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DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

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October 21, 1997

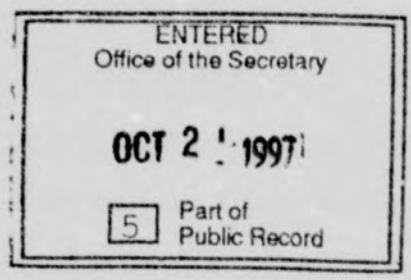
Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: STB Finance Docket No. 33388, *CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control And Operating Leases/Agreements—Conrail Inc., et al.*

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and twenty-five (25) copies of the Highly Confidential Comments, Evidence and Request for Conditions of Niagara Mohawk Power Corporation, which has been designated as NIMO-6. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.



Respectfully submitted,
John K. Maser III
John K. Maser III
Frederic L. Wood
Karyn A. Booth
Attorney for Niagara
Mohawk Power Corporation

ENCLOSURES
3315-020

cc: All Parties on the Highly Confidential Service List

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to working office
Office of the Secretary
UNDER SEAL

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
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

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**SUPPLEMENTAL COMMENTS, EVIDENCE, AND
REQUEST FOR CONDITIONS OF
INDIANAPOLIS POWER & LIGHT COMPANY**

ENTERED
Office of the Secretary
OCT 21 1997
S Part of
Public Record

Michael F. McBride
Brian D. O'Neill
Bruce W. Neely
Linda K. Breggin
Brenda Durham
Joseph H. Fagan
LeBOEUF, LAMB, GREENE
& MacRAE, L.L.P.
Suite 1200
1875 Connecticut Ave., N.W.
Washington, D.C. 20009-5728
(202)986-8000 (Telephone)
(202) 986-8103 (Fax)

Attorneys for Indianapolis
Power & Light Company

Due Date: October 21, 1997
Dated: October 21, 1997

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

I&PL-3

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

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Joseph H. Fagan
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& MacRAE, L.L.P.
Suite 1200
1875 Connecticut Ave., N.W.
Washington, D.C. 20009-5728
(202) 986-8000 (Telephone)
(202) 986-8103 (Fax)

Attorneys for Indianapolis
Power & Light Company

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SUPPLEMENTAL COMMENTS, EVIDENCE, AND
REQUEST FOR CONDITIONS OF
INDIANAPOLIS POWER & LIGHT COMPANY

Introduction and Summary

The proposed transaction would seriously harm existing rail transportation competition in Indianapolis. The impact on Indianapolis Power & Light Company ("IPL") would be severe because it will eliminate a major provider of rail transportation in Indianapolis, Conrail, and not adequately replace it with Norfolk Southern or another substantial competitor to CSX (which also now serves Indianapolis). In fact, Applicants have acknowledged that Indianapolis is the largest "2 to 1" metropolitan area affected by the proposed transaction, See generally Application, Vol. 2A at 147-49 (Hart Verified Statement), yet they have not proposed that NS have an ownership interest in Indianapolis or direct access to local shippers (with one exception, a General Motors plant).

Instead, Applicants have proposed an inefficient and costly combination of operating conditions, trackage rights fees, and a switching charge applicable to NS's operations in Indianapolis. NS, in turn, will have to pass through the costs associated with its operations to shippers, thus greatly

inhibiting its ability to compete with CSX in Indianapolis. Even NS's own witness, Michael Mohan, acknowledges in his Verified Statement that "Indianapolis will be primarily served by CSX." Application, Vol. 3B at 28. Given the terms of the proposed transaction, this is no wonder.

Instead of allowing NS to compete on equal footing with CSX, Applicants have proposed instead that NS will have "overhead" trackage rights with direct access to only one facility, a GM plant. NS would be barred from serving shippers directly through local trackage rights, and it would be barred from serving shippers via existing build-out or build-in options, or from serving new facilities. Furthermore, all NS traffic will have to be routed through the Hawthorne Yard where NS will have to depend on CSX for dispatching. Notably, the terms under which NS may use the Hawthorne Yard have in no manner been specified by Applicants.

In addition, the Applicants' proposal would impose a trackage rights fee and a switching charge, rather than one or the other. Moreover, the proposed trackage rights fee is too high and the switching charge, while allegedly cost-based, cannot be audited by shippers unless the Board requires it, thus

allowing the possibility of unreasonable or inaccurate costs being passed through to shippers. Taken together, these aspects of the proposed transaction effectively ensure that NS will be unable to compete on equal footing with CSX in Indianapolis, just as Witness Mohan admitted.

Applicants' proposal for Indianapolis directly conflicts with NS's "Principles of Balanced Rail Competition." IPL Exhibit 5 (McClellan Dep'n Exhibit 1). If those Principles had controlled the outcome, the proposal would have provided for an ownership interest in rail assets for NS in Indianapolis or trackage rights with direct access to local shippers, as NS clearly prefers. See IPL Exhibit 5 (McClellan Dep'n Tr. 79) ("we had made a major effort with our principles of balanced [rail] competition to state that the vision of the Northeastern solution should look something like what we have in the Southeast"). Instead, as NS Witness McClellan admitted: "We negotiated something different." Id. (McClellan Dep'n Tr. 86).

