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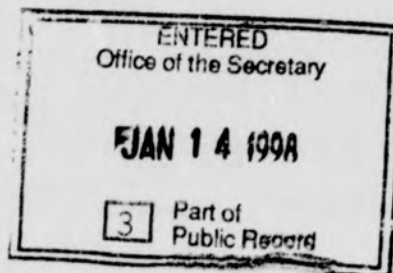
KARL MORELL



January 14, 1998

HAND DELIVERY

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



RE: STB Finance Docket No. 33388, 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

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Highly Confidential and Public Versions of the Rebuttal of Indiana Southern Railroad, Inc. Attached are 3.5 inch diskettes containing the filing in WordPerfect 5.2.

Also enclose is the original Verification of Mr. Richard Neumann which did not arrive in time for coping the filing.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully,

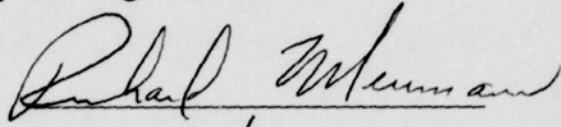
Karl Morell
Attorney for:
INDIANA SOUTHERN RAILROAD, INC.

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VERIFICATION

I, Richard Neumann, verify under penalty of perjury that the foregoing Rebuttal Verified Statement is true and correct to the best of my knowledge and belief.



Executed on January 13, 1998

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ORIGINAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

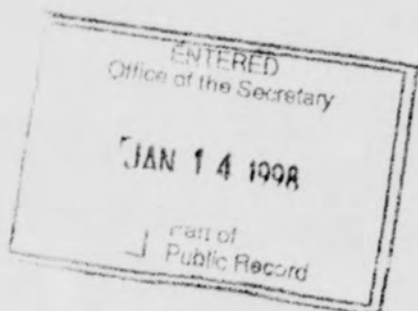
STB FINANCE DOCKET NO. 33388

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 (SUB-NO. 76)

INDIANA SOUTHERN RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND INDIANA RAIL ROAD COMPANY

REBUTTAL OF
INDIANA SOUTHERN RAILROAD, INC.



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Attorneys for:
INDIANA SOUTHERN
RAILROAD, INC.

Dated: January 14, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
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INDIANA SOUTHERN RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND INDIANA RAIL ROAD COMPANY

REBUTTAL OF
INDIANA SOUTHERN RAILROAD, INC.

Indiana Southern Railroad, Inc. ("ISRR"), pursuant to Decision No. 12 in this proceeding and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures at 49 C.F.R. Part 1180, hereby submits its rebuttal in support of ISRR's responsive application.

INTRODUCTION

On June 23, 1997, CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail

Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")¹ (collectively referred to as the "Primary Applicants") filed their Railroad Control Application ("Control Application").² On October 21, 1997, ISRR filed its Responsive Application seeking trackage rights in Indianapolis, Indiana and the surrounding area over certain rail lines currently owned by CRC and to be acquired by CSXT and over a short segment of rail line owned by the Indiana Railroad Company ("INRD"), a subsidiary of CSXT.³ Comments addressing the anticompetitive effects of the Primary Transaction in the Indianapolis area were also filed by the City of Indianapolis, Indianapolis Power & Light Company ("IPL"), Shell Oil Company, Citizens Gas & Coke Utility, and the Department of Justice ("DOJ").

On December 15, 1997, the United States Department of Agriculture filed comments in support of ISRR's Responsive Application.

TRackage RIGHTS REQUESTED BY ISRR

In its Responsive Application, ISRR requested the Board to condition the approval of the Primary Transaction by granting ISRR trackage rights in Indianapolis and the area surrounding Indianapolis as follows:

1. Indianapolis

Overhead trackage rights between MP 6.0 on ISRR's Petersburg Subdivision and IPL's Perry K facility in Indianapolis over the rail line currently owned by CRC and to be acquired by CSXT.

¹CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

²In the Control Application, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

³ISRR's Responsive Application was accepted for consideration by the STB in Decision No. 54, served November 20, 1997.

Overhead trackage rights between MP 6.0 on ISRR's Petersburg Subdivision and IPL's Stout facility located on the INRD rail line over a segment of the rail line currently owned by CRC and to be acquired by CSXT and a segment of INRD's rail line.

Local trackage rights over CRC's rail lines in Indianapolis, including the Indianapolis Belt Line, to be acquired by CSXT.⁴

2. Between Indianapolis and Surrounding Communities

Local trackage rights between Indianapolis and Shelbyville, Indiana over the rail line currently owned by CRC and to be acquired by CSXT.

Local trackage rights between Indianapolis and Crawfordsville, Indiana over the rail line currently owned by CRC and to be acquired by CSXT.

Local trackage rights between Indianapolis and Muncie, Indiana over the rail line currently owned by CRC and to be acquired by CSXT.

SUMMARY OF REBUTTAL EVIDENCE

Included in this filing are the Rebuttal Verified Statements of Mr. Richard Neumann, the Senior Vice President and General Manager of ISRR, Mr. Michael A. Weaver, Manager of the Fuel Supply Organization of IPL, and Mr. Thomas D. Crowley, economist and President of L. E. Peabody & Associates, Inc. Messrs. Neumann, Weaver and Crowley, who previously testified in this proceeding, respond directly to the Rebuttal Verified Statements of Thomas G. Hoback, Thomas E. Kuhn, John W. Orrison, and Gerald E. Vaninetti.

A brief summary of each of these rebuttal witnesses' testimony is as follows:

Mr. Richard Neumann

According to Mr. Neumann, the Perry K plant will become captive to CSXT if the Primary Transaction is unconditionally approved. CRC is currently a neutral switch carrier for traffic originated by either ISRR or INRD. Once CSXT replaces CRC in Indianapolis, CSXT will favor its subsidiary the INRD by pricing ISRR coal movements to Perry K out of business.

⁴ ISRR seeks trackage rights over all CRC rail lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis.

The short truck movements from Stout or the INRD yard to Perry K will not serve as a competitive constraint on CSXT, as they do on CRC today, since all prior rail movements are controlled by CSXT's subsidiary.

Mr. Neumann points out that ISRR has provided service to Stout via two routings: ISRR-Switz City-INRD and ISRR-Indianapolis-CRC-INRD and that Stout has four other rail options. If the Primary Transaction is unconditionally approved, CSXT and its subsidiary will control all of these routings. Mr. Neumann explains that the overhead trackage rights NSR is to receive will be of no benefit to either Perry K or Stout because NSR's route from the Indiana coal fields is highly circuitous and could not possibly compete with the direct INRD route to Indianapolis.

Mr. Neumann disputes CSXT Witness Vaninetti's contention that ISRR is not competitive for movements of coal to Stout because ISRR has handled limited volumes in the past and lost the traffic in 1997. Mr. Neumann demonstrates that ISRR remains competitive for this traffic. Once CSXT replaces CRC in Indianapolis, however, ISRR's ability to compete will be lost. Mr. Neumann also distinguishes relatively short truck movements of coal in rural areas of Indiana from Primary Applicants' suggestion that coal can economically be moved to Stout. In Mr. Neumann's view, trucking coal to Stout is neither economically possible nor politically practicable.

Mr. Neumann goes on to explain why NSR's ability to compete in Indianapolis is illusory. NSR will own no rail lines into Indianapolis or yard facilities in that city and apparently will have no offices or employees stationed in Indianapolis. Without any investment in Indianapolis, NSR will have little, if any, incentive to compete with CSXT. The situation in

Crawfordsville is similar, since NSR will have no physical presence in that community, and NSR's overhead trackage rights to and from Crawfordsville are over a highly circuitous route.

Mr. Michael A. Weaver

Mr. Weaver details the inconsistent positions CSXT and NSR have taken in this proceeding concerning the 2-to-1 status of IPL's Stout and Perry K plants. In their Control Application, Applicants stated that IPL was a 2-to-1 shipper in Indianapolis, but did not refer to either plant. In discovery, CSXT stated that Perry K was a 2-to-1 destination, but that Stout was not, based on the fiction that CSXT would compete with its 89 percent owned subsidiary the INRD. On Rebuttal, CSXT abandons the latter position for a new one.

Mr. Weaver refutes CSXT's new theory that competition at the Stout plant comes from trucks and power generated by IPL's other plants. He demonstrates that trucks are not effective competitors for moving coal to Stout because truck rates are substantially higher than rail rates. Truck deliveries would be less efficient and more costly, and their use environmentally less preferable than deliveries by rail. Mr. Weaver also explains that dispatching power from IPL's Petersburg plant to replace power from Stout is not an option, as Applicants suggest, because the Petersburg plant is already relied on first to generate power on the IPL system.

Mr. Weaver explains that ISRR's proposed trackage rights to Stout and Perry K would replicate the existing efficient movements of Indiana coal, unlike Applicants' proposal of having NSR route unit trains through the Hawthorne Yard. ISRR's trackage rights would also enable ISRR to use the possible "build-out" routes into the Stout plant. Finally, Mr. Weaver demonstrates that even at the higher "build-out" cost suggested by CSXT Witness Kuhn, the "build-out" would be feasible.

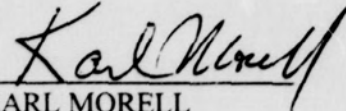
Mr. Thomas D. Crowley

Mr. Crowley demonstrates that IPL's Perry K plant currently has three competitive rail alternatives and that the Stout plant currently enjoys four competitive rail options. He explains that, if the Primary Application is approved without appropriate conditions, CSXT will control coal deliveries to both Perry K and Stout. With the replacement of CRC by CSXT, CSXT will control direct rail deliveries to Perry K via ISRR and INRD. Since CSXT owns 89 percent of INRD, CSXT will favor its subsidiary to the disadvantage of ISRR. CSXT will also control truck deliveries to Perry K from Stout.

Mr. Crowley also explains that CSXT will be able to competitively disadvantage the ISRR movements to Stout because: a) CSXT owns 89 percent of the INRD, the only railroad serving Stout; b) CSXT will control the CRC Belt which eliminates direct access to Stout by the ISRR or any other railroad other than CSXT; c) CSXT will control the CRC Belt and connecting rail lines which eliminates "build-out" or "build-in" options to ISRR or any other railroad other than CSXT; and d) NSR will receive only overhead trackage rights to Hawthorne Yard and the movement of high volume coal through that Yard is extremely inefficient and considerably more costly. Mr. Crowley confirms that ISRR will lose \$1.5 million annually to CSXT and INRD because it will no longer be able to compete as a result of the Primary Transaction.

Finally, Mr. Crowley explains that IPL's power supply options are not alternatives to two carrier success in disciplining rates and that IPL's "build-out" is feasible and justified even with Mr. Kuhn's additional construction estimates.

Respectfully submitted,



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RAILROAD, INC.

Dated: January 14, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION INC.
NORFOLK SOUTHERN CORPORATION AND
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**REBUTTAL VERIFIED STATEMENT
OF
RICHARD NEUMANN**

My name is Richard Neumann. I am Senior Vice President and General Manager of Indiana Southern Railroad, Inc. (ISRR). I previously submitted a verified statement, dated October 17, 1997, in support of ISRR's Responsive Application in this proceeding. My qualifications are set forth in that statement. I am submitting this rebuttal verified statement in response to the verified statements of Thomas G. Hoback, Thomas E. Kuhn, John W. Orrison, and Gerald E. Vaninetti contained in Applicants' Rebuttal filed on December 15, 1997.

In my initial statement, I explained that ISRR is currently competitive for coal movements to Indianapolis Power & Light's (IPL) Perry K and E.W. Stout generating stations located in Indianapolis, Indiana, even though ISRR does not serve either of those plants directly.

If the transaction proposed by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) (collectively referred to as Applicants) is approved without appropriate conditions, ISRR will no longer be competitive for IPL coal traffic moving to Indianapolis, and IPL will lose competitive rail service at its Perry K and Stout facilities. In addition, the loss of the revenues generated by ISRR from this traffic -- over \$1.5 million in 1996 -- will have a devastating effect on ISRR, possibly forcing ISRR to curtail service to other shippers on its rail line.

I also testified as to the loss of all meaningful rail competition for shippers in Indianapolis and the surrounding area as a result of Applicants' proposed transaction. Indianapolis and Crawfordsville are 2-to-1 locations that essentially will become captive to CSXT. Also, shippers located on the Indianapolis to Shelbyville, Indianapolis to Crawfordsville, and Indianapolis to Muncie rail lines will lose the neutral gateway service Consolidated Rail Corporation (CRC) offers today to nearby CSXT and NSR junctions.

In their Rebuttal filing, Applicants contend that the competitive conditions at the Perry K and Stout facilities will remain the same under their proposed transaction. They correctly point out that the Perry K facility is now served directly only by CRC and that the Stout facility is now served directly only by the Indiana Rail Road Company (INRD). Applicants, however, totally ignore or significantly understate the competitive options IPL currently has available for coal movements to these two facilities.

ISRR has served the Perry K facility via a CRC switch since 1992, when ISRR first began operations. ISRR is currently moving coal to Perry K from the Triad Mine located on the INRD at Switz City, Indiana. ISRR has trackage rights to serve the Triad Mine for coal

movements to all IPL plants other than Stout. Since IPL's current source of coal for Perry K is located on an INRD line, INRD is directly competitive with ISRR for service to Perry K via a CRC switch. INRD could also serve Perry K from the various mines it serves directly in Indiana. In the past, IPL has trucked some coal to the Perry K facility from its storage area at Stout. According to Mr. Hoback, INRD has also moved coal to its Senate Avenue Terminal, located one mile from the Perry K facility, and trucked to Perry K. Consequently, IPL currently has the options of receiving coal at Perry K from: (1) CRC direct; (2) ISRR via CRC switch at Indianapolis; (3) INRD via CRC switch at Indianapolis; (4) INRD to Stout and truck to Perry K; and (5) INRD to its switching yard in Indianapolis and truck to Perry K.

If Applicants' proposed transaction is unconditionally approved, the Perry K plant will become captive to CSXT. CRC will no longer exist in Indianapolis. Thus, the options of CRC handling coal direct or as a switch carrier from ISRR or INRD will be lost. CRC today is largely neutral in switching traffic from ISRR and INRD. ISRR believes that it currently enjoys an operational advantage over INRD for coal movements to Perry K, since it delivers the coal trains to CRC within one to two miles of the Perry K plant. Notwithstanding this operational advantage, CSXT will undoubtedly favor its subsidiary, the INRD, and price ISRR movements to Perry K out of business. The short truck movements from Stout or the INRD switching yard will not serve as a competitive constraint on CSXT, as they do on CRC today, since the prior rail movements are controlled by a CSXT subsidiary. Consequently, all current options of moving coal to Perry K will be controlled by a single source: CSXT.

Applicants suggest that the trackage or haulage rights NSR will receive as a result of the transaction will benefit Perry K. Applicants fail to explain, however, the source of coal

NSR purportedly will haul to the Perry K plant. NSR will not be permitted to serve Perry K directly nor will it be allowed to connect with ISRR in Indianapolis. NSR's routes to and from Indianapolis are also highly circuitous and not suitable for handling shipments of coal. NSR does not have direct access to any coal mines from which IPL buys its coal. Its only route from southern Indiana to Indianapolis would be via Louisville and Danville, Kentucky, Cincinnati, Ohio, and Muncie, Indiana, which is approximately 491 miles. This highly circuitous route is hardly competitive with the direct INRD route to Indianapolis. The eastern coal mines served by NSR are also of too great a distance to be competitive with nearby Indiana coal sources. In fact, Applicants' own witness claims that IPL is committed to using Indiana coal. Vaninetti RVS at 15-20. NSR coal movements to Indianapolis, therefore, would not serve as a competitive constraint on CSXT.

Mr. Orrison claims that the proposed transaction will have no effect on competition at Perry K because CSXT is simply replacing CRC and ISRR will be able to interchange with CSXT rather than CRC. Orrison RVS at 184. Mr. Orrison, however, ignores the fact that ISRR coal movements to Perry K currently compete with INRD routings. Once CSXT replaces CRC, CSXT will have a strong economic incentive to disadvantage the ISRR routings and benefit its subsidiary the INRD.

In a cynical attempt to portray ISRR as searching for the proverbial free lunch, Applicants note that ISRR previously sought access to the Perry K plant. As the letters from ISRR to CRC relied on by Applicants clearly demonstrate, in 1994 and 1995, ISRR sought to serve the Perry K facility directly because of service and operational difficulties ISRR was experiencing at that time with its connections with CRC in Indianapolis. ISRR is seeking access

to Perry K in this proceeding to remedy the loss of competition at that facility and not because of operational problems in Indianapolis.

ISRR has provided service to the Stout facility via two routings: ISRR-Switz City-INRD and ISRR-Indianapolis-CRC-INRD. The coal moving via Switz City originated at the Maysville Mine and the coal moving via Indianapolis originated at the Hawthorne Mine. INRD is able to serve the Stout facility direct from several Indiana mines and in interline movements with CP Rail from the Farmersburg Mine. CRC has the potential to serve the Stout facility via an INRD switch or directly via a build-in option from its nearby rail line in Indianapolis. Consequently, IPL today has the options of receiving coal at Stout from: (1) INRD direct; (2) CP Rail-Linton-INRD; (3) ISRR-Switz City-INRD; (4) ISRR-Indianapolis-CRC-INRD; (5) CRC-INRD and (6) CRC direct via a build-in to the Stout plant.

If Applicants' proposed transaction is unconditionally approved, the Stout plant, not unlike the Perry K plant, will become captive to CSXT. In order to favor its subsidiary the INRD, CSXT will price ISRR movements via Indianapolis out of business. Once the ISRR routing via Indianapolis is rendered noncompetitive, INRD will have no economic incentive to cooperate with ISRR in a joint-line movement via Switz City. Thus, both current routings to Stout involving ISRR will be lost. With the replacement of CSXT for CRC in Indianapolis, the option of CRC linehauling coal to INRD for a switch to Stout will also be lost. The build-in/build-out option will be rendered meaningless, since CSXT would have no incentive to build a line to Stout in order to compete with its subsidiary nor would IPL have an incentive to build-out to the parent of the railroad to which it has become captive. Consequently, all current options of moving coal to Stout will be controlled by CSXT.

Mr. Hoback suggests that INRD is prepared to negotiate a rate for coal movements by NSR via the Hawthorne Yard to Stout. Hoback RVS at 6. As previously explained, however, NSR has no economically viable coal route to Indianapolis. Mr. Hoback also fails to explain why INRD would offer NSR a competitive rate that would shorthaul the INRD. Applicants reject the condition suggested by the Department of Justice that NSR be given the right to connect with ISRR at Indianapolis, contending that NSR already connects with ISRR at Oakland City, Indiana. The ISRR-NSR connection at Oakland City, however, is of no benefit to IPL or any other shipper in Indianapolis given NSR's circuitous route between Oakland City and Indianapolis and ISRR's lack of access in Indianapolis.

