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February 23, 1998

HAND DELIVERY

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

SUB 76

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 Brief of Indiana Southern Railroad, Inc. Also enclosed is a 3.5 inch diskette containing the filing in WordPerfect 5.2.

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

Karl Morell
Attorney for:
INDIANA SOUTHERN RAILROAD, INC.

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ISRR-10

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

BRIEF OF INDIANA SOUTHERN RAILROAD, INC.

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RAILROAD, INC.

Dated: February 23, 1998

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

BRIEF OF
INDIANA SOUTHERN RAILROAD, INC.

Indiana Southern Railroad, Inc. ("ISRR"), pursuant to Decision No. 12 in these proceedings and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures at 49 C.F.R. Part 1180, hereby submits its brief in support of ISRR's Responsive Application. ISRR respectfully submits that the Railroad Control Application ("Control Application") filed by 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") should be denied unless the conditions requested by ISRR are approved.

[1] CSXC 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. In their Control Application filed on June 23, 1997, Primary Applicants

SUMMARY OF ARGUMENTS

Indianapolis and the surrounding area presents the Board with the most serious and pervasive competitive issues in these proceedings. Nearly 88 percent of all the 2-to-1 shippers identified by Primary Applicants are located in the Indianapolis area. Indianapolis and the surrounding area will lose all meaningful rail competition and are vastly more susceptible to rail rate increases and service deterioration than any other community affected by the Primary Transaction. In their private agreement to carve up CRC, Primary Applicants have relegated the Indianapolis area to the complete and exclusive domain of CSXT.

Indianapolis Power & Light ("IPL") operates two coal burning facilities in Indianapolis that currently enjoy the benefits of head-to-head rail competition. Post-Transaction both of these plants will become captive to CSXT. The Perry K Plant is located on the CRC line in Indianapolis and has been designed as a 2-to-1 destination by Primary Applicants. IPL currently has at least five routing options for coal deliveries to Perry K. ISRR and a CSXT subsidiary, the Indiana Rail Road Company ("INRD"), vigorously compete for coal movements to that plant via a CRC switch. IPL is also able to deliver coal to Perry K by truck from the nearby E.W. Stout Plant and a terminal on CSXT's subsidiary.

Post-Transaction, all options for moving coal to Perry K will be controlled by CSXT. CSXT, which will replace CRC as the switch carrier, will economically or operationally disadvantage coal movements over the ISRR in order to favor the routings over its subsidiary. The short truck movements to Perry K will no longer serve as a competitive constraint on CSXT,

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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").

as they do today on CRC, because CSXT will control the prior rail movements to both transloading facilities.

IPL's second facility, the Stout Power Plant, is located on CSXT's subsidiary a short distance form CRC's Indianapolis line. IPL currently has at least six routing options for coal movements to Stout. Again, ISRR and CSXT's subsidiary have vigorously competed for coal traffic to that plant. ISRR has delivered coal to Stout via a CRC and INRD switch in Indianapolis. CRC has the potential to serve Stout via an INRD switch or directly via a build-in from its nearby line. Post-Transaction, all options for moving coal to the Stout Plant will be controlled by CSXT. CSXT will competitively disadvantage the ISRR routings in order to favor its subsidiary. Once CSXT replaces CRC, all CRC routings will be taken over by CSXT and the build-in option -- which now disciplines INRD rates -- will become meaningless.

NSR will not be a competitive factor for coal movements to Indianapolis. NSR will have no direct access to the nearby Indiana coal fields; its shortest direct route is almost five times longer than the INRD route. Eastern coal sources are not competitive in Indianapolis because they must move vastly greater distances than coal shipments from Indiana mines. NSR will also not gain access to ISRR and its direct coal sources, and NSR will be precluded from serving Stout via the build-in options. Also, NSR coal movements to Indianapolis would not be operationally feasible because of NSR's circuitous route to that city and the requirement that NSR interchange all traffic with CSXT in CSXT's Hawthorne Yard.

By Primary Applicants' own admission, at least 66 shippers in Indianapolis will lose competitive rail service if the Primary Transaction is approved without conditions. In the nearby community of Crawfordsville, at least seven shippers face a similar fate. There is deep and widespread concern over the significant loss of rail competition in Indianapolis and the surrounding area. Primary Applicants' answer to these concerns -- granting NSR overhead trackage rights to Hawthorne Yard and overhead trackage rights or haulage rights to Crawfordsville -- fails woefully short of remedying the competitive harm in this area.

ISRR and other parties have demonstrated that NSR's ability to compete in the Indianapolis area is illusory and that the private arrangement between CSXT and NSR cedes this area to CSXT's exclusive dominion and control. Primary Applicants are not trading places or replicating the status quo, as they would lead the Board to believe. CSXT is largely retaining its current position in the area as well as assuming the position of CRC. CSXT will retain all of its assets and acquire all of CRC assets in the Indianapolis area. CSXT will retain direct access to its current customers and acquire the exclusive right to serve directly all but one of CRC's customers. NSR, on the other hand, will own no physical assets in the area, will have direct access to only one shipper and will be forced to operate over highly circuitous routes. Faced with numerous operating and access disadvantages, NSR will most likely be discouraged from providing any meaningful service to the Indianapolis area. Additionally, the CSXT-NSR arrangement provides CSXT no incentive to reduce costs or improve efficiencies in the Indianapolis area since NSR cannot provide service competition and is dependent on CSXT service to reach all but one customer.

Unlike the contrived CSXT-NSR solution, the trackage rights ISRR seeks are designed to provide meaningful rail competition and eliminate the competitive harm the Primary Transaction would otherwise produce in the Indianapolis area. By gaining direct access to IPL's two plants, ISRR would be able to preserve the two carrier competition those plants currently enjoy. The requested conditions would also enable ISRR to offer the shipping public in the Indianapolis area a competitive alternative to CSXT, which will be lost when CRC exits this market.

The Primary Transaction will also produce harm to essential services on the ISRR rail system. ISRR will lose over $1.5 million in annual revenues as a result of traffic diversions to CSXT and its subsidiary. The loss of this traffic will render the northern most section of ISRR's rail line unprofitable and force ISRR to abandon that segment. At least seven of ISRR's customers would be adversely affected by the abandonment through the loss of essential rail service. If ISRR's conditions are granted, ISRR would be able to continue serving its customers, as well as provide meaningful rail competition to the Indianapolis area.

BACKGROUND

ISRR is a Class III rail carrier operating over approximately 176 miles of track between Indianapolis and Evansville, Indiana. ISRR currently connects with CRC at Indianapolis; NSR and the Algers, Winslow & Western Railway (an NSR subsidiary) at Oakland City, Indiana; Indiana Rail Road Company ("INRD") at Switz City, Indiana; the CP Rail System ("CP Rail") at Bee Hunter, Indiana; and CSXT at Evansville, Indiana. Neumann V.S. at 2, ISRR-4.

ISRR began operations in April 1992, and has been able to consistently increase its traffic base. ISRR currently has 36 employees and operates a fleet of 14 locomotives. Its headquarters are located in Petersburg, Indiana, where it maintains a locomotive and car repair shop, a rail yard and service tracks. ISRR also maintains a facility at Worthington, Indiana, for its transportation employees and one at Spencer, Indiana, for its maintenance of way employees. The major commodity handled by ISRR is coal, which comprises 95 percent of its total carloads.

ISRR's gross revenues in 1996 were approximately $9 million and its major customers currently are IPL, Black Beauty Coal Company, Ferro and Whirlpool. *Id.* at 2-3.

ISRR has worked hard at reducing its costs to a bare minimum in order to provide economical service to its customers. ISRR operates with limited overhead. Its employees are cross-trained to perform multiple duties thereby eliminating the need for extra employees to handle separate functions. ISRR has reached the point where it cannot afford to further reduce its costs without adversely impacting the quality of service and the maintenance of its physical plant. *Id.* at 3.

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.

   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.[2]

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.

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[2] ISRR seeks trackage rights over all CRC rail lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis and the other shortlines operating to Indianapolis.

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,[3] Indiana, over the rail line currently owned by CRC and to be acquired by CSXT.

GOVERNING LEGAL STANDARD

Under 49 U.S.C. § 11324 (c), the Board shall approve a transaction when it finds the transaction consistent with the public interest.[4] In applying the statutory "public interest" standard, the Board must balance the benefits applicants and the public will derive from the transaction against the potential competitive harm. 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,* Decision No. 44 (slip op. at 98-99, served August 12, 1996) (*UP/SP*).[5]

In determining whether a proposed transaction involving two or more Class I railroads is consistent with the public interest, the Board is directed to consider, at a minimum, the following five factors:

> (1) the effect of the proposed transaction on the adequacy of transportation to the public;

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[3] On rebuttal, ISRR clarified that it is not seeking to serve local shippers in Muncie because the competitive status quo will be maintained in that community. Neumann R.V.S. at 14, ISRR-9.