Applicants' Witness Hart's testimony invited shippers to seek redress from CSX if the proposed arrangements are not sufficient to preserve existing competition (Application, Vol. 2A at 149). However, at least in Indianapolis, Applicants --

especially CSX -- have been unwilling to carry through on their commitments by addressing the obvious problems with their Indianapolis proposal, and admit that they are reluctant to make any changes in the proposed transaction.

Since CSX would acquire Conrail's lines in Indianapolis, and would perform "pickup/delivery" services for NS and other carriers, CSX is the primary obstacle to resolving the problems in Indianapolis. Among the problems are that CSX portrays The Indiana Rail Road, its subsidiary,¹ as "independent" and a competitor of CSX. That fiction has led CSX to claim that shippers such as IPL will receive adequate competition at its Stout Plant from CSX and The Indiana Rail Road, and that the Stout Plant, therefore, is not a "2 to 1" destination. As discussed below, the Board's regulations and a decision in this proceeding, the discovery ruling of Judge Leventhal, Supreme Court precedent, and Applicants' own documents and witnesses' statements demonstrate that CSX controls The Indiana Rail Road.

Once it is understood that CSX controls Indiana Rail Road, it is obvious that the Stout Plant is a "2 to 1" facility,

¹ CSX Transportation, Inc. owns 89 percent of Midland United Corporation which owns 100 percent of The Indiana Rail Road Company. See Application, Vol. 1 at 271.

as Applicants are treating IPL's Perry K Plant, and that IPL needs direct access to both the Stout and Perry K Plants from a carrier other than CSX/Indiana Rail Road to maintain its existing competition. IPL can also build out to Conrail from the Stout Plant, but under the proposed transaction apparently could not build out to NS.

Make no mistake, the proposed transaction will not improve the competitive environment for railroad service to IPL in Indianapolis. On the contrary, it will diminish IPL's competitive options. NS will enter the Indianapolis market at a significant disadvantage. It cannot realistically expect to compete with CSX on equal terms. With only overhead trackage rights, NS will not be able to offer IPL service comparable to that available today from Conrail. Even worse, NS has not even considered what service it will be able to offer IPL in Indianapolis after the proposed transaction becomes effective. This was borne out by the deposition testimony of NS's Executive Vice President for Operations, Mr. Stephen C. Tobias. Mr. Tobias is the senior official at NS with responsibility for operations, including the Transportation Department. He candidly admitted that he did not know how NS could provide service to either IPL's

Stout Plant or the Perry K Plant in Indianapolis. He also confirmed that the limited trackage rights that NS will have in Indianapolis will not permit NS to provide local service to IPL. IPL Exhibit 5 (Tobias Dep'n Tr. 154-56). Thus, while NS may be considering what to do in terms of future service to IPL after the transaction, it is clear that there currently are no plans and the options that may be available will be severely limited.

Accordingly, IPL strongly opposes the proposed transaction unless the Board revises the proposed arrangement to make Norfolk Southern an equal competitor with CSX/Indiana Rail Road in Indianapolis, as Conrail is today. In so requesting, IPL is not seeking any advantage over today's circumstances, because Indianapolis today has balanced competition between Conrail and CSX/Indiana Rail Road, and IPL seeks only to preserve that balanced competition.

The simple and effective way to preserve balanced competition is by designating Indianapolis a shared assets area. If NS is an equal joint owner of Conrail's tracks in and around Indianapolis, NS and CSX/Indiana Rail Road will be able to compete on equal footing. Applicants have endorsed this approach for New Jersey, Detroit, and Philadelphia, as a means of ensuring

effective competition. NS should also be permitted to acquire ownership interests in the Avon and Hawthorne Yards, so that both companies have ownership interests in yards in Indianapolis, thereby allowing NS to compete effectively with CSX. Moreover, NS would be entitled under those circumstances to equal access to short lines in and around Indianapolis. This approach would allow NS and CSX to compete in the marketplace without the need for constant regulatory involvement (although oversight would still be necessary).

In the alternative, NS should have fully effective trackage rights that provide direct access to shippers in Indianapolis, as its own Principles espouse. Not only would local trackage rights allow direct access to shippers, but the inefficient routing of all traffic through Hawthorne Yard would be unnecessary and NS would be able to provide local service, service via build-ins and build-outs, and service to new facilities. In short, direct access to local shippers would enable NS to compete with CSX on an equal footing, as Conrail does today with Indiana Rail Road at Stout and with CSX/Indiana Rail Road at the Perry K Plant (via a short truck haul from the Stout Plant).

If Indianapolis is not required to be a shared assets area, the terms and conditions of the trackage rights and switching services provided by CSX to NS (whether under the proposed plan or in connection with the fully effective trackage rights proposed by IPL) must be improved, to permit NS to compete effectively.

First, NS should not be charged both a trackage rights fee and a switching charge. If NS provides direct service to a shipper, only a trackage rights fee is appropriate. If CSX provides the direct service, only a switching fee is appropriate. Applicants propose to impose both a trackage rights fee and a switching charge, which will result in NS being unable to provide competitive service to Indianapolis shippers.

