimates of such coal supply;
- (d) The purchase price (excluding the cost of transporting the coal from such mine or source to the unit) per ton of coal that is expected or anticipated to be supplied by each such mine or source to the unit by calendar month, year or other time period for which CP&L has calculated estimates of such coal supply;
- (e) The name and transportation mode of each carrier (or carriers) that is expected or anticipated to supply fuel to the unit or that CP&L and/or its consultants or contractors have identified or considered as a possible transporter of fuel to the unit, and the total number of tons of coal expected or anticipated to be transported by each such carrier (or carriers) from each such mine or source to the unit by calendar month, year or other time period for which CP&L has calculated estimates of such coal shipment volume; and
- (f) The estimated, expected or anticipated rates and total charges per ton for such transportation of coal by each such carrier (or carriers) from each such mine or source to the unit by calendar month, year or other time period for which CP&L has calculated estimates of such coal shipment rates or charges.

Response:

There are no coal-fired units, plants, or facilities that have been identified in response to Interrogatory No. 12.

Interrogatory No. 14. Identify, separately for each coal producer or supplier and for each mine or source identified in response to Interrogatory No. 11 and No. 13, and for each mine or source that CP&L has considered as a possible future source of coal for use at any CP&L Plant, the following:

- (a) The total number of tons of coal produced by the mine or source during each calendar month from January 1, 1999 to the present;
- (b) The total number of tons of coal expected or anticipated to be produced by the mine or source in the future for supply to any CP&L Plant;
- (c) The total monthly and annual coal production capacity of the mine or source;
- (d) Any expected or anticipated future change in the monthly and annual coal production capacity of the mine or source and the date, amount and causes of such change;
- (e) (i) The original expected service life of the mine or source, including the date on which coal production operations at the mine or source are expected or anticipated to end and, if different, (ii) the current expected service life of the mine or source, including the date on which coal production operations at the mine or source are expected or anticipated to end; and
- (f) The total amount (in number of tons) of coal reserves recoverable from the mine or source.

Response:

CP&L objects to this Interrogatory on grounds of relevance to the extent that it seeks information regarding coal origins and/or destinations not at issue in this case. *See* General Objection No. 12 (regarding the limited scope of inquiry into intra- and intermodal competition). Without waiving this objection, CP&L states that it will produce documents containing responsive information, to the extent it has any, with respect to coal origins for coal

used at each of its coal-fired plants served by the NS.

Interrogatory No. 15. Identify, separately for each coal-fired CP&L Plant, and for each calendar day or calendar month (or, if not available for such time periods, for the smallest increment of time for which CP&L maintains records) from January 1, 1999 to the present, the following:

- (a) The coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a CP&L Plant for use in generating electric power) authorized by regulatory authorities to be maintained at the CP&L Plant;
- (b) The coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a CP&L Plant for use in generating electric power) forecast in advance or projected or targeted by CP&L to be maintained at the CP&L Plant; and
- (c) The coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a CP&L Plant for use in generating electric power) actually maintained at the CP&L Plant.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden, both to the extent that it seeks information regarding plants not at issue in this case (*see* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition)) and with respect to the substance of the information sought. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that it will produce documents containing responsive information with respect to each of CP&L's coal-fired plants.

Interrogatory No. 16. Identify any proposed, planned, expected or anticipated changes in the authorized, targeted or actual coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a CP&L Plant for use in generating electric power) for any CP&L Plant.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden, both to the extent that it seeks information regarding plants not at issue in this case (*see* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition)) and with respect to the substance of the information sought. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that it will produce documents containing responsive information with respect to each of CP&L's coal-fired plants.

Interrogatory No. 17. Identify and describe in detail CP&L's current policies and procedures for fuel and/or fuel procurement for any CP&L Plant.

Response:

CP&L objects to this Interrogatory on grounds of vagueness to the extent that it does not adequately distinguish: (i) procedures for fuel; and (ii) procedures for fuel procurement. CP&L also objects to this Interrogatory to the extent that it seeks information regarding plants that are not at issue in this case (*see* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition)), and regarding fuels other than coal. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that it will produce responsive documents that contain information setting forth CP&L's formal policies and procedures regarding the procurement of coal.

Interrogatory No. 18. Identify and describe in detail CP&L's current policies and procedures for determining the relative order in which power will be generated or dispatched from particular electric generating units, plants or facilities owned and/or operated by CP&L.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that, in determining the relative order in which power will be generated or dispatched, it generally follows an economic dispatch policy in which generating resources are ranked in terms of operating costs in a manner that will maintain system reliability. The underlying principle for CP&L unit commitment and dispatch is the regulatory mandate that the system be operated in an economically responsible manner while maintaining a high level of system reliability.

Interrogatory No. 19. Identify and describe in detail CP&L's current policies and procedures for determining whether, and to what extent, native or jurisdictional load electric power requirements of CP&L's retail electric customers are, should be or could be satisfied by (a) electric power generated or produced by CP&L or (b) electric power purchased or obtained by CP&L from persons not affiliated with CP&L.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that information responsive to this Interrogatory may be contained in the documents that CP&L references in General Objection No. 1.

Interrogatory No. 20. Identify, for each calendar month from January 1, 1999 to the present, any transmission constraints affecting the transportation, transmission or distribution of electric power:

(a) Within the CP&L system;

(b) Between the CP&L system and other utilities or electric power producers

and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which CP&L or its service territory is or is proposed to be a part; and

(c) Between or among different NERC Regional Councils.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that information responsive to this Interrogatory may be contained in the documents that CP&L references in General Objection No. 1.

Interrogatory No. 21. Identify and describe any negotiations or communications that have occurred during the period from January 1, 1999 to the present, or are contemplated by CP&L to occur in the future, between CP&L and any other person with respect to the actual, proposed or possible (a) amendment, modification, supplementation, replacement or alteration of the terms of any coal supply contract produced in response to Document Request No. 10 or (b) arrangement for the supply of coal to any CP&L Plant.

Response:

CP&L objects to this Interrogatory on grounds of confidentiality and on grounds of relevance. *See* General Objection No. 1 (regarding product and/or geographic competition). CP&L also objects to this Interrogatory to the extent that it seeks information regarding origins and/or destinations that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). *See also* Response to Document Request No. 11. CP&L also objects to this Interrogatory on grounds of burden and overbreadth in that responsive information could be found in numerous routine communications between CP&L and dozens of third party coal suppliers involving a number of different individuals at CP&L over a three-year period that would be virtually impossible to identify. Without waiving these

objections, CP&L will produce documents containing responsive information as set forth in its response to Document Request No. 11.

Interrogatory No. 22. For each calendar month (or other time period for which CP&L maintains records) during the period from January 1, 1999 to the present, identify the following:

- (a) The total native or jurisdictional load electric power requirements of CP&L's retail electric power customers;
- (b) The total actual consumption by CP&L's retail electric power customers of electric power sold or distributed by CP&L;
- (c) The total amount of electric power generated or produced by CP&L (excluding purchases or exchanges of electric power generated or produced by persons other than CP&L);
- (d) The total average cost (per kilowatt hour) of the electric power generated or produced by CP&L (excluding purchases or exchanges of electric power generated or produced by persons other than CP&L);
- (e) The total amount of electric power purchased or acquired by CP&L from any person not affiliated with CP&L;
- (f) The total average cost (per kilowatt hour) of the electric power purchased or acquired by CP&L from any person not affiliated with CP&L;
- (g) The total amount of electric power sold or distributed by CP&L to any person not affiliated with CP&L (excluding sales or distribution of electric power to CP&L's retail electric power customers);
- (h) The total average sales price or revenue (per kilowatt hour) received by CP&L for the electric power sold or distributed by CP&L to any person not affiliated with CP&L (excluding sales or distribution of electric power to CP&L's retail electric power customers);
- (i) The total average profit (per kilowatt hour) earned by CP&L for the electric power sold or distributed by CP&L to any person not affiliated with CP&L (excluding sales or distribution of electric power to CP&L's retail electric power customers);
- (j) The relative share of electric power that, to meet native or jurisdictional load requirements, was (i) purchased by CP&L to meet native or jurisdictional load or

other electric generating requirements or (ii) produced by CP&L to meet native or jurisdictional load or other electric generating requirements;

(k) The relative share of electric power generated at each CP&L Plant that was used to meet native or jurisdictional load or other electric generating requirements of CP&L Plants, or that was used to complete off-system and/or wholesale electric power sales or transfers; and

(l) The revenues, net income and/or profits generated by CP&L in connection with the sale or transfer of electric power generated at any CP&L Plant.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden. See General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that information responsive to this Interrogatory may be contained in the documents that CP&L references in General Objection No. 1.