[4] The "single and essential standard of approval is that the (Board) find the (transaction) to be consistent with the public interest." *Missouri-Kansas-Texas R. Co. v. United States,* 632 F. 2d 392, 395 (5th Cir. 1980), *cert denied,* 451 U.S. 1017 (1981).

[5] The Board's general policy statement on rail consolidations provides, in pertinent part, that:

> In determining whether a transaction is in the public interest, the (Board) performs a balancing test. It weighs the potential benefits to applicants and the public against the potential harm to the public.

49 C. F. R. § 1180.1 (c).

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system."[6]

49 U.S.C. § 11324 (b).

[6] Subsection (5) was added by the Staggers Rail Act of 1980 (Public Law 96-448) and was amended by the ICC Termination Act of 1995 (Public Law 104-88) to require the Board to consider adverse impacts upon competition "in the national rail system". This subsection was originally enacted to statutorily obligate the Board's predecessor to analyze the loss of rail competition in relevant regional markets. As explained by the sponsor of the subsection:

> I am offering an amendment...to specifically direct the Interstate Commerce Commission to consider the question of rail competition whenever making a determination of a railroad merger transaction.
>
> The escalation of rail mergers now taking place in the industry is causing concern among our Nation's farmers and ranchers was well as other shippers. The Interstate Commerce Commission is facing decision on several mergers that would have the effect of eliminating or nearly eliminating rail competition within entire sections of the country. I think it is important, therefore, that the ICC consider the question of competition as a regular part of the process of evaluating whether to allow mergers.

126 Cong. Rec. H8604 (September 9, 1980); Remarks of Congressman Panetta.

The first and last of these factors are relevant to ISRR's Responsive Application.

Section 11324 (b)(1) requires the Board to examine the public benefits that will result from the transaction. The Board has defined public benefits "as efficiency gains such as cost reductions, cost savings, and service improvements...(that) in varying degrees...are passed on to most shippers as reduced rates and/or improved services." *UP/SP* at 99. Benefits that accrue to the applicants as a result of increased market power, however, "are exclusively private benefits that detract from any public benefits associated with a control transaction." *Id.*

Section 11324 (b)(5) requires the Board to assess the effects of the transaction on competition. The Staggers Act increased the need for more careful scrutiny of anticompetitive effects of merger transactions. As the Board's predecessor noted:

> The new (Rail Transportation Policy) favoring increased reliance on competition to regulate activities will govern the environment in which the new system will operate. The ability of the railroads to take various actions free of regulatory restraints will make it easier to exert or abuse market power gained as a result of consolidation. For these reasons we must take even greater care to identify harmful competitive effects and to mitigate those effects where possible.

Union Pacific - Control - Missouri Pacific; Western Pacific, 366 I.C.C. 459, 502 (1982) (*"UP/MP/WP"*).

The Board considers two types of potential harm that may result from a proposed consolidation transaction: reduction of competition and harm to essential services. 49 C.F.R. § 1180.1 (c) (2).

The Board is concerned not only with the possible "elimination" of competition by consolidations, but also with any significant "lessening" or "reduction" in competition. *Railroad Consolidation Procedures*, 363 I.C.C. 784, 786-87 (1981). "Competitive harm results from a merger to the extent the merging parties gain sufficient market power to raise rates or reduce service (or both), and to do so profitably, relative to premerger levels." *UP/SP* at 100. Whenever possible, the Board attempts to ameliorate competitive harms with conditions. *Id.*

In determining whether a proposed transaction will result in competitive harm, the Board looks to the affected market. The affected market has two dimensions: product and geographic. *Rio Grand Industries, et al. - Control - SPT Co., et al.*, 4 I. C. C. 2d 834, 885 (1988) (*"RGI/SPT")*. The product sold by railroads is the transportation of freight. *Id.* at 886; *Rio Grande Ind., Inc. -- Pur. & Track. -- Soo Line R. Co.*, 6 I. C. C. 2d 854, 878 (1990) ("*RGI/SOO*"). The Board generally considers alternative rail service and, where relevant, intermodal options. *RGI/SOO* at 886-87; *Union Pacific Corp. et al. - Cont. - MO-KS-TX CO. et al.*, 4 I. C. C. 2d 409, 433-35 (1988) ("*UP/MKT*"). In past merger cases, the Board and its predecessor have not applied a fixed definition of the relevant market. Instead, they have examined the specific circumstances in each case to determine if the relevant market should be confined to rail transportation or enlarged to include other transportation modes. *See* Finance Docket No. 32133, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Decision No. 25 (slip op. 57, served March 7, 1995); *UP/MKT* at 433-34..

The area in which providers of a particular product operate is the relevant geographic market. The area may be as small as a city or as large as the entire country. *RGI/SPT* at 887. The Board's predecessor noted that "the distinctions between product and geographic markets are not as clear in transportation as they are in other industries, for carriers, in particular railroads, effectively sell their geography." *UP/MP/WP* at 505, n 28. Accordingly, the determinations of the relevant product market and the relevant geographic market in a particular case will necessarily be interrelated. The Board's predecessor analyzed traffic flows between city pairs, as well as traffic flows in rail corridors, and at specific points in the area in which the merging rail carriers operate. *UP/MKT* at 437.

The Board also considers whether a proposed transaction affects essential services. The Board's focus is on the preservation of essential services and not on the survival of any particular carrier. 49 C.F.R. § 1180.1 (c) (2) (ii). *See also, UP/MKT* at 431. The Board uses a two-step analysis in determining whether a proposed transaction will harm essential services. *UP/MP/WP* at 546. First, the Board considers whether any affected carrier faces financial losses on a particular line that would reduce its operational viability. *See Guilford Transportation - Control - B&M, et al.*, 5 I. C. C. 2d 202, 215 (1988). Second, the Board considers whether the rail line suffering the losses provides essential service. *UP/MP/WP* at 546. A service is considered essential "if there is a sufficient public need for the service and adequate alternative transportation is not available." 49 C.F.R. § 1180.1 (c) (2) (ii).

The Board has broad authority to impose conditions on its approval of a consolidation transaction in order to ensure that the public interest standard is met. 49 U.S.C. § 11324 (c); *UP/MP/WP* at 562. In determining whether conditions are warranted, the Board's "overriding concern is the public interest." *Id.* The Board can impose conditions to remedy new problems created by the transaction or preexisting problems that will be exacerbated by the transaction.

Public interest conditions will be imposed to ameliorate anticompetitive consequences of a proposed transaction if the conditions: (i) are operationally feasible; (ii) ameliorate or eliminate the harm threatened by the transaction; and (iii) are of greater benefit to the public than they are detrimental to the transaction. *UP/MP/WP* at 564.

A condition to protect a carrier when the transaction affects essential service on the carrier's rail lines is imposed upon a showing that the condition: (i) is related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidated carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits. 49 C.F.R. § 1180.1 (d) (1).

THE TRACKAGE RIGHTS REQUESTED BY ISRR SHOULD BE GRANTED

Approval of the Primary Transaction, without appropriate conditions, will significantly reduce competition for rail shippers in Indianapolis and the surrounding area and will cause a loss of essential services on the ISRR rail system. The conditions requested by ISRR are uniquely designed to ameliorate both of these competitive harms. If the conditions are granted, ISRR will be able to preserve competitive rail service for shippers in Indianapolis and the surrounding area and maintain service to its rail dependent on-line customers. As demonstrated below, the trackage rights ISRR seeks fully meet the Board's criteria for imposing conditions.

RAIL COMPETITION IN INDIANAPOLIS AND THE SURROUNDING AREA WILL BE SIGNIFICANTLY REDUCED AS A RESULT OF THE PRIMARY TRANSACTION

According to Primary Applicants' own testimony, Indianapolis is by far the largest 2-to-1 area created by the Primary Transaction. *See* CSX/NS-18 at 548. They concede that there are at least 66 shippers on CRC lines in Indianapolis that currently have two carrier rail service through reciprocal switching. *See* CSX/NS-19 at 147. The nearby community of Crawfordsville, according to Primary Applicants, is the second largest 2-to-1 area, with seven shippers facing a loss of competitive rail service. *Id.* at 148. In addition, CRC currently serves as a neutral gateway carrier to shippers on the Indianapolis to Shelbyville, Indianapolis to Crawfordsville, and Indianapolis to Muncie rail lines for traffic moving to nearby CSXT and NSR junctions. The proposed solution -- granting NSR overhead trackage rights to Hawthorne Yard in Indianapolis and overhead trackage or haulage rights to Crawfordsville -- falls woefully short of remedying the anticompetitive effects of the Primary Transaction in Indianapolis and the surrounding area. The conditions requested by ISRR, on the other hand, would enable ISRR to compete directly with CSXT from a rate and service standpoint and to provide the affected shippers a meaningful competitive alternative.