In the Rebuttal filing, CSXT offered to assume CRC's current contractual obligations for the ISRR-Indianapolis-CRC-INRD movements for the duration of the INRD-IPL coal contract. CSX/NS 176 at 365. CSXT's offer, however, would not prevent the loss of ISRR's competitive rail service to the Stout plant, the offer would simply delay the anticompetitive consequences of Applicants' proposed transaction.

Mr. Orrison contends that there is no operating reason why, post-Transaction, ISRR would not be able to deliver coal to Stout, since CSXT will simply replace CRC's switching service at Indianapolis. Orrison RVS at 184. I agree that there is no operational reason why ISRR would not be able to continue handling coal to Stout. As already explained, however, CSXT would have a strong incentive to competitively disadvantage ISRR movements to Stout.

Mr. Vaninetti reaches a number of erroneous conclusions concerning ISRR's ability to compete for coal traffic moving to the Stout plant. Mr. Vaninetti claims that ISRR is not competitive for the Stout traffic because it already has lost the traffic to a two-line haul via CP

Rail-INRD. Vaninetti RVS at 14. Mr. Vaninetti either fails to understand or conveniently ignores the fundamental principles of competition. The fact that ISRR lost traffic to INRD in 1997 that ISRR previously handled does not mean that ISRR is not a competitor for the traffic; it simply means that ISRR was outcompeted for the traffic originating on the CP Rail. As long as CRC remains in Indianapolis, ISRR will remain competitive for traffic moving to Stout. ISRR can compete for spot purchases of coal to Stout today and, if IPL decides to source its Stout coal from a different origin in the future, ISRR would be able to compete for the movements. Once CSXT replaces CRC in Indianapolis, however, ISRR's ability to compete will be lost. ISRR handled traffic to the Stout plant in the past. Mr. Vaninetti is unable to explain how ISRR was able to handle this traffic if its routing via CRC is not competitive.

Mr. Vaninetti also claims that ISRR's routing via CRC is not competitive for Stout traffic because in 1996 nearly three quarters of the Stout tons originated by ISRR moved via Switz City rather than CRC at Indianapolis. *Id.* Mr. Vaninetti's contention is erroneous in at least two fundamental respects. First, Mr. Vaninetti fails to explain how one quarter of the tons moving to Stout could have possibly moved over a route that is not competitive. Second, Mr. Vaninetti's conclusion is again premised on the faulty notion that rail carriers are only competitive for traffic in which they currently participate. Even if all of the traffic moving to Stout in 1996 moved via the ISRR-INRD routing, the ISRR-CRC-INRD route would still have served as a competitive constraint for coal moving to Stout.

Mr. Vaninetti further claims that CRC service problems caused substantial delays at the interchange point in Indianapolis which may have lead to the displacement of this routing alternative. *Id.* My letter to CRC, which Mr. Vaninetti erroneously relies on, addressed service

problems ISRR was experiencing in 1994 for coal movements to Perry K, and not as Mr.

Vaninetti alleges to Stout. In any event, any operational problems ISRR experienced in the past with CRC in Indianapolis will undoubtedly be exacerbated once CSXT replaces CRC and is able to favor the routings of its subsidiary.

Mr. Vaninetti totally misconstrues or misstates the conditions sought by ISRR in contending that ISRR is really seeking to improve its access to all four IPL plants, extend its routings to handle Western coal deliveries, and enhance its position at the expense of INRD and CSXT. *Id.* at 4. ISRR already exclusively serves two of IPL's plants (Petersburg and Pritchard), and none of the conditions requested by ISRR would have an impact on service to those plants. Similarly, none of the conditions requested by ISRR would enable ISRR to participate in movements of Western coal. Moreover, ISRR is not seeking to enhance its position at the expense of INRD and CSXT, but rather to maintain its current competitive position for coal shipments to Perry K and Stout and to preserve the rail competition those two plants currently enjoy.

In an effort to distort and disparage ISRR motives in this proceeding, Mr. Vaninetti cites to an undated internal memorandum from Phil Wilzbacher to Jim Bearden. On the basis of this memorandum, Mr. Vaninetti claims that ISRR internally concluded that Applicants' proposed transaction will not have a major impact on ISRR but then proceeded to advance its own agendas by seeking access to Perry K and Stout. *Id.* at 15. The memorandum relied on by Mr. Vaninetti was prepared shortly after April 9, 1997, which was at the same time Applicants entered into their letter agreement to carve up CRC, but well before the Control Application was filed and the details of the proposed transaction were made public. (Attached to my Verified Statement is a

copy of the memorandum from Mr. Bearden to which Mr. Wilzbacher responded.) Consequently, Mr. Wilzbacher could hardly have known how the competitive situation in Indianapolis would be effected by the CRC carve-up when his response was prepared. Since CRC and CSXT currently serve Indianapolis, one could only have logically assumed that in order to preserve the competitive status quo NSR, and not CSXT, would replace CRC in Indianapolis. More importantly, Mr. Wilzbacher was responding to Mr. Bearden's request for all locations where interchanges would be reduced to one road. Mr. Wilzbacher's response was based on the fact that ISRR already interchanged with NSR at Oakland City, Indiana and with CSXT at Evansville, Indiana, and did not, and at that time could not have, addressed the loss of competition to Perry K and Stout as a result of the carve-up ultimately proposed by Applicants.

Mr. Kuhn addresses the build-in/build-out option to the Stout plant. I have no personal knowledge of the actual cost of a build-out from Stout to the CRC line. I am generally aware of the geography between the Stout plant and the CRC line in Indianapolis and consider a build-out to CRC to be economically viable given the short distance involved. In my view, the build-out option provides a competitive constraint on the rates INRD is able to charge for coal movements to the Stout plant. It appears that Mr. Kuhn does not dispute the fact that the connection can be constructed, he simply questions the cost of construction.

Messrs. Hoback and Vaninetti contend that truck competition constrains rail rates to the Stout plant. Their argument is essentially that the Surface Transportation Board need not concern itself with the loss of rail competition at Stout because truck competition will discipline INRD's rates.

While I agree in principle with Messrs. Hoback and Vaninetti that trucks can be competitive with rail movements of coal in limited circumstances, I do not agree with their assessment that truck competition is effective to the Stout plant. ISRR competes with trucks at IPL's Petersburg and Pritchard power plants. The Petersburg plant receives truck shipments from mines located approximately 5 to 20 miles from the plant. Notwithstanding these very short distances for truck movements, ISRR handles almost one-half of the tonnages moving to that plant. The Pritchard plant receives some truck shipments from mines located approximately 50 miles from the plant. The truck movements, however, occur primarily in the winter months when IPL cannot take rail shipments because the Pritchard plant has no thaw sheds. The situation at Petersburg and Pritchard, however, is vastly different than at Stout and Perry K. Most importantly, the Petersburg and Pritchard plants are located in rural areas whereas Stout and Perry K are located in the city of Indianapolis. The economics, not to mention the political ramifications, of moving coal by truck over sparsely populated rural areas is significantly different than moving large volumes of coal over city streets. In addition, the distances for direct truck movements to Stout and Perry K are substantially greater than the distances for truck movements to either Petersburg or Pritchard.

While it is possible to move some coal to Stout by truck, I do not believe that trucking to Stout can be economically competitive with rail. More importantly, trucking large volumes of coal to Stout is, in my view, neither economically possible nor politically practicable. ISRR has participated in coal shipments to Stout for 4 years and never once considered trucks to be an effective competitor for those movements. In my six years at ISRR, IPL never raised the threat of truck competition for shipments to the Stout plant. ISRR has always considered alternative

rail movements to be its sole competitor for traffic destined to Stout. I am also unaware of any truck shipments ever having been made to the Stout plant.

Mr. Hoback also claims that IPL used the threat of truck competition in the late 1970s to constrain rail charges at Indianapolis. Hoback RVS at 5. As Mr. Hoback acknowledges, however, the switch charge to Stout was established after protracted litigation between IPL and INRD's predecessor, Illinois Central Gulf. While I have no personal knowledge of the litigation, I question why IPL would engage in extensive litigation over the switch charge if truck competition were an effective constraint on rail charges to Stout.

Mr. Hoback goes on to contend that CRC is not an effective competitor for coal in Indiana and that any CRC participation in coal movements from the mine at Farmersburg would have involved a three-carrier haul (CP Rail-CRC-INRD) which would have been less efficient than the current CR-Rail-INRD routing. *Id.* at 6. Mr. Hoback's contention, however, loses sight of the fact that ISRR's participation in a three-carrier haul (ISRR-CRC-INRD) has competed since ISRR's inception with INRD single and two-line hauls to the Stout plant. Also, the CRC route from Farmersburg via Terre Haute, Indiana is about 22 percent shorter than INRD's route via Linton, Indiana.

Mr. Hoback cites to a December 1996 publication stating that the Perry K facility will be partially converted to natural gas by November 1997. *Id.* at 8. Without citing any source, Mr. Vaninetti erroneously claims that Perry K has already been converted to gas-firing and that the plant has substantially reduced its coal burn since 1996. Vaninetti RVS at 11 n. 11. As Mr. Hoback should well know, the conversion has been delayed and may possibly never occur. Even

if the conversion does take place, Perry K will still need one half of its current coal shipments and will be dependent on rail to serve the plant.

Mr. Vaninetti makes a number of claims concerning IPL's ability to use internal and external power supply options to discipline rail rates to Stout and Perry K. Vaninetti RVS at 4, 8-10. I am not qualified to respond to these allegations other than to note that Perry K is a steam plant, not a power generating plant as Mr. Vaninetti apparently assumes. Therefore, IPL would not be able to discipline rail rates to Perry K by other power supply options.

With respect to the competitive situation in Indianapolis in general, Applicants contend that their proposed transaction replicates the existing competitive scenario. According to Applicants, CSXT will simply assume the current position of CRC and NSR will essentially assume CSXT's current position. CSX/NS-176 at 52. NSR's ability to compete in the Indianapolis market, however, is illusory. While most of the shippers in Indianapolis are currently served direct only by CRC, CSXT has a substantial physical presence in Indianapolis. CSXT owns its own rail line into Indianapolis (as does its subsidiary the INRD), has employees stationed in Indianapolis, owns its own rail yard and serves a limited number of shippers directly. Under Applicants' proposed transaction, NSR at best will simply pass through the city picking up any freight at Hawthorne Yard that may be available. It appears that NSR will own no physical assets in Indianapolis. NSR will own no rail lines into Indianapolis or yard facilities in that city and apparently it will have no offices or employees stationed in Indianapolis. Without any investment in Indianapolis, NSR will have little, if any, incentive to compete with CSXT.

Also, NSR's access to Indianapolis is limited to trackage rights over a circuitous route to most origins or destinations that will prevent NSR from effectively competing with CSXT. For

example, CRC and CSXT currently compete for traffic moving between Indianapolis and Chicago via Crawfordsville, Indiana. After Applicants' proposed transaction is approved, CSXT will continue to have the same direct route to Chicago, whereas NSR will have to utilize a CSXT switch in Indianapolis to Hawthorne Yard, trackage rights over a CSXT rail line northeast to Muncie, Indiana, and then north and west to Chicago. CSXT will also have a significantly more direct route for traffic moving between Indianapolis and the southeast, the midwest and the southwest.

CSXT will serve all shippers in Indianapolis directly, it will own or control all routings to and from the city, it will own all yard facilities, it will have a substantial physical and person presence in Indianapolis, and it will enjoy the shortest routes to all major markets. In short, Indianapolis will become a one railroad town.

The situation in Crawfordsville is similar. Crawfordsville is also a 2-to-1 location, although the community is much smaller than Indianapolis. Applicants claim that the 2-to-1 issues in Crawfordsville have been fully addressed. CSX/NS-176 at 366-67. NSR's purported access to Crawfordsville, however, is even more circumscribed than its access to Indianapolis. As with Indianapolis, NSR will have no physical presence in Crawfordsville and its trackage rights route to Crawfordsville is even more circuitous. It appears that NSR will have little, if any, traffic moving over the CSXT line between Indianapolis and Lafayette, Indiana. In order for NSR to serve Crawfordsville from Muncie, NSR would have to make almost a 200-mile round trip. NSR's contemplated service to Crawfordsville, therefore, would not be economical or operationally practical.

Applicants correctly point out that Muncie is currently served by CRC and NSR and that CSXT will take over the operations of CRC at Muncie. In seeking trackage rights between Indianapolis and Muncie, ISRR merely sought to serve shippers on that line and to gain access to NSR at Muncie. ISRR does not seek the right to serve shippers in Muncie. Contrary to Applicants' contention, however, the Central Railroad of Indiana does not have the right to provide local service to shippers in Shelbyville.

Mr. Orrison raises a few operational concerns about the conditions requested by ISRR. He points out that ISRR primarily hauls coal and claims that ISRR has not demonstrated the ability to handle other business. Orrison RVS at 47-8. The workpapers and documents produced to Applicants show that ISRR handles a myriad of commodities other than coal, including hazardous commodities. For example, ISRR handles steel, corn, soybeans, fuel oil, potash, fertilizer, plastic products, brick, ammonia, rail cars, lumber products, sugar, LPG, sunflower, aluminum scrap, methanol, and canned vegetables.

Mr. Orrison maintains that ISRR's requested trackage rights between Indianapolis and Shelbyville would delay traffic by at least one day. Shelbyville is located less than 30 miles from Indianapolis and ISRR could serve shippers on that line on a one day round trip movement. I also do not see why ISRR's service on that line would take any longer than CSXT's proposed service. Mr. Orrison also claims that the proposed trackage rights to Crawfordsville "would unnecessarily complicate service to the small town of Crawfordsville" and cause delays and interference. *Id.* at 48-49. There are currently two carriers operation over that line (CRC and CSXT) and it is expected that two carriers will operate over that line in the future (CSXT and NSR). Since ISRR is simply seeking to replace the purported NSR operations to Crawfordsville,

ISRR's requested trackage rights will have no impact on CSXT operations. The remainder of Mr. Orrison's concerns are generic and would apply to any grant of trackage rights. For example, he contends that "there would be additional complexities in scheduling, training in operating rules and physical characteristics and administrative functions, such as billings." *Id.* at 48. Railroads operate over one another throughout the country. ISRR currently has trackage rights to operate over line segments owned by CP Rail and CRC and has experienced no problems. In any event, ISRR is confident that if the requested trackage rights are granted CSXT will be able to surmount Mr. Orrison's concerns.

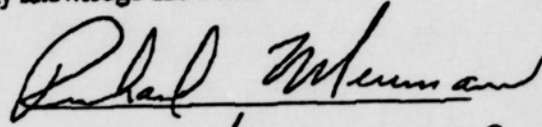
Applicants claim that there will be no loss of essential services on the ISRR line because ISRR will not lose the IPL traffic to Indianapolis and because most of the shippers on the line ISRR may be forced to abandon already use truck service. CSX/NS-176 at 369-71. As previously explained, if Applicants' proposed transaction is approved without appropriate conditions, ISRR will be competitively foreclosed from serving the Perry K and Stout facilities and lose all revenues attributable to that traffic. Applicants also claim that ISRR's use of 1996 revenue data is misleading because in 1997 ISRR lost the Stout traffic to INRD. At the time ISRR filed its Responsive Application, the most recent full year data available was for 1996. While ISRR lost the Stout traffic in 1997, under current conditions, ISRR is able to recapture that traffic. Once CSXT replaces CRC in Indianapolis, ISRR's Stout traffic will be permanently lost.

Applicants mischaracterize ISRR's discovery response concerning the ability of ISRR shippers to switch to trucks. In response to Applicants question whether to ISRR's knowledge any of the "shipper's shipments...ever moved by truck", ISRR responded in the affirmative for six of the seven shippers identified. The question was not whether the traffic currently handled

by ISRR could move by truck, but whether the shipper had ever used trucks for any shipments. One of the shippers, Indy Railway Service Corporation, receives and ships rail cars and is clearly dependent on rail service. That shipper, however, does not have sufficient volumes to justify retention of the ISRR line north of milepost 17 and it would not be economically prudent for anyone to acquire the line to serve only that shipper as Applicants suggest. While four of the shippers identified use trucks to meet some of their transportation needs, the traffic handled by ISRR could not economically be transported by trucks. Also, the new industrial park on the ISRR line would not be able to locate any rail shippers in that park, as is currently planned, if ISRR abandoned the northern segment of its line. Only one of the shippers identified by ISRR could substitute trucks for the traffic currently handled by ISRR.

VERIFICATION

I, Richard Neumann, verify under penalty of perjury that the foregoing Rebuttal Verified Statement is true and correct to the best of my knowledge and belief.



Executed on January 13, 1998

Wilzbacher, Phil (Exchange)

From: Dail, Jack E. (Exchange)
Sent: Wednesday, April 16, 1997 2:14 PM
To: Clark, Warner (Exchange); White, David (Exchange); Wilzbacher, Phil (Exchange)
Cc: Brigham, Mike (Exchange)
Subject: FW: NS/CSX purchase of Conrail

No doubt your GM has asked for your input re this request from Jim Bearden. I would like a copy of your (GM's) response to this request.

Warner and David: I only need one response from you unless Bill separates the DTI portion from the INOH.

From: Bearden, Jim (Exchange)
Sent: Wednesday, April 09, 1997 5:04 PM
To: Bearden, Direct Reports
Cc: Dail, Jack E. (Exchange); Franger, Sandy K. (Exchange)
Subject: NS/CSX purchase of Conrail

Please advise the following: 1) Locations of interchange with NS, CSX, and/or Conrail. 2) Types of traffic by carload and revenues at these points 3) Locations where interchange will be reduced to one road.

Also, list by bullet point your thoughts on how your railroad will be affected.

Let's plan on a conference call during the week of 4-21, to discuss the issues.

- 1) *INTERCHANGES: NS @ Oakland City, CSX @ Evansville, CH @ Indianapolis.*
2) *Types of Carloads / Revenues: NS*

PUBLIC VERSION

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388
(Sub-No. 76)

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY --
CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATION RAIL CORPORATION

**REBUTTAL VERIFIED STATEMENT OF MICHAEL A. WEAVER
IN SUPPORT OF THE RESPONSIVE APPLICATION OF
INDIANA SOUTHERN RAILROAD, INC. (ISRR-4)**

INTRODUCTION

My name is Michael A. Weaver. I am the same Michael A. Weaver whose Verified Statement was submitted as IP&L Ex. No. 1 to IP&L-3, the "Supplemental Comments, Evidence, and Request for Conditions of Indianapolis Power & Light Company" ("IP&L") submitted in Finance Docket No. 33388 on October 21, 1997. I am the Manager of the Fuel Supply Organization of IP&L, headquartered in and serving metropolitan Indianapolis, Indiana. As Manager of IP&L's Fuel Supply Organization, I have responsibility for all fuel purchases and deliveries to IP&L's Powerplants. I report to IP&L's Vice-President Fuels, Mr. Donald W. Knight. IP&L's concerns in this proceeding involve its two Plants in Indianapolis, Perry K and Stout. Perry K generates steam and Stout generates electricity.