Interrogatory No. 23. Identify all Forecasts prepared by or for CP&L or in CP&L's possession, custody or control during the period from January 1, 1999 to the present (including any breakdowns of any such forecasts, projections or estimates by commodity classification, geographic region, NERC Regional Council, coal mine or source, coal producer or supplier, generator or producer of electric power, railroad, year or other time period, CP&L Plant, or any other category) referring to the level, volume or rate of change in any of the following:

- (a) The expected or anticipated electric power generating capacity of CP&L or of any electric power generating unit, plant or facility (referred to herein as "unit") included in or comprising any CP&L Plant by calendar month, year or other time period;
- (b) The expected or anticipated total net generation (in kilowatt hours) of electric power of electricity generators or producers, CP&L or any unit by calendar month, year or other time period;
- (c) The expected or anticipated Capacity Factor of electricity generators or producers, CP&L or any unit by calendar month, year or other time period;
- (d) The expected or anticipated native or jurisdictional load requirements or

commitments (in kilowatt hours) of electricity generators or producers, CP&L or any unit by calendar month, year or other time period;

(e) The expected or anticipated volume of demand for electric power produced or sold by electricity generators or producers, power marketers, CP&L or any unit by calendar month, year or other time period;

(f) The expected or anticipated volume of sales (in dollars) of electric power produced or sold by electricity generators or producers, power marketers, CP&L or any unit by calendar month, year or other time period;

(g) The expected or anticipated level of the prices of electric power available for purchase or sale in the wholesale electricity market by electricity generators or producers, power marketers, CP&L or any unit by calendar month, year or other time period;

(h) The location, amount and duration of any transmission constraints affecting or potentially affecting the transportation, transmission or distribution of electric power;

(i) The expected or anticipated volume or amount of each type of fuel to be burned or used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(j) The expected or anticipated number of tons of coal to be burned or used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(k) The expected or anticipated number of tons of coal to be purchased or acquired by electricity generators, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(l) The expected or anticipated price or cost of coal to be purchased or used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(m) The expected or anticipated level of prices of coal that could be used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(n) The expected or anticipated number of tons of coal to be transported by rail by, for or to electricity generators or producers, CP&L or any unit by calendar month, year or other time period;

(o) The expected or anticipated level of railroad rates for the transportation of coal that could be used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(p) The expected or anticipated level or rate of change in the Rail Cost Adjustment Factor (with or without an adjustment for railroad productivity) published by the STB, or any other measure of the level or rate of change in the costs of providing rail freight transportation services, by calendar month, year or other time period; and

(q) The expected or anticipated level or rate of change in the Consumer Price Index, the Producer Price Index, the Gross Domestic Product-Implicit Price Deflator, or any other measure of inflation or rate of change in the level of prices, by calendar month, year or other time period.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden to the extent that it seeks information regarding plants that are not at issue in this case (*see* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition), and with respect to the substance of subparts (a) - (h), (i) (to the extent that it relates to fuel other than coal), (l), and (m). *See* General Objection No. 1 (regarding product and/or geographic competition).

Without waiving these objections, CP&L states that it will produce documents containing information that is responsive to subparts (i) (as to coal), (j), (k), (n), and (o) as to each of CP&L's coal-fired plants, and, as to subpart (o), to the extent that they pertain to coal burned at its NS served coal-fired plants, to the extent that CP&L may do so without violating confidentiality restrictions with third parties, to the extent there are any. CP&L also states that it will produce documents containing information that is responsive to subparts (p) and (q) to the extent that there are any. Finally, CP&L states that information responsive to other subparts of this Interrogatory may be contained in the documents that CP&L references in General

Objection No. 1.

Interrogatory No. 24. For each Forecast identified in response to Interrogatory No. 23, identify and describe in detail the methodology used to develop or prepare the Forecast including, but not limited to, the following:

- (a) All assumptions utilized in preparing or developing such Forecast; and
- (b) All data bases and sources of information used or relied upon to develop or prepare such Forecast.

Response:

See Response to Interrogatory No. 23. CP&L also objects to this Interrogatory on grounds of burden, on grounds of relevancy, on grounds that it seeks information in a raw form that would be duplicative of the information produced in response to Interrogatory No. 23 without conveying additional relevant information, and to the extent that the specific input information it seeks is not maintained by CP&L.

Interrogatory No. 25. Identify each consultant, expert or research firm employed by or for CP&L during the period from January 1, 1999 to the present in relation to coal procurement and/or coal transportation. For each person identified in response to this Interrogatory, identify the following:

- (a) The person employing such consultant, expert or research firm;
- (b) The date or dates of each such employment;
- (c) The stated purpose of each such employment; and
- (d) The report or other written communications made pursuant to such employment.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information regarding coal to be utilized at plants that are not at issue in this case. See General Objection

No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this Interrogatory on grounds that it is premature, and to the extent it requests privileged or protected work product involved in its preparation for and prosecution of this proceeding. *See* General Objection No. 4. Subject to and without waiver of these objections, CP&L will produce responsive documents including information requested in subpart (d), and the other subparts to the extent it has such documents.

Interrogatory No. 26. Identify, by docket number and agency name, each state or federal judicial, regulatory or administrative proceeding (a) to which CP&L is or was a party during the period from January 1, 1999 to the present and (b) which has involved the question of CP&L's compliance with the Amended Clean Air Act or any other existing or proposed law or regulation restricting emissions from electric generating facilities at any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by CP&L.

Response:

CP&L objects to this Interrogatory on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition).

Interrogatory No. 27. State whether CP&L has conducted, caused to be conducted, or has access to any studies, reports or other documents describing or analyzing the costs of utilizing privately owned or leased rail cars for the movement of coal or the costs of maintaining privately owned or leased rail cars for the movement of coal. If the answer to this Interrogatory is affirmative, describe in detail the scope of each such study, report or other document, the methodology utilized therein and the detailed results thereof.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information regarding rail cars utilized at plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiver of

this objection, CP&L will produce documents containing responsive information.

Interrogatory No. 28. For each hopper car or gondola owned or leased by CP&L, and for each of the calendar years 1999 to the present, identify the following:

- (a) The owner or lessee of the car;
- (b) The location(s) from which the hoppers or gondolas are assigned;
- (c) Car initial and number;
- (d) Source of car;
- (e) Car model or type;
- (f) Tare weight;
- (g) Date of purchase or lease;
- (h) Original cost plus additions and betterments;
- (i) Description of financing vehicle (e.g., equipment trust);
- (j) Debt rate as a percent;
- (k) Finance terms (in years);
- (l) Annual depreciation;
- (m) Accrued depreciation;
- (n) If leased, whether capital or operating lease;
- (o) If capital lease, the capitalized value of the lease by car or car group. If group of cars, identify the number (by initial and number) and aggregate dollars;
- (p) If an operating lease, the quarterly, semi-annual, annual, etc. lease payment by car or car group covering the term of the lease. If a group of cars, identify the number (by initial and number) and aggregate dollars;
- (q) The movement history of each car, including location, miles traveled between stations (loaded and empty), and the time and date of arrival at each station; and
- (r) The history (on a year-to-year basis) of per diem payments received by CP&L

or other owner or lessor for the use of each car.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information regarding railcars utilized in service to plants that are not at issue in this case. *See General Objection No. 12* (regarding the limited inquiry into intra- and intermodal competition). Subject to and without waiving this objection, CP&L states that it will produce documents containing responsive information, to the extent that it has such documents, pertaining to railcars utilized in service to its NS served coal-fired plants. *See Response to Document Request No. 59.*

Interrogatory No. 29. For each of the hopper or gondola cars identified in response to Interrogatory No. 28, identify maintenance and/or repair expenses by individual hopper or gondola car initial and number (owned and leased), incurred by CP&L for each of the calendar years 1999 to the present.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information regarding railcars utilized in service to plants that are not at issue in this case. *See General Objection No. 12* (regarding the limited inquiry into intra- and intermodal competition). Subject to and without waiving this objection, CP&L states that it will produce documents containing responsive information, to the extent that it has such documents, pertaining to maintenance and/or repair expenses for railcars utilized in service to its NS served coal-fired plants.

Interrogatory No. 30. For each of the hopper or gondola cars identified in response to Interrogatory No. 28, identify the total car unit-miles corresponding to the maintenance and repair expenses identified in Interrogatory No. 29 (*i.e.*, by individual hopper or gondola car initial and number, or car type or car series) for each of the calendar years 1999 to the present.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information

regarding railcars utilized in service to plants that are not at issue in this case. See General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to and without waiving this objection, CP&L states that it has no documents containing the maintenance and/or repair expense information sought in this Interrogatory for railcars utilized in service to its NS served coal-fired plants.

Interrogatory No. 31. Identify the individual days during the period January 1, 1999 to the present on which coal unloading operations at Mayo or Roxboro were suspended because of employee vacations or holidays or for any other reason and, for each such closing, the reason or reasons for such closing.

Response:

CP&L will produce documents containing responsive information.

Interrogatory No. 32. Identify each weekend (*i.e.*, Saturday and following Sunday) during the period from January 1, 1999 to the present on which coal unloading operations at Mayo or Roxboro were suspended and, for each such suspension, the reasons for such suspension.

Response:

CP&L will produce documents containing responsive information.

Interrogatory No. 33. State whether coal is or can be unloaded from NS's railroad cars at Mayo or Roxboro 24 hours per day. If the response to this Interrogatory is less than 24 hours per day, identify all circumstances which prevent 24-hour per day unloading.

Response:

Roxboro can and does unload coal 24 hours per day. Mayo is capable of unloading coal 24 hours per day. Mayo's normal unloading operations are from 7:00 a.m. - 10:00 p.m.

Interrogatory No. 34. Identify, separately for each calendar month from January 1, 1999 to the present, the date, time and duration of any period in which coal unloading operations at Mayo or Roxboro could not be carried out continuously, and the reasons why such coal unloading operations could not be carried out continuously.

Response:

CP&L will produce documents containing responsive information.

