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SEC

SERVICE DATE – MARCH 23, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42069

DUKE ENERGY CORPORATION  
v.  
NORFOLK SOUTHERN RAILWAY COMPANY

STB Docket No. 42070

DUKE ENERGY CORPORATION  
v.  
CSX TRANSPORTATION, INC.

STB Docket No. 42072

CAROLINA POWER & LIGHT COMPANY  
v.  
NORFOLK SOUTHERN RAILWAY COMPANY<sup>1</sup>

Decided: March 22, 2005

On March 7, 2005, the complainants in these proceedings, Duke Energy Corporation and Carolina Power & Light Company, filed three separate motions to compel responses to discovery. The complainants request an order compelling the defendants to produce contracts and other responsive documents related to Request for Production Nos. 3 and 4 served on the defendants in each proceeding.

Request No. 3 seeks production of all defendant coal transportation contracts and tariffs governing shipments (made in the year 2001 or thereafter): (1) relating to shippers in the complainants' Stand-Alone Railroad (SARR) traffic group; (2) relating to defendant-served shippers that lack facilities, access rights, or other means to receive rail service at destination by any other railroad than the defendant in that particular proceeding; or (3) relating to the transportation of coal by the defendant to any shipper that lacks the facilities, access rights, or other means to receive rail service by more than

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<sup>1</sup> These proceedings are not consolidated. They are being handled together in a single decision for administrative convenience.

one rail carrier. Request No. 4 seeks, to the extent that documents produced in response to request No. 3 relate to shippers not included in the respective SARR traffic group of each proceeding, all contracts and common carrier pricing authorities pertaining to the coal shipments prior to the date that the document produced as a result of Request No. 3 took effect. Complainants submit that the requests were intended to obtain information relevant to the phasing inquiry insofar as it relates to the defendants' pricing practices for their coal transportation services.

Defendants replied in each proceeding on March 10, 2005. Defendants state that they have agreed to produce the documents that are the subject of the complainants' motions to compel, if ordered to do so by the Board. Defendants state that many of the contracts have confidentiality or non-disclosure provisions that prohibit the defendants from producing them to a third party unless ordered to do so by a court or government agency. Defendants reiterate their belief that the requested documents are not relevant to the phasing inquiry and reserve the right to object to their introduction into evidence in this phase of the proceeding.

Here, there is good cause to grant complainants' motions, subject to the "Highly Confidential" provisions of the protective orders issued in these proceedings. Therefore, they will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Complainants' motions to compel discovery of rail transportation contracts are granted, as specified above.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary