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January 12, 2004

By Hand Delivery

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

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

Dear Secretary Williams:

Enclosed for filing on behalf of CSX Transportation, Inc. ("CSXT") in the above-referenced proceeding are a signed original and ten (10) copies of Defendant CSX Transportation Inc.'s Reply to Complainant's Supplemental Evidence ("Reply"). Also enclosed are ten (10) CDs containing electronic workpapers, and three (3) floppy disks containing an electronic version of the Reply. Each floppy disk also contains three exhibits in PDF format.

Please acknowledge receipt of this submission for filing by date-stamping the enclosed duplicate paper copy and returning it to our messenger.

If you have any questions concerning this filing, please contact one of the undersigned. Thank you for your attention to this matter.

Sincerely,

G. Paul Moates
Terence M. Hynes
Paul A. Hemmersbaugh

Enclosures

cc: Counsel for Complainant (w/encls.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.



STB Docket No. 42070

209842

DEFENDANT CSX TRANSPORTATION, INC.'S REPLY
TO COMPLAINANT'S SUPPLEMENTAL EVIDENCE

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DATED: January 12, 2004

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DUKE ENERGY CORPORATION,)	
)	
<i>Complainant,</i>)	
v.)	STB Docket No. 42070
)	
CSX TRANSPORTATION, INC.,)	
)	
<i>Defendant.</i>)	
)	

**DEFENDANT CSX TRANSPORTATION, INC.'S REPLY
TO COMPLAINANT'S SUPPLEMENTAL EVIDENCE**

INTRODUCTION

The Board's October 14, 2003 Order (the "October 14 Order") reopened the record in this proceeding for the "sole purpose" of affording the parties an opportunity to submit supplemental evidence regarding the impact on their respective SAC calculations of disallowing Duke's attempt to reroute certain ACW/CSXT crossover movements.¹ Specifically, the Board directed the parties to "quantify the revenues and costs of the stand-alone railroad attributable to the re-routing of [crossover] traffic." October 14 Order at 1.

¹ In TMPA, the Board held that "[t]o re-route non-issue traffic, the complainant's SAC analysis must either take responsibility for the entire movement from origin to destination or fully account for the ramifications of requiring the residual carrier to alter its handling of the traffic." STB Docket No. 42056, Texas Municipal Power Agency v. Burlington Northern Santa Fe Railway Co. (served March 24, 2003) ("TMPA") at 22 (emphasis added). More recently, in its NS/Duke Energy and NS/CP&L decisions, the Board established a rebuttable presumption that reroutes of crossover traffic that significantly alter the route of movement on the residual carrier, and result in a greater overall length of haul, are invalid. See STB Docket No. 42069, Duke Energy Corp. v. Norfolk Southern Ry. Co. (served November 6, 2003) ("NS/Duke Energy") at 25-26; STB Docket No. 42072, Carolina Power & Light Company v. Norfolk Southern Ry. Co. (served December 23, 2003) ("NS/CP&L") at 21-22.

The Supplemental Evidence filed by Duke on January 5, 2004 (“Duke’s Supplement”) goes far beyond the scope of the evidence requested by the October 14 Order. Duke does not even begin to address the revenue and cost impacts of disallowing the challenged reroutes until page 17 of its 26-page Supplement. Instead, Duke devotes most of its Supplement to a variety of other issues, including:

- the definition of “what constitutes a crossover traffic reroute” (Duke Supp. 1-5);
- a critique of the Board’s presumption regarding reroutes that lengthen the total haul (id. 8-10); and
- an entirely new proposed methodology for allocating revenues on rerouted crossover traffic (id. 10-17).

Each of these issues amounts to a request that the Board abandon a fundamental holding in its recent NS/Duke Energy and NS/CP&L decisions. It is ironic that Duke seeks to broaden the issues in this supplemental round of evidence, while at the same time questioning the “propriety” of the October 14 Order itself. See Duke Supp. 1. The Board should reject Duke’s attempt to expand the scope of the limited reopening called for by the October 14 Order.

In any event, Duke’s estimates of the costs and revenues associated with the challenged reroutes should be rejected, for several reasons:

First, Duke’s Supplement is based upon the same fundamentally flawed revenue and cost evidence that Duke submitted in its case-in-chief. For example, Duke estimates the operating costs attributable to the challenged reroutes by applying an ill-conceived ton-mile-based adjustment to the operating costs generated in the first instance by Duke’s inherently unreliable string diagram model. Likewise, Duke’s estimate of the revenues associated with the challenged reroutes is derived from the flawed revenue evidence presented in its case-in-chief (which included a substantial overstatement of actual base year traffic, and manipulated RCAF projections to inflate future SARR revenues — see CSXT Br. 32-39). Supplemental revenue and

cost estimates based upon the flawed evidence presented in Duke's case-in-chief are inherently unreliable, and should be rejected.

Second, Duke's supplemental revenue calculations are based upon an entirely new and wholly unsupported methodology for allocating revenues between its SARR and the residual CSXT. Specifically, Duke asks the Board to calculate revenue divisions on "rerouted" crossover traffic in a manner different from that which the Board prescribed for all crossover shipments in both NS/Duke Energy and NS/CP&L. See Duke Supp. 7-8. It is patently inappropriate for Duke to introduce a proposed new revenue allocation methodology — which neither Duke, nor any party, has espoused in any prior SAC proceeding — in response to the Board's narrow request that the parties quantify the revenues and costs associated with the challenged reroutes. Duke proffers no persuasive reason why the Board should treat "rerouted" traffic differently from other crossover traffic, nor has it demonstrated that its unprecedented "hold harmless" divisions methodology (see Duke Supp. 10-17) is reasonable.

Third, Duke's Supplement offers little substantive evidence regarding the impact of disallowing the challenged reroutes on the ACW's investment and operating costs. Indeed, Duke did not even bother to analyze the effect of restoring the customary routing for the challenged reroutes on the ACW's capacity requirements, blithely asserting that such effects are "too inconsequential to justify the quantification of the impact." Duke Supp. 20; id. 22. Duke likewise failed to quantify the impact of disallowing the challenged reroutes on any specific category of operating costs (e.g., locomotive expenses, car expenses and crew costs). Instead, Duke applied an across-the-board reduction to virtually every category of operating expenses, based upon the reduction in ACW ton-miles that would result if the challenged reroutes were redirected to their customary route(s) of movement. Duke Supp. 18, Duke Supp. Exh. S-4.

For the reasons explained below, CSXT's revenue calculations, its location-specific analysis of investment costs, and its itemized quantification of operating expenses associated with the challenged rerouted traffic, constitute the best record evidence regarding the revenues and costs attributable to the challenged reroutes. Accordingly, the Board should adopt the revenue and cost estimates set forth in CSXT's Supplemental Evidence.

I. SCOPE OF THE CHALLENGED REROUTED CROSSOVER TRAFFIC

Duke's Supplement gives the erroneous impression that there are substantial issues for the Board to resolve regarding the identity of the rerouted crossover traffic at issue in this proceeding. See Duke Supp. 1-5. As the following discussion shows, in almost all cases, the alleged discrepancies referred to by Duke are either non-existent, or are irrelevant in light of the Board's recent pronouncements regarding the rerouting of crossover traffic.

CSXT Supplemental Exhibit 7 (attached to this Reply) depicts, in tabular form, the parties' positions with respect to rerouted crossover shipments. Duke's Supplement (at 5) indicated that there are 60 ACW/CSXT crossover movements that, Duke believes, should be classified as "rerouted" shipments. Those movements are listed in Lines 1-60 of CSXT Supp. Exh. 7. As CSXT Supp. Exh. 7 also shows, CSXT agrees with Duke that each of those 60 movements is properly classified as a "reroute." Compare CSXT Supp. Exh. 7, Column 8 (identifying all shipments classified as reroutes by CSXT) with Column 9 (identifying all shipments classified as reroutes by Duke). Of the total of 60 movements, 36 (listed in Lines 1-36 of CSXT Supp. Exh. 7) are reroutes that result in a shorter overall length of haul, and are therefore presumptively valid under the principles articulated by the Board in NS/Duke Energy and NS/CP&L. Accordingly, as indicated in Column 10 of CSXT Supp. Exh. 7, CSXT has not challenged those shorter reroutes in its Supplemental Evidence. See also CSXT Supp. Exh. 1 (listing the movements constituting the "challenged rerouted traffic").

The remaining 24 movements that CSXT and Duke agree are properly classified as “reroutes” are challenged by CSXT. (The challenged movements are listed in Lines 37-60 of CSXT Supp. Exh. 7.) The movements listed in Lines 37-58 are challenged on the grounds that the rerouting proposed by Duke alters the route of movement on the residual CSXT, and would also lengthen the total haul. See CSXT Supp. Exh. 1. The movements listed in Lines 59 and 60 of CSXT Supp. Exh. 7 would result in a shorter haul, but are challenged by CSXT on the grounds that the customary route of movement for those shipments never touches any CSXT line replicated by the ACW — in fact, they never come within hundreds of miles of the “on-junction” at which Duke assumes the ACW would receive them from the residual CSXT. See CSXT Supp. 4-7.²

Finally, Line 61 of CSXT Supp. Exh. 7 involves a movement whose customary route never passes within 280 miles of the ACW “on-junction” assumed by Duke (DK Cabin, WV). See CSXT Supp. Exh. 2. Duke did not include this movement on its list of 60 “reroutes,” nor did Duke’s Supplement offer any explanation as to why it should not be classified as a “rerouted” shipment. CSXT’s position is that this movement — which was diverted hundreds of miles out of route by Duke — is properly classified as a “reroute,” and that Duke’s proposal to reroute the movement should be disallowed for the reasons set forth at pp. 4-7 of CSXT’s Supplement.

Duke takes the position that the movements listed in Lines 62-81 of CSXT Supp. Exh. 7 should not be classified as “reroutes” at all, because (according to Duke) CSXT moved those shipments via Spartanburg, SC (or, in the case of Line 81, Mount Holly, NC) “at least once during 2001.” Duke Supp. 3, 4-5 (emphasis added). CSXT agrees with Duke that it would be

² The movements listed on Lines 39, 40, 41, 50 and 52 of CSXT Supp. Exh. 7 are challenged by CSXT both on the grounds that rerouting those movements would result in a greater total length of haul, and because the customary route of movement for those shipments never passes anywhere near the ACW “on-junction” assumed by Duke.

inordinately burdensome to study these movements on a train-by-train basis, in order to determine the reason(s) why a route via Spartanburg, rather than the customary routing, was utilized by CSXT in each instance. See Duke Supp. 4. However, CSXT strongly disagrees with Duke's assertion (see Duke Supp. 3, 4-5) that a Complainant should be permitted to shift traffic away from its customary route of movement to a crossover route involving the SARR's lines whenever it can show that the incumbent railroad moved a single trainload via that route during the study year, especially where, as here, the record is devoid of evidence regarding the reason for the different routing (e.g., train accident or severe weather on the customary route, detour for track maintenance, shipper request, operating convenience, etc.).

In any event, the Board does not need to resolve the parties' disagreement regarding the proper classification of the shipments listed on Lines 62-81 of CSXT Supp. Exh. 7. As that Exhibit shows, CSXT has not challenged Duke's rerouting of the movements listed on Lines 62 through 80, inclusive. Those reroutes would result in a shorter overall length of haul, and are therefore presumptively valid under the principles articulated in the recent NS/Duke Energy and NS/CP&L decisions. In order to simplify further the issues in dispute, CSXT withdraws its challenge to the one remaining movement, listed in Line 81 of CSXT Supp. Exh. 7, which involves only 5,135 annual tons moving between the Liberty mine in West Virginia and Graingers, NC. Eliminating this small shipment (which amounts to less than one train per year — see CSXT Supp. 11-12) from the group of "challenged reroutes" would have no material impact on the analyses of the ACW's operating and investment costs set forth in CSXT's Supplement.

In summary, the only rerouted crossover shipments at issue here — i.e., those reroutes that have been challenged by CSXT and which ought to be disallowed, consistent with the

Board's prior decisions — are the movements listed in Lines 37-61 of CSXT's Supp. Exh. 7. Those challenged shipments involve 25 origin-destination pairs, and approximately 3.64 million tons of annual coal traffic. The Board need not consider, or resolve any disputes involving, the propriety of Duke's decision to reroute other crossover shipments listed in CSXT Supp. Exh. 7.

