

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUE
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KENDRA A. ERICSON

213765

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

April 14, 2005



WRITER'S E-MAIL:
cml@sloverandloftus.com

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and ten copies of Complainant's Petition to Modify Procedural Schedule. Because this Petition is being filed eighteen (18) days before its Opening Statement is due under the present schedule, Complainant requests that the Board give this filing **EXPEDITED CONSIDERATION**.

An additional copy of this pleading also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your prompt attention to this matter.

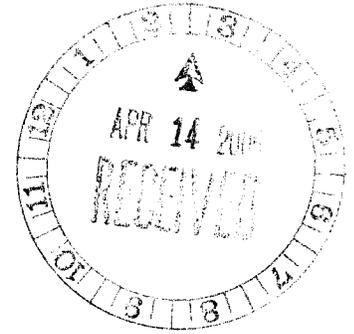
Sincerely,
C. Michael Loftus
C. Michael Loftus

CML:jwp
Enclosures

cc: David M. Konschnik
Counsel for NS

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DUKE ENERGY CORPORATION)	
)	
Complainants,)	
)	Docket No. 42069
v.)	
)	
NORFOLK SOUTHERN RAILWAY)	
COMPANY,)	
)	
Defendant.)	

PETITION TO MODIFY PROCEDURAL SCHEDULE

Complainant Duke Energy Corporation (“Duke”) hereby requests that the Board modify the procedural schedule issued by the Board on January 6, 2005 as follows to permit a thirty (30) day extension for the filing of Duke’s Opening Statement:

	<u>Present Schedule</u>	<u>Proposed Schedule</u>
Opening Statement due	May 2, 2005	June 2, 2005
Reply Statement due	June 1, 2005	July 1, 2005
Rebuttal Statement due	July 1, 2005	August 1, 2005
Briefs due	August 1, 2005	September 1, 2005

Modification of the schedule is appropriate for several reasons. First, one of Duke’s expert consultants and witnesses (L.E. Peabody & Associates), is currently involved in a number of pending coal rate cases. The procedural schedule in this matter

was initially proposed in recognition of this involvement, and was structured so as not to conflict with the procedural schedules in those other matters. Recent modifications to the procedural schedules in these other matters, however, has limited the availability of that consultant for purposes of this proceeding. Specifically, on March 21, 2005, the Board modified the procedural schedule in Docket No. 42088, *Western Fuels Association, Inc. and Basin Electric Power Cooperative v. BNSF Railway Company* (“WFA”). As a result of these revisions, Opening Statements in Docket No. 42088 are now due on April 19, 2004, just thirteen days before the date that Duke’s Opening Statement would be due in this phasing proceeding. In addition, by order dated March 18, 2005, the Board granted a one-week extension in the Otter Tail rate case (Docket No. 42071). As a consequence, supplemental reply evidence in Otter Tail was due on April 4, 2004, which impacted the availability of L.E. Peabody for the *WFA* proceeding and the instant proceeding. The analyses being developed by L.E. Peabody are necessary for use by other experts in the development of their testimony and thus time is required after the conclusion of the L.E. Peabody analyses for the completion of work on other expert testimony.

Second, as Duke explained in its recent Motion to Compel certain revenue/traffic data and the masking factors to the Board’s Costed Waybill Sample, Duke intends to submit analyses relating to NS’ revenue shortfall needs, the magnitude of the increase of the challenged rate increases, and the magnitude of past increases. While a principal reason for the denial of Duke’s Motion to Compel was the assumption that

certain contracts and related information would be produced by NS that would provide Duke with the information purportedly needed for these analyses, one of the reasons Duke sought the information that was the subject of its Motion to Compel was to obtain the revenue/traffic information from NS in a format that would be more efficient and less costly than having to conduct an analysis from contract information. Given that Duke has been denied the opportunity to access the information in the more efficient format, Duke will be unable to complete its Opening Statement prior to April 27, 2005.

Duke has consulted with counsel for NS and had been advised that NS is agreeable to the proposed extension. Accordingly, Duke respectfully submits that the Board should grant the requested one-month extension as it relates to all of the evidentiary submissions.

Respectfully submitted,

DUKE ENERGY CORPORATION

By: Paul R. Kinny
Assistant General Counsel
Duke Energy Corporation
422 South Church Street
Charlotte, NC 28202-1904

C. Michael Loftus 
Robert D. Rosenberg
Frank J. Pergolizzi
Andrew B. Kolesar III
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: April 14, 2005

Attorneys for Complainant

CERTIFICATE OF SERVICE

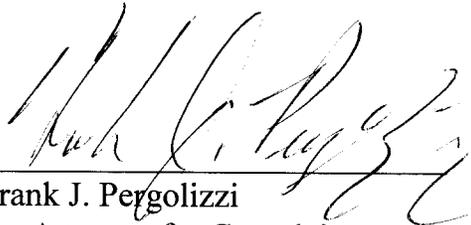
I hereby certify, that I have this 14th day of April, 2005 caused to be served copies of the foregoing Petition to Modify Procedural Schedule on counsel for defendant Norfolk Southern Railway Company as follows:

By hand delivery to:

G. Paul Moates, Esq.
Terence M. Hynes, Esq.
Paul A. Hemmersbaugh, Esq.
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, D.C. 20005

and by Federal Express to:

James A. Squires, Esq.
George A. Aspatore, Esq.
David A. Shelton, Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510



Frank J. Pergolizzi
An Attorney for Complainant