I have reviewed the Responsive Application of Indiana Southern Railroad, Inc. (sometimes referred to herein as "ISRR" or "Indiana Southern")(ISRR-4). The purpose of this Verified Statement is to support ISRR's request for trackage rights to serve IP&L's Stout and Perry K Plants ("the requested trackage rights"). Those trackage rights would preserve IP&L's current rail-to-rail competition between ISRR, and CSX's 89-percent-owned subsidiary INRD, for supplies of Indiana coal to the Stout and Perry K Plants, and would be efficient. Today, Indiana Southern, in interchange with Conrail, can serve Stout via switch (using the Indiana Rail Road). Indiana Rail Road (sometimes referred to as "INRD") serves Stout directly, and can serve Perry K via switch over Conrail. (Given that CSX owns most of Indiana Rail Road, and controls it, I sometimes refer to them jointly as "CSX/Indiana Rail Road.") Indiana Southern also uses Conrail as a destination carrier at the Perry K Plant. Conrail is not affiliated with either ISRR or INRD and thus is a neutral destination carrier, whereas CSX clearly would not be neutral, but would certainly favor its subsidiary INRD in setting rates or in delivering coal..

Therefore, ISRR's requested trackage rights will merely retain the existing rail-to-rail competition at the Stout and Perry K Plants for Indiana coal. Indiana Southern's requested trackage rights are essential in order to mitigate the severe anti-competitive effects that will result if CSX acquires Conrail's lines in Indianapolis, as proposed by NS and CSX. Unless Indiana Southern can continue to compete with CSX/Indiana Rail Road at Perry K and Stout, both Plants will become captive to CSX/Indiana Rail Road, and IP&L may lose Indiana Southern as an effective competitor at its Stout and Perry K Plants..

SUMMARY

1. In their Application, CSX and NS took the position that IP&L was one of the "2 to 1" shippers in Indianapolis, entitling it to relief, but without specifying whether that referred to IP&L's Stout Plant or Perry K Plant. In discovery, CSX stated that Perry K was deemed to be a "2 to 1" destination, but denied that the Stout Plant was, based on the fiction that CSX would compete with INRD. But CSX owns 89 percent of INRD, and obviously controls it, as Judge Leventhal found. So, in its Rebuttal, CSX has abandoned that position for a new one.

2. Now CSX contends that the Stout Plant does not experience rail-to-rail competition, but claims that the real competition is from trucks and power generated by our Petersburg Plant (which is unaffected by the transaction proposed by CSX and NS), and therefore IP&L is not entitled to relief at the Stout Plant.

3. Dispatching power from our Petersburg Plant to replace power from Stout to "discipline" CSX/INRD is not an option, contrary to Mr. Vaninetti's theory. Whenever the

Petersburg Plant can generate power, we rely on it first. Thus, we are already doing what Mr. Vaninetti recommends.

4. Indiana Southern's proposed trackage rights into Stout and Perry K would replicate the existing efficient movements of Indiana coal, unlike CSX/NS's inefficient proposal to route IP&L's coal unit trains, if handled by NS, into and out of Hawthorne Yard. Indiana Southern could also use any of the possible "build-out" routes into the Stout Plant that could also be used for possible western coal movements to Stout.

5. CSX's Witness Kuhn's testimony suggests that IP&L's proposed "build-out" from Stout might cost more -- perhaps twice as much -- as IP&L Witness Porter estimated, but that cost would be well within a feasible amount to justify the "build-out." Mr. Kuhn's testimony, like IP&L's, demonstrates that a "build-out" is feasible, as are other routes, and so is a truck transloading facility on the former Belt over which Conrail now operates. The potential of such a "build-out" acts as a constraint on the switching charge and rates Indiana Rail Road is able to impose on shipments to the Stout Plant.

I.

IP&L'S STOUT AND PERRY K PLANTS ARE "2 TO 1" FACILITIES BUT THE CSX/NS PROPOSAL WOULD NOT PRESERVE EXISTING COMPETITION AT THOSE FACILITIES.

A. The Stout Plant Is A "2 to 1" Facility.

It is CSX's 89-percent ownership of Indiana Rail Road (CSX/NS-17, Application, Vol. I, p. 271), and its admitted control of Indiana Rail Road, as Judge Leventhal found, that is at the core of the anti-competitive problems affecting Indianapolis shippers. That common ownership is also the reason why IP&L's Stout Plant is a "2 to 1" destination. However, CSX, at least previously in this proceeding, maintained the fiction that it will compete with Indiana Rail Road.

see, e.g., Sharp Dep'n Tr. at 14-15 (Attachment 1 hereto), despite its ownership interest in that Railroad. Mr. Sharp's colleague, Mr. William M. Hart, Vice President of Corporate Development for CSX Transportation, Inc., described the Board's test characterizing a "2 to 1" facility as follows:

A shipper is defined as a 2-to-1 if either (1) Two railroad lines physically enter its facility and those lines would be under common ownership after the transaction, or (2) A railroad's line physically reaches its facility, but the shipper has a second switching service option with a second rail carrier through reciprocal switching, trackage rights or haulage.

CSX/NS-19, Application, Vol. 2A, p.146. Mr. Hart's definition of a "2 to 1" point is under-inclusive, because it omits those destinations, such as IP&L's Stout Plant, that have the ability to be served via a "build-out" to a railroad not affiliated with the railroad that has an existing line into the facility, and because he should have included plants with access to a second carrier via switching.

In any event, the current rail options at the Stout Plant satisfy the Board's tests to qualify as a "2 to 1" destination. Stout can be served via a build-out to or at Conrail, and it can be served by Indiana Southern/Conrail via switching.

Under the terms of the transaction proposed by CSX and NS, if CSX takes exclusive control of Conrail's lines, both means of physical access into Stout will fall "under common ownership," to use Mr. Hart's term, yet CSX and NS apparently do not concede that the Stout Plant as a "2 to 1" destination.¹

¹I say "apparently" because there is much confusion on this point. In the Application (CSX/NS-25, Application, Vol. 8C, p. 525), CSX and NS included "Indianapolis Power and Light" as a "2 to 1" shipper in Indianapolis, without specifying which IP&L destination(s) -- Stout or Perry K or both -- were included. In discovery, therefore, IP&L inquired about the ambiguity, and CSX and NS finally admitted that Perry K was a "2 to 1" facility, but denied
(continued...)

Despite Applicants' refusal to concede that Stout as a "2 to 1" facility, the other second test for such a designation is also fulfilled because Indiana Rail Road serves the Stout Plant directly and Stout can also be served by Indiana Southern/Conrail via switch over Indiana Rail Road. CSX/NS-177, Rebuttal, Vol. 2A, Hoback V.S., p. P-195, Orrison Rebuttal V.S., p. P-653.

Applicants have refused to admit that CSX and Indiana Rail Road do not and will not compete with one another, but by Mr. Hart's own definition, Conrail's line (over which Stout can be served with Indiana Southern-origin coal via switch on Indiana Rail Road or directly via a build-out) would come "under common ownership," and thus Stout would clearly be a "2 to 1" facility. IP&L is surprised and disappointed that it would have to litigate this issue, since the "2 to 1" criteria are well-established under the Board's standards in prior mergers.² In fact, at his deposition, Mr. Hart admitted that the Stout Plant would be a "2 to 1" destination if Indiana Rail Road were treated as CSX:

Q. If a carrier has access via a switching charge to a plant that is directly served by another railroad and those two railroads were to merge, ~~would~~ one were to acquire the other, is it your

¹ (...continued)

Stout was (although not in so many words, instead saying only "Stout is served by Indiana Rail Road," without clarifying what they meant by that). Attachment 2 hereto.

In their December 15, 1997 Rebuttal, CSX and NS admit that their list of "2 to 1" shippers in Indianapolis was under-inclusive. (CSX/NS-176, Rebuttal, Vol. 1, p. P-60, referring to "Exhibit I" in CSX/NS-178, Rebuttal, Vol. 3C, pp. 638-39). But revised Exhibit I still merely lists "Indianapolis Power & Light" as one of the 66 "2 to 1" shippers, without specifying the destination intended.

²Applicants' refusal to treat the Stout Plant as a "2 to 1" destination, and, for that matter, the confusion surrounding whether even Perry K is a "2 to 1" destination, contradict Mr. Hart's testimony accompanying the Application (CSX/NS-19, Vol. 2A, p. 149) that, for any "2 to 1" shipper who comes forward, CSX "stands ready to address that shippers' [sic] concerns."

understanding that that would be a two-to-one situation as defined on your Exhibit No. 2?

A. Yes.

....

Q. . . . If, and I'm asking you to assume this for purposes of my question, Conrail has access to the Stout Plant via switching and CSX were the delivering carrier to the Stout Plant, do I take your previous answer to be that the Stout plant would be under my assumption a two-to-one plant?

A. Yes.

Q. Now, if we change my hypothetical to substitute Indiana Railroad for CSX, would you treat the Stout plant as a two-to-one point?

A. The second case?

Q. Is Conrail via switching and Indiana Railroad which you testified is owned by CSX.

A. Now, the Indiana Railroad is an independently run operation. I don't think it's the same case.

Hart Dep'n Tr. at 30-31 (Attachment 3 hereto). Applicants' prior position that Stout is technically not a "2 to 1" shipper because Indiana Rail Road serves it, and CSX does not, was complete nonsense. Presumably that is why CSX and NS, in their December 15, 1997 Rebuttal, have abandoned the fiction that CSX and Indiana Rail Road do or will compete, nor did they even offer Messrs. Hart and Sharp as Rebuttal witnesses.

Because it owns 89 percent of Indiana Rail Road, because 3 of 5 members of Indiana Rail Road's Board of Directors are CSX employees (including Mr. Sharp), and because CSX admits it controls Indiana Rail Road, CSX will have strong economic incentives to favor INRD- or CSX-

origin coal if CSX/Indiana Rail Road controls access to the Stout and Perry K Plants, and obviously will do so.

B. Perry K is a "2 to 1" Facility.

In another of the many inaccuracies in their Rebuttal, CSX and NS state that Perry K Plant "will gain two carrier access, an improvement over the status quo." See CSX/NS-176, Rebuttal, Vol. 1, p. P-365. CSX Witness (and INRD President) Hoback admitted that Perry K currently has two rail-carrier access, Indiana Southern via switch over Conrail and Indiana Rail Road via switch over Conrail. See CSX/NS-177, Rebuttal, Vol. 2A, p. P-198 (noting Conrail charge for moving INRD-origin coal to Perry K). The transaction proposed by CSX and NS would eliminate Conrail, the neutral destination carrier, and Perry K would instead be served only by CSX, which would clearly not be neutral as to whether coal was originated by its subsidiary Indiana Rail Road or by Indiana Southern. This is a reduction in the competitive status quo, not "an improvement," as CSX would have it. This is unsatisfactory to IP&L because CSX would clearly favor its subsidiary over Indiana Southern, whereas Conrail had no incentive to favor either of IP&L's origin carriers (since neither is affiliated with Conrail). Since CSX and NS apparently concede that Perry K is a "2 to 1" facility, the Board should treat it as such.

II.

**TRUCKS ARE NOT THE COMPETITION INTO THE STOUT PLANT;
INDIANA SOUTHERN/CONRAIL IS.**

Messrs. Hoback and Vaninetti insist that IP&L's real competitive constraint on Indiana Rail Road's rates into Stout is the use of trucks (CSX/NS-177, Rebuttal, Vol. 2A, pp. P-194-201, Vol. 2B, pp. P-504 to -07), and therefore IP&L will not suffer any loss of its competitive options as a result of the acquisition of Conrail by CSX and NS. In support of his position, Mr. Vaninetti

quotes Don Knight, my superior, who testified in a deposition that in the course of negotiations concerning rail rates from a new coal (Farmersburg) that would supply only about one-third of the needs of the Stout Plant that he had threatened the use of trucks to get coal to Stout to get a reduced rail rate from Indiana Rail Road. Don further testified:

What I mean by that, to explain it, is if you are negotiating where the railroad is trying to rip you off and you have got a trucker out there that is really trying the best he can to get your business and do it right, I would much rather pay three cents more a ton to go with a trucker. . . .

Knight Dep'n Tr. at 12-13 (Attachment 4 hereto). Mr. Knight further testified that he felt it was "ridiculous" that the rail rates offered by Indiana Rail Road were so high as to be competitive with truck rates, despite the lower costs involved in moving coal by rail. Knight Dep'n Tr. at 14 (Attachment 5). But what Mr. Vaninetti failed to mention was that, as I testified in my deposition Mr. Vaninetti cited for other points,

For all coal mines serving the Stout Plant,

For example, in January 1997, when the INRD contract took effect, the truck rate from the Triad Mine to Stout was [REDACTED] whereas the rail rate on INRD from the same mine was [REDACTED] down from [REDACTED] INRD's previous rate). In fact, when IP&L was negotiating a new contract with INRD, it used ISRR/Conrail and then INRD for switching, and the rail rate for that alternative was [REDACTED] depending on the origin, via either routing). Mr. Hoback at INRD agreed to lower our rate in return for a volume commitment of at least [REDACTED] He agreed to retain our [REDACTED] but only because ISRR/Conrail would get no more than the remaining [REDACTED]

But the fact that IP&L used ISRR/Conrail to convince INRD to lower its rate by about which reduction Mr. Vaninetti notes, but erroneously ascribes to trucks, which we did not use) only shows that INRD's existing rates at the time were Additionally, IP&L invested in the purchase of more than 570 rail cars because that is the mode of delivery it needs.

Thus, contrary to Mr. Vaninetti's testimony, our recent experience at Stout demonstrates that the only true (albeit imperfect) competition one railroad has for coal shipments is another railroad routing.

, if the Board were to accept the CSX/NS position, in order to move 100 percent of Stout's coal needs by truck, approximately 60,000 truck loads would be required per year. (1.5 million tons divided by 25 tons/truck equals approximately 60,000 truck loads.) On a daily basis, Monday through Friday, under that scenario, about 230 trucks would enter (and the same number would leave) the Stout Plant.

That is a total of 460 trucks per day round-trip.

Messrs. Vaninetti and Hoback disregard the efficiencies associated with unit-train service. :

To paraphrase Mr.

Vaninetti, CSX's "last minute" claim that trucks constitute IP&L real competition at the Stout Plant contradicts CSX's earlier, and now apparently abandoned, insistence that IP&L did not need protection for Stout as a "2 to 1" facility because CSX would compete vigorously with Indiana Rail Road! CSX's new-found advocacy of trucks is merely an attempt to divert the Board's attention from the real issue -- which is retention of IP&L's current two rail-carrier

access. (It is also ironic, in view of the railroad industry's longstanding attacks on the safety and environmental impacts of trucking.)

Although Mr. Vaninetti contends that Conrail's participation in the Indiana coal industry is limited (CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., pp. P-509 to -11 ("Conrail Has a Negligible Role in the Indiana Coal Industry")), Conrail's role is integral to the competitive balance IP&L now enjoys at the Stout and Perry K Plants. Conrail acts as a neutral destination carrier at Perry K and Stout for Indiana Southern- and Indiana Rail Road-origin coal. If CSX takes over Conrail's lines, it would eliminate Conrail's important function as a neutral destination carrier and therefore would eliminate the competition between Indiana Southern and Indiana Rail Road.

Under the Indiana Rail Road-IP&L Contract (CSX/NS-178, Rebuttal, Vol. 3D, p. 396), Indiana Rail Road is now entitled to deliver at least _____ of the coal used annually (including via truck). However, before that Contract took effect in 1997, Mr. Vaninetti concedes that Indiana Southern originated _____ of coal for IP&L's Stout Plant, with _____ of that routed over Conrail. CSX/NS-177, Rebuttal, Vol. 2B, p. P-510. _____ demonstrates the importance of the Indiana Southern/Conrail routing as an effective competitor to Indiana Rail Road when the Contract was executed in 1996. Indiana Southern/Conrail was the effective competitor to Indiana Rail Road, _____ and as such in 1996 Indiana Rail Road lowered its rate _____ to retain IP&L's Stout business.

This is also the answer to Mr. Hoback's testimony. Whatever IP&L may have threatened in long-ago negotiations, Indiana Rail Road reduced its rate by \$2.00 per ton

[see CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., p. P-150), which was

obviously not necessary to meet truck competition even including Mr. Vaninetti's alleged savings of for truck unloading as compared to rail unloading (which is wrong, at least for Stout). CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., p. P-504. In reality, rail unloading at Stout is less expensive than truck unloading because our unloading facilities accommodate rail cars more efficiently than trucks. Witness Vaninetti's observation may or may not be true at other powerplants, but it is not true at Stout, nor does Mr. Vaninetti's careful choice of words claim that it is.

Mr. Knight's deposition testimony, which Mr. Vaninetti took out of context (as I know, because I was there) indicated that the truck rates to Stout were higher than the rail rates. And when Mr. Knight testified that "this was not something two railroads were going head-to-head on," he merely meant that, because of the need to pay Indiana Rail Road a switching charge and to rely on Conrail and Indiana Rail Road to deliver coal originating on Indiana Southern, the competition between Indiana Southern and Indiana Rail Road is not "head-to-head," i.e., fully effective, as a free market would be. Obviously, he was not denying that Indiana Southern/Conrail is a competitor to Indiana Rail Road, because that was the alternative IP&L used until its new Contract with Indiana Rail Road took effect in 1997, and it caused sufficient competition to cause INRD to lower IP&L's rates to the Stout Plant.

CSX and NS denigrate the Conrail/Indiana Southern competitive option despite the fact that IP&L used the Indiana Southern/Conrail alternative extensively in 1995-96 rather than in 1997. However, Applicants themselves relied on 1996 statistics to support a showing of competition (or lack thereof) for Niagara Mohawk Power Corporation when it suited their purposes. See CSX/NS-176, Rebuttal, Vol. 1, at pp. P-139, -145, and -449. Like CSX and NS, I

submit that 1996 data is highly relevant to demonstrate competition that resulted in a rate reduction effective in 1997.

Moreover, Witness Vaninetti's argument about "Conrail" not being a competitor in the "Indiana coal market" ignores the fact that Indiana Southern is a major factor in the Indiana coal market (see CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., Table 3, p. P-510) and that Indiana Southern's line serving Indianapolis (and thus, indirectly, Stout) was a spin-off from Conrail. Obviously, that spin-off would not have occurred but for their mutual conclusion that it would be more economical for Indiana Southern to provide that service than for Conrail to do so. It is thus misleading to claim that hauling coal over Indiana Southern/Conrail "is a substantially inferior alternative to competition with two-line hauls involving INRD. . ." (id. at p. P-510).

Effective competition is not defined by whether Indiana Rail Road or Indiana Southern provide equal amounts of coal to Stout, or even any coal to Stout. It is the potential of either carrier to originate coal, together with fixed switching charge, that provides IP&L with the competitive options that are at risk under the transaction proposed by CSX and NS.

IP&L is not aware of any merger or control proceeding in which the Board deprived a facility of a second rail carrier option simply because that shipper could in theory also use trucks (especially without proof that trucks constitute effective competition at similar rates). The trackage rights requested by Indiana Southern provide the means for IP&L to retain its existing two-railroad service at Stout and Perry K to which, under those precedents, IP&L is entitled.

III.