Perry K Plant

IPL's Perry K Plant is located on a CRC line in Indianapolis. IPL currently has five routing options for coal deliveries to the Perry K Plant: (1) CRC direct; (2) ISRR via CRC switch at Indianapolis; (3) INRD via CRC switch at Indianapolis; (4) INRD to the E. W. Stout Plant and truck to Perry K; and (5) INRD to its switching yard in Indianapolis and truck to Perry K. ISRR has transported coal to Perry K via a CRC switch since it began operations in 1992. ISRR's primary competitor for coal movements to Perry K has been the INRD. The source of coal currently moving to Perry K is the Triad Mine located on the INRD at Switz City, Indiana. ISRR has trackage rights over the INRD to serve that mine for coal movements to all IPL plants other than Stout. Consequently, INRD can serve Perry K via a CRC switch from the Triad Mine, as well as from the various other mines INRD serves directly in Indiana. Neumann R.V.S. at 2-3, ISRR-9. In addition, IPL has shipped coal over the INRD to IPL's Stout Plant and INRD's Senate Avenue Terminal in Indianapolis for movements to Perry K by truck. CSX/NS-177 at 195-96. *See also,* Crowley R.V.S. at 3 and 9, ISRR-9.

Post-Transaction, the Perry K Plant will become captive to CSXT and its 89 percent owned subsidiary, the INRD. Once CRC exits the Indianapolis market, the options of CRC handling coal direct or as a switch carrier for ISRR or INRD will be lost. While ISRR currently has a slight operational advantage over INRD because it interchanges the coal movements with CRC within one to two miles of the Perry K facility, CRC is largely indifferent and neutral in switching the traffic to Perry K from either ISRR or INRD. CSXT, which will replace CRC, will have the means and a strong economic motive to favor its subsidiary and economically or operationally disadvantage coal movements over the ISRR. The short truck movements to Perry K from Stout or the INRD terminal will not serve as a competitive constraint on CSXT, as they do on CRC today, since the prior rail movements will be controlled by CSXT's subsidiary. Accordingly, post-Transaction, all options of moving coal to Perry K will be controlled by CSXT.

Primary Applicants suggest that Perry K will benefit from the Primary Transaction by gaining access to NSR via a CSXT switch through Hawthorne Yard. CSX/NS-176 at 55. What they conveniently fail to note, however, is that NSR has no direct access to nearby coal sources from which NSR could economically transport coal to Perry K. NSR will not gain access to ISRR in Indianapolis and the only NSR route from nearby Indiana coal mines is highly circuitous. In order to transport Indiana coal to Perry K, NSR would be forced to utilize a 491-

mile route via Louisville and Danville, Kentucky, Cincinnati, Ohio, and Muncie, Indiana, which is nearly five times longer than INRD's direct route. Because of the significantly further distances and NSR's highly circuitous route to Indianapolis, Eastern coal would not be competitive with the nearby Indiana coal. Neumann R.V.S. at 3-4, ISRR-9. Primary Applicants' own witness has confirmed NSR's inability to be competitive for coal movements to Indianapolis by demonstrating that IPL is economically committed to using Indiana coal. CSX/NS-177 Vol. 2B at 514-19. Even if NSR had access to economical sources of coal -- which it does not -- NSR would be restricted to interchanging the traffic with CSXT at Hawthorne Yard. The movement of unit coal trains through Hawthorne Yard is operationally inefficient and would further disadvantage movements to Perry K via the NSR.

CSXT witnesses attempt to downplay the loss of rail competition at Perry K by erroneously alleging that the plant has been partially converted to natural gas. CSXT/NS-177 Vol. 2A at 201 and Vol. 2B 510. According to Mr. Neumann, however, the conversion has been delayed and may never occur. Even if the conversion does occur, Perry K would still need to receive about one-half of its current coal volumes and would still be dependent on rail to meet its coal transportation needs. Neumann R.V.S. at 11-12, ISRR-9.

Primary Applicants have designated Perry K as a 2-to-1 facility. CSX/NS-37 at 12; CSX/NS-51 at 8; and CSX/NS-178 Vol. 3B at 638-39. As demonstrated by ISRR and others, Primary Applicants' contrived solution of preserving competition at that plant is not economically feasible and operationally efficient. Primary Applicants alternative argument -- that there will be no loss of competition at Perry K because CSXT will simply replace CRC (CSX/NS-177 Vol. 2A at 635)-- is equally unavailing. As already explained, ISRR coal movements to Perry K now compete with INRD routings, and CSXT, which controls INRD, will have the means and the motive to disadvantage ISRR routings. Indeed, CSXT Witness Hoback, the President of INRD, admitted that INRD competes with ISRR for coal movements to Perry K. CSX/NS-177 Vol. 2A at 198. Accordingly, the Primary Transaction will significantly reduce competition at Perry K and not, as Primary Applicants allege, maintain the status quo or improve competition.

Stout Plant

IPL's second power plant in Indianapolis is located on the INRD approximately three miles from CRC's Indianapolis Belt Running Track. IPL currently has six routing options for coal shipments to the Stout Plant: (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 or ISRR-CRC via a build-in to the Stout Plant. INRD is able to serve the Stout Plant direct from several Indiana coal mines and in interline movements with CP Rail from the Farmersburg Mine. ISRR has provided service to Stout via the INRD at Switz City and via a CRC and INRD switch at Indianapolis. CRC has the potential to serve Stout via an INRD switch or directly via a build-in from its nearby Belt Line. Neumann R.V.S. at 5, ISRR-9.

Post-Transaction, the Stout Plant, like the Perry K Plant, will become captive to CSXT and its subsidiary the INRD. CSXT will have the means and the motive to competitively disadvantage ISRR routings via Indianapolis. Once ISRR's service via Indianapolis is no longer competitive, INRD will have no incentive to jointly market ISRR-INRD movements via Switz City. ISRR, therefore, will be foreclosed from competing for Stout traffic. Once CRC exits the Indianapolis market, the option of CRC linehauling coal to Stout via an INRD switch will be lost. In addition, IPL is currently able to discipline INRD rail rates to Stout by threatening the use of the build-out option, which, if constructed, would provide CRC or ISRR-CRC routings direct access to Stout. The build-in/build-out option, however, will also become meaningless with the replacement of CRC by CSXT on the Belt Line.[7] It would make no sense whatsoever to build a connecting line to the parent of the company to which you have just become captive. Accordingly, post-Transaction, all options of moving coal to the Stout Plant will be controlled by CSXT.

For reasons previously discussed, NSR will not be a competitive factor for coal movements to Indianapolis. NSR's direct route from the nearby Indiana coal fields is over a highly-circuitous route, the eastern mines are located at too great a distance to be competitive, NSR will not gain access to ISRR, and NSR's overhead trackage rights on the Belt Line will specifically preclude NSR from serving Stout via a build-in. Moreover, NSR will be operationally constrained by the requirement that it only interchange traffic in Indianapolis with CSXT at the Hawthorne Yard.

On rebuttal, CSXT witnesses attempt to deflect the demonstrated loss of competition at the Stout Plant with illogical and transparently erroneous contentions. First, CSXT Witness Orrison acknowledges that ISRR is currently able to serve Stout via an interchange with CRC. CSX/NS-177 Vol. 2A at 655. He goes on to suggest, however, that there is no "operating" reason why ISRR could not continue hauling coal to Stout because CSXT will simply assume

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[7] The Board and its predecessor have consistently acknowledged that a build-out option constitutes potential competition that effectively constrains rail rates. *See* Finance Docket No. 32549, *Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Decision No. 38 (slip op. 67-8, served August 23, 1995) ("the merger will reduce OG&E's competitive options at Red Rock by negating its ability to 'build out' to a neutral carrier"); *UP/SP* slip op. 185.

CRC's role for ISRR coal movements to Stout. Mr. Orrison's contention, however, conveniently ignores the fact that ISRR's competitor, the INRD, is controlled by CSXT. He seems to suggest, as CSXT has done on other occasions in these proceedings, that CSXT will compete with its subsidiary, a notion that is counterintuitive and has been rejected by other CSXT witnesses.[8] *See* CSX/NS-177 Vol. 2A at 269-70 ("In most instances, economists consider complete ownership sufficient to provide the incentive to control the types of decisions, such as pricing, service quality, and interchanges, that control vertical rail relationships.").

Second, CSXT Witness Vaninetti alleges that ISRR is not a competitive factor for coal movements to Stout because last year ISRR lost the traffic to a two-line haul via CP Rail-INRD. CSX/NS-177 Vol. 2B at 513. Mr. Vaninetti's notion of competition is nonsensical and contrary to his testimony in this proceeding and in *UP/SP*.[9] Mr. Vaninetti is at a loss to explain why ISRR handled traffic to Stout in prior years via CRC if its routing is not competitive. As explained by Mr. Neumann, the fact that ISRR lost traffic to INRD last year "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. *** 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." Neumann R.V.S. at 7, ISRR-9. In reality, ISRR's

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[8]On Rebuttal, CSXT offers to temporarily preserve competition at Stout by extending the contract governing ISRR's movements to Stout. CSX/NS-176 at 365. As explained in ISRR's Rebuttal, CSXT's offer is virtually meaningless and, at best, would only delay the anticompetitive consequences of the Primary Transaction in Indianapolis.

