

STB Docket No. 42072

CAROLINA POWER & LIGHT COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Melissa Kronstain, Staff Attorney, Office of Proceedings

Good morning Chairman Nober and Commissioner Morgan.

The decision submitted for your consideration resolves a procedural matter in a stand-alone cost (SAC) coal rate complaint proceeding, involving Carolina Power & Light (CP&L) as complainant, and Norfolk Southern Railway Company (NS) as the railroad-defendant. The decision before you would grant a request by CP&L to disregard material submitted by NS as new and improper evidence submitted after the close of the evidentiary record.

Specifically, with its brief, NS submitted a table containing traffic data for the fourth quarter of 2002, notwithstanding language in the Board's December 13, 2002 decision stating that "new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions." CP&L objects to the submission of new evidence with a brief.

The Board recently addressed the issue of evidence filed in conjunction with closing briefs in Duke Energy Corp. v. Norfolk Southern Ry. Co. As the Board stated in that decision, there must be a clearly defined cut-off point, after which the record of the proceeding is closed. Thus, if a party wishes to introduce further material at a later stage, it must file a petition to supplement the record. Such a petition should show that the information sought to be introduced is central to the petitioning party's case, could not reasonably have been introduced earlier, and would materially influence the outcome of the proceeding.

NS has not filed such a petition here. The draft decision, therefore, rejects the traffic data submitted by NS with its brief.

This concludes my statement. We would be happy to answer any questions you might have.