IP&L CANNOT RUN ITS PETERSBURG PLANT TO "DISCIPLINE" THE RAILROADS AT ITS STOUT PLANT, BECAUSE IP&L ALREADY RUN ITS PETERSBURG PLANT WHENEVER IT IS AVAILABLE.

Mr. Vaninetti, a consultant, relied on speculation and not the real world for much of his testimony. For example, despite five rounds of interrogatories and document requests to IP&L, CSX and NS never asked whether we could run our Petersburg or Pritchard Plants (which are not affected by this proceeding) more and run the Stout Plant less. Yet, Mr. Vaninetti claims we could (CSX/NS-177, Rebuttal, Vol. 2B, pp. P-507 to -09), which is both untrue and, frankly, insulting. With all respect, it is silly to think that IP&L would not run Petersburg (which produces power at the lowest cost of any of our Plants on an incremental-cost basis) and instead run Stout (which is a higher-cost Plant) when it only needs power from one of the two Plants. Yet, that must be what Mr. Vaninetti thinks, since he advocates that IP&L run Petersburg more, and Stout less, to "discipline" the railroads. Id. at p. P-508 ("For instance, generation could be increased at ISRR-served Petersburg or Pritchard to put pressure on INRD's deliveries to Stout and vice-versa."). That is what we do, not to discipline the railroads, but because, like other utilities, our computers are programmed to use power generated by our lowest-cost plants (measured on an incremental-cost basis) first, then the next-lowest-cost plant, etc. Consequently, because Petersburg is our lowest-cost Plant and because of our obligation to our rate payers, we always run it first when it is available.

Mr. Vaninetti relied on Petersburg's and Stout's "capacity factors" for his speculation. Id. at p. P-508. Based on Petersburg's capacity factor of 66 percent (name-plate capacity), Mr. Vaninetti concludes we could run Petersburg more and Stout less. But capacity factor is a measure of the total power generated in a year as compared to the total net capacity of the Plant;

measured in that manner, Petersburg's capacity factor was . . . , as Mr. Vaninetti admitted. Compare CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., Table 2, p. P-508, with Vaninetti Dep'n Ex. No. 5. Such a factor can never 100 be percent because of the need to do maintenance, and in reality is usually well less than 100 percent. At night, or during off-peak periods, our demand for power is well below our total capacity. During such times, we can sometimes avoid the need for power from our Stout Plant, and even from some of the Petersburg Plant, by reducing the output of the Plants. That is why Petersburg's capacity factor was "only" . . . , and Stout's was

In order not to further confuse the record with statistics, let me simply say that, as a general rule, whenever power is available from Petersburg, we use it before we use power generated at Stout (which is consistent with Mr. Vaninetti's relative capacity factors for the two Plants). So the opportunity advocated by Mr. Vaninetti is not available, because we already use Petersburg-generated power before we use Stout. Thus, we already do -- automatically -- what Mr. Vaninetti recommends. Therefore, Mr. Vaninetti erred in concluding that we have other opportunities to run Petersburg or Pritchard more and Stout less. We do not.

IV.

THE TRACKAGE RIGHTS REQUESTED BY INDIANA SOUTHERN WOULD ALLOW IT TO EFFICIENTLY SERVE THE STOUT AND PERRY K PLANTS.

The trackage rights requested by Indiana Southern would allow it to act as a direct-service carrier for Indiana coal to IP&L's Stout and Perry K Plants. Without those trackage rights, Indiana Southern-origin traffic could be subject to higher switching charges and poorer dispatching than CSX/Indiana Rail Road-origin traffic. There is every reason to expect CSX to

favor its own traffic, while Conrail, which does not originate coal for IP&L at the Stout and Perry K Plants, has no such incentive.

As the Board has become painfully aware in its Ex Parte No. 573 proceeding, Rail Service in the Western United States, competition and adequate service for all serving carriers is critical in major metropolitan areas, such as Los Angeles and Houston. The same rationale applies to Indianapolis. Under the transaction proposed by CSX and NS, 67 of the 84 "2 to 1" shippers are located in Indianapolis.³ Arguably, Indianapolis would be susceptible to more inefficient routings and likely rate increases than any other area affected by the proposed transaction, because of the proposal to route NS traffic through Hawthorne Yards and the "bottleneck" CSX/Indiana Rail Road would create. If the Board grants Indiana Southern's requested trackage rights, Indiana Southern could act as a competitor to CSX/Indiana Rail Road and thus restore the competition that would otherwise be lost in Indianapolis.

Mr. Crowley has included as Exhibit TDC-1 to his testimony a revised schematic of the rail facilities in the vicinity of IP&L's Stout and Perry K Plants. The schematic illustrates the anti-competitive nature of the proposed transaction in Indianapolis and specifically how it will reduce IP&L's competitive options at Stout and Perry K. The schematic differs in two minor respects from that submitted by Mr. Crowley on behalf of IP&L in its Supplemental Comments (IP&L-3) as IP&L Exhibit No. 4 (TDC-2).

³Applicants admit that 66 of the 83 "2 to 1" shippers are located in Indianapolis. CSX/NS-176, Rebuttal, Vol. 1, p. P-60. (We have added 1 to the numerator and denominator since Applicants refuse to acknowledge Stout's obvious "2 to 1" status, and thus apparently excluded it from their count.) Thus, 80 percent of the shippers Applicants concede are entitled to relief from the Board are located on that portion of Conrail to be acquired by CSX in Indianapolis and could be served by Indiana Southern.

First, following the sale of the former Petersburg Secondary Branch to Indiana Southern, Conrail tore up a portion of the Petersburg Branch for a short distance north of Milepost 6, leaving what we and Witness Crowley refer to as the "Conrail Stub" (the remainder) connected to the Indianapolis Belt. The build-out proposed by Mr. John E. Porter in his Verified Statement (IP&L-3, IP&L Exhibit No. 2) would connect with the track that remains, i.e., the "Conrail Stub," and could thus connect the Stout Plant to Indiana Southern via the trackage rights it has requested over the Belt.

Second, the spur extending toward the Stout Station from the Stout Plant is owned by IP&L to the point of the "Y" depicted in the schematic. IP&L also owns the upper "leg" of the "Y." The remainder of the "Y" is owned by Indiana Rail Road. The schematic is consistent in all other respects with Mr. Crowley's original schematic (IP&L Exhibit No. 4 (TDC-2)). His revised schematic also illustrates the trackage rights sought by Indiana Southern to serve the Stout and Perry K Plants, and the possible transloading facility IP&L could build along the former Belt Track Conrail operates.

Without imposition of conditions such as those requested by Indiana Southern, IP&L's unit trains of coal, if handled by NS, will be sent to the Hawthorne Yard for switching by CSX, which is wholly unnecessary, since CSX would interchange at the INRD interchange with the former Belt (the "top of the hill" as INRD's Mr. Hoback refers to it). IP&L has a right to have its own cars handled in the manner that takes advantage of the efficiencies of unit train service. The handling of IP&L's coal unit trains if carried by NS is entirely inconsistent with the purpose and function of a switching yard, such as the Hawthorne Yard. It also is inconsistent with the premise the transaction proposed by CSX and NS. As CSX's Chairman Mr. John W. Snow testified at his deposition:

Q: And the applicants are advocating efficiency as one of the benefits of the proposed transaction, correct?

A: We're not advocating it. We're saying that one of the benefits of the transaction will be greater efficiency.

Snow Dep'n Tr. at 163 (Attachment 6 hereto); see also CSX/NS-17, Application, Vol. 1, Goode V.S. at 324, 336, and 338. It would contradict CSX's and NS's premise of "efficiency" for their proposal to require IP&L's coal unit trains, which it owns and thus has a right to have handled efficiently, to go into and out of a switching yard, when they do not do so today. Indeed, Mr. Fox, NS's Vice President-Coal Marketing, admitted at his deposition that NS and CSX would probably agree not to route IP&L's coal unit trains into and out of Hawthorne Yard, despite what NS and CSX proposed in their Application, see IP&L-3, IP&L Ex. No. 5 (Fox Dep'n Tr. 149-52).

Notably, CSX's Vice President-Service Design, John W. Orrison, who is CSX's operations Witness in this proceeding, could not think of any operational reasons to criticize Indiana Southern's proposal to serve the Stout and Perry K Plants. CSX/NS-177, Rebuttal, Vol. 2A, pp. P-518-21. That is not surprising, because direct service via Indiana Southern, without going in and out of Hawthorne Yard, would clearly be more efficient than relying on CSX to switch the traffic, especially if into and out of Hawthorne Yard. Clearly, therefore, if efficiency is the test, as it must be, Indiana Southern's proposal is far superior to the CSX/NS proposal.

V.

A BUILD-OUT FROM STOUT IS FEASIBLE.

In IP&L-3 (filed October 21, 1997), we demonstrated the feasibility of a build-out to the "Conrail Stub." See IP&L-3, IP&L Exhibit Nos. 1, 2, 3 and 4. Recently, Martin Marietta, located south of the "Conrail Stub," expressed an interest in sharing the cost of IP&L's proposed

build-out in order to gain rail service. Additionally, Country Mart, owner of a portion of the "Conrail Stub," and whose affiliate is Indiana Grain Cooperative, also expressed interest in working with IP&L in connection with the proposed "build-out." These inquiries further demonstrate the feasibility of Mr. Porter's proposed "build-out." Moreover, IP&L has two other build-out options from Stout to Conrail, which I described in my deposition but which CSX and NS failed to mention anywhere in their Rebuttal. Although Mr. Kuhn describes "possible problems" with Mr. Porter's estimate, I believe that, even taking Mr. Kuhn's additional costs into account, Mr. Kuhn's testimony demonstrates that a "build-out" from Stout to Conrail is feasible.

Dr. Peter A. Woodward, testifying on behalf of the Department of Justice, stated that Mr. Porter's proposed build-out was feasible and that the potential for the build-out would operate effectively as a constraint on Indiana Rail Road rates to the Stout Plant. Woodward Dep'n Tr. at 14-15, 28 (Attachment 7 hereto). He is right.

CSX Witnesses Kuhn and Vaninetti criticize the cost estimate of the build-out proposed by IP&L. Witness Porter and argue that his estimate should have included additional expenses, which would not even double the costs of the build-out. See CSX/NS-177, Rebuttal, Vol. 2A, Kuhn V.S., pp. P-310-11. Even if the Board were to accept Applicants' increased cost estimate for IP&L's build-out option, the increased costs do not in any way affect the feasibility of the build-out. For example, if the Stout Plant were to operate for only 20 more years, the total costs claimed by Mr. Kuhn would be distributed over the costs of shipping approximately 30 million tons of coal (20 years times 1.5 million tons per year), and would amount to about when the construction costs are amortized over the remaining life of the Stout Plant. The Stout Plant is likely to operate for more than 20 years, because it is now so hard to site new powerplants, and yet demand for electricity continues to grow. Mr. Kuhn's extra costs would

also be offset by elimination of the switching charge imposed by Indiana Rail Road (approximately) which would no longer be necessary (and which could also increase when the current IP&L/IND Contract expires in about . I am advised that Dr. Woodward testified that the build-out proposed by IP&L was feasible even if its actual costs were three times the estimated cost, and I agree with his judgment. Woodward Dep'n Tr. at 30 (Attachment 8 hereto). Rather than undermine the economic feasibility of the build-out, CSX and NS have succeeded in confirming it.

Mr. Vaninetti contends that service via Indiana Southern/Conrail and then onto Indiana Rail Road into Stout is inefficient because it entails three carriers and therefore not a competitive threat to Indiana Rail Road. However, at the time Conrail and IP&L entered into their current Contract (1987), Indiana Southern did not exist. The sale of the Petersburg Secondary Branch to Indiana Southern in about 1992 obviously increased efficiencies and profitability for the two railroads, or it would not have made economic sense. The fact that Indiana Southern has served the Stout Plant via Conrail proves that coal destined for Stout moves efficiently over those carriers and then via switch into the Stout Plant.

Although Indiana Southern/Conrail did not carry coal to Stout in 1997, the effectiveness of that competition to Indiana Rail Road is not thereby disproved. It did in 1995-96, and it is the existence of a feasible competitor that proves that competition exists, which is precisely the reason the Board should grant the trackage rights requested by Indiana Southern.

IP&L's present ability to threaten to use Indiana Southern/Conrail via a "build-out" acts as a constraint on Indiana Rail Road switching charge, as well as on the Indiana Rail Road line haul rate. Indiana Rail Road could not charge a significantly higher rate without forcing IP&L to seriously consider constructing the build-out. If IP&L were to construct a build-out, it would

have the option to eliminate Indiana Rail Road altogether from the movement, which could have devastating consequences for Indiana Rail Road, see CSX/NS-177, Rebuttal, Vol. 2A, Hoback V.S., p. P-198, thus giving IP&L leverage today.

Mr. Vaninetti also questions IP&L's seriousness about a "build-out" because IP&L only recently studied the feasibility of a "build-out" to Stout. See CSX/NS-177, Rebuttal, Vol. 2B, V.S., p. P-511. But IP&L did not need to investigate the feasibility of a "build-out" option until recently. Since 1987, IP&L had an agreement with Conrail (and, once it came into existence in 1992, also with Indiana Southern) which provided a competitive alternative to the Indiana Rail Road; accordingly, there was no reason to study such a "build-out" until a proceeding such as this threatened IP&L's current competitive options at the Stout Plant. We knew the "build-out" was feasible because the distance is relatively short (2-3 miles, depending on the route) and the terrain relatively flat. It was thus unnecessary to "study" what we already knew, until this proceeding required proof of the feasibility of the "build-out."

Finally, IP&L also considered building a transloading facility along the former Belt to bypass INRD into the Stout Plant. This, too, would give IP&L rail-to-rail competition, with the coal trucked just a few miles to destination. That option, too, would be eliminated if Indiana Southern's requested trackage rights are not granted. Mr. Crowley has depicted the likely site of the transloading facility on his revised schematic, Exhibit TDC-1, and has shown how it would avoid the congested I-465/Harding Street interchange.

STATE OF INDIANAPOLIS

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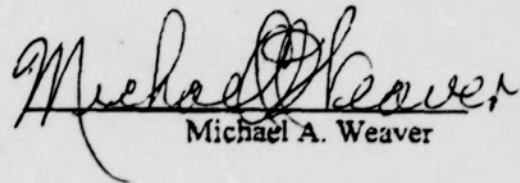
) ss.:

COUNTY OF MARION

)

VERIFICATION

Michael A. Weaver states under penalty of perjury that he is Manager of the Fuel Supply Organization for Indianapolis Power & Light Company, that he is qualified and authorized to file this Verified Statement in Finance Docket No. 33388 (Sub-No. 76) on behalf of IP&L and in support of Indiana Southern Railroad, Inc., that he has carefully examined all the statements in the foregoing verified statement, that he has knowledge of the facts and matters stated therein, and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


Michael A. Weaver

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BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 33388
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
RAILROAD CONTROL APPLICATION

~~HIGHLY CONFIDENTIAL~~ PUBLIC (9/22/97)

Washington, D.C.

Thursday, August 21, 1997

Deposition of RAYMOND L. SHARP, a
witness herein, called for examination by counsel
for the Parties in the above-entitled matter,
pursuant to agreement, the witness being duly
sworn by JAN A. WILLIAMS, a Notary Public in and
for the District of Columbia, taken at the
offices of Arnold & Porter, 555 Twelfth Street,
N.W., Washington, D.C., 20004-1202, at
10:00 a.m., Thursday, August 21, 1997, and the
proceedings being taken down by Stenotype by
JAN A. WILLIAMS, RPR, and transcribed under her
direction.

1 Q. Indianapolis Power & Light's traffic
2 into the Stout plant, for example?

3 A. Are you referring to the current
4 contract that's in existence or current movements
5 or potential movements?

6 Q. Current and potential.

7 A. I've had discussions with Mr. Knight,
8 yes.

9 Q. And does CSX have a subsidiary which in
10 turn owns 89 percent of the Indiana Railroad?

11 MR. ROSEN: If you know.

12 THE WITNESS: I don't have specific
13 knowledge as to the aspect the way you mentioned
14 it, but it's my understanding we have a
15 controlling interest in the Indiana Railroad.

16 BY MR. McBRIDE:

17 Q. And, in fact, are you now or will you
18 shortly be on the board of the Indiana Railroad?

19 A. I am now on their board.

20 Q. So would you think it reasonable to
21 conclude that CSX and Indiana Railroad are not
22 exactly arm's-length competitors of one another?

23 A. No, I would not think that's the case.

24 Q. Explain to me why you think CSX and
25 Indiana Railroad Company are head-to-head

1 competitors?

2 MR. ROSEN: I don't think that's what
3 he said.

4 But you can answer the question.

5 THE WITNESS: I'm not sure that I said
6 what you just asked me to repeat.

7 BY MR. McBRIDE:

8 Q. Then I'll start with that and I'll ask
9 you if you believe that CSX and Indiana Railroad
10 Company are head-to-head competitors?

11 A. The answer would depend on which
12 traffic you're talking about.

13 Q. Okay. How about traffic that comes in
14 on CSX origins and then interchanges with Indiana
15 Railroad?

16 A. It would seem to me we would not be
17 direct competitors where we interchange traffic
18 to them.

19 Q. Under what circumstances would you
20 regard yourself, CSX, that is, as a competitor of
21 Indiana Railroad?

22 A. Where traffic was available that could
23 be awarded to either Indiana Railroad or to CSX,
24 we would be competitors.

25 Q. Who has the sole physical access into

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CSX/NS-37

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

APPLICANTS' RESPONSE TO FIRST SET
OF INTERROGATORIES, FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS, AND
FIRST SET OF REQUESTS FOR ADMISSIONS TO
APPLICANTS FROM INDIANAPOLIS POWER & LIGHT

Applicants¹ hereby respond to the First Set of
Interrogatories, First Set of Requests for Production of
Documents, and First Set of Requests for Admissions to
Applicants from Indianapolis Power & Light ("IP&L" or
"requester") (IP&L-1).²

¹ "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively, "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively, "Conrail").

² Applicants note that there is a discrepancy in the title and body of requester's requests. In the title, requester directs its discovery to Applicants, but in the body (at the end of the first paragraph on page 2), requester directs the discovery to Conrail. Applicants' responses assume that the discovery was directed to Applicants.

- 12 -

goal was to afford access by NS to those industries to which both CSX and Conrail currently have access in Indianapolis.

Interrogatory No. 9

9. If the Perry K Plant or the Stout Plant or both are not included in your response to Interrogatory No. 8, explain the reasons for the decision not to grant Norfolk Southern access to those plants.

Applicants construe the reference to "included in your response to Interrogatory No. 8" as meaning "included among those industries which NS will obtain the right to serve." Subject to the foregoing, and to their general objections, Applicants respond as follows:

The Perry K plant is a "two-to-one" facility. The Stout plant is accessed via the INRD. They are both included in Applicants' response to Interrogatory No. 8.

Interrogatory No. 10

10. Explain the reasons why the Indiana Rail Road Company sought to discontinue portions of trackage rights over the Belt Track in STB Docket No. AB-295 (Sub-No. 3X), including a detailed description of the loss of potential service to facilities in Indianapolis and the surrounding area based on this abandonment.