[9]In these proceedings, Mr. Vaninetti claims that trucks are competitive for coal movements to Stout, even though he readily admits that he has no knowledge of any coal ever being trucked to Stout. More importantly, Mr. Vaninetti's testimony in UP/SP is directly at odds with his testimony here. In *UP/SP*, he criticized UP Witness Sharp by stating:

> 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.

See Crowley R.V.S. at 13, ISRR-9.

routings to Stout via CRC are currently competitive with alternative routings over the INRD, but will be rendered noncompetitive with the replacement of CRC by CSXT in Indianapolis.[10]

Third, CSXT Witnesses Hoback and Vaninetti would have the Board accept the loss of rail competition at Stout on the theory that truck competition constrains rail rates for coal movements to that plant. Their unsubstantiated allegations are, however, soundly refuted by Messrs. Neumann, Weaver and Crowley.

Mr. Neumann concedes that it is theoretically possible to truck some coal to Stout. In his view, however, it would be neither economical nor politically practicable to truck large volumes of coal to Stout given the distances involved and the fact that Stout is located in a major metropolitan area. Mr. Neumann points out that, in his six years at ISRR, IPL never raised the threat of truck competition for coal movements to Stout and that ISRR always considered alternative rail routings as its sole competition for Stout traffic. Neumann R.V.S. at 10-11, ISRR-9.

Mr. Weaver explains that, in negotiating the current INRD contract for the transportation of coal to Stout, IPL used the ISRR-CRC competitive rail routings as leverage and not, as Messrs. Hoback and Vaninetti allege, truck competition. Mr. Weaver compares the costs of moving coal to Stout by truck and rail and conclusively demonstrates that rail has a large rate advantage. He also points out that IPL has made a significant investment in rail cars, an

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[10]Mr. Vaninetti, citing to a document produced by ISRR in discovery, alleges that CRC service problems in Indianapolis rendered ISRR routings to Stout noncompetitive. CSX/NS-177 Vol. 2B at 513. As explained by Mr. Neumann, however, the document addressed service problems ISRR was experiencing in 1994 for coal movements to Perry K, and not Stout, and that any past operational problems ISRR may have experienced with CRC will pale in comparison to the ones ISRR will undoubtedly experience with CSXT in competing with CSXT's subsidiary. Neumann R.V.S. at 7-8, ISRR-9.

Citing to an internal ISRR memorandum, Mr. Vaninetti claims that ISRR previously concluded that the Primary Transaction will have no effect on ISRR. CSX/NS-177 Vol. 2B at 514. The document Mr. Vaninetti relies on, however, was prepared well before the details of the Primary Transaction were made public and addresses a topic different than that alleged by Mr. Vaninetti. *See* Neuman R.V.S. at 8-9, ISRR-9.

investment that would have been imprudent if trucks are competitive with rail. Mr. Weaver considers CSXT's new-found theory of truck competition as merely an attempt by CSXT to divert the Board's attention from the real issue -- which is the loss of rail competition at Stout. Weaver R.V.S. at 8-12, ISRR-9. Mr. Weaver also refutes CSXT's contention that CRC is a limited player in the Indiana coal industry by demonstrating that CRC's role remains integral to the competitive balance IPL currently enjoys at the Stout and Perry K Plants. He goes on to explain that ISRR is a major factor in the Indiana coal market and CRC's current neutrality between ISRR- and INRD- originated coal movements provides IPL rail competition in Indianapolis. *Id.* at 11-14.

Mr. Crowley refutes CSXT's truck-to-rail comparison by demonstrating that CSXT's witnesses have no knowledge of actual truck rates to Stout. He also disputes Mr. Vaninetti's contention that trucks have an apparent $1 per ton advantage over rail because of the differential in loading and unloading costs. Based on Mr. Crowley's experience, rail loading and unloading costs are usually lower than truck loading and unloading costs. In any event, based on the unloading facilities that currently exist at Stout, Mr. Crowley demonstrates that rail has a cost advantage over trucks. Crowley R.V.S. at 14-17, ISRR-9.

Moreover, the Board recently discounted evidence of alleged truck competition for distances comparable to those to the Stout Plant. STB No. 41185, *Arizona Public Service Company and Pacificorp v. The Atchison, Topeka and Santa Fe Railway Company*, served July 29, 1997. The Board concluded that the suggested truck movements would present significant environmental and operational problems. The Board further determined that, even if these problems could be surmounted, truck rates would not "place an effective competitive constraint on Santa Fe's rail rates." *Id.*, slip op. at 6-7.

Fourth, CSXT Witness Vaninetti speculates that IPL could discipline rail rates to Stout by generating additional power at IPL's Petersburg or Pritchard Plants.[11] CSX/NS-177 at 507-9. Mr. Weaver explains that, because Petersburg is IPL's lowest-cost Plant, IPL always utilizes power from Petersburg first when it is available. IPL has programmed its computers to sequentially generate power at its lowest cost plants not to discipline rail rates but to meet IPL's obligations to its rate payers. Weaver R.V.S. at 15-17, ISRR-9. *See also* Crowley R.V.S. at 17-18, ISRR-9. Accordingly, IPL is already doing precisely what Mr. Vaninetti suggests.

Fifth, CSXT Witnesses Kuhn and Vaninetti criticize IPL's cost estimates of the build-out/build-in option. CSX/NS-177, Vol. 2A at 306-11; CSX/NS-177, Vol. 2B at 511. Mr. Kuhn claims that IPL omitted some expenses in its build-out analysis. Even if the Board were to accept all of Mr. Kuhn's alleged additional costs, the build-out option would still be economically feasible, a fact which neither CSXT witness disputes. *See* Weaver R.V.S. at 19-21, ISRR-9; Crowley R.V.S. at 28-9, ISRR-9. Interestingly, CSXT's own witnesses confirm the economic feasibility of the build-out.

Indianapolis and the Surrounding Area

Primary Applicants readily admit that shippers in Indianapolis and the surrounding area will be competitively harmed if the Primary Transaction is approved without conditions. Aside from IPL's two plants, at least 65 other shippers in Indianapolis would suffer a loss of rail

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[11] Mr. Vaninetti's suggestion that other power sources could discipline rail rates to Perry K (CSX/NS-177 at 503) is nonsense. Perry K is a steam generating plant and not, as Mr. Vaninetti assumes, a power plant. *See* Neumann R.V.S. at 12, ISRR-9.

competition. *See* CSX/NS-19 at 147. In the nearby community of Crawfordsville, at least seven shippers face the same loss of competition. *Id.* at 148. Similarly, shippers located on the rail lines extending from Indianapolis to the nearby communities of Shelbyville, Crawfordsville and Muncie will lose CRC's neutral service to the CSXT and NSR junctions. By Primary Applicants' own admission, at least 73 of the 83 designated 2-to-1 shippers, or 88 percent, are located in the Indianapolis area. Consequently, Indianapolis and the surrounding area are vastly more susceptible to rail rate increases and inefficient routings than any other community affected by the Primary Transaction and, therefore, deserve the Board's closest attention.

Primary Applicants blithely respond to the competitive concerns in the Indianapolis area by contending that the Primary Transaction simply replicates the existing competitive scenario. They unabashedly claim that CSXT is merely assuming the role of CRC and NSR is assuming CSXT's current position. *See* CSX/NS-176 at 52. If Primary Applicants had truly intended to maintain the competitive status quo in the Indianapolis area, the solution would have been simple: NSR would simply have stepped into the shoes of CRC in this area. This solution would insure that competition to the two IPL plants is preserved and no 2-to-1 shippers are created in Indianapolis and Crawfordsville. Primary Applicants' failure to adopt this simple solution is powerful evidence of their intention to cede all meaningful rail operations in the Indianapolis area to CSXT.

NSR's ability to compete in the Indianapolis area is illusory. NSR is not assuming CSXT's current position, as Primary Applicants allege. Rather, CSXT is largely retaining its current position as well as assuming the position of CRC. NSR is merely being granted overhead trackage rights without the right to connect with any carrier other than CSXT and without the right to directly serve any shipper other than one facility in Indianapolis. Both CRC and CSXT currently have a substantial physical presence in Indianapolis. CSXT owns its own rail lines into Indianapolis, has employees stationed in Indianapolis, owns its own Indianapolis rail yard and directly serves certain Indianapolis shippers. Once the Primary Transaction is consummated, CSXT will acquire all of CRC's rail lines, presumably hire all or most of CRC's employees, acquire all of CRC's yard facilities and gain direct access to all CRC customers. NSR, on the other hand, apparently will own no physical assets in Indianapolis or Crawfordsville.[12] It will own no rail lines or yard facilities, have direct access to only one customer and will apparently have no employees stationed in either community. NSR is simply being given the right to pass through these two communities when picking up whatever freight may be available at Hawthorne Yard.

