

SERVICE DATE - MAY 30, 2000

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388 (Sub-No. 91)

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
(GENERAL OVERSIGHT)

Decision No. 2

Decided: May 26, 2000

Indianapolis Power & Light Company (IP&L) filed a letter on May 1, 2000, seeking certain relief relating to our oversight process for this proceeding.¹ Specifically, IP&L asks that we require applicants to address certain questions in their initial progress reports and that we make available to it a confidential trackage rights agreement. In separate responses filed May 9, 2000, CSX and NS oppose IP&L's requests. As discussed further below, we will deny IP&L's requests, except that we will make the agreement available to it.

Our conditions imposed to protect competition at the IP&L-operated electric generating plant in Stout, IN, included: (1) preserving IP&L's existing build-out potential by permitting Indiana Southern Railroad, Inc. (ISRR) or NS to serve the Stout plant if IP&L constructs any build-out to the Indianapolis Belt Line; (2) permitting IP&L to have its Stout plant served by NS directly or via switching by the Indiana Rail Road Company (INRD);² and (3) providing for a

¹ Subject to conditions imposed for IP&L and numerous other parties, we approved the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (Conrail), and the division of that carrier's assets by (1) CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT) (collectively CSX), and (2) Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR Dec. No. 89).

² INRD, the railroad currently serving the Stout plant, is an 89%-owned subsidiary of CSX.

new interchange between NS and ISRR at ISRR's existing milepost 6 to permit efficient access to nearby coal sources located on ISRR.³

First, IP&L asks us to direct NS and CSX to address certain matters in their respective June 1, 2000 progress reports.⁴ IP&L seeks an order requiring NS to address whether it has been able to compete for any business at IP&L's Stout or Perry K plants, whether any rates or other terms it may have proposed to IP&L were deemed uncompetitive by IP&L, whether it was thereafter able to offer competitive (lower) rates, and also whether it has been unable to serve IP&L due to its Conrail implementation problems. IP&L seeks an order requiring CSX to address whether INRD has felt any competitive pressure from NS at either Stout or Perry K. In initiating this general oversight proceeding, we directed CSX and NS to file progress reports discussing, among other things, "the workings of the various conditions" imposed in the Conrail transaction. Oversight Dec. No. 1, slip op. at 3. Because the IP&L conditions are among those conditions, CSX and NS will have to address them and IP&L will have the opportunity to

³ Responding to concerns expressed by IP&L and ISRR, we found that we could not determine whether an interchange at milepost 6 would be sufficient to provide the relief we contemplated and so directed CSX, NS, ISRR, and IP&L to negotiate a mutually satisfactory solution and to report back to us. See CSX/NS/CR Dec. No. 96 (STB served Oct. 19, 1998), slip op. at 14-15.

CSX proposed interchanging traffic at the Crawford Yard for the Perry K and Stout plants; ISRR and IP&L expressed concerns and continued to seek additional relief vis-a-vis Stout; and NS stated its belief that "the procedures proposed by CSX for interchanging traffic at Crawford Yard, unlike a Milepost 6.0 interchange, is feasible." NS-74 at 2. We noted that, if NS comes to share ISRR's concerns over any potential inefficiencies associated with an ISRR-NS movement into Stout, or if, after having been given an opportunity to work, the ISRR-NS movement into Stout proves problematic, we would explore other options to make sure that a viable alternative service is available. We specifically stated that "demonstrated deficiencies in the [ISRR-NS] operations into Stout may be examined as part of our review in the oversight process" and that "we will impose additional relief as necessary to ensure that our conditions work as intended." See CSX/NS/CR Dec. No. 115 (STB served Feb. 8, 1999), slip op. at 4; and CSX/NS/CR Dec. No. 125 (STB served May 20, 1999), slip op. at 4-5 (clarifying Decision No. 115).

⁴ Under our general oversight condition, CSX and NS must file progress reports by June 1, 2000, and make traffic data available to interested persons by June 15, 2000. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating Leases/Agreements — Conrail Inc. and Consolidated Rail Corporation (General Oversight), STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 1 (STB served Feb. 9, 2000), and published in the Federal Register on February 14, 2000, at 65 FR 7414 (Oversight Dec. No. 1).

respond. We agree with CSX and NS that IP&L fails to demonstrate why our general oversight procedure should be changed or is otherwise inadequate to address IP&L's concerns. Indeed, IP&L should already possess much of the requested information. We therefore decline to dictate the specifics of the applicants' reports.

Second, to aid in its participation in the oversight proceeding, IP&L asks us to require CSX and NS to provide a copy of the trackage rights agreement that CSX, NS, and INRD entered for service by NS at Stout. Specifically, it seeks to review the provisions of the trackage rights agreement to assess NS' ability to compete for traffic at the Stout plant. CSX and NS contend that IP&L has offered no new reason justifying a reversal of our previous denial of a similar request by IP&L for access to that agreement. In refusing to reopen compensation issues in Decision No. 125, we noted that, in ordering the parties to work out an adequate interchange agreement for NS and ISRR, we did not intend to make IP&L privy to separate agreements concerning compensation arrangements between NS and CSX or INRD. Those compensation issues had nothing to do with establishing a workable interchange between NS and ISRR for coal movement to the Stout plant.

Now IP&L seeks to present evidence concerning the overall effectiveness of our remedial condition giving NS access to the Stout plant. Without access to the terms of the trackage rights agreement, it might be difficult for IP&L to develop this issue. We believe that IP&L should have access to the terms of the trackage rights agreement to use in presenting its case to us as part of our oversight process. Accordingly, we will require CSX and NS to give IP&L's counsel a copy of their Stout trackage rights agreement pursuant to the protective order entered in STB Finance Docket No. 33388.⁵

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. IP&L's request is granted in part and denied in part as set forth above.

⁵ See CSX/NS/CR Dec. No. 1 (STB served Apr. 16, 1997), as modified in various respects in CSX/NS/CR Dec. No. 4 (STB served May 2, 1997), CSX/NS/CR Dec. No. 15 (STB served Aug. 1, 1997), CSX/NS/CR Dec. No. 22 (STB served Aug. 21, 1997), CSX/NS/CR Dec. No. 46 (STB served Oct. 17, 1997), and CSX/NS/CR Dec. No. 87 (STB served June 11, 1998).

2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary