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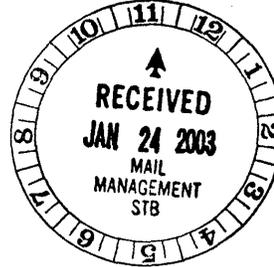
BY HAND

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

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Public Record



Re: *STB Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Railway Company*

Dear Secretary Williams:

We write in response to the letter from Duke counsel to you dated January 22, 2003, requesting that the Board not consider actual 2002 traffic data that NS filed in connection with the above-captioned matter. See William L. Slover Letter to Secretary Williams (Jan. 22, 2003). NS submitted its actual traffic data for the second half of 2002 (which first became available the second week of January 2003) in response to Duke's erroneous Rebuttal allegation that NS had withheld this information in order to understate likely SARR traffic volumes.

Although final third quarter traffic data was not even available when NS filed its Reply Evidence on September 30, Duke alleged on rebuttal that NS' Reply Evidence "deliberately chose to discuss data for only the first six months of [2002]" in order to avoid disclosing that "Eastern coal volumes are returning to levels previously projected." See Duke Rebuttal at III-A-10 to III-A-12. Duke's allegation is not only flatly wrong, it is an attack on NS' integrity. The Board should not allow Duke to attack NS' integrity and then object to NS' responsive submission of evidence that demonstrates that Duke's allegations were baseless and erroneous. Duke's position would force the Board to balance Duke's unsupported allegation that traffic likely exceeded forecast levels against NS' denial of that allegation. The actual traffic volume data NS has submitted, on the other hand, will allow the Board an opportunity to determine for itself what actually happened to SARR traffic volumes in the second half of 2002.

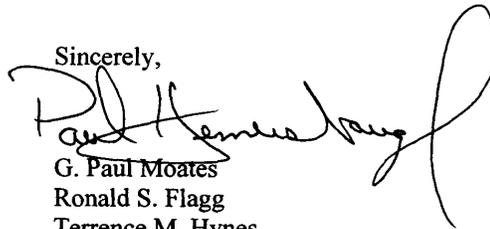
When the Board reviews that actual traffic data, it will find that traffic volumes on the lines traversed by Duke's SARR did not even approach projected levels. Instead, that traffic actually fell well below the levels projected in NS' own course-of-business forecast, and

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even further below Duke's made-for-litigation forecast. Thus, contrary to Duke's allegation, for purposes of SAC analysis, NS would have benefited from the use of actual traffic volumes from the third and fourth quarters of 2002, because those volumes were substantially lower than the actual volumes NS used in its very conservative Base Case.

Duke's effort to suppress NS' actual traffic volume is telling. Rather than allowing the Board to examine actual traffic volume data, Duke would prefer that the Board confine its review to an assessment of Duke's insinuations, unsupported suppositions, and allegations concerning base year traffic. Duke's objection to the Board's consideration of evidence that could only enhance the rigor and accuracy of the SAC analysis speaks volumes about Duke's lack of confidence in its own evidence and SAC presentation, and the veracity of Duke's allegations concerning 2002 traffic volumes. The Board should reject Duke's invitation to disregard the best evidence of actual traffic volumes for the second half of 2002, and accept NS' actual traffic data.

Sincerely,



G. Paul Moates  
Ronald S. Flagg  
Terrence M. Hynes  
Paul A. Hemmersbaugh

cc: Counsel for Complainant