



## News Release

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### **South Mississippi Electric Initiates Legal Action in Rail Dispute**

Hattiesburg, MS--South Mississippi Electric Power Association (SME), a generation and transmission cooperative headquartered in Hattiesburg, has taken legal action against Norfolk Southern Railway Company in order to seek relief from excessive transportation rates and to recover unjust charges due to breach of contract.

The Association's primary baseload generating station, Plant Morrow located near Purvis, Miss., burns coal that originates from Appalachia. Norfolk Southern (NS) is the only rail carrier able to serve the route required to deliver coal to Morrow, thus making SME a captive shipper. NS exerts sole control over the rates, rules and other terms of transporting coal to Morrow and has been the sole carrier of fuel since the plant began operations in 1978. The most recent contract between the two parties expired December 31, 2010.

On Wednesday, December 29, 2010 South Mississippi Electric filed a complaint against NS in the United States District Court for the Southern District of Mississippi, Hattiesburg Division, claiming breach of its current coal transportation contract. On the previous day, the Association also filed a complaint with the National Surface Transportation Board (STB) seeking relief from excessive and unreasonable future rates proposed by NS.

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The federal court action claims that NS breached the current transportation contract through: (1) its application of a fuel surcharge that SME believes overcompensated NS for fuel cost changes; (2) improper application of the contract adjustment clause that SME alleges resulted in contract overpayments; and (3) service failures that resulted in approximately 130,000 tons of delivery shortfalls in 2010. SME also alleges that NS breached its obligation to act in good faith in performing the contract.

In the STB action, SME seeks the establishment of just and reasonable rates, rules and other terms from NS for its services going forward. NS has notified SME that rates beginning in 2011 will be four times the amount the railroad charged under contract as recently as 2003.

“This has been a continual issue with Norfolk Southern for many years,” said SME spokesman Kurt Brautigam. “Each contract over the past decade has resulted in costs 60% to 80% higher than the preceding one. Our rail costs have continued to rise significantly while the service we receive has steadily deteriorated. NS is one of the most profitable railroads in the country, and it is troubling that we have received no reasonable or substantive response to our concerns. At this point, unfortunately, we have no other recourse than to litigate to seek relief from the monopolistic abuse NS has subjected us to.

“The most frustrating and disappointing aspect to this trend of higher costs and poorer service is that the costs negatively impact our end-use consumers, who can least afford them. These costs go straight to our bottom line, which is especially damaging to a not-for-profit organization.”

South Mississippi Electric provides wholesale power for eleven Member distribution cooperatives which, cumulatively, provide not-for-profit retail electric service to 406,000 homes and businesses in 56 of Mississippi’s 82 counties.

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