Interrogatory No. 35. Identify any constraints (legal or otherwise) that prevent CP&L from recovering from its electricity ratepayers (wholesale or retail) the costs of transporting coal by rail to any coal-fired CP&L Plant, including increases in such costs of rail transportation.

Response:

CP&L objects to this Interrogatory on grounds of relevance. Without waiving this objection, and subject to its General Objections, CP&L will produce documents containing information responsive to this Interrogatory. *See* Response to Document Request No. 57.

Interrogatory No. 36. Identify, for each coal-fired CP&L Plant and for each calendar month and year (or shorter time period for which CP&L maintains records) from January 1, 1999 to the present, the amount of any coal transportation costs that CP&L did not recover from its electricity ratepayers (wholesale or retail), the reasons for such failure to recover such costs, and the circumstances of such failure.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information regarding plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving this objection, and subject to its General Objections (*see* particularly, General Objection Nos. 1 and 2), CP&L will produce documents, to the extent it has any, containing responsive information.

Interrogatory No. 37. Identify, for each coal-fired CP&L Plant and for each calendar month and year (or shorter time period for which CP&L maintains records)

from January 1, 1999 to the present, the cost of transporting coal by rail to such plant as a percentage of the total cost of producing electric power at such plant.

Response:

CP&L objects to this Interrogatory to the extent that it seeks information regarding coal to be utilized at plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition) and on grounds that it seeks information regarding CP&L's coal transportation expenditures. Without waiving this objection, and subject to its General Objections (*see* particularly, General Objection Nos. 1 and 2), CP&L states that it will produce documents containing responsive information

DOCUMENT PRODUCTION REQUESTS

1. Produce all documents that underlie, support or relate to the allegation, contained in Paragraph 11 of the Complaint, that NS possesses "market dominance" (as defined in 49 U.S.C. § 10707) with respect to the transportation of coal between the origins covered by CP&L's Complaint, on the one hand, and Mayo and Roxboro, on the other hand.

Response:

CP&L objects to this Request for the reasons set forth in response to Interrogatory No. 1 (regarding prematurity).

2. Produce all documents that underlie, support or relate to the allegation, contained in Paragraph 10 of the Complaint, that the challenged common carrier rates of NS generate revenue-to-variable cost ratios in excess of 180 percent for the transportation of coal between the origins covered by CP&L's Complaint, on the one hand, and Mayo and Roxboro, on the other hand.

Response:

CP&L objects to this Request for the reasons set forth in response to Interrogatory No. 1 (regarding prematurity).

3. To the extent not produced in response to Document Request No. 2, produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the time period from January 1, 1999 to the present, referring to the variable costs of service or to the revenue-to-variable cost ratios for the transportation of coal by rail between any origin and any CP&L Plant. For each such study or analysis, produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study or analysis.

Response:

CP&L objects to this Request on grounds of relevance to the extent that it seeks information regarding the cost of service to plants not at issue in this case. CP&L also objects to this Request on grounds set forth in response to Interrogatory No. 1 (regarding prematurity) and to the extent it requests privileged or protected work product involved in its preparation for and prosecution of the instant case. *See* General Objection No. 4. Subject to and without waiver of these objections, CP&L states that no non-privileged, responsive documents exist regarding service to the issue plants.

4. Produce all documents that underlie, support or relate to the allegation, contained in Paragraph 12 of the Complaint, that the challenged common carrier rates established by NS for the transportation of coal between the origins covered by CP&L's Complaint, on the one hand, and Mayo and Roxboro, on the other hand, are unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702.

Response:

CP&L objects to this Request on grounds set forth in response to Interrogatory No. 1 (regarding prematurity).

5. To the extent not produced in response to Document Request No. 4, produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or

reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the time period from January 1, 1999 to the present, referring to the maximum reasonableness of the rates charged (or proposed to be charged) by NS or to the stand-alone costs of service for the transportation of coal by rail between any origin and any CP&L Plant. For each such study or analysis, produce all underlying workpapers and source documents, including (without limitation) all computer-readable data containing inputs to or the results of such study or analysis.

Response:

See Response to Request No. 3.

6. Produce all documents referring to any of the following:
 - (a) The feasibility and/or costs of receiving coal at Mayo or Roxboro by means of motor carriers, water carriers, conveyors or any other non-rail transportation mode;
 - (b) The feasibility and/or costs of receiving coal at Mayo or Roxboro by means of any rail carrier other than NS;
 - (c) The feasibility and/or costs of constructing or acquiring transportation facilities so as to receive coal at Mayo or Roxboro transported in whole or in part by means of any rail carrier other than NS;
 - (d) The feasibility and/or costs of constructing or acquiring transportation facilities so as to receive coal at Mayo or Roxboro transported in whole or in part by means of any non-rail carrier;
 - (e) The availability or unavailability to CP&L of effective competitive transportation alternatives to NS's coal transportation services for delivery of coal to Mayo or Roxboro;
 - (f) The nature and source of any competitive or business leverage CP&L possesses or might possess in negotiating with NS reasonable rail rates for NS's coal transportation services for delivery of coal to Mayo or Roxboro; and
 - (g) The costs incurred by NS in transporting coal between any mine or source and any CP&L Plant.

Response:

CP&L objects to this request to the extent that it seeks information regarding the competitive leverage that supposedly would be created by indirect forms of competition. See General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition) and General Objection No. 1 (regarding product and/or geographic competition). CP&L also objects to subpart (f) concerning "the nature and source of any competitive or business leverage" CP&L might possess with respect to its coal transportation negotiations with NS on grounds of vagueness, overbreadth, and burden to the extent that the type of information sought may encompass a voluminous range of subjective information that would be impossible to identify. Further, CP&L objects to subpart (g) for the reasons set forth in response to Request No. 3. Without waiving these objections, and subject to CP&L's response to Interrogatory No. 6, CP&L states that, with regard to subparts (a)-(e) and (g), no non-privileged, responsive documents exist regarding service between the issue origins and the issue plants. CP&L further states that it will produce responsive, non-privileged documents regarding (f) to the extent that they may be reasonably ascertained.

7. Produce, separately for each proposal to acquire or construct rail facilities identified in response to Interrogatory No. 6 or No. 7, each document referring to such proposal, including (but not limited to) the following:

- (a) All studies and analyses of the feasibility and/or costs of constructing, maintaining or operating the rail facilities proposed to be acquired or constructed;
- (b) All studies and analyses relating to the engineering, design or operation of the rail facilities proposed to be acquired or constructed;
- (c) All documents referring to the use of the rail facilities proposed to be acquired or constructed by any rail carrier, the terms of such use, and the rates and charges for transportation over such facilities;

(d) All correspondence relating to such proposal; and

(e) All regulatory filings made by CP&L with Federal, state or municipal governmental agencies or departments in connection with such proposal.

Response:

See Responses to Interrogatory Nos. 6 and 7. Without waiving the objections set forth therein, CP&L states that no non-privileged, responsive documents exist regarding service between the issue origins and issue plants.

8. Produce all documents referring to any solicitation identified in response to Interrogatory No. 8 or No. 9.

Response:

See Responses to Interrogatory Nos. 8 and 9. Without waiving the objections set forth therein, CP&L states that no non-privileged, responsive documents exist regarding service between the issue origins and issue plants.

9. Produce each contract in effect at any time during the period from January 1, 1999 to the present between CP&L, on the one hand, and any carrier (other than NS), on the other hand, for the transportation of coal to any CP&L Plant. The response to this Document Request should include all supplements and amendments to each such coal transportation contract, as well as all documents necessary to determine, during the entire time period covered by this Document Request, the applicable carrier, mine or source, CP&L Plant, transportation rate or charges, and volume of coal transported or to be transported under such contract.

Response:

CP&L objects to this Request on grounds of relevance to the extent that it seeks coal transportation contracts for service to plants other than the issue plants. See General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to

this Request to the extent that it seeks production of contracts that are subject to confidentiality agreements with third parties. Without waiving these objections, CP&L states that there are no responsive coal transportation contracts between CP&L and a carrier other than NS for service to the plants at issue in this case. CP&L further states that it would not object to the production of responsive contracts involving coal transportation service to its other coal-fired plants served by NS if the Board were to order such production.

10. Produce each coal supply contract to which CP&L is or was a party and which was in effect at any time during the period from January 1, 2001 to the present. The response to this Document Request should include all supplements and amendments to each such coal supply contract, as well as all documents necessary to determine, during the entire period covered by this Document Request, the applicable seller, mine or source, price and volume of the coal supplied under the contract.

Response:

CP&L objects to this Request on grounds of relevance to the extent that it seeks coal supply contracts from origins not at issue in this case and/or to the extent that it seeks contracts for the supply of coal to be used at plants that are not at issue in this case. See General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this Request to the extent the requested materials are confidential and contain provisions that expressly prohibit CP&L from disclosing the terms of such contracts to third parties without the consent of the other contracting party or when compelled to do so by a court or government order. Without waiving these objections, CP&L states that it would not object to the production of the requested materials if the Board were to require such production in this case.

11. Produce all documents referring to any negotiations or discussions that have occurred during the period from January 1, 1999 to the present, or are contemplated by CP&L to occur, between CP&L and any other person for the purpose of (a) amending, modifying, supplementing, replacing or altering the terms of any coal supply contract produced in response to Document Request No. 10 or (b) arranging for the supply of coal to any CP&L Plant.