In addition to having no physical presence in these communities and having direct access to only one shipper, NSR would be forced to operate over a highly circuitous route. For example, CSXT currently competes for traffic moving between the Indianapolis area and Chicago via Crawfordsville. Post-Transaction CSXT will continue to have that same direct route. NSR, however, will be forced to operate from Muncie to Hawthorne Yard to await CSXT's switch, then backtrack to Muncie and proceed north and west to Chicago. CSXT will have similar routing advantages for traffic moving between the Indianapolis area and the southeast, the midwest and the southwest. NSR's ability to serve Crawfordsville is even more circumscribed. It appears that NSR will have little, if any, traffic moving over the rail line between Indianapolis and Lafayette. Also, Crawfordsville traffic moving to or from Chicago, the

[12] NSR Chairman of the Board, President and Chief Executive Officer, Mr. David R. Goode, testified that he is unaware of any planned NSR investment for Indianapolis. *See* I&PL-3, Exhibit 5 (Goode Dep'n Tr. at 45.)

northeast and southeast would be routed through Muncie. Consequently, in order to serve Crawfordsville, NSR would have to make an almost 200-mile round trip from Muncie simply to bring the traffic onto the NSR system. NSR's ability economically to serve that community is highly suspect.

Faced with these numerous disadvantages, NSR will most likely be discouraged from providing any meaningful service to the Indianapolis area. CSXT, therefore, will be able to significantly raise its rates to the point where NSR's disadvantaged service becomes competitive. In addition, NSR must rely on CSXT service to reach all but one shipper in the Indianapolis area. CSXT, therefore, has no incentive to reduce costs or improve its efficiencies in this area because NSR cannot provide service competition.

CSXT will clearly have a strangle hold on Indianapolis and the surrounding area. NSR will not be able to provide any meaningful competition to CSXT, given NSR's lack of facilities and shipper access and the inefficient and circuitous NSR routings in this area. NSR's inability effectively to compete in the Indianapolis market is largely confirmed by Primary Applicants' own filings to date in these proceedings. NSR's operating plan contains a mere 10-line discussion of NSR's proposed operations in Indianapolis and simply states that NSR will receive overhead trackage rights to serve the 2-to-1 shippers via a CSXT switch in Hawthorne Yard. CSX/NS-20 at 231. One searches NSR's filings in vain for any indication of NSR's intentions or ability to provide meaningful competition in the Indianapolis area. There is no evidence of how NSR intends to serve shippers, the routes it would use for particular traffic patterns, the volume and type of traffic it expects to generate, and the physical presence it will have in these communities, much less any assurances that its limited access and circuitous routings will not impede NSR's ability effectively to compete.

CSXT and NSR apparently have agreed among themselves, for their own private reasons and without regard to the public interest, that there shall be no effective rail competition in the Indianapolis area. The Board's predecessor rejected such contrived solutions where the applicants select among themselves the remedy to a competitive problem. *Santa Fe Southern Pacific Corp. - Control - SPT Co.*, 2 I.C.C.2d 709, 815-17 (1986). In so doing, the ICC noted that "applicants might be inclined to propose conditions that would create the least effective competition....(and that) applicants might...find it worthwhile to offer a proposal that addresses some but not all of the anticompetitive problems, in the hope that the (ICC) would be satisfied." *Id.* at 816. *See also, Santa Fe Southern Pacific Corp - Control - SPT Co.*, 3 I.C.C.2d 926, 935 (1987) ("We are disinclined to risk the possibility of collusion and market splitting that might result from such an artificial, settlement induced rationalization of the western rail system.").

The loss of meaningful rail competition in the Indianapolis area is further confirmed by other parties to these proceedings. For example, the United States Department of Agriculture ("USDA") points out that the greater Indianapolis region, "located in the heart of the Eastern Cornbelt, is one of the Nation's largest and most dynamic metropolitan areas." Comments of USDA, dated December 15, 1997 at 3. USDA supports ISRR's Responsive Application because it is concerned that "the overhead trackage rights (NSR) will receive may not enable (NSR) to provide effective competition in this market." *Id.* The United States Department of Justice ("DOJ") points out that INRD and ISRR-CRC routings currently compete for coal traffic moving to the Stout Plant and that this competition will vanish when CSXT takes over the CRC rail lines in Indianapolis. In concluding that NSR will not effectively replace the lost CRC competition, DOJ explains that:

> First, (NSR) does not have (CRC's) convenient access to the nearby Indiana coal, which means its delivered costs are higher, which means (NSR) likely could not offer competitive rates on coal shipments to Stout. Second, (NSR) likely would suffer operational problems (slowdowns and the like) in using (CSXT's) congested Indianapolis switching facilities. (CRC) too must depend on a competitor for switching services, but its threat to receive a build-out (a threat that [NSR] cannot use as a lever) helps to ensure effective cooperation.

DOJ-1 at 8-9.

The City of Indianapolis ("CI") seeks the imposition of conditions to remedy the public harm posed to Indianapolis if the Primary Transaction is unconditionally approved. CI describes Indianapolis' predicament as follows:

> Whatever public benefits the Proposed Transaction might yield for the rest of the northeast and the midwest, these benefits will not be realized for the City of Indianapolis.... Rather than increased competition for Indianapolis, the Proposed Transaction will mean a decrease in competition. Rather than single-line efficiency for Indianapolis, the Proposed Transaction will mean inefficient and costly trackage and switching arrangements. Rather than fresh opportunities for improved transportation options and resulting economic growth for Indianapolis, the Proposed Transaction will mean lost opportunities for improved transportation options and resulting economic harm.

CI-6 at 2.

CI claims that Indianapolis will become a "one railroad town" because NSR will not be able to effectively compete in Indianapolis. *Id.* at 3. The arrangement between CSXT and NSR precludes NSR from providing direct service to the 2-to-1 shippers, does not give NSR "any contractual rights regarding access to specific trackage" in Hawthorne Yard, gives CSXT the "exclusive control of the management, operation and maintenance of the trackage from Muncie and Lafayette, as well as the trackage at Hawthorne Yard, *** [d]oes not require (CSXT) to dispatch (NSR) trains equally and without prejudice" and significantly circumscribes the "number and scope of Indianapolis customers (NSR) will actually be allowed to serve...." *Id.* at 4-5.

IPL expresses similar concerns over the serious loss of competition in Indianapolis in general and for its two plants in that city in particular. *See* I&PL-3. IPL demonstrates that both Perry K and Stout are 2-to-1 destinations. In so doing, IPL explains that the Primary Transaction:

> will not improve the competitive environment for railroad service to IPL in Indianapolis. On the contrary, it will diminish IPL's competitive options. (NSR) will enter the Indianapolis market at a significant disadvantage. It cannot realistically expect to compete with (CSXT) on equal terms. With only overhead trackage rights, (NSR) will not be able to offer IPL service comparable to that available today from (CRC). Even worse, (NSR) has not even considered what service it will be able to offer IPL in Indianapolis....

I&PL-3 at 5.

IPL is supporting ISRR's Responsive Application because the trackage rights ISRR seeks offer the only effective solution for preserving IPL's current two rail carrier competition at the Perry K and Stout Plants. *See* Weaver R.V.S. at 2 and 16, ISRR-9; Crowley R.V.S. at 1, ISRR-9.

Citizens Gas & Coke Utility ("Citizens") points out that Indianapolis is the twelfth largest metropolitan area in the Nation and the largest not having any direct access to navigable waters. It is deeply concerned over the further loss of rail competition in Indianapolis. Citizens notes that the arrangement between NSR and CSXT "offers not even the appearance of true competition but is in any objective sense, an illusion." Comments and Supporting Evidence of Citizens, dated October 21, 1997, at 3.

Shell Oil Company and Shell Chemical Company ("Shell") oppose the Primary Transaction because of their concerns over "service deterioration, acceleration of rate increases, and a continued decrease in railroad competition." SOC-3 at 2. Because the arrangement between CSXT and NSR in Indianapolis is inadequate, Shell seeks to have Indianapolis declared an "open" area. Hall V.S. at 16, SOC-3.

Other shippers in the Indianapolis area are equally concerned over various anticompetitive effects of the Primary Transaction. For example, Savage Industries Inc., ("Savage") supports ISRR's requested trackage rights between Indianapolis and Crawfordsville because rail transportation is vital to its success. Savage explains that ISRR's requested conditions will maintain current rail competition and guarantee service in the event of problems such as those currently experienced in the west. (A copy of Savage's letter to the Board is attached as Exhibit 1.) Grain Processing Corporation ("GPC") is currently constructing a new plant on the ISRR south of Indianapolis. One of the primary reasons it selected this site was to gain access to Class I railroads, particularly CRC, for movements to the east and northeast. GPC maintains that ISRR's requested conditions are necessary to preserve rail competition in the Indianapolis area and avert potential service problems such as those experienced in the west. (A copy of GPC's letter to the Board is attached as Exhibit 2.) Indy Railway Service Corporation also supports ISRR's requested trackage rights to preserve rail competition for itself and the other shippers in the Indianapolis area that will become captive to a single rail carrier. (A copy of Indy Railway's letter to the Board is attached as Exhibit 3.)