Applicants object on the ground that the answer is contained in public documents on file at the STB. Subject to the foregoing and to their general objections, Applicants respond as follows:

See the Notice of Exemption filed by the INRD in Docket No. AB-295 (Sub-No. 3X). The INRD's rights in

- 13 -

question were overhead rights, which INRD had not used for at least two years prior to seeking authority for discontinuance of trackage rights. Through a switching arrangement with Conrail, the INRD preserved access to local customers, so that there was no meaningful "loss of service" by the INRD.

Interrogatory No. 11

11. Identify all rail carriers who currently have access to the Stout Plant and identify and explain any changes in service and economic arrangement with respect to the Stout Plant if the proposed transaction is approved and consummated.

Subject to their general objections, Applicants respond as follows:

The INRD currently has direct access to the Stout plant and will continue to have direct access to that plant after approval of the proposed transaction. Conrail can supply transportation service to IP&L for coal traffic originating on Conrail and destined for the Stout plant. Conrail can deliver that traffic to the INRD, which delivers it to Stout. After approval of the proposed transaction, it is contemplated that CSX will stand in the shoes of Conrail with respect to any arrangements that are in place between Conrail, the INRD and the IP&L. As provided in the Trackage Rights Agreement, NS will gain access to the INRD. See Volume 8C of the Application at 313-34.

CSX/NS-51

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

APPLICANTS' RESPONSE TO SECOND SET
OF INTERROGATORIES AND APPLICANTS'
SUPPLEMENTAL RESPONSE TO FIRST SET OF
INTERROGATORIES, FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS, AND FIRST
SET OF REQUESTS FOR ADMISSIONS
FROM INDIANAPOLIS POWER & LIGHT COMPANY

Applicants¹ hereby respond to the Second Set of
Interrogatories from Indianapolis Power & Light Company
("IP&L" or "requester") (IP&L-2) and supplement the
response to IP&L's First Set of Interrogatories, First
Set of Requests for Production of Documents, and First
Set of Requests for Admission.

GENERAL RESPONSES

The following general responses are made with
respect to all of the requests and interrogatories.

¹ "Applicants" refers collectively to CSX Corporation
and CSX Transportation (collectively, "CSX"), Norfolk
Southern Corporation and Norfolk Southern Railway
Company (collectively, "NS"), and Consolidated Rail
Corporation and Conrail Inc. (collectively, "Conrail").

deliveries to, or pickup of empty coal cars from the Stout Plant, exceed the current switching charge paid by IP&L under its contract with Conrail and, is so, by how much.

7. Subject to their general objections, Applicants respond as follows: Applicants do not know what the future charges will be, and therefore, cannot assess whether the future charges will exceed the current switching charge paid by IP&L under its contract with Conrail. See response to Interrogatory No. 5(b).

Interrogatory No. 8: Under the proposed transaction, will NS's trackage rights extend over the Indianapolis Belt Running Track?

8. Subject to their general objections, Applicants respond as follows: NS will have overhead trackage rights over a portion of the Indianapolis Belt Running Track. See Volumes 8B and 8C of the Application.

Interrogatory No. 9: If the answer to Interrogatory No. 8 is affirmative, would NS's trackage rights permit IP&L to connect directly with NS at a point along the Indianapolis Belt Secondary through a build-out from the E.W. Stout Plant, or would NS be limited to overhead trackage rights along the Indianapolis Belt Running Track?

9. Applicants object to the interrogatory to the extent that the "Indianapolis Belt Secondary" is not a defined term. Subject to this objection and their general objections, Applicants respond as follows: NS will be limited to overhead trackage rights along the Indianapolis Belt Running Track, and accordingly, IP&L

will not be permitted to connect directly with NS at a point along the Indianapolis Belt Secondary through a build-out from the E.W. Stout Plant. See Volume 8B of the Application at 110-11, 321-22.

* * *

Applicants supplement their response to Interrogatory No. 9 of IP&L's First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admissions to Applicants with the following:

Both the Perry K and Stout plants are included in Applicants' response to Interrogatory No. 8. While the Perry K plant is not a "two-to-one" facility, CSX is treating the facility as a "two-to-one" for purposes of giving NS access to it through cost-based switching. See Exhibit X to Transaction Agreement, CSX/NS-25, Volume 8C at 501 et seq. The Stout plant is accessed via the Indiana Rail Road Company.

Respectfully submitted,

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
J. GARY LANE
JAMES L. HOWE, III
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P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
DOUGLAS R. MAXWELL

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Wednesday, September 24, 1997

13 Deposition of WILLIAM M. HART, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at 9:05 a.m.,
21 Wednesday, September 24, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY,
24 RPR, and transcribed under their direction.

25

1 you were thinking of in the question that I asked
2 you previously about Conrail accessing the Stout
3 plant?

4 A. No.

5 Q. Is that because you had a different
6 route in mind?

7 A. I wasn't thinking about it.

8 Q. Now that you are thinking about it, is
9 that the way that you believe coal via Conrail
10 would get to the plant?

11 A. I'm not certain of the precise points
12 of interchange and connectivity at the points in
13 Indianapolis.

14 Q. If a carrier has access via a switching
15 charge to a plant that is directly served by
16 another railroad and those two railroads were to
17 merge, where one were to acquire the other, is it
18 your understanding that that would be a
19 two-to-one situation as defined on your Exhibit
20 No. 2?

21 A. Yes.

22 Q. Would your answer be different if the
23 latter railroad was not the entity thought to be
24 merging or acquiring but an entity owned by the
25 entity that is merging or acquiring?

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1 MR. SIPE: Do you understand that
2 question?

3 THE WITNESS: No, I don't. You'll have
4 to do that one again.

5 BY MR. McBRIDE:

6 Q. Let's use specifics to try to help.
7 If, and I'm asking you to assume this for
8 purposes of my question, Conrail has access to
9 the Stout plant via switching and CSX were the
10 delivering carrier to the Stout plant, do I take
11 your previous answer to be that the Stout plant
12 would be under my assumption a two-to-one plant?

13 A. Yes.

14 Q. Now, if we change my hypothetical to
15 substitute Indiana Railroad for CSX, would you
16 treat the Stout plant as a two-to-one point?

17 A. The second case?

18 Q. Is Conrail via switching and Indiana
19 Railroad which you testified is owned by CSX.

20 A. Now, the Indiana Railroad is an
21 independently run operation. So I don't think
22 it's the same case.

23 Q. Have you encountered such a situation
24 before in trying to determine what a two-to-one
25 shipper is?

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX :
TRANSPORTATION INC., : STB Finance Docket
NORFOLK SOUTHERN CORPORATION : No. 33388
AND NORFOLK SOUTHERN RAILWAY :
COMPANY--CONTROL AND OPERATING:
LEASES/AGREEMENTS--CONRAIL :
INC. AND CONSOLIDATED RAIL :
CORPORATION :
- - - - - x

DEPOSITION OF DONALD W. KNIGHT

Washington, D.C.
Monday, December 8, 1997

REPORTED BY:
CRAIG L. KNOWLES

1 money, which we loaned him. It took Mr. Waltz's
2 approval. But that is the only thing that stands
3 out.

4 Q So you have no recollection of --

5 A No.

6 Q -- the Indiana Railroad approaching you or
7 IP&L about raising their switch charge?

8 A No. I am not saying it didn't happen.

9 Q No, I understand. That's fine.

10 Do you recall ever saying to Mr. Tom Hobeck
11 that if the Indiana Railroad increased its switch
12 charge by any amount, that IP&L would immediately
13 shift all of its coal tonnage to truck from rail?

14 A No, I don't remember that incident. But,
15 let me say this. I certainly in negotiations have
16 said I would use trucks in certain cases even if it
17 costs more. I have said that.

18 Q Okay.

19 A What I mean by that, to explain it, is if
20 you are negotiating where the railroad is trying to
21 rip you off and you have got a trucker out there that
22 is really trying the best he can to get your business

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1 and do it right and serve you three days before you
2 get the call, I would much rather pay three cents
3 more a ton to go with the trucker, if that is what we
4 are referring to.

5 Q Mr. Knight, can you tell me when -- first,
6 do you have a rail transportation contract with the
7 Indiana Railroad?

8 A Yes --

9 Q Does IP&L?

10 A Yes, we do.

11 Q When was that contract negotiated?

12 A '95, I think.

13 Q In the process of negotiating that rail
14 contract with the Indiana Railroad, did you ever say
15 to Mr. Tom Hobeck that if the Indiana Railroad did
16 not reduce its existing rail rates by approximately
17 20 percent, that you would truck coal from the new
18 Farmersburg mine to the Stout plant?

19 A I don't know if I used those words or not.
20 The rate we have under that contract is the truck
21 competitive rate. Mr. Hobeck was fighting two
22 trucking companies. He had a fellow on his board

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX :
TRANSPORTATION INC., : STB Finance Docket
NORFOLK SOUTHERN CORPORATION : No. 33388
AND NORFOLK SOUTHERN RAILWAY :
COMPANY--CONTROL AND OPERATING:
LEASES/AGREEMENTS--CONRAIL :
INC. AND CONSOLIDATED RAIL :
CORPORATION :
- - - - - x

DEPOSITION OF DONALD W. KNIGHT

Washington, D.C.
Monday, December 8, 1997

REPORTED BY:
CRAIG L. KNOWLES

1 that was president of a trucking company that knew
2 what it cost to move it by truck. And that is
3 exactly where he was at.

4 Q What do you mean, that is exactly where he
5 was at?

6 A Well, the fellow he had on the trucking
7 company, and Tom says he knows exactly what it costs
8 to move the coal by truck, and sitting on his board.
9 And that's where our rates are, they are truck
10 competitive rates.

11 Q Your rail rates that you are getting from
12 the Indiana Railroad are truck competitive rates, is
13 that what you are saying?

14 A Yes. Tom knew exactly what it cost to go
15 by truck. He told me how he knew that.

16 Q So is that why you entered into the, your
17 current contract with the Indiana Railroad, because
18 those rail rates were competitive with truck?

19 A Yes. I think it's ridiculous but that is
20 what we had to do.

21 Q I'm sorry, what do you mean it was
22 ridiculous?

1 A Because Hobeck's costs are nowhere near
2 what a trucker's costs are. What a railroad wants to
3 do is try to block out other railroads so they don't
4 have to compete with them, they only have to compete
5 with trucks. That is what I mean by it. This was
6 not something two railroads were going head-to-head
7 on.

8 MS. TAYLOR: Off the record.

9 (Discussion off the record.)

10 MS. TAYLOR: Okay, Mr. Knight, those are
11 all the questions I have for you.

12 MR. MC BRIDE: No redirect.

13 (Whereupon, at 2:57 p.m., the deposition
14 was concluded.)

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Thursday, September 18, 1997

13 Deposition of JOHN W. SNOW, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by MARY
17 GRACE CASTLEBERRY, a Notary Public in and for the
18 District of Columbia, taken at the offices of
19 Arnold & Porter, 555 Twelfth Street, N.W.,
20 Washington, D.C., 20004-1202, at 10:00 a.m.,
21 Thursday, September 18, 1997, and the proceedings
22 being taken down by Stenotype by MARY GRACE
23 CASTLEBERRY, RPR, and transcribed under her
24 direction.
25

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1 appropriate person to talk about that, although
2 Mr. Hart might be as well.

3 Q. Would CSX have any objection to taking
4 the traffic of the sort I just described at some
5 point other than the Hawthorn yard and bringing
6 it to the Stout plant?

7 A. We may or we may not and I wouldn't be
8 the one who would know.

9 Q. I see. Do you understand that a lot of
10 shippers own their own coal cars these days?

11 A. These days and many days in the past.

12 Q. And you understand that a shipper who
13 owns its own cars might prefer to have the most
14 efficient arrangement for the delivery of coal?

15 A. In which regard they're not much
16 different from shippers of coal generally.

17 Q. Right, but you do understand that?

18 A. Sure. That's true of all coal shippers
19 that I'm aware of.

20 Q. And the applicants are advocating
21 efficiency as one of the benefits of the proposed
22 transaction, correct?

23 A. We're not advocating it. We're saying
24 that one of the benefits of the transaction will
25 be greater efficiency.

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the

[20] BN Sante Fe merger. I filed two verified statements
on
[21] that merger. The first one did essentially similar
[22] tasks, similar work as the statement I just filed in
this

Page 10

[1] proceeding.
[2] Q. Have you had similar responsibilities in
[3] mergers involving other industries?
[4] A. Yes.
[5] Q. Many or few would you characterize?
[6] A. I have probably done about - worked on
about
[7] half a dozen merger filings where the level of analysis
[8] was similar to this, and I've worked on many more
[9] mergers, merger filings but only maybe half a dozen
in
[10] this detail.
[11] Q. When you analyze merger acquisition
[12] transactions, do you typically accept the representations
[13] made to you by the parties to the transaction?
[14] A. I do generally. If there's a way of verifying
[15] the representations or perhaps seeing if there are
other
[16] ways of looking at the same facts that everyone is
[17] looking at, I try to do those. I try to screen all of
[18] the information I get as well as I can to see, to look
[19] for possible errors or exaggerations, that kind of
thing.
[20] Q. Do you treat the representations made by other
[21] parties interested in the transaction the same way?
[22] A. Yes.

Page 11

[1] Q. How do you use as an economist resolve
[2] situations in which you find conflicting presentations
[3] made to you by different parties interested in the
[4] transaction?
[5] A. Well, I try to resolve them in the way that
[6] either the - if there's a factual dispute, I choose the
[7] facts which I - either there's the most factual support
[8] for a particular other fact or when there's - then
[9] there's different views on the issue of economic
theories
[10] of competitive behavior, then I rely on what economic
[11] theory I think is the more plausible one, perhaps one
[12] which has been tested more successfully than another
[13] theory which is being advanced. Those kinds of
criteria.
[14] Q. On page 8 of your verified statement which
was
[15] submitted as part of the document captioned DOJ-1,
you
[16] indicated - and this is, I believe, a quote - "The
[17] status station is served directly only by one rail,
[18] Indiana Railroad, but is also served by Conrail, the
[19] reciprocal switch." That's about in the middle of page
[20] 8. Do you see that?
[21] A. Yes, I see it in my copy.

[22] Q. What is the basis for your testimony that IP&L

Page 12

[1] status station is served by Conrail by reciprocal switch?
[2] A. That's based on information from IP&L.
[3] Q. How did you obtain that information?
[4] A. I conducted a couple of interviews with
people Attachment 7
[5] at IP&L. Page 1 of 3
[6] Q. Did you interview anyone else about this fact?
[7] A. I may have gotten the same information
from
[8] Indiana Southern Railroad. I'm thinking of other
sources
[9] of that information. Those I think are the only two,
the
[10] only two sources.
[11] Q. Do you know who provides the reciprocal
[12] switching service for Conrail that you referred to in
[13] your testimony?
[14] A. I believe it's the Indiana Railroad.
[15] Q. Did you interview anyone at the
[16] Indiana Railroad in connection with preparation of your
[17] testimony?
[18] A. No.
[19] Q. Did you interview anyone at Conrail in
[20] connection with your preparation of your testimony?
[21] A. No.
[22] Q. Did you ask at any point to be able to

Page 13

[1] interview anyone at Conrail in connection with the
[2] preparation of your testimony?
[3] A. No.
[4] Q. Did you ask at any point to interview anyone at
[5] the Indiana Railroad in connection with the preparation
[6] of your testimony?
[7] A. No, I didn't.
[8] Q. Do you know whether the reciprocal switch
that
[9] you refer to in the sentence that we just read was the
[10] subject of a file tariff?
[11] A. No.
[12] Q. Do you know whether party that provides
[13] reciprocal switch service to Conrail is under any
[14] obligation to continue to do so?
[15] A. After - if the merger goes through or -
[16] Q. Absent the transaction.
[17] A. No. I guess - let me just amend that. My
[18] understanding from talking to IP&L and Indiana
Southern
[19] representatives is that if the merger were not to
occur,
[20] that the current or the recent situation that I
described
[21] in my testimony about how Conrail served IP&L, that
that
[22] would continue.

Page 14

[1] So that the implication from the conversations
[2] I had with the people I mentioned was that this

[7] arrangement would continue. If it were not for the
[4] merger, we would assume we would go on. That's my
only
[5] understanding of the situation.
[6] Q. If there was a written agreement that governed
[7] this arrangement, would that be relevant to your
[8] analysis?

[9] A. A written agreement between? Between
Conrail

[10] and -

[11] Q. The party providing what you've described as
[12] reciprocal switching?

[13] A. In the Indiana Railroad? I'll assume the
[14] Indiana Railroad. I'm sorry, I understand - could
you

[15] repeat the first part of the question, please?

[16] Q. Would it be relevant to your testimony if there
[17] was a written agreement between Conrail and the
[18] Indiana Railroad governing this service?

[19] A. It is relevant, although, as I say in my
[20] statement, the threat of a build out seems to be very
[21] important in addition to any agreement that
[22] Indiana Railroad and Conrail may have.

Page 15

[1] Q. Would it be relevant to your testimony if the
[2] agreement was terminable in the near future?

[3] A. Well, I think that that has to be taken in the
[4] context of Conrail's current ability to access IP&L. It
[5] might be relevant in terms of affecting the
conclusions I

[6] reach, although as I argue in my statement, the
[7] incentives or taking what I say in my statement and
[8] adding something to it, the incentives that IP&L -
[9] excuse me, the incentives that Indiana Railroad
would

[10] have towards accepting an agreement with Conrail or
[11] continuing the existing agreement I see those are
[12] strongly affected by Conrail's position relative to
being

[13] able to accept a build out. So I have to answer your
[14] question in terms of that.

[15] Q. Page 9 of your testimony you indicate that
IP&L

[16] is a member of the ECAR Interconnection Network.
What is

[17] the basis for that aspect of your testimony?

[18] A. I believe I saw that on the Internet under
[19] the - on one of the Oasis web pages.

[20] Q. What is the ECAR Interconnection Network?

[21] A. It's a network of utilities in the midwest
[22] which are all connected and can trade power, electric

Page 16

[1] power back and forth.

[2] Q. Is it an entity in a legal sense?

[3] A. I don't know.

[4] Q. In preparation of your statement, did you
[5] review any documents of the ECAR Interconnection
Network?

[6] A. No, nothing beyond the web page

information

[7] that I mentioned.

[8] Q. Do you have an understanding as to how the
ECAR

[9] Interconnection Network works?

[10] A. I have a very basic understanding from their
[11] web page. I couldn't answer detailed questions about
[12] their exact rules for allocating power, power
generation,

[13] no.

[14] Q. In connection with preparation of your
[15] statement did you interview anyone who is an employee
of

[16] the ECAR Interconnection Network?

[17] A. No.

[18] Q. Did you in connection with the preparation of
[19] your testimony interview any other member of the ECAR
[20] Interconnection Network?

[21] A. I don't know because - I didn't interview
[22] anyone for the purpose of learning about the ECAR

Page 17

[1] Network. I may have interviewed another utility
which

[2] was part of the ECAR Network, and I didn't know it
at the

[3] time and don't know it now. So I don't know the
answer.

