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February 13, 2004

BY HAND

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

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

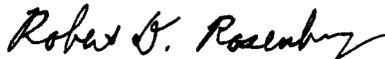
Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and 16 copies of the Motion of Complainant Duke Energy Corporation ("Duke") for an Extension of Time for Filing Petitions for Reconsideration in this proceeding.

Because this Petition is being filed less than two weeks before petitions for reconsideration are due under the Board's rules, Duke requests that the Board give this filing **EXPEDITED CONSIDERATION**.

We have enclosed an additional copy of this Motion to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,



Robert D. Rosenberg

Enclosures  
cc: Counsel for Defendants



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BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings

~~FEB 13 2004~~

DUKE ENERGY CORPORATION,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42070
	)	
CSX TRANSPORTATION, INC.	)	
	)	
	)	
Defendant.	)	

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**MOTION OF COMPLAINANT DUKE ENERGY CORPORATION  
FOR EXTENSION OF TIME TO FILE PETITIONS FOR  
RECONSIDERATION AND FOR STAY OF DATE BY WHICH  
COMPLAINANT IS TO ADVISE THE BOARD WHETHER IT  
WISHES TO SEEK RELIEF UNDER THE PHASING CONSTRAINT**

**EXPEDITED ACTION REQUESTED**

DUKE ENERGY CORPORATION

By: Paul R. Kinny  
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Duke Energy Corporation  
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OF COUNSEL:  
  
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1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dated: February 13, 2004

Attorneys for Complainant



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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DUKE ENERGY CORPORATION,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42070
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	

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**MOTION OF COMPLAINANT DUKE ENERGY CORPORATION  
FOR EXTENSION OF TIME TO FILE PETITIONS FOR  
RECONSIDERATION AND FOR STAY OF DATE BY WHICH  
COMPLAINANT IS TO ADVISE THE BOARD WHETHER IT  
WISHES TO SEEK RELIEF UNDER THE PHASING CONSTRAINT**

Complainant Duke Energy Corporation (“Duke”) hereby respectfully requests a 30-day extension of the due date for petitions for reconsideration of the Board’s decision served February 4, 2004, in the above-captioned proceeding. The present due date is February 24, 2004; the proposed due date is March 25, 2004. Counsel for Defendant CSX Transportation, Inc. (“CSXT”) has authorized Duke to advise the Board that it has no objection to this proposed extension.

In addition, Duke requests the Board to stay the present date (March 5, 2004) by which it is to advise the Board whether it wishes to seek relief under the phasing constraint, until 15 days after the date of service of the Board’s decision for

reconsideration. Counsel for CSXT has indicated that CSXT opposes this request, and intends to file a reply in opposition thereto.

In support of this motion, Duke respectfully states as follows.

**I. Petitions for Reconsideration**

Under the Board's rules, petitions for reconsideration of an agency decision are normally due 20 days after service of the decision. However, this case involves a voluminous record, a 109-page decision on the merits, and hundreds of millions of dollars. In addition, Duke's economic consultants have been unable to complete their review of the staff workpapers underlying the decision, and in fact, on February 11, 2004, Duke's counsel advised the Board that two electronic spreadsheets underlying the Board's calculations of SARR road property investment costs are missing.

Finally, Duke's counsel and consultants are actively involved in other rate cases with due dates in February, including Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Railway Company (petitions for reconsideration due February 23, 2004); Docket No. 41185, Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company (Opening evidence on reopening due February 27, 2004); and Docket No. 41191 (Sub-No. 1), AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company (Opening evidence due March 1, 2004). In addition, at least some of CSXT's consultants presumably are involved in the preparation of reply evidence in Docket No. 42071, Otter Tail Power

Company v. The Burlington Northern and Santa Fe Railway Company, which is due on February 23, 2004.

For these reasons, Duke needs additional time to prepare a petition for reconsideration of the Board's decision served February 4, 2004, and requests a 30-day extension (to March 25, 2004) of the due date for such petitions. As indicated earlier, CSXT does not oppose this request.

**II. Petition for Stay of Phasing Notification Date**

At present, Duke is to notify the Board whether it wishes to seek relief under the phasing constraint within 30 days after service of the February 4 decision, or by March 5, 2004. Duke has not yet decided whether to seek phasing relief, and in order to make an informed decision whether to do so it needs to know what SAC relief it may be awarded as a result of its petition for reconsideration. The interests of administrative efficiency would be served by postponing the date by which Duke must notify the Board whether it wishes to seek relief under the phasing constrain.

Duke also notes that in the Duke/NS rate case (Docket No. 42069), the Board stayed both the effective date of its merits decision and the due date for notifying the Board whether Duke wishes to seek phasing relief. Granting the requested stay in this case would put it in a similar procedural posture as Duke's rate case against NS.

Counsel for CSXT has indicated that CSXT opposes the request for a stay of the date for notifying the Board whether Duke wishes to seek relief under the phasing

constraint, and has requested Duke to inform the Board that it intends to file a reply in opposition to this request.

Because of the short time (11 days) between the filing of this motion and the present due date for petitions for reconsideration, Duke respectfully requests the Board to expedite its decision on this motion.

Respectfully submitted,

DUKE ENERGY CORPORATION

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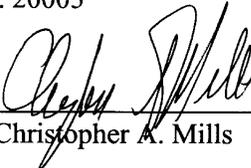
Dated: February 13, 2004

Attorneys for Complainant

**Certificate of Service**

I hereby certify that this 13th day of February 2004, I have caused a copy of the foregoing Response to be served by hand upon counsel for Defendants as follows:

G. Paul Moates  
Paul A. Hemmersbaugh  
Sidley & Austin  
1501 K Street, N.W.  
Washington, D.C. 20005

  
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Christopher A. Mills