Response:

See Response to Request No. 10. In addition, CP&L objects to the production of documents to the extent that they seek information as to the negotiations/discussions of a coal supply contract or an amendment to a coal supply contract that either: (i) has expired; or (ii) is currently effective, on grounds that such documents would be duplicative of information that is contained in the contracts that NS has requested. CP&L also objects to this open-ended Request on grounds of overbreadth and burden in that responsive information concerning any communications with coal suppliers could be found in numerous routine communications between CP&L and dozens of third party coal suppliers involving a number of different individuals at CP&L over a three-year period that would be virtually impossible to identify and produce. See Response to Interrogatory No. 21. Subject to these objections, CP&L will produce documents responsive to this request.

12. Produce all documents referring to the actual, contemplated or possible supply of coal by any producer or supplier of coal to any CP&L Plant during any future time period, including all studies or analyses prepared by or for CP&L referring to any such actual, contemplated or possible future supply of coal and all documents containing communications between CP&L and any coal producer or supplier referring to any such actual, contemplated or possible future supply of coal.

Response:

See Response to Interrogatory No. 21 and Document Request Nos. 10 and 11.

13. Produce all fuel supply contracts (other than coal supply contracts identified in Document Request No. 10) to which CP&L is a party and which has an effective term of more than one year. The response to this Document Request should include all supplements and amendments to each such fuel supply contract, as well as all documents necessary to determine, during the entire period covered by this Document Request, the applicable seller, source, price and volume of the fuel supplied under the contract.

Response:

CP&L objects to this Request on grounds of relevance and burden, *see* General Objection No. 1 (regarding product and/or geographic competition).

14. Produce all contracts for the purchase and/or sale of electric power or electric generating capacity (other than contracts for the purchase and/or sale of electric power to/from CP&L's retail electric customers) to which CP&L is a party and which has an effective term of more than one year. The response to this Document Request should include all supplements and amendments to each such purchase and/or sale contract, as well as all documents necessary to determine, during the entire time period covered by this Document Request, the applicable purchasers and/or sellers, the source of the electric power or generating capacity covered by such contract, the volume or amount of electric power or generating capacity covered by such contract, the duration of such contract, and the prices or other charges specified in such contract.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition).

15. Produce all documents referring to the present or future authorized, targeted or actual coal inventory level (*i.e.*, the amount of coal, in tons, maintained or available at a CP&L Plant for use in generating electric power) for any CP&L Plant.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). CP&L also objects to this

Request to the extent that it seeks information regarding inventory levels at plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that it will produce responsive documents pertaining to its coal-fired plants.

16. Produce all documents comprising or referring to CP&L's current policies and procedures for fuel and/or fuel procurement for any CP&L Plant.

Response:

CP&L objects to this Request to the extent that it seeks documents related to fuel other than coal (*see* General Objection No. 1 (regarding product and/or geographic competition)), and related to origins and/or destinations that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this Request as vague and ambiguous in that CP&L is unaware of whatever distinction NS may be making as between "fuel" and "fuel procurement."

Without waiving these objections, CP&L states that it will produce responsive documents containing statements of its coal acquisition policy.

17. Produce all documents comprising or referring to CP&L's current policies and procedures for determining the relative order in which power will be generated or dispatched from particular electric generating units, plants or facilities owned and/or operated by CP&L.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1. *See also* CP&L's Response to

Interrogatory No. 18.

18. Produce all documents supporting or explaining the calculation or development of each dispatch price identified in response to Interrogatory No. 10(p), including documents identifying the fuel expense, variable operation and maintenance expense and heat rate component by output segment for each unit.

Response:

See Response to Request No. 17.

19. Produce documents identifying, separately for each electric power generating unit, plant or facility included in or comprising any CP&L Plant and for each calendar month, day, hour or block of hours (the smallest increment of time for which CP&L maintains records) from January 1, 1999 to the present, the amounts of operation and maintenance expenditures determined or assigned as variable costs as opposed to fixed costs, including all documents supporting or explaining the calculation or development of such determination or assignment.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

20. Produce all documents comprising or referring to CP&L's current policies and procedures for determining whether, and to what extent, native or jurisdictional load electric power requirements of CP&L's retail electric customers are, should be or could be satisfied by (a) electric power generated or produced by CP&L or (b) electric power purchased or obtained by CP&L from persons not affiliated with CP&L.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See General Objection No. 1* (regarding product and/or geographic competition). Without waiving these

objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

21. Produce documents identifying, separately for each electric power generating unit, plant or facility included in or comprising any CP&L Plant and for each calendar month, day, hour or block of hours (the smallest increment of time for which CP&L maintains records) from January 1, 1999 to the present, the electric power purchase price at which CP&L would purchase electric power from a person not affiliated with CP&L rather than generating or producing such power at the unit or another CP&L Plant, including all documents supporting or explaining the calculation or development of such price.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

22. Produce all documents referring to any instructions, guidelines or policies provided to or used by CP&L personnel in determining the relative order in which electric power will be generated or dispatched from particular electric generating units, plants or facilities owned and/or operated by CP&L and the volume or amount of electric power to be generated by such units.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1. *See* Response to Interrogatory No.

18.

23. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the period from January 1, 1999 to the present, referring to the extent to which native or jurisdictional load electric power requirements of CP&L's retail electric customers in the future will be, or could be, satisfied by (a) electric power generated or produced by CP&L or (b) electric power purchased or obtained by CP&L from persons not affiliated with CP&L.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

24. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the period from January 1, 1999 to the present, referring to any of the following:

- (a) The possibility that alternative fuels (including, but not limited to, gas, oil, nuclear, coal-based synthetic fuels or solar) might or could be used in the future to generate electricity at any existing CP&L Plant;
- (b) The possibility that alternative fuels (including, but not limited to, gas, oil, nuclear, coal-based synthetic fuels or solar) might or could be used in the future to generate electricity at any CP&L Plant to be constructed or operated in the future;
- (c) The impact of potential advances in technology on the volume or amount of coal (or alternative fuels) required or used in the future to generate electricity at any existing CP&L Plant;
- (d) The impact of potential advances in technology on the volume or amount of coal (or alternative fuels) required or used in the future to

generate electricity at any CP&L Plant to be constructed or operated in the future; and

(e) The feasibility, costs and benefits of converting any coal-fired CP&L Plant to allow it to use alternative fuels (including, but not limited to, gas, oil, nuclear, coal-based synthetic fuels or solar) to generate electricity.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

25. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports, and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the period from January 1, 1999 to the present, referring to the actual, planned, proposed or possible (a) shutdown or closure of any CP&L Plant or (b) extension of the service life of any CP&L Plant as a result of construction or modification of facilities or modification of operating practices.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). CP&L also objects to this Request on grounds of relevance to the extent that it seeks documents related to plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that it has no responsive documents pertaining to the shutdown or life-extension of any of its coal-fired plants. *See also* Response to Interrogatory No. 10.

26. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the period from January 1, 1999 to the present, referring to any existing or actual or potential future transmission constraints affecting the transportation, transmission or distribution of electric power:

- (a) Within the CP&L system;
- (b) Between the CP&L system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which CP&L or its service territory is or is proposed to be a part; and
- (c) Between or among different NERC Regional Councils.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

27. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, feasibility studies, technical analyses, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the period from January 1, 1999 to the present, referring to any proposed or planned investment or project related to the removal or alleviation of any existing or actual or potential future transmission constraints affecting the transportation, transmission or distribution of electric power:

- (a) Within the CP&L system;
- (b) Between the CP&L system and other utilities or electric power producers and/or sellers comprising the members of the Regional Transmission Organization or NERC Regional Council of which CP&L or its service territory is or is proposed to be a part; and

(c) Between or among different NERC Regional Councils.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to this Request may be included within the documents that CP&L references in General Objection No. 1.

28. Produce all documents referring to or comprising any Forecast identified in response to Interrogatory No. 23 including (but not limited to) all documents referring to the methodologies identified in response to Interrogatory No. 24.

Response:

Subject to the objections set forth in its Response to Interrogatory Nos. 23 and 24, CP&L states that it will produce documents responsive to the request.

29. Produce all documents referring to any of the following subjects:

- (a) The reasonableness of the level of the rates charged by NS for the transportation of coal to Mayo and Roxboro;
- (b) The impact of the level of the rates charged by NS for the transportation of coal to Mayo and Roxboro on the volume of electricity output generated at any unit, plant or facility included in or comprising Mayo or Roxboro; and
- (c) The effect that actual or hypothetical changes in the level of the rates charged by NS for the transportation of coal to Mayo or Roxboro might or would have on:
 - (1) The volume of electricity output generated at any unit, plant or facility included in or comprising Mayo and Roxboro;
 - (2) The relative dispatch priority of Mayo and Roxboro within the CP&L electric generating systems;

(3) The amount and type of electricity output that could be sold, exchanged or transferred by CP&L to third parties and the amount of revenue or profit potentially earned from such power transactions; and

(4) The feasibility, costs and benefits of reducing the level of electricity produced at any unit, plant or facility included in or comprising Mayo and Roxboro and of closing or shutting down power generation activities at any such unit, plant or facility on a temporary or permanent basis.