[4] Q. Do you know whether IP&L Indianapolis
Power &

[5] Light has purchased any power in the last three years
[6] from other members of the ECAR Interconnection
Network?

[7] A. I don't know whether they've purchased
power

[8] from that network specifically, no.

[9] Q. Do you have any understanding as to the
[10] circumstances in which it would be economical for them
to

[11] do so?

[12] A. I think they - IP&L would certainly have an
[13] incentive to purchase power from the Interconnection
[14] Network if the price of that power were low relative to
[15] the price of their own generating stations. Well, the
[16] possibility of that happening has not come up, as I
[17] recall, in the discussions I've had with the IP&L
[18] representatives.

[19] We talked a little bit about the other
[20] generating stations on their network, but the issue of
[21] power coming from ECAR and the price of that power
did
[22] not come up, as I recall.

Page 18

[1] Q. Did you ask any questions about their ability
[2] to purchase power from other members of the ECAR
[3] Interconnection Network?

[4] A. I don't remember.

[5] Q. The bottom of page 8 and the top of page 9
you

[6] refer to Conrail supplying the remaining 10 percent of

BSA

switching

(15) fees in Indianapolis?

(16) A. No.

(17) Q. If there was such a contract, would that be relevant to your testimony?

(18) A. That would be because the switching fee would affect ultimately the prices, that and other things would

(21) affect the prices that Norfolk Southern would offer to IP&L.

Page 27

(1) Q. Further down on page 17 of your statement you

(2) indicate this is a point you alluded to earlier that the

(3) possibility of a build out from IP&L. I take it this is

(4) referring to the stout facility, was an important lever,

(5) to use your words. Did you in connection with the

(6) preparation of your testimony - first, am I

(7) understanding that portion correctly?

(8) A. Yes, I think so.

(9) Q. In connection with your evaluation of this

(10) build out, as you refer to it, did you interview anyone

(11) at Indiana Railroad to determine whether the possibility

(12) of this build out had any influence on their pricing

(13) behavior to IP&L?

(14) A. No, because I didn't interview anyone at

(15) Indiana Railroad.

(16) Q. Do you have a view as to whether it would be

(17) economically rational for IP&L to complete the build

(18) out that you refer to in your testimony?

(19) A. I think making a very rough guess based on

(20) cost estimates and IP&L's representation of the kind

(21) of savings they were able to get with competition which

(22) was essentially supported by a build out and the tonnage

(23) that

Page 28

(1) goes to stout, it would appear to be a reasonable

(2) investment for IP&L to make. IP&L certainly has

(3) represented that that is the case. But just based on

(4) the cost and the likely rate savings I think it is something

(5) that would make sense.

(6) One thing I might add I think what happens a

(7) lot of times that happens in these build out situations

(8) that the build out never occurs, but it's a reasonable

(9) enough threat to the incumbent railroad, the serving

(10) railroad, in this case Indiana Railroad, that it's taken

(11) seriously, and the threat has an affect on the rates. As

(12) long as it's something which is a credible threat in the

(13) economics terminology, it can often have an effect on

(14) the rates of the serving railroad charges.

(15) And on the surface of it it looks like the

(16) economics would support it, given the cost estimates.

(17) Q. Did you do any written analysis of whether the

(18) costs of this build out would be worth it?

(19) A. No, I didn't.

(20) Q. So the analysis that you just described for me,

(21) is that some analysis that you just did in response to my

(22) question or is that analysis that you did at some earlier

Page 29 Attachment 7

(1) time? Page 3 of 3

(2) A. No, I knew the key values here, the cost of the

(3) build out, the apparent savings from the build out given - which would be calculated from the tonnage and

(5) the cost. I had done this earlier in my head and given

(6) current low interest rates it struck me as an

investment

(7) that would pay off, given, say, a 20 year or more life

(8) span of the track. Of course some of the costs - well,

(9) it seemed like a sensible investment, and I did some

(10) sketches of that earlier.

(11) Q. Did you inquire of anyone whether there were

(12) environmental restrictions that might preclude this build

(13) out from occurring?

(14) A. No, no not before I wrote my statement.

(15) Q. Given the parameters that you were referring to

(16) earlier that you considered in evaluating the build out

(17) at what price would the build out be too expensive to be

(18) a credible threat to use the terminology that I believe

(19) you used in your earlier answer?

(20) A. That's hard to say. I don't know what

interest

(21) rate IP&L would use in its internal calculations

about

(22) whether there was a worthwhile use of its capital. I

Page 30

(1) suppose if it were three times as high as the 8 or 9

(2) million it might approach being not a profitable

option

(3) and might not be taken seriously by Indiana

Railroad.

(4) But it's hard to answer without knowing the

(5) cost of the capital to Indiana Power & Light and

whether

(6) there's any risk involved which they would have

(7) considered in their decision.

(8) Q. Would you regard the build out threat as

(9) relevant to your analysis if IP&L had concluded

(10) internally that it would never do the build out but that

(11) the Indiana Railroad perceived that IP&L might?

(12) A. Well, it might not change much in my

analysis

(13) because if I understand your question right, what's

(14) important here is whether Indiana Railroad believes

this

(15) is a threat to deal with if they are risk averse and they

(16) attach a low probability that the build out ever

(17) happened. But they're still very nervous about losing

(18) all of this coal traffic to somebody via a build out,

(19) they might still - the build out might still be an

(20) important aspect of competition to them, even if

BSA

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[22] question or is that analysis that you did at some earlier

Page 29 Attachment 8

Page 1 of 2

[1] time?

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[4] given - which would be calculated from the tonnage

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[20] happened. But they're still very nervous about losing

all of this coal traffic to somebody via a build out,

they might still - the build out might still be an

important aspect of competition to them, even if

IP&L who

(21) perhaps had better information than Indiana Railroad even

(22) if IP&L thought it wasn't going to pay a suspect, IP&L

Page 31

(1) would never want to make this known. This is just part

(2) of their negotiations with Indiana Railroad.

(3) Q. What if IP&L believed that it could be built and would be economical to do so, but the Indiana Railroad did not believe that IP&L would ever do it. would that affect your analysis?

(7) A. And the build out occurred? I would want it

(8) I would like to answer your question in that context, is

(9) that a fair thing to do?

(10) Q. Well, we're evaluating a potential transaction that hasn't happened yet, and I'm asking you if you did your investigation and you learned from the utility that they believed that they could build out, but you learned from the railroad currently serving the utility that they did not believe that the build out could ever happen for whatever reason, would that affect your testimony?

(17) A. It might, but if the build out really - if the build out were possible and Indiana - IP&L began work on

(19) the build out perhaps in some way that it was not very costly to get started, that might change

(21) Indiana Railroad's mind, particularly if Indiana Railroad

(22) was just wrong and very stubborn but wrong, I think that

Page 32

(1) that might not change the analysis at all. If it really were true that the build out was going to occur without

(3) some sort of rate concession from Indiana Railroad, for

(4) example, it might not be very hard for Indiana Railroad

(5) to finally become convinced of that.

(6) Q. If Indiana Railroad did not believe that the build out would ever happen, would the build out be a credible threat to use your economics term that you introduced earlier?

(10) A. I think it would because the only outcome of that would be that Indiana Railroad realized that its beliefs were wrong and would just have to change its beliefs.

(14) Q. So it becomes a credible threat only after it's built, is that your testimony?

(16) A. Well, I mean, this is all based on - this hypothetical is all based on Indiana Railroad being wrong, and I find it hard to believe that they would continue to be - to continue a wrong belief if there were accumulating evidence to the contrary that they would just change their belief, change their

assumption

Attachment 8

(22) about the build out.

Page 2 of 2

Page 33

(1) And I think eventually they would under this hypothetical and whether or not the build out occurred,

(3) there would still be essentially two railroad competition. The effect would be of two railroad competition.

(6) Q. What is the basis for your testimony that IP&L is part of the ECAR Interconnection Network - strike that.

(9) We already talked about that.

(10) A. Yes, I think you asked me about that.

(11) Q. I'm sorry, I already asked you about that.

(12) Page 18 of your testimony you refer to past competition between Conrail, Indiana Railroad, and with

(14) the delivery of coal to the stout plant. What is the basis for that portion of your statement?

(16) A. My interviews with IP&L.

(17) Q. Did you review any documents relating to that competition?

(19) A. No, I didn't - no, I didn't.

(20) Q. What is the PJM Interconnection Association that you refer to on page 10 of your testimony?

(22) A. That's the Interconnection Network that covers

Page 34

(1) Pennsylvania, I believe New Jersey, Maryland, District of Columbia, possibly some other areas. Central Atlantic area which PEPCO is a member.

(4) Q. Is the PJM Interconnection Association an entity of some sort?

(6) A. It is an entity, yes.

(7) Q. Does it have employees?

(8) A. Yes.

(9) Q. Do you know how PJM works?

(10) A. I have a basic understanding. I've reviewed their web page, I've talked to one person at PJM gave me

(12) a little information on their electricity pricing. I've talked to people in my Indiana Trust Division who have -

(14) who seem to have an understanding of PJM. I visited the

(15) central dispatching place of PJM. I've seen a PJM report

(16) on its activity, that sort of thing.

(17) Q. When you spoke to someone at PJM regarding electricity pricing, was that in connection with the preparation of this statement?

(20) A. Yes.

(21) Q. And who did you speak to?

(22) A. I don't remember her name. This was a question

Page 35

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

Rebuttal
Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.

On Behalf of
Indiana Southern Railroad, Inc.

Due Date: January 14, 1998

PUBLIC VERSION

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LIST OF EXHIBITS

**EXHIBIT
NO.**
(1)

TITLE
(2)

Exhibit__ (TDC-1) Schematic of Routes to IPL Power Plants

Exhibit__ (TDC-2) Witness Vaninetti's Deposition Exhibit No. 2

I. INTRODUCTION

My name is Thomas D. Crowley, I am an economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. I am the same Thomas D. Crowley who filed testimony on behalf of Indianapolis Power & Light Company ("IP&L") on October 21, 1997.^{1/}

As stated in my previous verified statement on behalf of IP&L, if the CSX/NS^{2/} control application of Conrail^{2/} is approved in its current form, IP&L will lose the existing competitive rail alternatives to its E.W. Stout ("Stout") and C.C. Perry K ("Perry K") Generating Stations.

In its October 21, 1997 Supplemental Comments, IP&L requested that the Surface Transportation Board ("STB") condition its approval of the acquisition of Conrail by requiring "pro-competitive measures" such as enabling an alternate carrier direct access to the Indiana Southern Railroad ("ISRR"), the Indiana Railroad ("INRD") and IP&L's Stout and Perry K Stations, as Conrail has today. Although IP&L did not specifically present the ISRR as the solution, upon review of the Responsive Application of Indiana Southern Railroad, Inc., ISRR's requested conditions would retain IP&L's existing competition. The ISRR's requested trackage rights in Indianapolis would replace the lost neutral carrier in Conrail, preserving IP&L's current two rail-carrier competition between ISRR and CSX's 89 percent owned subsidiary, INRD. ISRR's trackage rights would allow its coal trains serving IP&L's Perry K and Stout Plants to be routed efficiently, as they are today and not inefficiently, as NS coal trains are routed (via Hawthorne Yard).

^{1/} The testimony on behalf of IP&L (designated as IPL Exhibit 4) dealt with the impact on the existing competitive options available to IP&L's Stout and Perry K Stations, and IP&L's future ability to acquire market transportation rates to each station due to CSX's and NS' acquisition of Conrail.

^{2/} CSX Corporation and CSX Transportation, Inc. ("CSX")/Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") proposed acquisition of Conrail Inc. and Consolidated Rail Corporation ("Conrail").

This verified statement addresses the Applicants' Rebuttal comments on the ISRR's requests and how those same requests coincide with IP&L's concerns for their lost competition and required conditions. My comments are organized below under the following topical headings:

- II. Summary and Findings
- III. IP&L/ISRR Current Alternatives
- IV. Impact on Controlled Lines on ISRR and Service to Perry K and Stout Plants
- V. Applicants' Rebuttal and Alternatives to IP&L/ISRR's Lost Rail Competition
- VI. ISRR's Requested Conditions are Responsive to IP&L's Lost Competition

II. SUMMARY AND FINDINGS

If the CSX/NS control application is approved in its current form, IP&L will lose the existing rail competition that it enjoys at its E.W. Stout and C.C. Perry K Generating Stations, including the competitive alternatives involving the ISRR.

The following summary and findings are derived from my analyses of the Responsive Application of Indiana Southern Railroad, Inc. and the CSX/NS' Rebuttal Statements.

1. For existing and future movements of coal to Perry K, IP&L currently has access to three alternatives: 1) ISRR/Conrail direct; 2) INRD/Conrail direct; 3) INRD to Stout and truck from Stout to Perry K.
2. For existing and future movements of coal to Stout, IP&L currently has access to a number of alternate railroads and rail routes which include: 1) INRD direct; 2) ISRR/Conrail and a switch move on INRD; 3) CSX/INRD; and, 4) alternate build-out/build-in scenarios to access Conrail direct.
3. If the CSX/NS acquisition of Conrail is approved in its current form, CSX will control deliveries to both Perry K and Stout because CSX will gain control of the existing Conrail lines. With CSX's 89% ownership of INRD, CSX will have a strong economic incentive to favor its subsidiary, the INRD, eliminating ISRR as a competitive alternative.
4. Following the CSX/NS proposed acquisition of Conrail, NS will gain "overhead" trackage rights on the Belt^{3/} to the Hawthorne Yard. These "overhead" trackage rights will not provide effective competition to CSX at either Perry K or Stout.
5. The reasons that the proposed CSX/NS' plan competitively disadvantages the ISRR movements to IP&L's Perry K Plant are: a) CSX owns 89% of the INRD, the competing carrier to ISRR; and, b) CSX will control direct rail deliveries to Perry K via ISRR and INRD. CSX/INRD will also control truck deliveries from Stout because it will be the only rail carrier to Stout. Stated differently, CSX will control all effective transportation options to Perry K.
6. The reasons that the proposed CSX/NS' plan competitively disadvantages the ISRR movements to IP&L's Stout Plant include: a) CSX owns 89% of the INRD which is the only railroad serving Stout; b) CSX will control the Conrail Belt which eliminates direct access to Stout by the ISRR or any other railroad other than CSX; c) CSX will control

^{3/} The Indianapolis Belt Secondary ("Belt") is a "U" shaped line of track approximately 13.5 miles long that covers the southern part of Indianapolis. See (Exhibit TDC-1)

the Conrail Belt and connecting rail lines which eliminates build-out or build-in options to the ISRR or any other railroad other than CSX; and, d) NS only has overhead trackage rights to Hawthorne Yard and the movement of high volume coal to Hawthorne Yard by NS for subsequent delivery by CSX is extremely inefficient and considerably more costly.

7. ISRR expects to lose \$1.5 million annually to the CSX/INRD because it will no longer be able to compete as a result of the transaction. ISRR's other traffic movements will also become less competitive because of their increased cost per unit.
8. The ISRR is the effective competitive restraint on the INRD rates for Perry K and Stout Plants, . This was evident in the negotiations for the present INRD move to Stout.
9. IP&L's power supply options are not alternatives to two carrier access in disciplining rates. Mr. Vaninetti erred in claiming that IP&L can turn to its Petersburg or Pritchard plants for dispatching power to Stout as a means to "discipline" the INRD rates. Also, in WTU,^{4/} the STB has recognized that the ability to generate power at another plant does not discipline transportation rates.
10. Contrary to Mr. Vaninetti's assertion, western coal transportation rates can compete with locally mined Indiana coal. Mr. Vaninetti in the UP/SP merger acknowledged that Western Coal was extremely competitive in the eastern markets.
11. ISRR's requested trackage rights are applicable to: 1) the Conrail lines that access Stout and Perry K; and, 2) the Conrail lines to be "built-out" to or "built-in" from.
12. IP&L's build-out is feasible and justified with Mr. Kuhn's additional construction

^{4/} See STB Decision No. 41191 West Texas Utilities Company v. Burlington Northern Railroad Company, served May 3, 1996 ("WTU").

III. IP&L/ISRR CURRENT ALTERNATIVES

A. BACKGROUND

The ISRR began operations in April 1992 providing rail service over approximately 176 miles of track between Indianapolis and Evansville, Indiana. The ISRR's line at Mile Post 6 ("MP6") connects with Conrail's track before reaching the former Indianapolis Belt secondary ("former Belt"). In 1992, IP&L received its first shipment of coal originated by the ISRR and has always viewed the ISRR as an efficient and competitive alternative with respect to IP&L's present and future movements to the Perry K and Stout Plants. A schematic of IP&L's alternative routes and ISRR's requested trackage rights is included as Exhibit __ (TDC-1).

B. TRANSPORTATION ALTERNATIVES FOR PERRY K AND STOUT

Today, IP&L's Perry K Plant receives its coal supply via an ISRR/Conrail move. Similar to the ISRR/Conrail alternative move for Stout, the ISRR brings the southern Indiana coal north where it is interchanged with Conrail north of MP6. Conrail then moves the coal directly to the Perry K Plant.

^{5/}, Conrail can also deliver competing INRD coal to Perry K via switching at the former Belt.^{6/}

With respect to the Stout Plant, IP&L presently receives coal delivered by the INRD directly. As described in my previous verified statement on behalf of IP&L, the Stout Plant also has a number of other viable competitive alternatives for delivery of coal such as: 1) ISRR/Conrail and delivery by INRD pursuant to a Conrail absorbed switch charge; 2) CSX

^{5/} CSX/NS-178, Railroad Application, Applicants' Rebuttal, Volume 2A, page P-195.

^{6/}

Also see schematic, Exhibit __ (TDC-1).

origination and an INRD delivery; and, 3) a build-out to Conrail with connection to rail carrier(s) that access Indiana, eastern and western coals.

IV. IMPACT ON CONTROLLED LINES ON ISRR AND SERVICE TO PERRY K AND STOUT PLANTS

If the CSX/NS control application is approved in its current form, IP&L's loss of Conrail as a competitor in Indianapolis will have a significant affect on the alternative competitive routes to IP&L's Stout and Perry K Plants as described above, including those involving the ISRR.

John W. Orrison's Rebuttal Verified Statement claims that the proposed transaction is intended to replicate the present operation in Indianapolis by simply substituting Conrail with CSX.^{7/} CSX would operate the Belt as did Conrail, switch the traffic for customers located on the Belt as did Conrail, and provide Hawthorne Yard for NS switching instead of being switched at CSX's State Street Yard. However, no longer will a neutral carrier have access to IP&L's Perry K and Stout Plants or to short-line carriers like the ISRR. Orrison believes that "to avoid the loss of competitive rail service by two Class I carriers, NS will essentially assume CSX's present position in Indianapolis."^{8/}

In its Application, CSX feels it has addressed the competitive rail service issues in Indianapolis by granting the NS overhead trackage rights on Conrail's Muncie-Indianapolis Line, CSX's Lafayette-Crawfordsville, IN Line, Conrail's Crawfordsville-Indianapolis Line, and Conrail's Indianapolis Belt Line to serve the 2-to-1 shippers and shortline railroads.^{9/} With "overhead" trackage rights granted to NS, NS will not be able to directly serve any industries including the IP&L plants, any shortlines such as the ISRR or build-outs and new facilities as they or any other carrier such as the ISRR could if they had been given "local" trackage rights. The NS' competitive access would be limited to their delivery and pick up of all loaded and

^{7/} CSX/NS-178, Volume 2A, pages P-653 and 1

^{8/} CSX/NS-178 Volume 2A, page P-654.