II. DUKE'S PROPOSED NEW DIVISIONS METHODOLOGY

The centerpiece of Duke's Supplement is its proposal of an entirely new methodology for allocating revenues on rerouted crossover traffic between the SARR and the residual incumbent carrier. See Duke Supp. 7-17. Specifically, Duke proposes that a SARR be permitted to reroute a crossover movement — regardless of the impact of the reroute on the total length of haul — so long as the residual carrier's "rate of compensation" is maintained by applying a supposed "hold constant" adjustment to the MSP divisions calculation prescribed by the Board's recent NS/Duke Energy and NS/CP&L decisions. Id. Conversely, Duke proposes an upward adjustment of the revenues allocated to the SARR on rerouted shipments that produce shorter overall hauls, on the grounds that the MSP methodology unfairly expropriates a portion of the savings attributable to the SARR's (purported) greater efficiency. Id. 10-11. Duke's untimely attempt to alter the Board's recently-adopted MSP divisions methodology, as applied to "rerouted" crossover traffic, should be rejected.

As an initial matter, Duke's proposal is far beyond the scope of the evidence requested by the October 14 Order. That order directed the parties to "quantify" the revenues (and costs) associated with rerouted traffic, not to propose new — and totally unprecedented — methodologies for allocating revenues on rerouted shipments. The parties had ample opportunity to present such proposals as part of their respective cases-in-chief, and both Duke and CSXT took full advantage of that opportunity. See Duke Op. III-A-20 to 25; CSXT Reply III-A- 28 to 47; Duke Reb. III-A-31 to 61. If Duke desired to advocate a "hold harmless" adjustment to the

revenue allocation on rerouted crossover traffic, it could have (and should have) done so in its case-in-chief. Duke's attempt to introduce such a proposal for the first time in its Supplemental Evidence is improper, and should be rejected for that reason alone.

Duke's proposal also flies in the face of the Board's admonition that it will adhere to established precedent unless a party can demonstrate "a persuasive reason to depart from that precedent." NS/CP&L at 13. In the NS/Duke Energy proceeding (to which Duke was a party), the Board addressed at length the proper methodology for allocating revenues on crossover traffic, and adopted the MSP methodology. NS/Duke Energy at 17-25. The Board reaffirmed that holding in its recent NS/CP&L decision (at 20-21). Duke's Supplement offers no persuasive reason why the Board should apply a different methodology in this case than it did in deciding Duke's rate dispute with CSXT's competitor, NS. Moreover, Duke's proposed "hold harmless" adjustment would (according to Duke) apply only to rerouted crossover traffic. Duke Supp. 7-8. But Duke has not presented any coherent basis for treating "rerouted" shipments differently from other crossover traffic.

In any event, Duke's proposed "hold harmless" adjustment is fatally flawed, for two reasons:

First, Duke's proposal ignores the issue of through route efficiency that is clearly at the heart of the Board's concern about rerouting of crossover traffic.³ The premise underlying that proposal is that a SARR should be permitted to enhance its revenues by shifting crossover traffic

³ The Board's NS/Duke Energy and NS/CP&L decisions clearly provided that the presumption permitting shorter reroutes, and disallowing longer ones, may be rebutted in particular cases, where it can be demonstrated that a longer route is more efficient (or a shorter one less efficient) than the customary routing. It may well be that today's real-world routing is more efficient than the proposed reroute (regardless of whether it is longer or shorter). In such circumstances, any change to the customary routing would increase the costs of handling the movement to the railroad and/or its shippers. (Given the relatively insignificant impact of the challenged reroutes in this case, CSXT has elected not to make such a showing here.)

to a less efficient interline routing, so long as the incumbent carrier is compensated “on a ‘hold harmless’ basis.” Duke Supp. 9, and n. 7.⁴ That premise is fundamentally at odds with SAC principles. Duke’s further assumption that customers would be willing to accept less efficient routings “in order to share more fully in the SARR’s savings” (Duke Supp. 17) is inconsistent with both SAC and the record evidence. As CSXT has previously shown (CSXT Br. 3, 33-34) Duke’s own revenue calculations assumed that the ACW would charge the same rates as CSXT does today. Indeed, the SAC analysis is designed to measure the revenues and costs that the SARR would experience if it charged the same rates as the incumbent carrier. Moreover, Duke has not proffered any evidence demonstrating that shippers — such as the Florida utilities whose rerouted coal shipments move predominately in private fleets (see CSXT Supp. 6) — would accept longer routes that reduced the productivity of their assets, simply to enhance the ACW’s revenues.

Second, the revenue adjustment advocated by Duke would not “hold harmless” the residual incumbent. The two examples discussed in Duke’s Supplement (at 12-17) demonstrate this reality (and also illustrate why Duke is so anxious to reroute crossover traffic). The “game” that Duke seeks to introduce into the process, with its rerouting and “hold harmless” adjustment, is to substantially increase the distance a movement travels over the SARR, and substantially decrease the distance the movement travels over the residual incumbent, regardless of whether the overall length of haul increases, decreases or stays the same. Duke’s premise is that the

⁴ See also Duke Supp. 9 (“Duke does not agree that the automatic exclusion of reroutes that lengthen the total distance by more than a very small amount is sound in any event. *The residual incumbent should still be willing to handle the traffic* so long as the residual incumbent’s revenue division covers the residual incumbent’s incremental costs and makes a positive contribution”); 11-12 (“ . . . where the total length of haul is increased, and the residual incumbent stands to receive a diminished rate of compensation of line-haul and terminal services, the SARR might find it in its best interests, and the best interests of its customers generally, to provide additional compensation to the residual incumbent in the form of “hold harmless” compensation.”)

residual incumbent should be willing to “play the game” as long as it is “held harmless.”

However, even if operating costs per route mile are identical via the customary route and the rerouted route (which Duke has not shown), it is easy to see that Duke’s proposed methodology does not, in fact, hold the residual incumbent harmless.

For example, if it is assumed that each of the two sample movements generates an R/VC ratio of 2, variable costs are exactly half of the revenues.⁵ In Table S-3, under the “Original Routing via Typo,” the residual CSXT would receive revenues of \$13.73, incur costs of \$6.865 ($\$13.73/2$), and therefore realize a contribution of \$6.865. Under the “Reroute via Spartanburg,” the residual incumbent would receive \$9.62 in revenues and incur costs of \$4.35,⁶ leaving it with contribution of only \$5.27. Assuming that costs per mile are the same via either route, the residual CSXT’s costs would be reduced by \$2.515 per ton (\$6.865 minus \$4.35), while its revenues were reduced by \$4.11, thereby reducing the overall contribution of the movement to CSXT’s joint and common costs. Application of Duke’s proposed adjustment would reduce contribution even further (without any offsetting additional cost decrease) by transferring an additional \$0.92 per ton to the ACW. Under Duke’s proposal — assuming operating costs per mile are identical via the historical and rerouted route — Duke would reduce CSXT’s revenues by \$5.03 per ton, even though the residual incumbent’s costs are reduced by only \$2.515 per ton. Assuming — as is more logical — that costs are actually higher via the rerouted route, the contribution earned by CSXT would decline even further. Clearly, the residual CSXT would not be “held harmless” under this scenario, even if the Board’s MSP were applied, and the

⁵ The principles articulated here are not affected by the R/VC assumption – they would be equally true whether the R/VC were 1.1 or 4.0.

