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

Re: Carolina Power & Light v. Norfolk Southern Railway Co., STB Docket No. 42072

Dear Secretary Williams:

We write on behalf of Defendant Norfolk Southern Railway Company ("NS"), to clarify three factual points that may have been confused by statements in Complainant CP&L's "Consolidated Reply to Petition to Correct Technical Error and to Petition for Reconsideration," filed in the above-captioned case on February 9, 2004 ("CP&L Reply"). Although the facts described below should be undisputed, NS wishes to ensure that the record is clear on these three points.

First, NS' Petition for Reconsideration stated that, to the extent the Board was going to take "official notice" of government data (not found in the record) as the best evidence of traffic moving over the P&SH, it should rely upon EIA data reflecting actual coal production for the Central Appalachian region rather than EIA forecasts of such production. NS Reconsideration Petition at 2, 8-9 (Jan. 20, 2004). CP&L asserted in its reply that "NS fails to state precisely when this [actual production] data became available." CP&L Reply at 4. As is clear from the published data itself (including the EIA web-sites cited in NS' Petition at 2 n.1), the EIA publishes actual coal production data every week for the prior week, for the year-to-date, and for the prior 52 weeks. Thus, for example, actual Central Appalachian coal production data for 2002 (showing an approximately 7.9% decline in coal production from 2001, as reflected in Table 1 of NS' Reconsideration Petition) were available on the EIA's web-site by the second week of January 2003 – prior to the EIA's release of AEO 2003 and over 11 months before the Board's decision in this proceeding. Although the Board could readily determine this fact from the

record, NS provides this explanation in response to CP&L's professed ignorance about the timing of EIA's issuance of relevant data.

Second, CP&L's Reply agrees with NS that the Decision understated P&SH operating expenses by applying an incorrect ratio of peak-year to base-year tonnages (which accounted for $13.3 million of the $13.7 million total operating expense error identified in NS' Reconsideration Petition), but it disputes whether the Board should revise the peak year from 2003 to 2008. CP&L Reply at 9-10. In addition, however, CP&L raises a new claim in its Reply – that the Board created another error by inserting new "hard codes" (in place of formulas) to its traffic forecast spreadsheet. *Id.* According to CP&L, that error effectively caused "tons for the P&SH to be overstated by approximately 100,000 tons per year beginning in 2008 and continuing through 2022." *Id.* at 9. However, CP&L fails to quantify what (if any) impact the error might have on P&SH operating costs, or to suggest how the Decision might be revised to correct any such error. *See id.* Moreover, while CP&L implies that some (unquantified) adjustment of operating expenses might be appropriate to account for the apparent tonnage overstatement, it neglects to acknowledge the obvious corollary that if P&SH tonnages are reduced, its revenues also must be correspondingly reduced (NS estimates that the revenue overstatement associated with the "hard code" errors averages approximately $3.4 million per year for the years 2008-2022).

NS agrees that the net effect of the Board's insertion of several "hard code" numbers in place of dynamic formulas in the relevant spreadsheets was to increase overall P&SH tonnages by approximately 97,000 tons per year for the years 2008 to 2022, and, correspondingly, to overstate P&SH revenues and costs. The most straightforward way to address both the cost and revenue changes associated with the "hard code" errors CP&L mentions would be to first eliminate the hard codes in the spreadsheet cells CP&L has identified, and replace those hard codes with the appropriate formulas. *See* CP&L Reply at 9, n. 8 (listing the cells in STB Decision WP "Final Revenues and Tons.xls" into which hard codes were inserted). The spreadsheet will then flow through the appropriate calculations of tonnages and revenues for the 20-year DCF period. Second, to properly adjust the associated operating expenses, the Board would need to replace the corresponding inputs to its operating expense spreadsheet, at STB Workpaper "stb-Trains (CPL-NS).xls," worksheet "Unique of Trains 2003," column "H."

Third, CP&L's Reply claims it is responding to "two different petitions" filed by NS, which CP&L uses to justify filing a 32-page reply that exceeds the 20-page maximum prescribed by the Board's rules by sixty (60) percent. *See* CP&L Reply at 1, 12, n.14; 49 C.F.R. § 1115.3(d). Consistent with the Board's rules, NS filed a single Reconsideration Petition (divided for convenience into two sections, one for computational errors, and the other for more substantive errors), and that Petition complied with the 20-page maximum prescribed by those same regulations. Contrary to CP&L's suggestion, the Board's rules provide for only one type of reconsideration petition in a maximum rate reasonableness case; they do not authorize a separate "technical error correction" petition. To the best of NS' knowledge, CP&L did not request that the Board waive the page limit on replies to reconsideration motions. Because this

situation may arise in the future, NS asks the Board to address CP&L's novel, unilateral interpretation of the Board's rules.

NS hopes these three items help to clarify the record in this matter. If you have any questions, please contact one of the undersigned.

Very truly yours,

G. ~~Paul Moates~~
Paul A. Hemmersbaugh

cc: C. Michael Loftus
David M. Konschnik