^{9/} Railroad Control Application, CSX/NS-20, Volume 3A, page 211.

empty cars to and from CSX's Hawthorne Yard with switching on a contractual basis.^{10/} Although these intentions may have satisfied some of the 66 "2-to-1" shippers in Indianapolis, it fails to maintain the IP&L and ISRR competitive requirements needed to serve the Perry K and Stout Plants.

As I explained in depth in my previous verified statement on behalf of IP&L, the Applicants have acknowledged Perry K and Stout as "2-to-1" locations^{11/} in their Application, depositions and workpapers. But, more importantly, the Applicants' witnesses have shown and acknowledged CSX's ownership and control of its subsidiary, the INRD. On page 14 of the deposition of CSX's Witness, Mr. Sharp, Mr. Sharp acknowledges that CSX owns 89% of the INRD^{12/} and that he is on INRD's Board of Directors.

^{13/} Therefore, CSX can not be considered a competitive or neutral carrier to IP&L or ISRR movements when replacing Conrail in Indianapolis because of its 89% ownership and control of the INRD.

^{10/} CSX/NS-20, Volume 3A, page 211.

^{11/} Although the Applicants claim an "oversight" in providing an incomplete list of only thirty (30) of the shippers in the proposed agreement granting NS trackage rights, a list of the 66 Indianapolis 2-to-1 shippers, including IP&L, can be found in CSX/NS-178, Volume 3B, page 638, and in CSX's Witness Hart's workpaper at CSX 05 HC 000102.

^{12/} CSX/NS-20, Volume I, page 271 of the Application shows that the Indiana Railroad is a subsidiary of CSX and that CSX has 89% controlling interest.

^{13/}

A. PERRY K

The competitive alternatives available to Perry K are Conrail movements direct to the plant via an ISRR or INRD switch, or trucking from the Stout Plant. Mr. Orrison claims that the only difference post acquisition is that CSX will be the new carrier with direct access and that CSX will be the switch carrier for the ISRR and INRD. As expressed by ISRR,^{14/} if the transaction is approved without conditions, Conrail will no longer be a neutral carrier but would be replaced by CSX which will have a strong economic incentive to favor its subsidiary, the INRD,

^{15/} An ISRR/CSX joint move will now be competing with the single line CSX/INRD move.

IP&L's trucking alternative becomes even less desirable as trucking would be contingent on the competitive alternatives at Stout as described below.

B. STOUT

Similar to Perry K, Stout's alternatives will not be competitive if the transaction is approved without conditions. First, the INRD, which CSX owns 89%, will still serve Stout directly. As for the ISRR/Conrail move, CSX will now move the coal over the Belt for interchange with its subsidiary INRD instead of Conrail. With respect to the build-out to the previous Conrail line or Conrail's Belt avoiding CSX's INRD line and switching charges, IP&L would now be building out to CSX's tracks.

Prior to the control application, INRD's direct move to Stout had to compete with the Conrail/INRD switch and the Conrail build-out. Now that CSX will control the Conrail lines

^{14/} Responsive Application of Indiana Southern Railroad, Inc., page 7.

^{15/}

in addition to its control of the INRD, Stout is looking at CSX as its only alternative, especially for the delivery of the southern Indiana coal.

The ISRR does not believe that an ISRR-CSX-INRD move will be competitive because CSX will favor its subsidiary, INRD. Without a neutral carrier, the build-out also becomes noncompetitive.

In reviewing IP&L and ISRR's competitive alternatives for the Stout and Perry K Plants, nowhere is NS or any other carrier mentioned as a replacement for, or an answer to, the lost competition previously provided by the neutral railroad (Conrail). This is because no short line other than INRD, such as the ISRR, has access to the former Belt because the NS, which the Applicants claim will maintain the competition, can only reach the Hawthorne Yard, requiring it to rely on CSX or INRD to reach either plant. Thus, CSX will control access to both IP&L Plants post-transaction.

**C. ISRR'S LOSS
OF RAIL SERVICE**

If the transaction is approved without the necessary required conditions, ISRR will lose the ability to compete for essential rail service including IP&L's Perry K and Stout traffic. The Applicants' claim that ISRR will not be adversely affected by the transaction and that ISRR was misleading in using its 1996 revenues to show its potential revenue losses. They also claim that the majority of the \$1.5 million in lost revenues is business that ISRR could not compete for and already has lost.

If the 1996 revenues and the ISRR/Conrail/INRD 1994 and 1995 shipments to Stout show anything, it is that the ISRR has successfully competed for IP&L business at Stout, as Mr.

16/

The \$1.5 million annual revenues are potential revenues that ISRR will be forced out of competing for in the future because it will not be able to compete as it can today.

17/

ISRR also claims that the lost traffic would force it to cover its fixed costs with its remaining traffic, increasing its cost per unit. ISRR maintains that at some point, the remaining customers would be forced to switch to other modes of transportation such as trucking.

16/ Hoback, deposition, pages 218-219.

17/

**V. APPLICANTS' REBUTTAL AND ALTERNATIVES
TO IP&L/ISRR'S LOST RAIL COMPETITION**

**A. ISRR/CONRAIL PROVIDE
COMPETITION AT STOUT**

Mr. Vaninetti claims that "IP&L has been unusually effective in using the threat of truck competition to discipline its rail rates to all four of its coal-fired power plants" (Vaninetti, page P-500). Mr. Vaninetti also claims that ISRR (and Conrail) lost the service to Stout "due to its inability to compete..." (Vaninetti, page P-503) and asserts that if the Conrail alternative routing was competitive, "then a substantially higher percentage of ISRR's inter-line traffic to IP&L-Stout would have been routed on Conrail in 1996" (Vaninetti, page P-510).

Mr.

Vaninetti's perception of competition is illogical, inconsistent with ICC/STB policy and inconsistent with his testimony in this proceeding as well as his testimony in the UP/SP merger.

Mr. Vaninetti's perception of competition is illogical. Obviously, the railroad that submits a bid for transportation, but loses to a lower bid, has not been successful. However, the losing bidder is still a potential competitor. The ICC recognized this in Ex Parte 320 (Sub-No. 3), Product and Geographic Competition noting that its "policy is to consider potential as well as actual competition in determining whether effective competition exists" (2 I.C.C. 2nd, 10). I agree. The fact that ISRR/Conrail has moved coal to Stout in the past is proof of competition from ISRR origins.

Furthermore, Mr. Vaninetti's current position is completely at odds with his prior testimony in the UP/SP merger proceeding which was incorporated as Exhibit No. 1 to his deposition in this proceeding. As a witness for a coalition of shippers in the UP/SP merger proceeding, Mr. Vaninetti claimed that the shippers would be harmed if the merger occurred because the SP was a potential (and sometimes successful) competitor. As part of his critique of UP's Witness Sharp, Mr. Vaninetti stated:

Mr. Sharp does not differentiate between competition and successful competition, since his assessment that 'competition between Union Pacific origins and Southern Pacific origins was quite modest [or] rare' is apparently based on which carrier was successful in gaining the business -- not that the carriers competed for the business (Vaninetti deposition Exhibit No. 1, page 34) (emphasis in original)^{18/}

Clearly, Mr. Vaninetti's inconsistent approach to ISRR/Conrail's competitive impact at Stout must be disregarded in this proceeding. Simply stated, ISRR/Conrail have been, and will continue to be a competitive force on the INRD's rates at Stout. It was the only other means by which IP&L received coal at Stout in 1995 and 1996 and even under IP&L's contract with INRD which became effective ISRR/Conrail can still provide coal to Stout for ten (10) percent of its needs. After the contract expires, ISRR/Conrail could supply all of the coal to Stout. However, if ISRR does not retain effective access to Stout after CSX's and NS' acquisition of Conrail, IP&L's competitive alternative will be lost.

^{18/} A publicly available version of Witness Vaninetti's testimony in Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., can be found as Exhibit No. 1 of his deposition.

B.

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**C. PETERSBURG "DISCIPLINES"
THE RAILROADS AT STOUT**

Mr. Vaninetti also claims that IP&L's power supply options such as internal dispatch from its other plants and purchasing power from other utilities are alternatives to discipline rail rates. In his Rebuttal Verified Statement, IP&L's Michael A. Weaver discusses Mr. Vaninetti's misinterpretation of IP&L's annual generation and "capacity factors" for its four Plants and further explains why IP&L can not increase the other plants generation as Mr. Vaninetti suggests. The Petersburg Plant is IP&L's lowest-cost Plant and IP&L, like other utilities, uses that power first when available.

as Mr. Weaver explained.^{25/} IP&L does not have the option of running its other Plants more to pressure railroads and discipline rates, as Witness Vaninetti now claims: "For instance, generation could be increased at ISRR-served Petersburg or Pritchard to put pressure on INRD's deliveries to Stout and vice-versa."^{26/}

^{24/}

^{25/} Exhibit __ (TDC-2), also Bates numbered document CSX 88 HC 104.

^{26/} CSX/NS-178, Rebuttal, Vol. 2B page P-508.

especially when considering the safety and environmental impacts of so many trucks. Applicants' Witness Vaninetti arrived at that same conclusion with trucking only one-third of the coal the Stout Plant needs, and so advised INRD and CP Rail in 1995 during its negotiations with IP&L, but he neglected to include that in his testimony where he claims that trucking coal to Stout is effective competition to INRD.^{24/} I agree with Mr. Vaninetti's advice to INRD and CP Rail.

**C. PETERSBURG "DISCIPLINES"
THE RAILROADS AT STOUT**

Mr. Vaninetti also claims that IP&L's power supply options such as internal dispatch from its other plants and purchasing power from other utilities are alternatives to discipline rail rates. In his Rebuttal Verified Statement, IP&L's Michael A. Weaver discusses Mr. Vaninetti's misinterpretation of IP&L's annual generation and "capacity factors" for its four Plants and further explains why IP&L can not increase the other plants generation as Mr. Vaninetti suggests. The Petersburg Plant is IP&L's lowest-cost Plant and IP&L, like other utilities, uses that power first when available.

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^{24/} Exhibit __ (TDC-2), also Bates numbered document CSX 88 HC 103-104.

^{25/} Exhibit __ (TDC-2), also Bates numbered document CSX 88 HC 104.

^{26/} CSX/NS-178, Rebuttal, Vol. 2B page P-508.

With respect to purchasing power from other utilities, the STB has found that utilities dispatch their lowest-cost generation first for their own customers and the power that would be available from other utilities is usually the highest cost power. "Therefore, obtaining power from other sources -- whether from other CSX utilities or from elsewhere on the power grid -- would not be an economical alternative to Oklaunion's output."^{27/} Mr. Vaninetti's evaluation also stated that "IP&L's generation costs are among the lowest in the region", further evidence that IP&L would not turn to a more expensive power source to discipline rail rates. IP&L's efficient and competitive power production at Stout is a result of its current 2 rail-carrier access and not the alternative power supply options that Mr. Vaninetti puts forth.

D. WESTERN MOVEMENTS

As a result of environmental restrictions, IP&L may be obliged to change coal suppliers. Whether through scrubbing the coal moved from IP&L's present sources or shipping low-sulfur coal from the east or west, IP&L's present uncertainty concerning its coal supply is now augmented by the CSX/NS proposal to acquire the Conrail lines.^{28/} Although Mr. Vaninetti suggests that IP&L might not be serious about considering use of Western coal at Stout, his own evidence proves that IP&L did seriously consider doing so. Mr. Vaninetti states that IP&L solicited Western coal and Mr. Vaninetti provides an article quoting Colorado/Utah producers saying PRB coal will be very competitive.^{29/} Yet, IP&L can not make a decision with respect to its coal supply until IP&L determines if it will be able to maintain the railroad competition

^{27/} "WTU" Decision, page 13.

^{28/} Alternatively, IP&L could consider blending Indiana coal with Western coal. As Witness Vaninetti conceded in his deposition other utilities whose boilers are designed for Eastern coal have also blended Eastern and Western coal as described for Stout.

^{29/} CSX/NS-178, GEV-7, page P-596.

it enjoys today as described in my previous verified statement for IP&L and throughout this rebuttal testimony.

Witness Vaninetti claims that regardless of the disposition of Conrail, Western coal is unlikely to be used at IP&L's Stout Plant because of the "inability of coal transported more than 1,250 miles to compete effectively with locally-mined Indiana coal".^{30/} As shown in his Table 5, Mr. Vaninetti calculates the 1996 rail rates that would be necessary for Western coal to compete with the Indiana coal at the Stout Plant. Accepting his coal quality, heating value, SO₂ content, and mileages, Mr. Vaninetti says that a Powder River Basin, Wyoming ("PRB") rail rate of \$ per-ton would be required to compete with Indiana coal. He also points out that this rate is 31/

from my experience in negotiating transportation rates for unit train movements out of the Powder River Basin, I strongly believe that if IP&L pursued negotiations, for western coal, it would have received a much lower rate considering the competitive alternatives available to IP&L, unless INRD was the cause for the high rate.

Using Mr. Vaninetti's ^{32/} per-ton rate and his 1,280 miles from the PRB, the rate is equivalent to mills per ton-mile, the maximum mills rate Mr. Vaninetti believes would be required to compete with Indiana coal.

^{30/} CSX/NS-177, Volume 2B, page P-516.

^{31/} On page 10 of Witness Vaninetti's deposition, Mr. Vaninetti his maximum rate required to compete with Indiana coal from \$16.97, found in Table 5 of his Rebuttal Verified Statement, to Mr. Vaninetti does not support or explain the other changes made that would have been required to the mills per ton-mile from 13.3 to .

^{32/} On page 10 of Witness Vaninetti's deposition, Mr. Vaninetti reduces his maximum rate required to compete with Indiana coal from \$16.97, found in Table 5 of his Rebuttal Verified Statement, to \$15.84. Mr. Vaninetti does not support or explain the other changes made that would have been required to the mills per ton-mile from 13.3 to .

In the WTU Decision, the STB found a maximum reasonable rate of \$13.68 per-ton for a unit train coal movement of approximately 1,110 miles out of the PRB in railroad-owned cars. This translates to a rate of 12.3 mills per ton-mile. This move is comparable to Mr. Vaninetti's PRB/Stout move and translates into a \$15.79 per-ton transportation rate, less than what he believes would compete with Indiana coal.

The rail rate for Powder River Basin origins as shown in Mr. Vaninetti's Table 5 of per ton translates into mills per ton-mile (per-ton divided by 1,280 loaded miles). As shown above this is equivalent to the maximum rate obtained by applying the WTU decision to IP&L's haul. However, even this rate level is above the market rate for rail transportation from the Powder River Basin or the average rate level for coal moved on the BNSF.

First, in the UP/SP merger, the same Mr. Sansom who also has submitted testimony on behalf of the Applicants' in this proceeding, submitted testimony on behalf of UP regarding the level of market rates from the Powder River Basin^{33/}. Mr. Sansom stated that "UP and BN/Santa Fe have been offering rail rates in the 9 to 12 mills per ton-mile range for new, long-haul moves over the past several years" (Sansom, Docket No. 32760, page 81). In my experience, Mr. Sansom's rate levels are high for movements with rail competition at both origin and destination (as IP&L would have), but his values are suitable for purposes of this testimony. A rate of 9 mills, applied to IP&L's haul of 1,280 miles, produce a rail rate of \$11.92 per-ton.

^{33/} The Applicants' Rebuttal Narrative states that Mr. Sansom is an expert on "coal industry issues" and not rail rates (Volume I, page P-762). Mr. Sansom's qualifications presented in this proceeding are, for all practical purposes, identical to his qualifications in the UP/SP merger with one major modification. In the UP/SP merger, Mr. Sansom's qualifications included experience with rail transportation. However, for this proceeding, all references to his rail expertise have been removed (compare Exhibit I of his testimony in this proceeding to Exhibit RLS-1 in Docket No. 32760). For UP/SP, Mr. Sansom's testimony stated that since 1974 his "experience has encompassed production and market studies on Western coal and the transportation thereof". (Sansom, Docket No. 32760, page 2). Then, Mr. Sansom's statement of qualifications for his UP/SP testimony included topical headings for "Coal Markets and Coal Prices, and Coal Transportation" and "Coal and Transportation Procurement" (Sansom, Docket No. 32760, Exhibit RLS-1, pages 1 and 2).

Second, a rate of mills per ton-mile as found by Mr. Vaninetti exceeds the average coal revenue per ton-mile for BNSF. The BNSF 1996 Annual Report to Stockholders, which incorporates the Santa Fe, shows that the average coal revenue equals 11.65 mills per ton-mile. The BNSF average coal revenue reflects all coal movements, including older contracts that generally reflect higher rates. Application of the 11.65 mills per ton-mile to IP&L's haul from Powder River Basin equals \$14.91 per-ton. Again, this demonstrates that western coal is a viable alternative for IP&L and contradicts Mr. Vaninetti's conclusion.

Mr. Vaninetti also acknowledged in the UP/SP merger on behalf of the Western Shippers' Coalition that "PRB coal is routinely transported by rail and rail-to-water methods to plants located more than 1,500 miles from the PRB, with many new markets located more than 2,000 miles away."^{34/} He also stated "Western coal now is regularly shipped to utility customers as far as Michigan, Indiana, Florida, and Georgia and exported to Spain and the Pacific Rim. Western low-Btu and high-Btu coals, facilitated by changes in fuel supply economics resulting from Phase I CAAA compliance, now compete directly with Eastern and Midwestern coals at many locations and have displaced such coals at several power plants".^{35/} This is quite different from his present statement that 1,250 mile coal movements from the PRB to Indiana are unlikely to be competitive. I conclude that Mr. Vaninetti had it right in testifying in the UP/SP merger proceeding that western coal is competitive, such as to the Stout Plant, rather than his contrary conclusion in his testimony in this proceeding.

^{34/} Union Pacific Corp. et al -- Control and Merger -- Southern Pacific Rail Corp., et al, WSC-3, Vaninetti, page 12.

^{35/} Union Pacific Corp. et al -- Control and Merger -- Southern Pacific Rail Corp., et al, WSC-3, Vaninetti, page 12.

**VI. ISRR's REQUESTED CONDITIONS ARE
RESPONSIVE TO IP&L's LOST COMPETITION**

IP&L believes the ISRR's requested trackage rights are an efficient and feasible means of preserving IP&L's existing effective competition between the ISRR and INRD. Although the Applicants claim that Indianapolis will still have 2-carrier access that will not just maintain but improve the "status quo", it is obvious that this is not the case for IP&L's Perry K and Stout Plants, or for the ISRR. The CSX ownership of the INRD, and the NS' limited access into Indianapolis, will not provide a neutral railroad, such as Conrail is, to retain the effective competition that now exists.