⁶ Revenue per ton-mile of 11.5 mills, divided by 2 = 5.75 mills. 5.75 mills X 656.6 miles on residual CSXT via Spartanburg = \$3.775 per ton. Adding terminal costs of \$0.575 per ton (original division relating to destination terminal of \$1.15 per ton divided by R/VC ratio of 2 = \$0.575 per ton) yields total costs on residual CSXT via Spartanburg of \$4.35.

adjustment proposed by Duke would only serve to exacerbate that harm. In short, where the reroute results in a reduction in the overall length of haul, application of Duke's adjustment fails its own standard of "holding harmless" the residual incumbent, and should be rejected.

Analysis of the movement described in Duke's Table S-4 produces a similar (although not identical) result. By moving the Sarah-Harlee traffic via a longer Spartanburg route, Duke is able to substantially increase the miles on the ACW and decrease the miles on the residual CSXT. Assuming for purposes of analysis that the historical movement generates an R/VC ratio of 2, and that costs per mile via the rerouted route are identical to costs via the customary route, the revenues earned by the residual CSXT would decline from \$7.00 to \$3.70, while its costs would decline from \$3.50 ($\$7.00/2$) to \$1.92.⁷ In other words, revenues earned by the residual CSXT would decline by \$3.30, even though its costs would decline by only \$1.58. Duke's proposed "hold harmless" adjustment would do little to offset this harm, increasing the residual CSXT's division by only \$0.14 per ton. Even after this adjustment, the residual CSXT's revenues would decline by \$3.16, while its costs would decline by only \$1.58. Contrary to Duke's assertions, no residual incumbent could be expected to consent to the reroutes proposed by Duke under these circumstances.

In summary, Duke's proposed methodology does not meet the standard set by Duke — of holding the residual carrier harmless — even when the MSP is applied. Where the reroute results in a shorter overall movement, the adjustment proposed by Duke serves to exacerbate this harm, not to mitigate it. Where the reroute produces a longer overall movement, the modification suggested by Duke fails to address the Board's fundamental concern about through

⁷ Revenue per ton-mile of 11.5 mills, divided by 2 = 5.75 mills. 5.75 mills x 233.1 miles on residual CSXT via Spartanburg = \$1.340 per ton. Add terminal costs of \$0.58 per ton (original division relating to destination terminal of \$1.16 per ton divided by R/VC ratio of 2 = \$0.58 per ton) yields total costs on residual CSXT via Spartanburg of \$1.92.

route efficiency, while doing little to offset the substantial harm caused to the residual incumbent by permitting the rerouting to occur. The Board should reject Duke's proposed "hold harmless" adjustment because it would arbitrarily reduce the revenues earned by the residual carrier without an offsetting reduction in the residual carrier's costs. The Board certainly should not be deterred from rejecting this fallaciously named "hold harmless" adjustment by Duke's shaking of the "barrier to entry" shillelagh. (See Duke Supp. 12). Denying Duke's efforts to drain revenues from CSXT through application of an economically irrational standard scarcely constitutes creation of "an impermissible entry barrier" (id.); rather it represents a sound rejection of yet another attempt to game the stand-alone cost test.

III. SARR CONFIGURATION

Duke and CSXT agree generally on the alternate gateways at which the challenged crossover traffic would be interchanged if the rerouted segments were disallowed. Compare Duke Supp. Exh. S-3 with CSXT Supp. Exh. 1.⁸ However, Duke's Supplement contains no substantive analysis of the impact on the ACW's track capacity requirements of returning the challenged movements to their customary routings. Duke simply asserts that redirecting those shipments "should theoretically reduce congestion" and "presumably reduce the need for capital investment." Duke Supp. 22 (emphasis added). Duke concludes that disallowing the challenged reroutes would not result in any changes in the ACW's main line track configuration. Id.⁹

⁸ CSXT's Supplemental Evidence assumed that the eight movements, totaling approximately 455,000 tons, that Duke diverted from routes that never come close to the ACW "on junction" posited by Duke would move via their customary routing, and that the ACW therefore would not participate in those movements. CSXT Supp. 10. Duke's Supplemental Exhibit S-3 likewise appears to recognize that the customary routing of these shipments (via Cumberland, MD or Corbin, KY) would bypass the ACW.

⁹ Duke acknowledged that the increase in interchange activity at Pineville Jct., KY occasioned by redirecting 3 million tons of ACW/CSXT crossover traffic from the Spartanburg gateway to Pineville Jct. might create the need for an additional interchange track at that location. Duke Supp. 21-22. See CSXT Reply III-B-63; CSXT Supp. Exh. 3.

By contrast, CSXT's Supplemental Evidence presented a careful, location-specific analysis of the impact on the ACW's track capacity requirements of redirecting the challenged crossover traffic to ACW/CSXT interchange points that more accurately reflect the customary route of movement for such shipments. Utilizing the same three methodologies (the Rail Traffic Controller ("RTC") Model, Capacity Constraint Analysis, and the Kloer Table) that he used in preparing CSXT's case-in-chief, witness Wheeler identified certain reductions in the ACW's track facilities that would be possible if the challenged reroutes were disallowed. See CSXT Supp. 9-20; CSXT Supp Exh. 3. CSXT witness Baranowski demonstrated that eliminating the track facilities identified in witness Wheeler's supplemental analysis would reduce the ACW's investment costs by \$18.2 million. CSXT Supp. 20-21, Table 2. CSXT's detailed, location-specific analysis of the investment costs associated with the challenged reroutes constitutes the best record evidence of such costs, and should be adopted by the Board.