Response:

CP&L objects to this Request on grounds of relevance and burden with respect to the substance of subparts (b) and (c). *See* General Objection No. 1 (regarding product and/or geographic competition). *See* Response to Interrogatory Nos. 2 and 4. Without waiving these objections, CP&L states as to subpart (a) that no non-privileged, responsive documents exist regarding rates for service to the issue plants.

30. Produce (in computer-readable format to the extent available) any computer model, computer program, software or other system, maintained and/or used by or for CP&L during the period January 1, 1999 to the present, or that was or could be used to forecast, project or estimate:

- (a) The costs of transporting coal or other fuels to any CP&L Plant;
- (b) The delivered costs of obtaining coal or other fuels for use at any CP&L Plant;
- (c) The electric power generating capacity of CP&L or of any electric power generating unit, plant or facility (referred to herein as "unit") included in or comprising any CP&L Plant by calendar month, year or other time period;
- (d) The total net generation (in kilowatt hours) of electric power of electricity generators or producers, CP&L or any unit by calendar month, year or other time period;
- (e) The Capacity Factor of electricity generators or producers, CP&L or any unit by calendar month, year or other time period;

- (f) The native or jurisdictional load requirements or commitments (in kilowatt hours) of electricity generators or producers, CP&L or any unit by calendar month, year or other time period;
- (g) The volume of demand for electric power produced or sold by electricity generators or producers, power marketers, CP&L or any unit by calendar month, year or other time period;
- (h) The volume of sales (in dollars) of electric power produced or sold by electricity generators or producers, power marketers, CP&L or any unit by calendar month, year or other time period;
- (i) The level of the prices of electric power available for purchase or sale in the wholesale electricity market by electricity generators or producers, power marketers, CP&L or any unit by calendar month, year or other time period;
- (j) The location, amount and duration of any transmission constraints affecting or potentially affecting the transportation, transmission or distribution of electric power;
- (k) The volume or amount of each type of fuel to be burned or used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;
- (l) The number of tons of coal to be burned or used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;
- (m) The number of tons of coal to be purchased or acquired by electricity generators, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;
- (n) The price or cost of coal to be purchased or used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;
- (o) The level of prices of coal that could be used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;
- (p) The number of tons of coal to be transported by rail by, for or to electricity generators or producers, CP&L or any unit by calendar month, year or other time period;

(q) The level of railroad rates for the transportation of coal that could be used by electricity generators or producers, CP&L or any unit for purposes of generating electric power by calendar month, year or other time period;

(r) The level or rate of change in the Rail Cost Adjustment Factor (with or without an adjustment for railroad productivity) published by the STB, or any other measure of the level or rate of change in the costs of providing rail freight transportation services, by calendar month, year or other time period; and

(s) The level or rate of change in the Consumer Price Index, the Producer Price Index, the Gross Domestic Product-Implicit Price Deflator, or any other measure of inflation or rate of change in the level of prices, by calendar month, year or other time period.

Response:

CP&L objects to this Request on grounds of relevance, overbreadth, and burden, *See* General Objection No. 1 (regarding product and/or geographic competition), particularly to the extent that CP&L will produce detailed information directly relevant to the question of future coal deliveries by NS to the CP&L plants, including all responsive forecasts of coal consumption and the other coal cost and delivered cost information sought through NS's Requests. CP&L also objects to this Request to the extent that it seeks documents regarding plants other than those at issue in this case (*see* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition)). Further, CP&L objects to this Request to the extent that it seeks documents that are subject to licensing restrictions, and objects to this Request as vague and ambiguous in its use of the term "other system." *See* Response to Interrogatory Nos. 23 and 24.

31. Produce all documents (including, but not limited to, all data inputs, all data runs, all intermediate and final output and results) referring to any application or use by CP&L, during the period from January 1, 1999 to the present, of any computer model, computer program, software or other system identified in Document Request No. 30.

Response:

See Response to Request No. 30. Without waiving the objections set forth therein, CP&L states that it is producing documents containing forecasts of the nature sought in several of these subparts (*see, e.g.*, Response to Interrogatory No. 23) and other documents referenced in General Objection No. 1, which reflect CP&L's formal forecasts of many of the topics listed in Request No. 30 as such forecasts pertain to CP&L.

32. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the time period from January 1, 1999 to the present, referring to any of the following subjects:

- (a) The wholesale market for the purchase and/or sale of electric power;
- (b) Competition for the purchase and/or sale of electric power in the wholesale market;
- (c) CP&L's actual or potential expenses, revenues or profits from the purchase and/or sale of electric power in the wholesale market; and
- (d) Any of the subjects identified in Document Request No. 30(a) through No. 30(s).

Response:

CP&L objects to subparts (a), (b), and (c) of this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that documents responsive to subparts (a), (b) and (c) of this Request may be included within the documents that CP&L references in General Objection No. 1.

CP&L objects to subpart (d) of this Request for the reasons set forth in response

to Request No. 30. In addition, CP&L objects to subpart (d) of this Request on grounds of burden to the extent that it seeks production of "all workpapers and other supporting documents and data (including machine-readable data)," since this material is likely to be duplicative of the requested studies or analyses and unlikely to yield additional relevant information. Without waiving these objections, CP&L refers NS to CP&L's response to Request No. 31.

33. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the time period from January 1, 1999 to the present, referring to the impact or potential impact of (i) CP&L's compliance with the Amended Clean Air Act or any other existing or proposed law or regulation restricting emissions from electric generating facilities, (ii) deregulation of the electric utility industry and/or (iii) the introduction of competition in the generation and sales of electric power on any of the following:

- (a) CP&L;
- (b) Any CP&L Plant;
- (c) The volume or amount of electric power generated or produced at any CP&L Plant;
- (d) The volume or amount of electric power sold by CP&L to persons other than CP&L's retail electric power customers;
- (e) The revenues or profits earned by CP&L from the sale of electric power to persons other than CP&L's retail electric power customers;
- (f) The volume or amount of coal burned or used at any CP&L Plant;
- (g) The relative cost to generate or produce electric power at any CP&L Plant as compared with the generation or production costs of electric power producers or sellers other than CP&L;
- (h) The relative cost to generate or produce electric power at any CP&L Plant as compared with the cost of purchasing or acquiring electric power from producers or sellers other than CP&L; and

(i) CP&L's ability or potential ability to compete for present or future sales of electric power with electric power producers or sellers other than CP&L.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition).

34. Produce all documents referring to any proposed, planned, contemplated or possible transaction involving any of the following:

(a) The sale or transfer by CP&L of the ownership and/or operation of any CP&L Plant to any other entity (including shareholders of any affiliate of CP&L)

(b) The purchase by CP&L of the ownership and/or operation of any electric generating plant or facility from any other entity;

(c) The acquisition by CP&L of any person that engages in the generation, sale or distribution of electric power; and

(d) The merger or consolidation of CP&L with any person that engages in the generation, sale or distribution of electric power.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving these objections, CP&L states that it has no documents pertaining to the sale or transfer by CP&L of the issue plants.

35. For each employment of a consultant, expert or research firm identified in response to Interrogatory No. 25, produce the following:

- (a) All documents prepared by such consultant, expert or research firm in connection with such employment; and
- (b) All documents containing communications between CP&L and such consultant, expert or research firm in connection with such employment.

Response:

CP&L will produce responsive documents as set forth in its Response to Interrogatory No. 25.

36. Produce each Integrated Resource Plan or other similar report or study prepared by or for CP&L during the period January 1, 1999 to the present, including all underlying supporting materials and workpapers.

Response:

CP&L objects to this Request on grounds of relevance. *See* General Objection No. 1 (regarding product and/or geographic competition). In addition, CP&L objects to this Request as vague and ambiguous in its use of the phrase "similar report." Finally, CP&L objects to this Request on grounds of burden to the extent that it seeks production of "all underlying supporting materials and workpapers."

Without waiving these objections, CP&L states that it will produce its Integrated Resource Plans prepared during the period January 1, 1999 to the present.

37. Produce each study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data (including machine-readable data), prepared by CP&L (or by any person retained or employed by CP&L) during the time period from January 1, 1999 to the present, referring to any of the following:

- (a) CP&L's fuel management, fuel procurement and/or fuel transportation

functions;

(b) CP&L's compliance with the Amended Clean Air Act or any other existing or proposed law or regulation restricting emissions from electric generating facilities at any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by CP&L; and

(c) CP&L's preparations for or compliance with deregulation of the electric utility industry and/or the introduction of competition in the generation and sales of electric power.

Response:

CP&L objects to subpart (a) of this Request on grounds of relevance and burden to the extent that it seeks information regarding fuels other than coal, and to the extent that it seeks production of "all workpapers and other supporting documents and data (including machine-readable data)." Without waiving these objections, CP&L states that it will produce documents that are responsive to subpart (a) of this Request.

CP&L objects to subparts (b) and (c) of this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition).

38. Produce each monthly Form 423 ("Monthly Report of Cost and Quality of Fuels for Electric Plants") filed with the FERC during the period from January 1, 1999 to the present and relating to any electric power generating unit, plant or facility owned (in whole or in part) and/or operated by CP&L.

Response:

CP&L objects to this Request on grounds of relevance to the extent that it seeks documents related to CP&L plants that NS does not serve. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this Request to the extent that it seeks information regarding fuel other than coal. *See* General Objection No. 1 (regarding product and/or geographic competition). CP&L also objects to this

Request on grounds that the information sought is readily available to NS from public sources.

Without waiving these objections, CP&L states that it will produce the requested documents.

