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VIA Electronic Filing

Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20024

Re: STB Docket No. AB-1044, Indiana Business Railroad, Inc. - Adverse
Discontinuance of Rail Service - Portion of Norfolk Southern Railway
Company's Rockport Branch - Reply of Norfolk Southern Railway
Company to Indiana Business Railroad, Inc.'s Letter of October 8, 2009

Dear Ms. Quinlan:

Enclosed for electronic filing with the Board in the captioned proceeding is Norfolk Southern Railway Company's reply to Indiana Business Railroad, Inc.'s Letter of October 8, 2009. The letter asked for a decision on IBR's petition for waiver or requested that IBR be allowed to file an additional pleading if NSR's response to the petition is treated as a motion to dismiss. This letter responds to a totally unsupported allegation made in the October 8, 2009 letter.

In the October 8, 2009 letter, IBR states that NSR is taking a position opposite to the one it took almost 19 years ago in *PSI Energy, Inc. - Feeder Line Development - Norfolk Southern Corp. Line Between Cynthiana and Carol, IN*, 7 I.C.C. 2d 227 (1991). This interpretation is unsupported and without merit. IBR quotes the last sentence of the ICC's decision: "We also note that PSI has the option of filing an application pursuant to § 10903 to force NS to abandon the track. See *Modern Handcraft, Inc. -- Abandonment*, 363 I.C.C. 969 (1981)." There is nothing in the decision or even in the wording of the quoted sentence to suggest that this was a position taken by NSR rather than dicta by the Commission, a possible suggested alternative thrown in as an afterthought. NSR's position was that it wished to retain control of the subject formally discontinued line that had been acquired from Conrail. "NS states that it acquired this discontinued line in anticipation of resumed coal mining activity along the line."

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While the quoted statement does not support IBR's argument, other statements by the ICC in that decision that support NSR's position in this case. These include:

NS states that it acquired this discontinued line in anticipation of resumed coal mining activity along the line. Because NS presumably intends to provide service if and when service becomes feasible, NS should have the first opportunity to provide the service. 7 I.C.C.2d 227, 232, footnote 16.

The Commission also stated:

Thus, a critical first step in this case is to determine whether there is a current need for service on this line that should be met. n14 There is a procedure available to resolve that underlying issue that is less drastic than a forced taking of the property from NS. That is for PSI to petition to have NS's discontinuance authority terminated (based on changed circumstances) and the service obligation reinstated for this line. If PSI should successfully demonstrate that service ought to be resumed at this time, NS would then be obligated to restore the line and provide service on it. n15 At that point, if NS met that obligation, then PSI's interests would be satisfied without depriving NS of the business opportunity for which it acquired this inactive line. n16 If, on the other hand, NS failed to meet its obligations, then PSI could renew its feeder line application at that time. PSI would then be in a better position to make the showing required by § 10910(c)(1). 7 I.C.C. 2d 227, 231-2 (Footnotes 14, 15 omitted, 16 above.)

Since IBR is not a shipper and has no traffic to provide to NSR for it, it can not satisfy either the feeder line acquisition requirements or make a reasonable request for rail service that might permit it to argue that service should resume on the subject line. At least PSI Energy was a potential shipper located on the line and had an arguable interest in using rail service. IBR is a stranger, a short line startup which is trying to take NSR's rail line before new traffic for the line becomes available.

Very truly yours,


James R. Paschall

cc: via e-mail attachment

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