In its Supplement, Duke attempts to augment its Rebuttal evidence regarding the necessity for capital improvements on CSXT's line south of Spartanburg, SC. See Duke Supp. 22-25. The matters raised by Duke (for the first time) in its Supplement could have — and should have — been included in Duke's Rebuttal. The Board should reject Duke's untimely attempt to buttress its Rebuttal in this manner. In any event, Duke's Supplement fails to address the question raised by the October 14 Order — *i.e.*, the impact (if any) of disallowing the challenged reroutes on the need for improvements on the residual CSXT's lines south of Spartanburg. CSXT's Supplemental Evidence (at 16-18) addresses that issue in detail, and constitutes the best record evidence regarding required facility improvements south of Spartanburg.

The workpapers underlying witness Wheeler's supplemental analysis of the ACW's track and facility requirements included an executable copy of the RTC Model — identical to the version used by witness Wheeler in preparing CSXT's case-in-chief — loaded on a CSXT-owned laptop computer. See CSXT Supp. Computer WP 1. CSXT provided the RTC Model for the Board's use in evaluating CSXT's Supplemental Evidence. The model enables the Board to test witness Wheeler's conclusions regarding the ACW's track requirements in light of the correct treatment of the challenged rerouted traffic.¹⁰

CSXT also obtained (at its expense) an additional copy of the RTC Model for Duke's use in evaluating, and responding to, CSXT's Supplemental Evidence. In response to a request by Duke for production of the RTC Model following the filing of CSXT's Reply, CSXT previously advised Duke that it could purchase a copy of the model from the model's developer, Berkeley Simulation Software ("Berkeley"). See Duke Reb. III-B-12. (The licensing agreement governing the RTC Model prohibits use of the model on multiple computers, so that CSXT could not "share" the copy used by it in preparing its Reply.) Duke apparently contacted Berkeley to inquire about obtaining a copy of the model for use in preparing its Rebuttal, but made a tactical decision not to do so. See Duke Rebuttal at II-B-12 to 13 & n.13. Duke subsequently took the position that the Board should not give weight to that portion of CSXT's Reply evidence that was based upon the RTC Model because CSXT did not provide the model to Duke and the Board at CSXT's expense. Duke Br. 28-29. CSXT's decision to provide the RTC Model to both Duke and the Board (at CSXT's sole expense) in connection with CSXT's Supplemental Evidence effectively moots any objection that Duke might assert to the Board's consideration of witness Wheeler's supplemental RTC Model analysis.

¹⁰ CSXT's supplemental workpapers also include a tutorial that provides instructions on the use of the RTC Model.

Prior to delivering the RTC Model to Duke, CSXT's counsel contacted Duke's counsel to make certain arrangements that were necessary to comply with the terms of CSXT's licensing agreement with Berkeley. Specifically, CSXT asked that Duke agree (i) to grant access to the model only to those persons authorized to have access to Highly Confidential materials under the Protective Order in this proceeding; (ii) not to copy any of the computer files constituting the RTC Model; and (iii) to return the model (and the CSXT-owned laptop to which it is licensed) upon completion of these proceedings. See CSXT Supp. Exh. 8 (Letter from T. Hynes to R. Rosenberg dated January 5, 2004). After initially agreeing to these terms, Duke changed its mind. In a letter to CSXT's counsel (see Letter from R. Rosenberg to T. Hynes dated January 5, 2004, attached as CSXT Supp. Exh. 9), Duke counsel advised that "we see no useful purpose served through CSXT's belated willingness to come forward with the model."

Duke's decision to decline the copy of the RTC Model that CSXT obtained for Duke's use provides no justification for the Board to reject or discount CSXT's supplemental RTC Model analysis. Duke cannot complain that the terms requested by CSXT — which mirror the conditions under which all materials designated "Highly Confidential" under the Board's Protective Order served Feb. 5, 2002 have been produced during the course of this proceeding — were in any manner unreasonable. CSXT continues to be willing to furnish the model to Duke at CSXT's expense, subject to the terms set forth in CSXT Supp. Exh. 8.

Nor can Duke legitimately assert that it was improper for CSXT to submit the RTC Model to the Board (and to Duke) in connection with CSXT's Supplemental Evidence. As Duke itself acknowledged, the impact of disallowing the challenged reroutes on the ACW's capacity requirements can be quantified only by rerunning the capacity model analyses presented by the parties in their respective cases-in-chief. Duke Supp. 20, 22. (For reasons known only to it,

Duke elected not to do so.) Moreover, Duke touted the fact that it provided a copy of witness Crowley's string diagram model in connection with Duke's case-in-chief as the reason the Board should adopt Mr. Crowley's capacity evidence, rather than CSXT's. Duke Br. 30. Thus, it was entirely appropriate for CSXT to submit the RTC Model as a workpaper underlying witness Wheeler's supplemental RTC Model analysis.

Finally, Duke's (erroneous) contention that CSXT's prior unwillingness to purchase the RTC Model for Duke's use deprived it of the ability to test CSXT's case-in-chief RTC analysis provides no basis for the Board to disregard (or accord reduced weight to) CSXT's supplemental capacity evidence. Consistent with NS/Duke Energy and NS/CP&L, it is likely that the Board will adjust the ACW's traffic base to exclude those rerouted crossover movements that violate the principles articulated in those decisions. If the Board does, in fact, make such adjustments, the best evidence regarding the ACW's capacity requirements will be that set forth in CSXT's Supplemental Evidence (rather than in its case-in-chief). Both Duke and the Board will have had the opportunity to utilize the RTC Model to evaluate CSXT's supplemental capacity analysis. In these circumstances, Duke cannot contend that it would be unfairly prejudiced were the Board to adopt the results of the RTC analysis presented by CSXT in its Supplemental Evidence.

For the reasons discussed above, CSXT's supplemental capacity analyses constitute the best evidence regarding the impact of disallowing the challenged reroutes on the ACW's track capacity requirements, and that evidence should be adopted by the Board.

IV. OPERATING PLAN

Duke's Supplement does not discuss the changes in the ACW's operations that would result from disallowing the challenged reroutes. By contrast, CSXT's Supplemental Evidence identifies the specific impact of the challenged reroutes on the ACW's locomotive and car fleets, interchange volumes, train inspection activities and operating personnel requirements. CSXT

Supp. 22-24. CSXT's submission constitutes the best evidence of the impact of disallowing the challenged reroutes on the ACW's operations, and should be adopted by the Board.