As the above summary of evidence demonstrates, there is deep and widespread concern over the significant reduction of rail service in Indianapolis and the surrounding area. This area by far contains the most 2-to-1 shippers and presents the Board with the most serious and pervasive competitive issues. The arrangement between CSXT and NSR will not by any stretch of the imagination maintain the competitive status quo in the Indianapolis area, as Primary Applicants would lead the Board to believe. It is painfully obvious that, in carving up CRC, CSXT and NSR have relegated Indianapolis and the surrounding area to the complete and exclusive domain of CSXT.

THE PRIMARY TRANSACTION WILL FINANCIALLY HARM ISRR AND IMPAIR ITS ABILITY TO PROVIDE ESSENTIAL SERVICES

ISRR will lose approximately $1.5 million in annual gross revenues if the Primary Transaction is approved without the conditions requested by ISRR. The loss of about 17 percent of its revenues would have a devastating effect on ISRR. ISRR would immediately have to reduce costs by terminating service on the marginal segment of its rail system and possibly increasing rates for its remaining shippers. These cost-saving measures will undoubtedly lead to further traffic losses.

In 1996, ISRR generated gross revenues of over $1.5 million from traffic handled to IPL's Perry K and Stout Plants. That same year ISRR's total gross revenues were approximately $9 million. Neumann V.S. at 3-4, ISRR-4. Since its inception, ISRR has been competitive for coal movements to Perry K and Stout. Post-Transaction, Perry K and Stout will become captive to CSXT and its subsidiary, the INRD, and ISRR will be foreclosed from serving either of these plants. Consequently, all revenues ISRR has enjoyed from coal movements to Indianapolis will be diverted to CSXT and its subsidiary.

These traffic diversions will force ISRR to cover its fixed costs from a declining traffic base thereby increasing its per unit cost which would have to be passed on to its remaining customers. These increased unit costs will have a downward spiraling trend. As the per unit cost for ISRR's service increases, some of ISRR's remaining customers would be forced to switch to other transportation modes or go out of business, which, in turn, would only further increase ISRR's per unit cost and drive away additional customers.

ISRR's concern over the downward spiraling effect of the projected traffic losses is confirmed extensively in economic literature and was recognized by the Board's predecessor. It is almost universally accepted that the rail industry exhibits substantial economies of density.[13] Consequently, as a railroad's traffic volume declines, its unit cost increases. Economies of density arise, in part, from the fact that railroads have relatively high fixed costs. As these costs are spread over a declining amount of traffic, the unit cost of providing service increases. While unit variable costs generally vary inversely with traffic volumes, the changes are not necessarily immediate or proportional with the changes in traffic volume. ISRR is essentially a single north-south rail line. ISRR, therefore, cannot abandon any discrete section of its mainline without jeopardizing the loss of additional traffic. The major cost savings ISRR could immediately achieve, such as significantly reducing maintenance expenditures, would ultimately be

[13] *Coal Rate Guidelines - Nationwide,* 1 I.C.C. 2d 520, 531 (1985); Ernst R. Berndt, Ann F. Friedlaender, Judy-Er Wang Chiang, and Christopher A. Vellturo, *Cost Effects of Mergers and Deregulation in the U.S. Rail Industry,* 4 The Journal of Productivity Analysis 127 (1993); A. Barbera, C.M. Grimm, K.A. Phillips, and L.J. Selzer, *Railroad Cost Structure-Revisited,* Journal of the Transportation Research Forum, Vol. 28, No. 1 237 (1987).

counterproductive. Moreover, ISRR's major expense, paying principal and interest on the acquisition cost of the rail system in 1992, cannot be avoided.

With the permanent loss of the IPL coal traffic to Indianapolis, the northern most section of ISRR's rail system -- between milepost 17, near Mooresville, Indiana, and milepost 6, at Indianapolis -- would be rendered unprofitable. The IPL's Indianapolis coal traffic has enabled ISRR profitably to operate this 11-mile segment. There is not sufficient local and other overhead traffic on that segment, however, to economically justify ISRR's continued operation of that segment. Therefore, with the loss of the Indianapolis coal traffic, the most immediate cost savings ISRR could achieve with the least disruptive effect on its overall financial situation would be to abandon the 11-mile segment. *See* Neumann V.S. at 4, ISRR-4. The abandonment of that segment, however, would sever ISRR's ties to Indianapolis, which would further reduce rail service to that city and leave shippers located on that segment without rail service.

The $1.5 million revenue losses projected by ISRR are a direct result of traffic diversions to CSXT and its subsidiary. The abandonment of the 11-mile segment would result in further revenue losses from the local and other overhead traffic currently handled over that line.

On rebuttal, Primary Applicants raise three cursory arguments in response to ISRR's essential service case. First, they claim that ISRR will be able to continue moving coal to Indianapolis under existing contracts. CSX/NS-176 at 369. Primary Applicants' own citations to those contracts confirms the absurdity of their argument. *See Id.* at 54-55. As ISRR and other parties have demonstrated, post-Transaction, ISRR will be competitively foreclosed from serving IPL's plants in Indianapolis. Second, Primary Applicants claim that the use of 1996 revenue data is misleading because ISRR lost the Stout traffic to INRD in 1997. CSX/NS-176 at 370. While

ISRR lost the Stout traffic to its competitor, the INRD, last year through market place competition, under current competitive conditions ISRR is able to recapture all or part of that traffic. Once CSXT replaces CRC in Indianapolis, however, ISRR will be permanently foreclosed from handling any future Stout traffic.

Third, Primary Applicants allege that ISRR does not provide any essential rail service because six of the seven shippers on the segment ISRR would be forced to abandon can use trucks. *Id.* Their argument, however, is based totally on the mischaracterization of ISRR's discovery responses. In response to CSXT and NSR interrogatories, ISRR identified seven shippers that would lose rail service if ISRR is forced to abandon its rail line north of milepost 17. (Relevant portions of ISRR's discovery responses are attached as Exhibit 4.) In response to their subsequent question whether to ISRR's knowledge any of these "shipper's shipments...ever moved by truck", ISRR responded in the affirmative for six of the seven shippers. The question CSXT and NSR asked and the one ISRR answered was whether these shippers ever used trucks for any shipments and not whether the traffic ISRR handles for these shippers could move by truck. In any event, Mr. Neumann explains that only one of the shippers identified could substitute trucks to move the traffic now handled by ISRR. Neumann R.V.S. at 16, ISRR-9.

The essential services provided by ISRR are further confirmed in the letters attached as Exhibits 2 and 3. Indy Railway, which is located on the line segment ISRR would be forced to abandon, is a heavy railcar repair facility. It ships and receives railcars nationwide and portrays ISRR as its "umbilical cord" to the markets that it serves. GPC is constructing a new plant on the ISRR and is not one of the seven shippers identified by ISRR. Nevertheless, GPC demonstrates that trucks are not a viable alternative for long distance transportation. If ISRR is forced to abandon the northern segment of its line, GPC will lose essential rail service for routings through Indianapolis, which will greatly reduce, if not eliminate, its ability to compete in the market.

ISRR is aware that in the past decade and a half the Board and its predecessor have focused on the preservation of essential services and not on the survival of carriers. Even though ISRR believes that it has fully met the Board's "essential service" standard, ISRR nevertheless urges the Board to give heightened attention to the plight of small railroads in the current environment. Given the ever diminishing number of Class I railroads and the concentration of market power, ISRR believes that it is incumbent on the Board to broaden its analytical perspective to consider the survival and financial viability of small carriers, as well as the survival of the shippers that rely on their service. It is well established that an agency "faced with new developments or in reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice." *American Trucking Ass'ns v. Atchison Topeka & Santa Fe Ry,* 387 U.S. 397, 416 (1967).

THE TRACKAGE RIGHTS ISRR SEEKS MEET ALL OF THE BOARD'S CONDITIONING CRITERIA

The trackage rights ISRR seeks are designed to ameliorate the anticompetitive consequences of the Primary Transaction in the Indianapolis area. If granted, the trackage rights would enable ISRR to preserve rail competition at IPL's Perry K and Stout Plants and for other affected shippers in Indianapolis and the surrounding area. At the same time, the revenues ISRR would derive from the trackage rights operations would allow ISRR to continue providing shippers on its system essential rail services.

As previously noted, the Board has broad authority to impose conditions on its approval of transactions. The Board has an affirmative duty to impose such conditions as are necessary to insure that a transaction before it is in the public interest. *See Atlantic Coast Line R. Co. v. United States*, 48 F.2d 239, 244 (W.D.S.C. 4th Cir. 1931), *aff'd*, 284 U.S. 288 (1932). The Board "is not intended to be a passive arbiter but the 'guardian of the general public interest,' with a duty to see that this interest is at all times effectively protected." *Lamoille Valley R.R. v. ICC*, 711 F.2d 295, 322 n. 55 (D.C. Cir. 1983).