39. Produce each separate response to interrogatories provided by CP&L to the FERC under Docket No. IN79-6 (Fuel and Energy Purchase Practices pursuant to Section 205(f)(2) of the Federal Power Act) during the period from January 1, 1999 to the present.

Response:

CP&L objects to this Request on grounds of relevance to the extent that it seeks documents related to CP&L plants that NS does not serve. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this Request to the extent that it seeks information regarding fuel other than coal. *See* General Objection No. 1 (regarding product and/or geographic competition). Without waiving these objections, CP&L states that it will produce its responsive FERC Form 580 reports.

40. To the extent not otherwise provided in response to any other Document Request, produce, for the period from January 1, 1999 to the present, each official form periodically filed by CP&L with state regulatory commissions or agencies having jurisdiction to regulate the generation, sale and distribution of electric power and containing data (including volume and cost) on coal procurement for, or coal transportation of coal consumed or projected to be consumed at, any CP&L Plant (including Mayo and Roxboro).

Response:

CP&L objects to this Request to the extent that it seeks documents regarding origins and/or destinations that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Moreover, CP&L objects to this Request on grounds of confidentiality in that it seeks information regarding CP&L's coal and coal transportation expenditures. CP&L also objects to this Request on grounds of burden in

that volume and delivered cost information regarding coal consumed at the issue plants exists in CP&L's FERC Form 423's. Without waiving these objections, CP&L states that it will produce responsive fuel reports to the extent that they can be produced without violation of a confidentiality restriction with a third party.

41. Produce all studies, reports or other documents identified in response to Interrogatory No. 27, as well as the workpapers and explanation of procedures relating to such studies, reports or other documents.

Response:

CP&L objects on grounds of burden and relevance to producing "the workpapers and explanation of procedures relating to such studies, reports or other documents." Without waiving these objections, CP&L states that it will produce responsive documents.

42. Produce documents sufficient to identify the dates, from January 1, 1999 to the present, on which coal unloading operations at any CP&L Plant (including Mayo and Roxboro) were suspended because of employee vacations or holidays or for any reason and, in the case of each such suspension, the duration and reason for such suspension.

Response:

CP&L objects to this Request on grounds of burden and to the extent that it seeks a voluminous range of documents regarding destinations that are not at issue in this case. See General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to these objections, CP&L states that it will produce responsive documents pertaining to Roxboro and Mayo.

43. Produce documents sufficient to identify the incidence or frequency of coal unloading operations on weekends at any CP&L Plant (including Mayo and Roxboro) during the period from January 1, 1999 to the present.

Response:

CP&L objects to this Request on grounds of burden and to the extent that it seeks a voluminous range of documents regarding destinations that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to these objections, CP&L states that it will produce responsive documents pertaining to Roxboro and Mayo.

44. Produce documents sufficient to identify the dates, from January 1, 1999 to the present, on which coal unloading operations at any CP&L Plant (including Mayo and Roxboro) could not be carried out continuously on a 24-hour per day basis and, in the case of each such instance, the duration and reason for such failure to carry out coal unloading operations continuously on a 24-hour per day basis.

Response:

CP&L objects to this Request on grounds of burden and to the extent that it seeks a voluminous range of documents regarding destinations that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to these objections, CP&L states that it will produce responsive documents pertaining to Roxboro and Mayo.

45. Produce all mine loading permits relating to any shipment of coal between any mine origin or source, on the one hand, and Mayo and Roxboro, on the other hand, during the period from January 1, 1999 to the present, and all documents referring to any change in such mine loading permits (including changes in scheduled loading date or destination of the shipment) and the nature of and reasons for any such change.

Response:

CP&L objects to this Request on grounds of burden in that it seeks production of voluminous range of routine, transactional documents which, to the extent that they are relevant,

merely include information that is already in NS's possession by virtue of the fact that NS has transported all of CP&L's relevant coal. Without waiving these objections, will produce responsive documents.

46. Produce all documents in CP&L's possession, custody or control, at any time during the period from January 1, 1999 to the present (including, without limitation, documents containing communications between CP&L and any coal mine operator or coal supplier), referring to any of the following:

(a) The extent to which coal loading operations at any origin or source that supplies coal to Mayo or Roxboro are or could be carried out on particular days of the week (including weekends and holidays);

(b) The extent to which coal loading operations at any origin or source that supplies coal to Mayo or Roxboro are or could be carried out during particular hours of the day;

(c) The extent to which coal unloading operations at Mayo or Roxboro are or could be carried out on particular days of the week (including weekends and holidays); and

(d) The extent to which coal unloading operations at Mayo or Roxboro are or could be carried out on particular hours of the day.

Response:

CP&L objects to this Request on grounds of burden to the extent that potentially responsive documents could be found in routine correspondence/communications between: (i) CP&L and a dozens of third party coal suppliers; or (ii) a number of different individuals at CP&L, over a three-year period. Without waiving these objections, CP&L states that it will produce responsive documents that it can reasonably identify. *See also* Response to Interrogatory No. 10, Request Nos. 42-44.

47. Produce all documents referring to, or sufficient to identify, the following:

(a) The extent to which railroad cars carrying coal traffic to any CP&L

Plant (including Mayo or Roxboro) have been or are loaded to their full physical capacity; and

(b) The average load of coal per railroad car carrying coal traffic to any CP&L Plant (including Mayo and Roxboro).

Response:

CP&L objects to this Request to the extent that it seeks documents regarding destinations that are not at issue in this case. *See* General Objection No. 12. CP&L also objects to this request on grounds of burden to the extent that it seeks production of a large number of routine transactional documents (*e.g.*, waybills, shipping notices, dump sheets, etc. that may or may not convey some of the information sought) that merely convey information that is already in NS's possession (by virtue of the fact that NS has transported all relevant coal). *See* General Objection No. 7. Subject to and without waiving these objections, CP&L states that, other than the routine transactional documents cited above that it is not producing, it does not maintain the coal loading information which this request seeks.

48. Produce documents identifying, or that could be used to identify, for each railroad freight car used for the shipment of coal between any mine or source (hereinafter referred to as "Origin"), on the one hand, and Mayo or Roxboro (hereinafter referred to as "Destination"), on the other hand, from January 1, 1999 to the present, the following:

- (a) The name and location (city and state) of the Origin from which the shipment originated;
- (b) The name and location (city and state) of the Destination at which the shipment was delivered;
- (c) The date and time when the empty rail car used for the shipment was placed at the Origin and made available by the serving railroad for loading;
- (d) The date and time when loading of the rail car used for the shipment was completed at the Origin and the loaded car was made available to the

serving railroad for movement to Destination;

(e) The date and time when, if at all, the loaded rail car used for the shipment was interchanged or transferred to another railroad at an intermediate point between Origin and Destination;

(f) The date and time when the loaded rail car used for the shipment was placed at the Destination and made available by the serving railroad for unloading;

(g) The date and time when the rail car used for the shipment, after unloading at the Destination, was made available to the serving railroad for movement to the same or a different Destination; and

(h) The date and time when the rail car used for the shipment was placed at the same or a different Destination for reloading.

Response:

CP&L objects to this Request to the extent that it is not applicable (*see* (e)), and on grounds of burden to the extent that it seeks production of a large number of routine transactional documents (*e.g.*, waybills, shipping notices, dump sheets, etc.) that merely convey information that is already in NS's possession (by virtue of the fact that NS has transported all relevant coal). This information is also contained on NS's Coal Transportation Management System. Without waiving these objections, CP&L responds that it will produce documents responsive to this Request. *See* Response to Request Nos. 42-44.

49. Produce documents identifying, or that could be used to identify, for each shipment of coal between any mine or source (hereinafter referred to as "Origin"), on the one hand, and Mayo or Roxboro (hereinafter referred to as "Destination"), on the other hand, from January 1, 1999 to the present, the following:

(a) The loaded transit time between each Origin and Destination;

(b) The empty transit time between each Origin and Destination;

(c) The round-trip transit time between each Origin and Destination;

- (d) The train cycle time for each shipment;
- (e) The freight car cycle time for each shipment; and
- (f) The locomotive cycle time for each shipment.

Response:

CP&L objects to this Request on grounds of burden to the extent that it seeks production of a large number of routine transactional documents (*e.g.*, waybills, shipping notices, dump sheets, etc.) that merely convey information that is already in NS's possession (by virtue of the fact that NS has transported all relevant coal). This information is also contained on NS's Coal Transportation Management System. Without waiving these objections, CP&L responds that it does not maintain the transit- and cycle-time information that this Request seeks.

50. Produce (in machine-readable format if available) all data or information obtained by or for CP&L from NS's Coal Transportation Management System for the period from January 1, 1999 to the present.

Response:

CP&L objects to this Request on grounds of relevance and burden. *See* General Objection No. 1 (regarding product and/or geographic competition) and General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this request to the extent that it seeks information relating to a system which predates the implementation of the system (on information and belief, NS did not make the system available to its customers until mid-year 2000). Without waiving these objections, CP&L responds that it does not regularly maintain information obtained from NS's Coal Transportation Management System. CP&L further responds that it is reviewing its files for responsive information available from January 1, 2001 to present, and it will produce any responsive documents for this time

period.