V. OPERATING EXPENSES

Duke's estimate of the annual operating expenses associated with the challenged rerouted traffic should be rejected, and CSXT's estimates should be adopted by the Board, for several reasons:

First, Duke proffered no quantification whatsoever of the impacts of disallowing the challenged reroutes on specific categories of ACW operating expenses. Instead, Duke simply applied an across-the-board reduction to virtually every category of ACW operating costs (as calculated by Duke in its case-in-chief), in proportion to the reduction in ACW ton-miles that would occur if the challenged reroutes were redirected to their customary route(s) of movement. See Duke Supp. 17-18.¹¹ Duke's meat-axe approach is inherently less reliable than CSXT's operating cost evidence, which quantifies the impact of the challenged reroutes on each individual category of ACW operating costs, based upon revised operating statistics reflecting changes in the ACW's train operations that would occur if the challenged reroutes were redirected to their customary route(s) of movement. See CSXT Supp. 24-27 and Tables 3 and 4.

Second, Duke's reduction of virtually every category of operating costs on the basis of the change in ton-miles handled by the ACW clearly overstates the savings that would result from shifting the line-haul for the challenged crossover movements back to their customary routing(s). Duke's methodology reduces all of the costs incurred by the ACW in handling the subject traffic, including the cost of loading operations at mine origins and the cost of

¹¹ Duke's operating cost adjustment excluded only the costs of operating managers, general and administrative costs, and *ad valorem* taxes, which are not directly volume-driven, and which would not be substantially impacted by the modest reduction in traffic volume resulting from disallowance of the challenged reroutes. See Duke Supp. 18.

interchanging the challenged movements with CSXT, even though those functions would be unaffected by disallowance of a portion of the rerouted ACW line-haul. As CSXT has shown, railroads incur substantial costs in connection with loading, train assembly and switching activities in and around the mine origins. See generally CSXT Reply III-C, III-D. A reduction in the length of the ACW's line-haul on the challenged reroutes (by shifting them back to their customary interchange points) would not produce any reduction in the ACW's cost of originating the traffic. Likewise, shifting the point of interchange for the challenged reroutes from Spartanburg, SC to alternate gateways (such as Typo, Pineville Jct. or Russell, KY) would not reduce the costs incurred by the ACW in performing interchange operations. (Witness Fliess' supplemental analysis of the ACW operating plan confirms that redirecting the challenged rerouted traffic would not enable the ACW to reduce operating personnel levels at ACW terminals. See CSXT Supp. 24.) Thus, reducing the ACW's traffic origination and interchange costs on the basis of a reduction in line-haul ton-miles overstates the operating cost savings attributable to disallowing the challenged reroutes.

Reducing other categories of operating expenses in direct proportion to a reduction in line-haul ton-miles is also of dubious validity. For example, maintenance-of-way costs tend to increase or decrease in an incremental step function, rather than in a linear fashion in tandem with ton-miles. Duke tendered no evidence to support its assumption that there exists a direct linear relationship between line-haul ton-miles and particular categories of operating expenses.

In short, Duke has failed to produce evidence sufficient to sustain its ton-mile-based methodology for estimating the impact of disallowing the challenged reroutes on the ACW's annual operating expenses. In contrast, CSXT presented a detailed analysis of the impact of the challenged reroutes on each specific category of ACW operating costs, based upon the same

spreadsheet methodology utilized by CSXT witness Plum in developing CSXT's case-in-chief. CSXT's itemized analysis of ACW operating expenses is clearly superior to Duke's unsupported, across-the-board approach. Accordingly, the Board should adopt CSXT's estimate of the changes in ACW operating costs that would result from disallowing the challenged reroutes.

Finally, Duke made no attempt to account for the impact of the challenged reroutes on CSXT's off-SARR operating costs, as required by the Board's TMPA decision (at 22). Duke's failure to make such a showing warrants disallowance of all of the challenged reroutes.

CONCLUSION

For all of the foregoing reasons, and those set forth in CSXT's Supplemental Evidence, the Board should adopt CSXT's estimates of the revenues and costs attributable to the challenged rerouted crossover traffic.

Respectfully submitted,

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Counsel for Defendant CSX Transportation, Inc

DATED: January 12, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,)	
)	
<u>Complainant,</u>)	
)	
v.)	STB Docket No. 42070
)	
CSX TRANSPORTATION, INC.,)	
)	
<u>Defendant.</u>)	

VERIFICATION AND STATEMENT OF QUALIFICATIONS

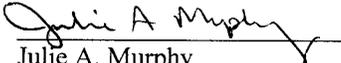
JULIE A. MURPHY

My name is Julie A. Murphy. I previously sponsored portions of the Reply and Supplemental Evidence of CSX Transportation, Inc. in this matter.

In Defendant CSX Transportation Inc.'s Reply to Complainant's Supplemental Evidence, I am sponsoring Sections I and II.

I declare under the penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this testimony.

Executed on this 12th day of January, 2004.


Julie A. Murphy

BEFORE THE
SURFACE TRANSPORTATION BOARD

DUKE ENERGY CORPORATION,)	
)	
<u>Complainant,</u>)	
)	
v.)	STB Docket No. 42070
)	
CSX TRANSPORTATION, INC.,)	
)	
<u>Defendant.</u>)	

VERIFICATION AND STATEMENT OF QUALIFICATIONS

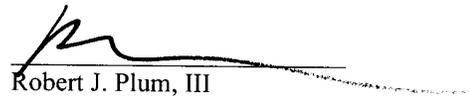
ROBERT J. PLUM, III

My name is Robert J. Plum, III. I previously sponsored portions of the Opening, Reply, Rebuttal, and Supplemental Evidence of CSX Transportation, Inc. in this matter.

In Defendant CSX Transportation Inc.'s Reply to Complainant's Supplemental Evidence, I am sponsoring Section V.

I declare under the penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this testimony.

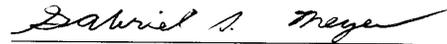
Executed on this 12th day of January, 2004.


Robert J. Plum, III

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of January, 2004, I served the foregoing
“Defendant CSX Transportation Inc.’s Reply to Complainant’s Supplemental Evidence” by
causing five (5) copies thereof to be delivered, via hand delivery, to:

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



Gabriel S. Meyer

Exhibit 7

↳

60 OD pairs that CSXT and Duke agree are reroutes (including longer and shorter than historical hauls). (5.7 million tons).
 18 OD pairs that Duke claims are not reroutes because a train traverses the ACW at least once in 2001. Not challenged by CSXT. (2.9 million tons).