ISRR's requested trackage rights satisfy each of the criteria for imposing a public interest condition and a condition designed to preserve essential services. ISRR has demonstrated that the Primary Transaction will have anticompetitive consequences and threatens harm to the public interest in Indianapolis and the surrounding area. Consequently, the imposition of public interest conditions is warranted.

In its Responsive Application, ISRR demonstrated that the requested trackage rights are operationally feasible. On rebuttal, Primary Applicants raise no operational challenges to ISRR's proposal to serve the Perry K and Stout Plants. CSX/NS-177 at 518-21. Their lack of criticism is not surprising, since ISRR's proposed service to the two IPL plants is more efficient and operationally far superior to the CSXT-NSR proposal. *See* Weaver R.V.S. at 19, ISRR-9.

CSXT Witness Orrison raises a few inconsequential operational concerns about the other conditions ISRR seeks. Because coal is the primary commodity ISRR moves over its rail line, Mr. Orrison expresses a concern over ISRR's ability to handle other commodities. As explained by Mr. Neumann, ISRR handles a diverse range of commodities, including steel, corn, soybeans, fuel oil, potash, fertilizer, plastic products, brick, ammonia, rail cars, lumber products, sugar, LPG, sunflower, aluminum scrap, methanol, and canned vegetables. Neumann R.V.S. at 14, ISRR-9. With respect to the requested trackage rights between Indianapolis and Shelbyville, Mr. Orrison is concerned that ISRR's operations would add an interchange and delay traffic by at least one day. ISRR would be able to serve shippers on that line on a one-day round trip basis because Shelbyville is only 30 miles from Indianapolis. Given the limited volume of traffic on that line, ISRR operations would not cause any delays or interference. With respect to the proposed operations to Crawfordsville, Mr. Orrison is concerned that the addition of ISRR would cause interference and unnecessary complications for traffic on the Crawfordsville line. There are currently two freight carriers operating over the line to Crawfordsville, and because ISRR is simply seeking to replace the purported NSR operations, there will continue to be only two carriers on the line post-Transaction. Mr. Orrison generally complains about additional complexities of adding a trackage rights carrier. These concerns, however, are generic and would apply to any grant of trackage rights. As Mr. Orrison well knows, trackage rights are ubiquitous, with railroads operating over one another daily. His concerns apply to all trackage rights operations and are surmounted daily by CSXT and other railroads.

ISRR's requested trackage rights are specifically designed to eliminate the competitive harm threatened by the Primary Transaction in Indianapolis and the surrounding area. By gaining direct access to IPL's two Indianapolis plants, ISRR would be able to preserve the two rail carrier competition those plants currently enjoy. The remainder of the requested conditions would enable ISRR to offer the general shipping public in the Indianapolis area a competitive option to CSXT, which will be lost when CRC exits this market. As previously shown, NSR's ability to compete in this market is illusory. If granted, the trackage rights ISRR seeks would enable ISRR to provide the shipping public in this area meaningful and effective rate and service competition.

Finally, ISRR's requested trackage rights are in the public interest and would not be detrimental to the Primary Transaction. Insofar as Indianapolis and the surrounding area are concerned, the Board's balancing test is quite simple. Primary Applicants have demonstrated few, if any, public benefits in this area. Not only are there no public benefits to speak of, the Primary Transaction, if unconditionally approved, would result in substantial public detriments to shippers in the Indianapolis area in the form of increased transportation costs and less efficient routings. On the other hand, the general public in the Indianapolis area would derive significant benefits from the conditions ISRR seeks through improved service and the preservation of rail competition in the area. At the same time, the conditions would not detract in any material respect from the public benefits CSXT and NSR expect to achieve from the Primary Transaction. CSXT and NSR claim collective public benefits of nearly $1 billion a year. *See* CSX/NS-18 at 2. The requested conditions would simply enable ISRR to continue competing for the IPL traffic and possibly attract some additional traffic from service to shippers otherwise losing competitive rail service in the Indianapolis area.

The criteria for imposing "essential service" conditions, as set forth at 49 C.F.R. § 1180.1 (d) (1), have already largely been covered. First, the requested trackage rights to serve the Perry K and Stout Plants are directly related to ISRR's projected financial losses and the resulting loss of essential services on the ISRR rail system. If those conditions are granted, ISRR would be able to continue competing for that traffic and provide ISRR the opportunity to earn sufficient revenues so that it can continue providing efficient and economical service to its on-line shippers.

Second, the requested trackage rights are designed to enable ISRR's rail-dependent shippers to receive adequate service. If ISRR is able to retain the IPL traffic or gain new traffic in the Indianapolis area, ISRR will remain a viable carrier and will be able to continue serving its customers. Third, as explained above, the requested trackage rights are operationally feasible and would not pose any operating or other problems for CSXT and NSR. Fourth, as already demonstrated, the requested rights would not frustrate the ability of Primary Applicants to achieve their anticipated public benefits.

CONCLUSION

For the foregoing reasons, ISRR respectfully urges the Board to condition the Primary Transaction by imposing the trackage rights sought by ISRR.

Respectfully submitted,

Karl Morell

KARL MORELL
Of Counsel
BALL JANIK LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
INDIANA SOUTHERN
RAILROAD, INC.

Dated: February 23, 1998

EXHIBITS

EXHIBIT 1

Kevin A. Hall
Senior Vice President &
General Manager
Industrial & Rail Services

Savage Industries Inc.
5250 South Commerce Drive
Suite 200
Salt Lake City, Utah 84107
(801) 263-9400
(801) 261-6677 FAX

December 18, 1997

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

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 RAILWAY COMPANY
--TRACKAGE RIGHTS—
CSX TRANSPORTATION, INC. AND INDIANA RAILROAD COMPANY

VERIFIED STATEMENT
OF
KEVIN A. HALL

My name is Kevin A. Hall, Senior Vice President for Savage Industries Inc. My business address is 5250 South Commerce Drive, Suite 200, Salt Lake City, Utah 84107. My responsibilities include general management of rail operations, which include rail property leases and rail equipment leases, as well as arranging for carload shipment.

Savage Industries Inc. is a multimodal transportation company with over 40 million tons of products managed annually with a facility located on CONRAIL in Indianapolis. Rail transportation is a vital factor to the success of our business as we ship and receive over 200,000 carloads annually.

The multimodal transportation business is highly competitive and economic survival is directly related to availability of responsive transportation service at competitive rates.

In summation, we request the Surface Transportation Board to grant the trackage rights requested by the Indiana Southern Railroad (ISRR) to, from and between Indianapolis and Crawfordsville, IN. We believe the ISRR trackage rights will maintain competition, provide my company with long-term economic security, and guarantee rail transportation in the event of service problems such as those experienced recently in the west.

I, Kevin A. Hall, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on December 18, 1997.

Sincerely,

Kevin A. Hall

Kevin A. H all
Senior Vice President
and General Manager

EXHIBIT 2

Where Innovation Comes Naturally
GPC

Grain Processing Corporation
1600 Oregon Street
Muscatine, Iowa 52761-1494 USA
Phone 319-264-4211

January 6, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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 RAILWAY COMPANY
-TRACKAGE RIGHTS-
CSX TRANSPORTATION, INC. AND INDIANA RAILROAD COMPANY

VERIFIED STATEMENT
OF
ROBERT J. WILLIS

My name is Robert J. Willis, Vice President of Transportation for Grain Processing Corporation. My business address is 1600 Oregon Street; Muscatine, IA 52761. I have held my position for six (6) years and my responsibilities include negotiation of rail contracts, rail property leases and rail equipment leases, as well as arranging for carload shipments.

Grain Processing Corporation is a corn wet milling company located in Muscatine, Iowa. We are currently constructing a new plant near Washington, Indiana, on the Indiana Southern Railroad. One of the primary reasons for selecting this site was the rail transportation alternatives offered by connections the Indiana Southern had with Class I railroads. One of these was Conrail in Indianapolis for our customers in the east and northeast. By allowing the Indiana Southern's request for trackage rights you will assure competition for the future through this large 2 to 1 shipping community of Indianapolis and its surrounding area.

The grain business is highly competitive and economic survival is directly related to availability of responsive transportation service at competitive rates. Long distance truck transportation is not a viable alternative due to volume shipment requirements.

Where Innovation Comes
GPC Naturally

Grain Processing Corporation
1600 Oregon Street
Muscatine, Iowa 52761-1494 USA
Phone 319-264-4211

The loss of rail service options would be detrimental to our business as we are dependent on the cost effectiveness of rail shipments, especially over long distances where trucks cannot compete. Without these options, our ability to compete in the current market would be greatly reduced if not eliminated.

Furthermore, we have seen the manner in which customers throughout the country have been affected by service problems resulting from recent railroad mergers in the western United States. Given this scenario, we feel the value of a viable alternative after the Conrail acquisition is evident.

In summation, we request the Surface Transportation Board to grant the trackage rights requested by the Indiana Southern Railroad (ISRR). We believe the ISRR trackage rights will help maintain competition, protect my company and others from potential post-merger rate increases, and guarantee rail transportation in the event of service problems such as those experienced recently in the west.

I, Robert J. Willis, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on January 6, 1998.

Sincerely,

GRAIN PROCESSING CORPORATION

Robert J. Willis

Robert J. Willis
Vice President Transportation

RJW/bc
bcc Mr. Phil Wilzbacher, Director of Marketing; Indiana Southern Railroad; PO Box 158; Petersburg, IN 47567

EXHIBIT 3

INDY RAILWAY SERVICE CORPORATION
Mailing Address: P.O. Box 42331 Office/Shop: 6111 W. Hanna Ave.
INDIANAPOLIS, INDIANA 46242-0331
Telephone: 317-[illegible]-3706

February 3, 1998

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

Subject: STB FINANACE 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 RAILROAD COMPANY

Dear Mr. Williams:

My name is Calvin T. Morris, President and owner of Indy Railway Service Corporation located at 6111 West Hanna Avenue, Indianapolis, Indiana, 46241. The mail address is P.O. Box 42331, Indianapolis, Indiana, 46242-0331.

Indy Railway Service Corporation is a heavy railcar repair facility, specializing in open top coal hopper cars and covered hopper cars. We have been in business since 1974 and at the present location since 1977. We are served by The Indiana Southern Railroad at mile post eight (8) on the southwest side of Indianapolis.

The customer base of Indy Railway Service Corporation is nationwide with cars moving to and from Conrail at Indianapolis on the north end and from Norfolk Southern Railway at Oakland City, Indiana, and CSX at Evansville, Indiana, on the south end. We also receive considerable traffic from The Indiana Southern Railroad, originating at Petersburg, Indiana, and coal mines in the immediate area. In fact, The Indiana Southern Railroad is our umbilical cord to the market we serve. Without them we are dead at the present location.

Other local industries now served by Conrail will also be in peril if they are captive to single line rail service. I am well aware of the competitive nature and operating excellance of the Norfolk Southern Railway, where I have twelve years service and CSX, where I have fifteen years service. Neither of these companies will suffer from competition of a short line railroad such as The Indiana Southern Railroad.

As a result of the dire need for competition to control rates and insure survival of captive local industries, I request the Surface Transportation Board to grant the trackage rights requested by The Indiana Southern Railroad as outlined in the STB Finance Docket No. 33388 (Sub-No. 76).

Thank you for your consideration.

Sincerely,

Calvin T. Morris

Calvin T. Morris
President

CTM/srr

bcc: Mr. Dick Neumann, General Manager
Indiana Southern Railroad Company
P.O. Box 158
Petersburg, IN 45567

EXHIBIT 4

ISRR-6

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

RESPONSE OF INDIANA SOUTHERN RAILROAD, INC.,
TO THE FIRST SET OF INTERROGATORIES AND REQUESTS FOR DOCUMENTS OF
CSX AND NORFOLK SOUTHERN

Indiana Southern Railroad, Inc. ("ISRR"), hereby responds to the First Set of Interrogatories and Requests for Production of Documents of CSX and NS[1] (CSX/NS-133), served November 6, 1997.

[1] "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc., and "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company.

3. Describe in detail the basis for ISRR's "estimates that it will lose approximately $1.5 million in revenues annually to CSXT and INRD," as alleged on page 5 of ISRR's Responsive Application.

Response: ISRR projects that it will lose all revenues earned from traffic handled for Indianapolis Power and Light Company ("IPL"). Documents responsive to this interrogatory will be placed in ISRR's depository.

4. Describe in detail the basis for ISRR's contention that "[t]he loss of these revenues will impair ISRR's ability to perform essential services on its rail line," as alleged on page 5 of ISRR's Responsive Application.

Response: The loss of the projected revenues will force ISRR to reduce costs. The most immediate cost savings ISRR would be able to achieve would be to abandon its line north of milepost 17, which would sever ISRR's connection to Indianapolis. This northern line segment would not be profitable without the IPL traffic that currently moves over that segment. If ISRR is forced to abandon that segment, all rail shippers on that segment as well as shippers on other parts of the ISRR system that ship by rail to or over Indianapolis would lose rail service.

5. Identify all shippers currently served by ISRR that ISRR contends would lose rail service as a result of the Proposed Transaction.

Response: ISRR is continuing to analyze the actions ISRR would need to take as a result of the projected revenue losses. As explained in the Responsive Application, one option ISRR has considered is to abandon its line north of milepost 17. If ISRR were to take this action the following shippers would lose rail service:

Trans-City Terminal Warehouse, Inc.
P.O. Box 42069 4750 Kentucky Ave.
Indianapolis, IN 46242

Indy Railway Service Corporation
6111 W. Hanna Ave.
Indianapolis, IN 46241

Newcomer Lumber
149 East High
Mooresville, IN 46158

Ameriplex Industrial Park
251 N. Illinois Street
Indianapolis, IN 46204

Ambassador Steel
149 Sycamore Lane
Mooresville, IN 46158

General Shale
P.O. Box 96
Sycamore Lane
Mooresville, IN 46158

Star Metals
Illinois Street
Petersburg, IN 47567

6. For each shipper identified in response to the preceding interrogatory, identify:
a. The specific physical location, including street address, of each of that shippers facilities served by ISRR;
b. The annual volume of traffic, by car, that ISRR has transported for that shipper (separately for each facility) from 1995 to the present; and
c. The routes, by origin and destination, over which ISRR has transported traffic for that shipper from each facility from 1995 to the present.

Response:

a. See response to Interrogatory No. 5.

b. Documents responsive to this interrogatory will be placed in ISRR's depository.

c. For Trans-City Terminal Warehouse, inbound traffic is handled from interchange with CRC at Indianapolis, CP Rail at Bee Hunter, and CSX at Evansville. For Newcomer Lumber, inbound traffic is handled from interchange with CRC at Indianapolis. For Ambassador Steel, inbound traffic is handled from interchange with CRC at Indianapolis, NS at Oakland City and CSX at Evansville. For Indy Railway Service Corporation, inbound and outbound traffic is handled to and from the interchange with CRC at Indianapolis, CSX at Evansville, and INRD at

Switz City. For General Shale, inbound traffic is handled from interchange with NS at Oakland City and CSX at Evansville. Outbound traffic is handled to interchange with CRC at Indianapolis. Ameriplex Industrial Park is currently under development on the ISRR with the intention that companies locating in the Park will have rail service. For Star Metals, inbound traffic is handled from interchange with CRC at Indianapolis and CSX at Evansville. Outbound traffic is handled to interchange with CRC at Indianapolis.

7. Identify the amount of revenue received by ISRR from each of the shippers identified in response to the preceding interrogatory for the years 1995, 1996, 1997 or any part thereof.

Response: Documents responsive to this interrogatory will be placed in ISRR's depository.

8. For each shipper identified in response to Interrogatory No. 5,
a. To ISRR's knowledge, have any of that shipper's shipments from any facility served by ISRR ever moved by truck or any other mode of transportation not involving ISRR at any time from 1995 to the present?
b. If the answer to the preceding subpart is "yes," identify separately with respect to each such facility the alternate transportation mode or modes by which such shipments moved.

Response:

a. Yes, except for Indy Railway Service Corporation.

b. The alternate mode for each shipper other than Indy Railway is truck. To the best of ISRR's knowledge, Indy Railway's only mode of transportation has been rail.

9. State the volume of traffic that ISRR contends it will lose if the Application is approved without the conditions ISRR requests:
a. In total; and

Response: According to Applicants, Indianapolis is by far the largest 2-to-1 point created by the Proposed Transaction. CSX/NS-18 at 548. In addition, the Indianapolis area today is a major traffic origination point for CRC. CSX/NS-20 at 209. Unlike CRC today, which has a major presence in Indianapolis and direct routes to and from Indianapolis over which it can provide local service, NS will have only a limited presence in Indianapolis, its routings to and from Indianapolis are highly circuitous in relation to the rest of the NS system, and NS will not be able directly to serve any shipper in Indianapolis or on the rail lines it will use to access Indianapolis. NS's limited and unduly circumscribed access to Indianapolis is hardly an appropriate substitute for CRC's current presence in the area.

12. Describe in detail the basis for ISRR's contention that "ISRR's customers would have no option other than to divert to (sic) their shipments to trucks" if ISRR reduces rail service as a result of traffic diversions to CSX and INRD, as ISRR contends on pages 6-7 of the Responsive Application.

Response: Shippers on the ISRR today have two transportation options: they can ship by rail over the ISRR or they can ship by truck. If ISRR is forced to reduce or stop service altogether, these shippers will either have to ship by truck or not ship at all and go out of business. The basis for ISRR's contention is that there is no barge service nearby, air freight service is impracticable and these shippers' traffic is not conducive to being hauled by wheelbarrow.

13 Define the term "neutral and indifferent gateway service" as that term is used on page 9 of the Responsive Application.

CERTIFICATE OF SERVICE

I hereby certify that on this 23d day of February, 1998, I caused a copy of the Brief of Indiana Southern Railroad, Inc. (ISRR-10), 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

Karl Morell