**A. CONRAIL HAS AN
INTEGRAL ROLE IN IP&L'S
INDIANA COAL MOVEMENTS**

Witness Vaninetti minimizes Conrail's contribution "to balanced rail competition in the Indiana coal industry" by arguing that Conrail is "limited to its short-haul responsibilities as a bridge carrier for IP&L-Stout and as a destination carrier for IP&L-Perry K."^{36/} Conrail's role is better defined as a neutral carrier rather than a "short bridge carrier" because it creates and maintains the competitive alternatives that are imperative to IP&L's Stout and Perry K Plants. Witness Vaninetti points out that Conrail's portion of the Perry K and Stout movements is less than 6 miles and that Stout did not receive delivered coal via Conrail in 1997 and will not be able to deliver amounts in excess of 10% through the year . Just because ISRR/Conrail did not move any coal to Stout in 1997 and may not through (the term of the IP&L-INRD contract -- see Applicants' Rebuttal, CSX/NS-178 Vol IIID, P-397-399), does not minimize Conrail's effectiveness as past or future competition to the INRD. ISRR/Conrail moves all the coal to Perry K and could still move a substantial amount to Stout.

^{36/} CSX/NS-178 Rebuttal Volume 2B, page P-510.

B. PERRY K

ISRR's requested trackage rights in Indianapolis includes overhead trackage rights between MP6 on ISRR's Petersburg Subdivision and IP&L's Perry K Plant over the current Conrail line which is to be acquired and controlled by CSX. As a result of the condition, ISRR will simply replace Conrail allowing IP&L's present coal movements delivered by ISRR/Conrail to be efficient and competitive now and in the future. ISRR's direct access would allow it to compete equally with the new CSX/INRD single-line move.

C. STOUT

ISRR's requested trackage rights in Indianapolis also includes overhead trackage rights between MP6 on ISRR's Petersburg Subdivision and IP&L's Stout Plant located on the INRD over the current Conrail line which is to be acquired and controlled by CSX. As a result of the condition, ISRR will simply replace Conrail allowing ISRR to compete efficiently with the present INRD direct move as the ISRR/Conrail/INRD movement had done.

ISRR also requests local trackage rights over Conrail lines in Indianapolis, including the Belt line which will be acquired by CSX. As a result of this condition, ISRR will simply replace

Conrail allowing the ISRR to have access to IP&L's build-out from Stout as Conrail did before. The build-out as described below would not require Conrail or the ISRR to switch with the INRD, resulting in a less costly and more efficient move than Applicants' propose.

**D. ACCESS TO ISRR TRACK
WOULD PROVIDE A VIABLE
ALTERNATIVE TO CSX'S PENDING
MONOPOLY OF IP&L'S COAL TRAFFIC**

**1. Applicants' Rebuttal Comments
on the Build-Out Option**

Applicants' Witness Vaninetti dismisses IP&L's claims related to the competitive influence of a potential build-out to Conrail as "...last minute efforts..." to "legitimize" a competitive alternative to INRD for the delivery of coal to the Stout Plant. He further contends that "the threat of truck competition is the only competitive alternative that provides such influence." (Vaninetti, page P-511). Mr. Vaninetti is incorrect on both counts.

Prior to the rebuttal testimony, the Applicants contended that CSX would compete with INRD for coal transportation to the Stout Plant. Such an absurd contention is absent from Mr. Vaninetti's testimony, but is replaced with allegations regarding the prohibitive cost of a potential build-out along with the viability of truck movements. Unlike Mr. Sharp of CSX, Mr.

37/

38/

37/

38/

Mr. Vaninetti's current assertion that truck competition would offer a suitable alternative to INRD rail service to the Stout Plant ignores several facts. First, the highway transportation of approximately 1.5 million tons a year through the already congested and overloaded I-465/Harding Street interchange would be the cause of congestion there and at best would be inefficient. The rail industry, including CSX, frequently oppose trucking because of safety difficulties associated with large truck movements as well as public subsidies which the railroads allege underwrite highway traffic.

The inability of trucks to compete with large volume coal movements was noted by the STB in APS.^{39/} In APS, the loaded coal movement equalled 115 miles, approximately the same haul as coal destined to the Stout Plant. The STB rejected the trucking alternative, in part, because of environmental concerns and also because the STB was not convinced that trucking was an "effective constraint on Santa Fe's rail rates".^{40/}

Applicants' Witness Thomas E. Kuhn discounts the feasibility of the build-out, asserting that IP&L Witness Porter has understated the cost of the build-out. While I do not endorse Mr. Kuhn's costs, it should be observed that the build-out contemplated by IP&L is relatively short

. The terrain which it traverses is relatively flat, and, based on my experience in assisting utilities with gaining competitive access the build-out is feasible. Therefore, in my opinion, the build-out could be accomplished at a cost which is reasonable when compared to other build-outs actually constructed or planned.

^{39/} STB Docket No. 41185, Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, decided July 21, 1997 ("APS").

^{40/} APS, page 6.

Of primary importance, however, is the competitive leverage which the build-out would provide as a counter to CSX and CSX's affiliate INRD's ability to extract monopoly rents from IP&L under the terms of the application. The build-out cost, even including the additives asserted by Mr. Kuhn, are minimal when compared with the future rate levels which IP&L could pay as a result of IP&L's loss of the Conrail option.

Stated differently, whether or not the Conrail build-out option is even used, is secondary to the issue at hand. The mere knowledge of the option's existence has been or will be sufficient to help hold rail rates to the Stout Plant at a competitive level.

Finally,

I have depicted the approximate location of the transloading facility on the attached schematic in Exhibit (TDC-1). This threat, too, would have served to constrain INRD's switching charge to Conrail for non-INRD-origin coal traffic such as from ISRR.

**2. It is a Widely Recognized Fact That
Build-Out Options Have Served Effectively
to Maintain or Establish Rail Competition**

a. The BNSF and UPSP Mergers

The ability of shippers to construct tracks to competing rail entities has, in practice and theory, been recognized by both the STB and its predecessor the ICC as an effective action by which rail competition can be either maintained or introduced.

Most recently, the build-out option has been recognized in both the BNSF Merger^{41/} and UP/SP merger^{42/} proceedings as an effective methodology by which shippers can be protected from the anti-competitive effects of the reduction of origins or destination service. In both of those recent merger proceedings I appeared as a witness on behalf of a number of shippers who either wished to maintain their pre-merger ability to construct build-outs, and obtain alternative competitive access rights. The ICC and the STB acknowledged the competitive leverage provided by the build-out options and granted relief to affected shippers by imposing appropriate conditions for the benefit of Oklahoma Gas and Electric Company ("OG&E") and Entergy Corp ("Entergy"). With respect to OG&E, the ICC in the BNSF Merger decision stated that:

We conclude that the merger will reduce OG&E competitive options at Red Rock by negating its ability to "build-out" to a neutral carrier --" (Page 67)

and,

The negotiating leverage provided by the build-out option will disappear with the merger.....To preserve the competitive status quo, we have crafted a condition that will permit OG&E to maintain its existing build-out option. (Page 68)

In the UP/SP Merger, the STB confirmed validity of the build-out option, stating :

"We will grant the build-out relief sought by Entergy vis-a-vis its White Bluff plant, and thereby preserve the White Bluff build-out status quo, transport coal trains to and from White Bluff via the White Bluff-Pine Bluff build-out line, if and when that line is ever constructed by any entity other than UP/SP." (Page 185)

In another proceeding unrelated to rail mergers, Omaha Public Power District utilized a build-out to gain a competitive rail option. In that proceeding, the ICC recognized the viability

^{41/} ICC Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company - Control and Merger - Santa Fe Pacific Corporation and Achison, Topeka and Santa Fe Railway Company, served August 23, 1995.

^{42/} STB Finance Docket No. 32760 -- Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, ST. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company, served August 12, 1996.

of the build-out option and accordingly ordered that BN should allow the crossing of its tracks by the build-out (which was designed to reach the UP^{43/}).

**3. The Build-Out Option Is
Economically Feasible Under
Any Reasonable Standard Of Measure**

In his verified statement of October 21, 1997 IP&L Witness John E. Porter presented evidence relating to the physical feasibility and cost of the construction of a build-out line from IP&L's Stout Plant to the Indianapolis Belt Secondary Route.

Mr. Kuhn's Rebuttal statement on behalf of the Applicants takes issue with Mr. Porter's estimates of the physical and cost requirements of the build-out. Mr. Kuhn concludes that Mr. Porter understated the cost of construction by approximately \$3.1 million.

I believe that the construction costs estimated by Mr. Porter to be the best evidence of record. However, even accepting the costs claimed by Mr. Kuhn, the value of the build-out still provides a reasonable competitive option.

Table 1 below summarizes the cost of the build-out on a cost per-ton basis. My analysis is based on the construction cost presented by Mr. Porter and Mr. Kuhn, a 20 year recovery period, an 8 percent cost of capital rate, monthly payments, and 1.5 million tons per year (125,000 tons per month).

^{43/} ICC Finance Docket No. 32630, Omaha Public Power District -- Petition Under 49 U.S.C. 10901 (d).

<p style="text-align: center;">Table 1 Annual Cost of Construction For The Stout Plant Build-Out</p>		
<u>Witness</u> (1)	<u>Estimated</u> <u>Cost</u> (2)	<u>Cost</u> <u>Per-Ton</u> ^{1/} (3)
1. Porter ^{2/}		
2. Kuhn ^{3/}		
^{1/} Annuity rate based on 8% cost of capital, 20 year recovery period and monthly payments to develop the cost and place on a per-ton basis utilizing 1.5 million tons per year or 125,000 tons per month. ^{2/} Porter VS., Page 2. ^{3/} Line 1 plus the addition of \$3,125,000 from Mr. Kuhn, Page P-310.		

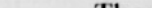
As shown in Table 1 above, the cost to exercise the build-out option equals per-ton based on IP&L's Witness Porter's calculation. Utilizing Mr. Kuhn's estimated cost of construction results in a build-out cost of per-ton. These costs are considerably reasonable in light of two factors.

Second, I am advised that other shippers, such as the Indianapolis plant of Martin Marietta, could also utilize the build-out, thereby decreasing the cost per-ton. IP&L has discussed this matter with Indiana Grain Cooperative/Country Mart, the shipper at the end of the "Conrail Stub" depicted on my schematic attached as Exhibit__ (TDC-1), and with Martin Marietta, whose plant is immediately south of the Indiana Grain facility and has been advised that both Indiana Grain and Martin Marietta would work with IP&L to upgrade rail service for all three of them along the Conrail Stub, including an extension to the Martin Marietta facility.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

THOMAS D. CROWLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

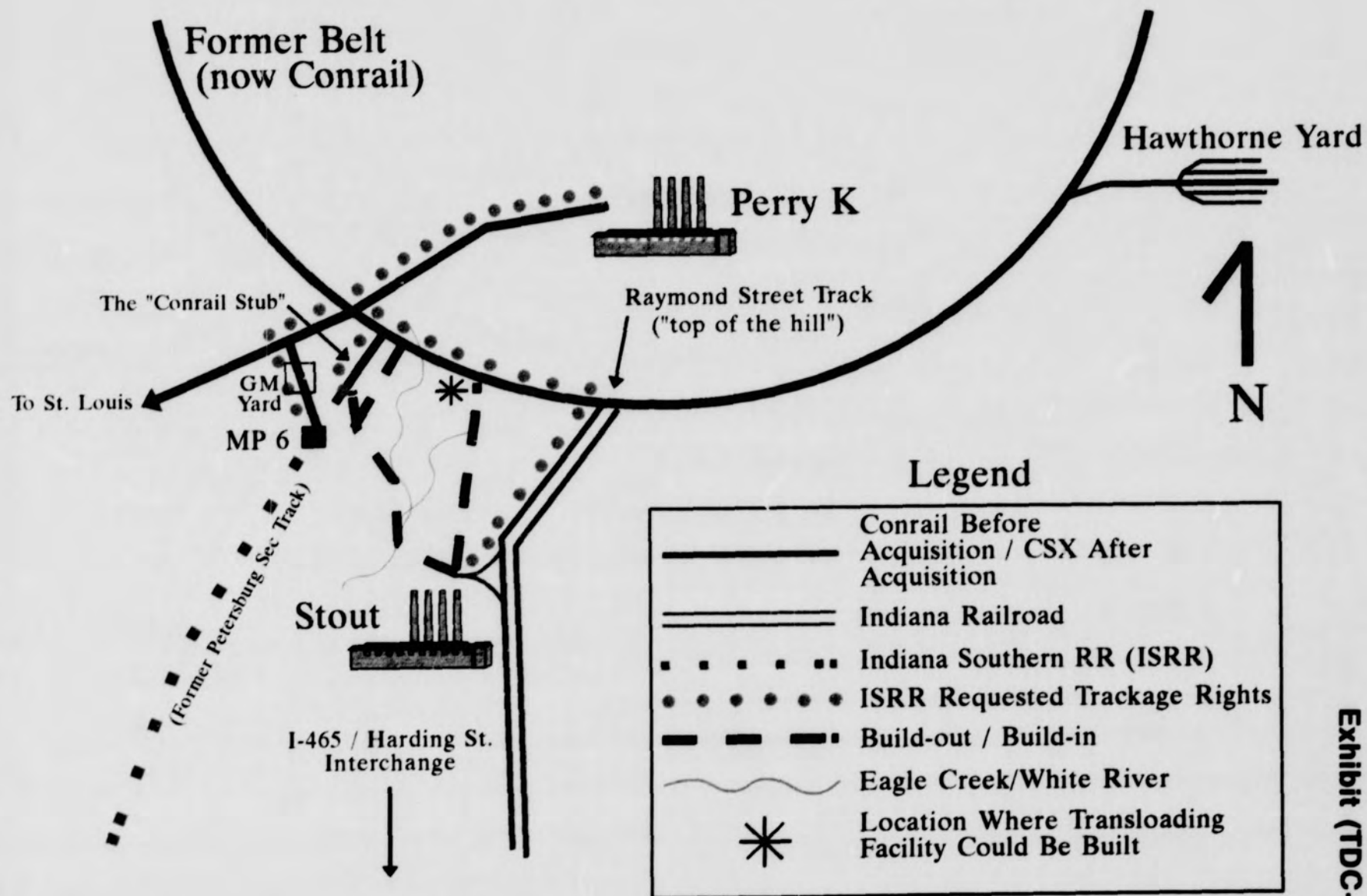

Thomas D. Crowley

Sworn to and subscribed
before me this 13th day
of January, 1998.

Witness my hand and official seal.


Carol J. Haller
my Commission Expires July 31, 2001

Schematic of Routes to IPL Power Plants



CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 1998, I caused a copy of the Rebuttal of Indiana Southern Railroad, Inc. (ISRR-9), to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.


Karl Morell

STB

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(Sub 76)

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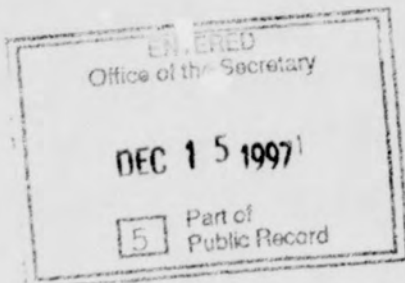
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388

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

FINANCE DOCKET NO. 33888 (SUB-NO. 76)
RESPONSIVE APPLICATION — INDIANA SOUTHERN RAILROAD

COMMENTS OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE



Michael V. Dunn
Michael V. Dunn
Assistant Secretary

Marketing and Regulatory Programs

U.S. Department of Agriculture
Washington, DC 20250

Date: December 15, 1997



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388

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

FINANCE DOCKET NO. 33888 (SUB-NO. 76)
RESPONSIVE APPLICATION — INDIANA SOUTHERN RAILROAD

COMMENTS OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE

These comments are filed on behalf of the United States Department of Agriculture (USDA) in response to the Surface Transportation Board's (STB) decision served November 20, 1997, accepting for consideration certain responsive applications.

AUTHORITY AND INTEREST

Through the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 (j)), Congress has directed and authorized the Secretary of Agriculture to participate in proceedings before STB to "assist in improving transportation services and facilities . . . for agricultural products and farm supplies" and to make "complaint or petition to [STB] . . . with respect to rates, charges, tariffs, practices, and services. . . ." In addition, the USDA, through the opera-

tions of the Commodity Credit Corporation and foreign commodity donation programs, is a participant in the markets for agricultural products.

INTRODUCTORY REMARKS

In our October 21, 1997, filing in this proceeding, which we incorporate by reference, we stated our view that contrary to the statutory rail transportation policy (49 U.S.C. 10101) STB has placed too much weight on the achievement of efficiency and too little weight on effective competition. Effective competition promotes reasonable rates, minimizes the need for regulatory control, and encourages honest and efficient management of railroads. By contrast, efficiency benefits (including *potential* cost savings) are inherently more speculative. Not only might the proposed benefits of a merger never be realized, but, because of market power, whatever benefits do accrue may not be passed through to shippers in the form of lower prices.

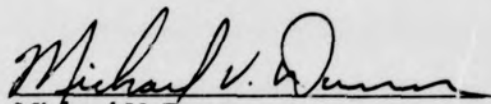
USDA strongly believes that the most effective form of competition for railroads is *intra*-modal competition. While mergers of Class I railroads may be in the public interest, they do reduce effective *intra*-modal competition. STB's has the power to mitigate this loss of effective *intra*-modal competition by attaching protective conditions to the merger. In the past, however, STB has been reluctant to exercise its conditioning powers. USDA believes that STB can more effectively promote the national rail policy by using its conditioning power more aggressively. We believe that although protective conditions may reduce the benefits of a consolidation, they promote effective competition which carries with it many concrete and salutary benefits.

SUB-DOCKET NO. 76

In this Sub-Docket, STB has asked for comments on the responsive application of the Indiana Southern Railway (ISRR). ISRR seeks a combination of local and overhead trackage rights that will permit effective access to Indianapolis, Indiana. ISRR claims that these trackage rights will ameliorate the anti-competitive effects approval of this application would entail.

The fate of the greater Indianapolis region is a key concern to USDA. Indianapolis, located in the heart of the Eastern Corridor, is one of the Nation's largest and most dynamic metropolitan areas. According to the primary applicants, Indianapolis is, by far, the largest 2-1 pointed created by the proposed transaction. USDA is concerned that if this transaction is approved, the overhead trackage rights Norfolk Southern Railway (NS) will receive may not enable NS to provide effective competition in this market. Therefore, in order to maintain and protect effective intra-modal competition STB should condition its approval of this application by granting the ISRR effective access to Indianapolis.

Respectfully submitted,


Michael V. Dunn
Assistant Secretary

Marketing and Regulatory Programs

U.S. Department of Agriculture
Washington, DC 20250

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CERTIFICATE OF SERVICE

I, Paul J. Bertels, certify that on this the 15th day of December, 1997, I caused a copy of the foregoing document to be served by first-class mail, postage pre-paid, on all parties of record in STB Finance Docket No. 33388.

Paul J Bertel