1 OD pair not included in Duke's rerouted traffic. Challenged by CSXT Supplemental Evidence. (38,762 tons).

Line No.	Origin	O St	Destination	D St	SARR Interchange	Historical Interchange	CSXT (All) Reroutes	Duke (All) Reroutes	CSXT Challenged Reroutes	Movements Over ACW At Least Once	2002 SARR Tons
1	SARAH	KY	HARLEE	GA	SPARTANBURG	N/A	X	X			9,556
2	LYNCH3	KY	HARLEE	GA	SPARTANBURG	N/A	X	X			442,046
3	LYNCH3	KY	PARK	FL	SPARTANBURG	N/A	X	X			111,633
4	TYPO	KY	CEDARBAY	FL	SPARTANBURG	N/A	X	X			71,846
5	SAPPHIRE	KY	PARK	FL	SPARTANBURG	N/A	X	X			9,560
6	BUCKEYE1	KY	CEDARBAY	FL	SPARTANBURG	N/A	X	X			7,979
7	SAPPHIRE	KY	SUTTON	FL	SPARTANBURG	N/A	X	X			28,494
8	SAPPHIRE	KY	PLYMOUTH	NC	MOUNT HOLLY	N/A	X	X			25,183
9	LEATHERW1	KY	HARLEE	GA	SPARTANBURG	N/A	X	X			20,908
10	BATBRANCH	KY	STILESBOR	GA	SPARTANBURG	N/A	X	X			10,521
11	LEATHERW1	KY	PARK	FL	SPARTANBURG	N/A	X	X			9,100
12	YELCREEK	KY	PLYMOUTH	NC	MOUNT HOLLY	N/A	X	X			166,908
13	MOUSIE	KY	STILESBOR	GA	SPARTANBURG	N/A	X	X			62,198
14	WELPREPLA	WV	STILESBOR	GA	SPARTANBURG	N/A	X	X			30,339
15	HUTCHINSO	WV	LELAND	NC	MOUNT HOLLY	N/A	X	X			7,553
16	BLUGRASS4	KY	ROCMOUNT	NC	MOUNT HOLLY	N/A	X	X			5,636
17	BETH	WV	ROBINSON	SC	MOUNT HOLLY	N/A	X	X			9,841
18	DAMFORK	KY	PLYMOUTH	NC	MOUNT HOLLY	N/A	X	X			7,534
19	DAMFORK	KY	STILESBOR	GA	SPARTANBURG	N/A	X	X			10,576
20	RAPLOADE1	KY	PARK	FL	SPARTANBURG	N/A	X	X			93,623
21	KOHL SAAT	WV	CEDARBAY	FL	SPARTANBURG	N/A	X	X			17,123
22	HIGNITE1	KY	WARSAW	NC	SPARTANBURG	N/A	X	X			13,643
23	DAMFORK	KY	GASTON	AL	SPARTANBURG	N/A	X	X			8,746
24	RAPLOADE1	KY	GAY	FL	SPARTANBURG	N/A	X	X			9,220
25	RAPLOADE1	KY	BROOKSVIL	FL	SPARTANBURG	N/A	X	X			375,987
26	BETH	WV	RINCON	GA	SPARTANBURG	N/A	X	X			71,709
27	BATBRANCH	KY	LUMBERTON	NC	MOUNT HOLLY	N/A	X	X			9,656
28	TYPO	KY	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			300,479
29	BEVBRANCH	KY	HARLEE	GA	SPARTANBURG	N/A	X	X			10,672
30	SAPPHIRE	KY	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			79,340
31	BUCKEYE1	KY	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			9,364
32	MOUSIE	KY	MONCURE	NC	MOUNT HOLLY	N/A	X	X			9,993
33	FOLA	WV	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			9,125
34	SYLVESTER	WV	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			18,241
35	WELPREPLA	WV	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			28,564
36	HOLBROOK	WV	REDLEVJUN	FL	SPARTANBURG	N/A	X	X			27,228
37	CLOVER	KY	STILESBOR	GA	SPARTANBURG	PINEVILLE	X	X	X		234,255
38	LYNCH3	KY	STILESBOR	GA	SPARTANBURG	PINEVILLE	X	X	X		1,335,382
39	EMEMINE 1/	PA	POWERPARK	FL	SPARTANBURG	CUMBERLAND	X	X	X		47,613
40	EMEMINE 1/	PA	BOSTWICK	FL	SPARTANBURG	CUMBERLAND	X	X	X		29,801
41	BAIMINE 1/	PA	POWERPARK	FL	SPARTANBURG	CUMBERLAND	X	X	X		81,059
42	LYNCH3	KY	MITCHELL	GA	SPARTANBURG	PINEVILLE	X	X	X		174,963
43	GOALS	WV	NORBIRMIN	AL	SPARTANBURG	RUSSELL	X	X	X		50,605
44	WELPREPLA	WV	NORBIRMIN	AL	SPARTANBURG	RUSSELL	X	X	X		54,639
45	LYNCH3	KY	JACMAC	GA	SPARTANBURG	PINEVILLE	X	X	X		101,466
46	RAPLOADE1	KY	STILESBOR	GA	SPARTANBURG	TYPO	X	X	X		62,334
47	HUTCHINSO	WV	STILESBOR	GA	SPARTANBURG	RUSSELL	X	X	X		57,323
48	FANCO	WV	STILESBOR	GA	SPARTANBURG	RUSSELL	X	X	X		61,248
49	PRENTER	WV	STILESBOR	GA	SPARTANBURG	RUSSELL	X	X	X		28,755
50	EVERGREEN 1/	WV	REDLEVJUN	FL	SPARTANBURG	CUMBERLAND	X	X	X		104,425
51	CLOVER	KY	HARLEE	GA	SPARTANBURG	PINEVILLE	X	X	X		51,584
52	EVERGREEN 1/	WV	LAKELAND	FL	SPARTANBURG	CUMBERLAND	X	X	X		42,837
53	CLOVER	KY	POWERPARK	FL	SPARTANBURG	PINEVILLE	X	X	X		337,884
54	CLOVER	KY	TAFT	FL	SPARTANBURG	PINEVILLE	X	X	X		40,983
55	CLOVER	KY	PARK	FL	SPARTANBURG	PINEVILLE	X	X	X		401,572
56	CLOVER	KY	LAKELAND	FL	SPARTANBURG	PINEVILLE	X	X	X		9,740
57	DAMFORK	KY	STEVENSON	AL	SPARTANBURG	RUSSELL	X	X	X		56,934
58	DAMFORK	KY	BRIDGEPOR	AL	SPARTANBURG	RUSSELL	X	X	X		124,731
59	CONSOL95 2/	WV	BOSTWICK	FL	SPARTANBURG	N/A	X	X	X		40,396
60	RESOURCE 2/	KY	REDLEVJUN	FL	SPARTANBURG	N/A	X	X	X		70,723
61	LOVMINE 2/	WV	BOSTWICK	FL	MOUNT HOLLY	N/A	X		X		387,62
62	LYNCH3	KY	TAFT	FL	SPARTANBURG	N/A	X			X	234,908
63	LEATHERW1	KY	TAFT	FL	SPARTANBURG	N/A	X			X	619,288
64	BLUGRASS4	KY	CANADYS	SC	SPARTANBURG	N/A	X			X	17,189
65	TYPO	KY	SAVANNAH	GA	SPARTANBURG	N/A	X			X	122,392
66	RAPLOADE1	KY	SUTTON	FL	SPARTANBURG	N/A	X			X	45,904
67	MIDDLESBO	KY	HARTSVILL	SC	MOUNT HOLLY	N/A	X			X	64,831
68	MIDDLESBO	KY	LELAND	NC	MOUNT HOLLY	N/A	X			X	7,284
69	BUCKEYE1	KY	LUMBERTON	NC	MOUNT HOLLY	N/A	X			X	25,915
70	LEATHERW1	KY	RAEFORD	NC	MOUNT HOLLY	N/A	X			X	6,462
71	LEATHERW1	KY	SOCHILL	SC	MOUNT HOLLY	N/A	X			X	37,315
72	BLUGRASS4	KY	LELAND	NC	MOUNT HOLLY	N/A	X			X	49,955
73	LEATHERW1	KY	LUMBERTON	NC	MOUNT HOLLY	N/A	X			X	5,103
74	BUCKEYE1	KY	WARSAW	NC	MOUNT HOLLY	N/A	X			X	26,682
75	MOUSIE	KY	HARLEE	GA	SPARTANBURG	N/A	X			X	370,074
76	YELCREEK	KY	REDLEVJUN	FL	SPARTANBURG	N/A	X			X	490,858
77	BEVBRANCH	KY	PARK	FL	SPARTANBURG	N/A	X			X	18,625
78	RAPLOADE1	KY	REDLEVJUN	FL	SPARTANBURG	N/A	X			X	631,436
79	MCVICKER	KY	BOSTWICK	FL	SPARTANBURG	N/A	X			X	79,637