51. Produce documents identifying, or that could be used to identify, for each mine or source (hereinafter referred to as "Origin") that supplied coal to any CP&L Plant from January 1, 1999 to the present or that could in the future be used to supply any CP&L Plant, the following:

- (a) The name and location (city and state) of the Origin;
- (b) The track capacity in feet at each mine or source;
- (c) Schematics showing the trackage configuration at each mine with both the track that NS owns (or jointly owns) and the mine-owned track clearly identified;
- (d) Annual weeks, days per week, and hours per day, of mine coal loadout operation;
- (e) Average tons per car loaded; and
- (f) Loading capacity (tons per hour).

Response:

CP&L objects to this Request on grounds of relevance and burden to the extent that it seeks information about coal movements between origins and destinations that are not at issue in this case. See General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects to this request to the extent that for CP&L's coal-fired plants served by NS, NS already has information concerning all these requests. Without waiving these requests, CP&L responds that it does not maintain information concerning (b), (c), (d), (e), and (f). CP&L further responds that it will produce documents responding to subpart (a) pertaining to its NS-served plant mine origins.

52. Produce documents identifying, or that could be used to identify, for each CP&L Plant (hereinafter referred to as "Destination") that received coal from January 1, 1999 to the present, the following:

- (a) The name and location (city and state) of the Destination;
- (b) The track capacity in feet at each Destination;
- (c) Schematics showing the trackage configuration at each Destination with both the track that NS owns (or jointly owns) and the track not owned (or jointly owned) by NS clearly identified;
- (d) Annual weeks, days per week, and hours per day, of coal unloading operations;
- (e) Average tons per car unloaded; and
- (f) Unloading capacity (tons per hour).

Response:

CP&L objects to this Request on grounds of relevance and burden to the extent that it seeks documents regarding CP&L plants not at issue in this case, *see* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition), and to the extent that NS already maintains this information. Without waiving these objections, CP&L states that it will produce responsive information as to subparts (a), (b), (c) and (f) as to each of its NS-served coal-fired plants. As for subpart (d), CP&L will produce responsive documents pertaining to Roxboro and Mayo. CP&L does not maintain information pertaining to subpart (e). *See* Response to Document Request No. 47.

53. Produce all documents referring to any sale or acquisition of land (improved or unimproved) completed by CP&L in the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Kentucky or Tennessee during the period from January 1, 1999 to the present including (but not limited to) documents showing the location of the parcel, size of the parcel, sale or acquisition price, a description of any improvements to the parcel, date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

Response:

CP&L objects to this Request on grounds of relevance and burden to the extent that it seeks information concerning land sales/acquisitions in Tennessee, Georgia, and South Carolina not on the lines of the stand-alone railroad being designed by CP&L for purposes of this case and to the extent that it seeks information regarding: (i) sales or acquisitions of land by entities other than CP&L; (ii) improvements to individual parcels; and (iv) characteristics of individual parcels. Without waiving these objections, CP&L states that it will produce a summary of responsive property sales and/or acquisitions by CP&L .

54. Produce all appraisals prepared by or for CP&L, or in CP&L's possession, custody or control, at any time during the period from January 1, 1999 to the present, for any real estate parcels located in the states of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Kentucky or Tennessee.

Response:

CP&L objects to this Request on grounds of relevance and burden to the extent that it seeks information concerning land sales/acquisitions in Tennessee, Georgia, and South Carolina not on the lines of the stand-alone railroad being designed by CP&L for purposes of this case and to the extent that it seeks information regarding sales or acquisitions of land by entities other than CP&L. Without waiving these objections, CP&L states that it will produce responsive property appraisals performed by CP&L.

55. Produce all documents comprising or referring to agreements or understandings between CP&L and the Power Agency with respect to any of the following:

(a) CP&L's operation of Mayo and Roxboro;

(b) CP&L's authorization to make coal supply and coal transportation arrangements for coal consumed at Mayo or Roxboro;

(c) The policies or arrangements for the dispatch of electric power produced at Mayo or Roxboro;

(d) The sale or use of any electric power produced at Mayo or Roxboro for or on behalf of the Power Agency; and

(e) The respective rights or entitlement of CP&L and the Power Agency to the sale or use of any electric power produced at Mayo or Roxboro.

Response:

CP&L objects to this request on grounds of relevancy. Without waiving this objection, CP&L states that it will produce responsive documents.

56. Produce all documents referring to any communications between CP&L and the Power Agency regarding any of the following:

(a) The level of NS's rates for coal transportation service to Mayo or Roxboro;

(b) The impact of NS's rates for coal transportation service to Mayo or Roxboro on the costs of producing electric power at Mayo or Roxboro or on the generation and sale of electric power at Mayo or Roxboro;

(c) The negotiations between CP&L and NS regarding the establishment of common carrier or contract rates for coal transportation service to Mayo or Roxboro; and

(d) The filing and prosecution of the Complaint.

Response:

CP&L objects to this request on grounds of relevancy. Without waiving this objection, CP&L responds that it has no responsive documents relating to this request.

57. Produce all documents referring to CP&L's ability or right to recover from its electricity ratepayers (wholesale or retail) the costs of transporting coal by rail to any coal-fired CP&L Plant, including increases in such costs of transportation.

Response:

CP&L objects to this Request on grounds of relevance and burden to the extent that it seeks documents relating to CP&L plants not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Without waiving this objection, CP&L states that it will produce responsive documents sufficient to show the information sought in this Request as to each of its NS-served coal-fired plants.

58. Produce documents sufficient to identify, for each coal-fired CP&L Plant and for each calendar month from January 1, 1999 to the present, the cost of transporting coal by rail to such plant as a percentage of the total cost of producing electric power at such plant.

Response:

CP&L objects to this Request on grounds of relevance and burden to the extent that it seeks documents relating to CP&L plants not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). CP&L also objects on grounds that it seeks information regarding CP&L's coal transportation expenditures. Without waiving these objections, CP&L states that it will produce responsive documents as set forth in its Response to Interrogatory No. 37.

59. Produce each railroad freight car or locomotive sales or lease agreement to which CP&L (including, without limitation, Railcar, Ltd.) is or was a party and which was in effect at any time during the period from January 1, 2001 to the present. The response to this Document Request should include all supplements and amendments to each such sales or lease agreement, as well as all documents necessary to determine, during the entire period covered by this Document Request, the applicable seller or lessor, purchaser or lessee, number and type of freight car or locomotive covered by such agreement, and price and other terms governing such sales or lease.

Response:

CP&L objects to this Request to the extent that it seeks information regarding equipment utilized in service to plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to and without waiving this objection, CP&L states that it will produce responsive documents pertaining to railcars/locomotives utilized in service to its NS served coal-fired plants.

60. Produce all documents referring to the actual or estimated costs of acquiring, leasing, maintaining or repairing railroad freight cars or locomotives.

Response:

CP&L objects to this Request to the extent that it seeks information regarding equipment utilized in service to plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to and without waiving this objection, CP&L states that it will produce responsive documents pertaining to railcars/locomotives utilized in service to its NS served coal-fired plants.

61. Produce all documents referring to the actual or estimated costs of acquiring, constructing, maintaining or repairing railroad track structures, communications or signalling systems, or other fixed roadway facilities used in connection with railroad freight operations.

Response:

CP&L objects to this Request to the extent that it seeks information regarding track structure at plants that are not at issue in this case. *See* General Objection No. 12 (regarding the limited inquiry into intra- and intermodal competition). Subject to and without waiving this objection, CP&L states that it will produce responsive documents pertaining to its track structures utilized in service to its NS served coal-fired plants.

62. Produce, to the extent not produced in response to any Document Request, all documents consulted or used in preparing CP&L's response to any Interrogatory.

Response:

CP&L will produce responsive, non-privileged documents.

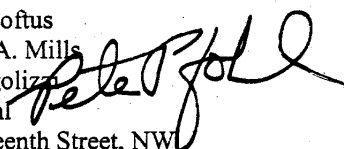
Respectfully submitted,

CAROLINA POWER & LIGHT COMPANY

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Dated: March 8, 2002

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CERTIFICATE OF SERVICE

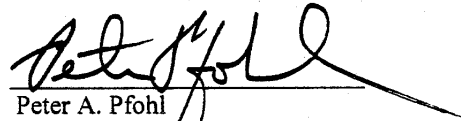
I hereby certify, that I have this 8th day of March, 2002 caused to be served copies of the foregoing Complainant's Responses and Objections to Norfolk Southern Railway Company's First Set of Interrogatories and Requests for Production of Documents on counsel for defendant Norfolk Southern Railway Company ("NS") as follows:

G. Paul Moates, Esq.
Vincent F. Prada, Esq.
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, D.C. 20005

(via hand delivery);

George A. Aspatore, Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

(via overnight mail).


Peter A. Pfohl
An Attorney for Complainant

ATTACHMENT B

**Excerpt From "2002 Budget Power Estimate Revision 1" to
CP&L "Monthly Fossil Unit Summary" (CPL-05445-05446)**

Filed Separately Under Seal
Pursuant to Protective Order

Summary of the NC Clean Smokestacks Bill

Bill Title: Improve Air Quality /Electric Utilities; SB 1078, HB 1015

~~Summary of the Clean Smokestacks Bill~~

On Monday April 23, the North Carolina Senate passed the North Carolina Clean Smokestacks Bill with an overwhelming 43 – 5 vote. The NC House of Representatives is currently considering an identical bill where it has over 50 co-sponsors and bipartisan support. Governor Easley has also indicated his support for the bill. The utilities, Duke Energy and Progress, Energy stated that they can and will meet the reductions called for in the bill.

