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January 7, 2002

ENTERED
Office of the Secretary

JAN - 8 2002

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BY HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding
are the originals and ten copies each of the following pleadings:

- (1) the parties' joint Report on Conference Pursuant to
49 C.F.R. § 1111.10(b), and 204319
- (2) the parties' Joint Motion for Protective Order. 204320

A diskette containing the text of the proposed protective order
in WordPerfect 8.0 format is also enclosed.

Please acknowledge receipt of the enclosed by stamping
and returning to our messenger the enclosed duplicate of this
letter.

Sincerely,

Christopher A. Mills

CAM/cma
Enclosures
cc (by hand): G. Paul Moates, Esq.

204319

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

REPORT ON THE PARTIES' CONFERENCE
PURSUANT TO 49 C.F.R. § 1111.10(b)

Counsel for the parties have conducted a conference to discuss procedural and discovery matters in this case pursuant to 49 C.F.R. § 1111.10(b). The results of their conference are summarized below.

1. The parties agreed to file a joint motion with the Board requesting that a protective order be entered in this proceeding similar to the order adopted by the Board in Docket No. 42059, Northern States Power Company Minnesota d/b/a Xcel Energy v. Union Pacific Railroad Company. The joint motion is being filed separately.

2. The parties agreed that the procedural schedule adopted by the Board for use in stand-alone cost cases (49 C.F.R. § 1111.8) will be followed in this proceeding, subject to the following agreed modifications and qualifications. First, the parties have agreed that the due dates for reply and rebuttal

evidence will be extended slightly to give the parties additional time to prepare those filings. Second, the parties have agreed that the schedule should include one round of simultaneous briefs, not to exceed 30 pages in length, to be filed 30 days following the submission of rebuttal evidence. Third, NS is concerned about its ability to complete its discovery obligations within 75 days. Conversely, Duke Energy is concerned about minimizing the period during which it is forced to pay tariff rates which it believes are excessive. In this context, the parties understand and recognize that, although the proposed schedule provides for the completion of discovery within 75 days following the filing of the complaint, the volume and complexity of Duke Energy's discovery requests may necessitate a request for additional time for completion of discovery. Rather than attempt at this early stage of the proceeding to estimate the amount of additional time that may be needed, NS has agreed to the 75-day discovery period with the understanding that the schedule will not preclude it from seeking from the Board an enlargement of the period for discovery (or Duke Energy from opposing such a request). The proposed procedural schedule is set forth in the Appendix to this Report.

3. Counsel agreed that the parties will serve all papers on Washington counsel by hand-delivery and on in-house counsel by overnight delivery service.

4.. Counsel agreed that, within three business days after the filing with the Board of any evidence or pleading containing Highly Confidential Material (as defined in the proposed Protective Order the parties are separately filing with the Board), the filing party shall furnish the other party a copy of such filing that is redacted to omit Highly Confidential Material of the filing party.

Respectfully submitted,



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Dated: January 7, 2002



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Attorneys for Complainant

APPENDIX

Docket No. 42069
Duke Energy Corporation v. Norfolk Southern Railway Company
Stipulated Procedural Schedule (Pursuant to 49 C.F.R. § 1111.8)

December 19, 2001 (Day 0)	Complaint filed.
January 8, 2002 (Day 20)	Answer to complaint due.
March 4, 2002 (Day 75)	Discovery completed. ¹
April 18, 2002 (Day 120)	Complainant files opening evidence on absence of intermodal and intramodal competition, variable costs, and stand-alone costs. Defendant files opening evidence on revenue-variable cost percentages generated by complainant's traffic.
July 17, 2002 (Day 210)	Complainant and defendant file reply evidence to opponent's opening evidence.
August 20, 2002 (Day 244)	Complainant and defendant file rebuttal evidence to opponent's reply evidence.
September 19, 2002 (Day 274)	Parties file simultaneous briefs not to exceed 30 pages in length (excluding cover page and tables of contents, citations and definitions).

¹ Because the parties are uncertain whether discovery can be completed within the 75-day period specified in this procedural schedule, each party reserves the right to request an enlargement of the discovery period.