Notes:
 1/ These OD pairs are challenged because real world trains never traverse the ACW and because the proposed reroute is longer than the historical routing.
 2/ These OD pairs are challenged because real world trains never traverse the ACW.

Exhibit 8

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January 5, 2004

Robert D. Rosenberg, Esq.
Slover & Loftus
1224 17th Street, N.W.
Washington, DC 20036

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

Dear Robert:

This letter has reference to our telephone conversation this afternoon, during which we discussed the terms upon which CSXT will make available to Duke Energy Corporation's outside counsel and consultants an executable copy of the Rail Traffic Controller ("RTC") simulation Model utilized by CSXT witness Wheeler in preparing CSXT's Supplemental Evidence filed today in the above-captioned proceeding.

As you know, the RTC Model is subject to a licensing agreement with Berkeley Simulation Software, which prohibits the copying of any RTC files. CSXT has obtained an additional copy of the RTC Model, which it will provide to Duke (on a CSXT-owned laptop computer) subject to the following terms:

1. Duke agrees that its outside counsel and consultants will use the laptop computer, and the RTC Model installed thereon, solely for purposes of this proceeding, and not for any other purpose. The laptop computer and the RTC Model will be treated as Highly Confidential pursuant to the terms of the Protective Order entered by the Board in this proceeding.
2. Duke's counsel and consultants will not make any copies of the RTC Model, or any of the files which constitute the RTC Model.
3. Duke agrees that it will return the laptop computer, and the RTC Model software installed thereon, to CSXT within five (5) business days after completion of the STB proceedings in the above-captioned case (prior to any judicial appeals). If, following such appeals, the case is remanded to the STB for further proceedings, and such proceedings involve

Robert D. Rosenberg, Esq.
January 5, 2004
Page 2

issues relating to matters for which the RTC Model was utilized by CSXT and/or Duke, CSXT agrees that it will make the laptop computer, and the RTC Model installed thereon, available to Duke's outside counsel and consultants for use in connection with such further STB proceedings on remand, subject to the terms set forth in this letter.

Per your request during our telephone conversation today, CSXT will deliver the laptop computer, by messenger, directly to Duke's consultant, Mr. Thomas Crowley, immediately upon receipt of a countersigned copy of this letter.

Finally, CSXT acknowledges that Duke's agreement to the terms of this letter shall not be construed as a waiver of any objection that Duke might otherwise assert to the RTC Model or to CSXT's evidence based thereon.

If the foregoing is consistent with your understanding of our agreement, please countersign the letter in the space provided below, and return the letter by facsimile to the undersigned.

Sincerely yours,


Terence M. Hynes

TMH:aat

Agreed and accepted this 5th
day of January, 2004:

Counsel for Duke Energy Corporation

SLOVER & LOFTUS

ATTORNEYS AT LAW

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January 5, 2004

BY FAX AND HAND

Terrence M. Hynes, Esq.
Sidley & Austin
1501 K Street, N.W.
Washington, D.C. 20005

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

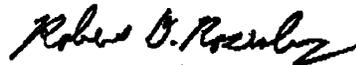
Dear Terry:

We write to respond to your letter of this date received late this afternoon. Therein, you seek our agreement to a page and a half of terms and conditions relating to Duke's access to a computer model (the RTC model) which CSXT has used throughout the course of this case to develop evidence concerning stand-alone railroad operations.

Heretofore, CSXT has been unwilling to make a copy of the model available to the Board or to Duke's counsel and consultants. CSXT's about-face comes so late in the course of this proceeding that we see no useful purpose served through CSXT's belated willingness to come forward with the model.

Accordingly, for the foregoing reasons and under the described circumstances, we decline, on Duke's behalf, to enter into any agreement concerning the supplement evidence whose due date is moments away.

Sincerely,



Robert D. Rosenberg