The Clean Smokestacks bill would do the following:

- ♦ **NOx Cap.** Set a statewide cap to reduce NOx emissions year-round by 78% from 1998 levels. This cap essentially extends the NOx SIP call requirements year-round. The reduction would be phased in by 2009.
- ♦ **SO2 Cap.** Set a statewide cap to reduce SO2 emissions by 73% from 1998 levels. The reduction would be phased in by 2013.
- ♦ **Additional NOx and SO2 Reductions.** Direct the Environmental Management Commission, the state's rule-making body, to evaluate annually beginning in 2004, the need for further reductions of these pollutants.
- ♦ **Other States.** Direct the state to use its resources to compel other states to make similar reductions.
- ♦ **Study Carbon Dioxide.** Direct the state to study issues related to setting standards for carbon dioxide emissions.
- ♦ **Study Mercury.** Direct the state to study issues related to setting standards for mercury emissions.
- ♦ **Cost Recovery.** Allow utilities to recover the full cost of compliance for reductions pertaining solely to this bill.

Prepared by Michael Shore, Southeast Air Quality Manager, Environmental Defense
Phone: (919) 881-2601 e-mail: mshore@ed.org
May 1, 2001

Existing Requirements, Standards, and Goals for SO₂ and NO_x

Caps for SO ₂ (tons)				
	2000	2009	2010	2013
Federal Title IV Requirements (Acid Rain Program)	317,000		266,000	
NC Clean Smokestacks Bill		250,000		130,000

Caps for NO _x (tons)			
	2007 Summer	2007 Year-Round	2009
Federal NO _x SIP Call (5 months of year only)	28,000		
Clean Smokestacks Bill (year-round)		60,000	56,000

There is not a standard for mercury in the bill, but controlling NO_x and SO₂ also reduces mercury emissions.

- ♦ Estimated Incidental Mercury Reduction – 66% reduction from 1998 levels

General Assembly

Senate Bill 1078

Improve Air Quality/Electric Utilities. (= H 1015)

Bill Text: [Edition 1](#) [Edition 2](#)

Introduced by: Allen H. Wellons, Austin M. Allran, Brad Miller, Charles Carter, Charles W. Albertson, Daniel G. Clodfelter, David F. Weinstein, Eleanor Kinnaird, Eric Miller Reeves, Fletcher L. Hartsell, Jr., Frank W. Ballance, Jr., Hamilton C. Horton, Jr., Howard N. Lee, James Calvin Cunningham, James Forrester, Jeanne H. Lucas, John A. Garwood, John H. Kerr III, Kay R. Hagan, Linda Garrou, Patrick J. Ballantine, Philip E. Berger, Robert A. Rucho, Robert C. Carpenter, Stephen M. Metcalf, T. LaFontaine Odom, Sr., Tony Rand, Virginia Foxx, Wib Gulley, William R. Purcell

P/L = Public/Local Bill | S = Affects Appropriations
* = Bill Text Has Changed

Session	2001 - 2002	Prime Sponsors	Stephen M. Metcalf
Fiscal Notes	Available	Attributes	P

Date		Action
04/04/2001	S	Filed
04/05/2001	S	Ref To Com On Agriculture/Environment/Natural Resources
04/18/2001	S	Reptd Fav Com Substitute
04/18/2001	SA	Com Substitute Adopted
04/19/2001	S	Withdrawn From Cal
04/19/2001	S	Placed On Cal For 4/23/2001
04/23/2001	S	Passed 2nd & 3rd Reading
04/25/2001	H	Rec From Senate
04/25/2001	H	Ref to the Com on Public Utilities and, if favorable, to the Com on Environment and Natural Resources

[\[how a law is made\]](#)

Bill Look-Up

Enter a bill number to search for.

Example: Enter S7 to search for Senate Bill 7 or H7 to search for House Bill 7.

2001 - 2002 Session Bill Number:

[Disclaimer](#)

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

2

SENATE BILL 1078*
Agriculture/Environment/Natural Resources
Committee Substitute Adopted 4/18/01

Short Title: Improve Air Quality/Electric Utilities. (Public)
Sponsors:
Referred to:

April 5, 2001

A BILL TO BE ENTITLED
AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY REQUIRING
REDUCTIONS IN THE EMISSIONS OF CERTAIN POLLUTANTS FROM
CERTAIN FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.107 reads as rewritten:

- "§ 143-215.107. Air quality standards and classifications.
- (a) Duty to Adopt Plans, Standards, etc. - The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:
- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
 - (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
 - (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
 - (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
 - (5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

- (6) To adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs a motor vehicle, all information necessary to fully make use of the on-board diagnostic equipment and the data compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.
- (8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide (SO₂) allowances and nitrogen oxides (NO_x) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.
- (8a) To develop and adopt standards and plans and to implement programs to control emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) as provided in G.S. 143-215.107D.
- (9) To regulate the content of motor fuels, as defined in G.S. 119-16, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.
- (10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.
- (11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.
- (12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.
- (13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.
- (14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or

other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. - In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g). Repealed by Session Laws 1995, c. 507, s. 27."

SECTION 2. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:
"§ 143-215.107D. Emissions of oxides of nitrogen

(NOx) and sulfur dioxide (SO2) from
certain coal-fired electric generating units.

The Environmental Management Commission shall adopt rules to implement G.S. 143-215.107(a) (8a) as provided in this section. For emissions of oxides of nitrogen (NOx), the Commission shall develop and adopt standards and plans and implement programs to control emissions from coal-fired generating units, as those terms are defined in 40 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by an investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to generate 25 or more megawatts of electricity so that no later than 1 January 2007 these units will collectively emit no more than 60,000 tons of oxides of nitrogen (NOx) annually and no later than 1 January 2009 these units will collectively emit no more than 56,000 tons of oxides of nitrogen (NOx) annually. For emissions of sulfur dioxide (SO2), the Commission shall develop and adopt standards and plans and implement programs to control emissions from coal-fired generating units, as those terms are defined in 40 Code of Federal Regulations § 96.2 (1 July 2000 Edition), that are owned or operated by an investor-owned public utility, as defined in G.S. 62-3, and that have the capacity to generate 25 or more megawatts of electricity so that no later than 1 January 2009 these units will collectively emit no more than 250,000 tons of sulfur dioxide (SO2) annually and no later than 1 January 2013 these units will collectively emit no more than 130,000 tons of sulfur dioxide (SO2) annually."

SECTION 3. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:
"§ 62-133.6. Environmental compliance expenditure-

recovery.

(a) As used in this section, the term
'environmental compliance expenditures' means only those
expenditures incurred after 1 July 2001 by an electric utility
to comply with standards adopted pursuant to G.S. 143-215.
107D that exceed the expenditures required to comply with
the revisions to the State Implementation Plan (SIP) to
reduce emissions of oxides of nitrogen (NOx) pursuant to the
final notice published by the Administrator of the United States
Environmental Protection Agency at 63 Federal Register 57491 (27
October 1998) codified at 40 Code of Federal Regulations §
51.121 (1 July 2000 Edition).

(b) The Commission shall hold a hearing and shall allow each electric utility to recover all just, reasonable, and prudently incurred environmental compliance expenditures through an environmental compliance expenditure-recovery factor that is separate from the electric utility's base rates.

(c) The Commission shall set the environmental compliance expenditure-recovery factor for each utility at least annually. The Commission shall base the environmental compliance expenditure-recovery factor on projections of environmental compliance expenditures for a future 12-month period. The Commission shall incorporate into the environmental compliance expenditure-recovery factor determination the experienced under-recovery or over-recovery of the electric utility's environmental compliance expenditures incurred during the previous 12-month period. Any refund or collection made as part of this process shall include interest at a rate to be determined by the Commission.

(d) The Commission shall adopt rules to implement this section."

SECTION 4. It is the intent of the General Assembly that the State use all available resources and means, including negotiation, participation in interstate compacts and multistate and interagency agreements, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) comparable to those required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as enacted by Section 2 of this act, on a comparable schedule. The State shall give particular attention to those states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage.

SECTION 5. The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) beyond those required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as enacted by Section 2 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September 2004.

SECTION 6. The General Assembly anticipates that measures implemented to achieve the reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) required by G.S. 143-215.107(a)(8a), as enacted by Section 1 of this act, and G.S. 143-215.107D, as enacted by Section 2 of this act, will also result in significant reductions in the emissions of mercury from coal-fired generating units. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to monitoring emissions of mercury and the development and implementation of standards and plans to

implement programs to control emissions of mercury from coal-fired generating units. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of mercury. The Division shall annually report on its interim findings and recommendations to the Environmental Management Commission and the Environmental Review Commission beginning 1 March 2002. The Division shall report its final findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 March 2005.

SECTION 7. The Division of Air Quality of the Department of Environment and Natural Resources shall study issues related to the development and implementation of standards and plans to implement programs to control emissions of carbon dioxide from coal-fired generating units and other stationary sources of air pollution. The Division shall evaluate available control technologies and shall estimate the benefits and costs of alternative strategies to reduce emissions of carbon dioxide. The Division shall report its findings and recommendations to the Environmental Management Commission and the Environmental Review Commission no later than 1 March 2002.

SECTION 8. This act is effective when it becomes law.