Second, the trackage rights fee of 29 cents per car mile is too high. The fee should instead be set at CSX's costs, as the switching charge will be, so that CSX cannot always undercut NS in competing for a shipper's traffic. The proposed fee is higher than the level UP charges BNSF as a result of the trackage rights awarded BNSF in the Union Pacific/Southern Pacific merger proceeding, and the Board is well aware of BNSF's inability to compete equally with UP using those trackage rights.

See, e.g., BNSF's Quarterly Reports filed in Finance Docket No. 32760 (Sub-No. 21). By reducing the proposed trackage rights fee, Indianapolis shippers have a chance at maintaining the balanced competition they currently enjoy.

Third, IPL supports the cost-based switching charge proposed by Applicants, provided that (1) the charge will equal CSX's actual costs, (2) the shippers are allowed to audit the costs that CSX claims it incurred, and (3) the Board will review such charges expeditiously if challenged. Again, this will ensure that NS is able to compete on equal footing with CSX.

In addition, Applicants' proposals for Conrail lines outside of the immediate Indianapolis area could result in substantial harm to IPL, because NS may not be able to compete effectively with CSX for the movement of western coal to Indianapolis if that becomes necessary to comply with IPL's environmental obligations under the Clean Air Act. Today, CSX has a direct route to Indianapolis from Chicago, and Conrail has a direct route from St. Louis. Under the proposed transaction, CSX would be able to interchange with the western carriers at either Chicago or St. Louis and efficiently move the coal to Indianapolis. In contrast, NS's proposed routes from Chicago and

St. Louis to Indianapolis are circuitous and inefficient. Furthermore, Kansas City may not be a viable interchange to NS for western coal, because of long-standing congestion problems there and because of the western carriers' likely preference for destinations east of Kansas City as interchange points for western coal shipments.

Accordingly, it is critical that the Board provide continuing expeditious oversight to ensure that any IPL traffic via Kansas City or other interchanges to NS from western carriers will be handled efficiently with through rates quoted through Kansas City. It is essential to maintaining balanced competition that the western carriers do not discriminate against Kansas City in favor of Chicago or St. Louis where NS is at a competitive disadvantage. Therefore, the Board should ensure that the western carriers participate in a through rate with NS at Kansas City on a nondiscriminatory basis. In the alternative, NS should be granted trackage rights on a non-discriminatory basis over CSX lines from St. Louis or Chicago to Indianapolis to ensure that NS can effectively compete with CSX for the movement of western coal to Indianapolis.

ARGUMENT

I.

THE APPLICABLE LAW.

In Decision No. 29 in this proceeding (at 3), the Board clearly stated what it regards the applicable law to be. For the reader's convenience, we set out in full the Board's statement:

Our authority to condition the primary application . . . is found in 49 U.S.C. 11324(c). The criteria for imposing conditions to remedy anticompetitive effects were set out in Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65(1982). There, the Interstate Commerce Commission (ICC) stated that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger. Additionally, the criteria for imposing conditions to remedy a claim of harm to essential services appear at 49 CFR 1180.1(d). [T]he burden of proof is on petitioners to present sufficient evidence [that approval of the primary application without imposition of the conditions will harm either their ability to provide essential services and/or competition.] See Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983).

In Union Pacific Corp., et al. -- Control and Merger --
Southern Pacific Corp., et al., Finance Docket No. 32760 (served
Aug. 12, 1996), the Board identified various shippers who
qualified as "2 to 1" shippers or were capable of "build-ins" or
"build-outs" to have access to a competing carrier. In the
interests of brevity, the reader is referred to that decision for
exhaustive discussions of the issues.

IPL will show that the Applicants' proposal will
produce a significant reduction of competition in the
Indianapolis metropolitan area, that IPL's proposed conditions to
maintain vigorous competition between CSX and NS in Indianapolis
are operationally feasible, and that its proposed conditions will
promote the public interest by eliminating or ameliorating the
potential harm from the proposed transaction that the loss of
Conrail and the failure to maintain adequate competition will
cause, and thus will outweigh the adverse impact on the public
interest of the proposed transaction. IPL will also show that
both its Perry K Plant (which Applicants are treating as a "2 to
1" destination) and its Stout Plant are "2 to 1" destinations,
and that, in any event, IPL is able to "build out" from Stout to
reach Conrail today.

II.

INDIANAPOLIS SHOULD BE A SHARED ASSETS AREA.

Indianapolis is today served by two Class I railroads. When Conrail disappears, and NS takes its place in Indianapolis, it should do so under the same terms that control Conrail's competition with CSX/Indiana Rail Road today -- unfettered, and as an equal. Consequently, the simple solution to the "2 to 1" problems created by the disappearance of Conrail and the "Rube Goldberg" proposal of Applicants for the Indianapolis area is to let NS compete on an equal footing with CSX. The unmistakable method of achieving that result is to allow NS to be a joint owner of Conrail's tracks in and around Indianapolis, especially the Indianapolis Belt, as Applicants themselves proposed for New Jersey, Detroit and Philadelphia. NS should also be an equal owner of the Avon and Hawthorne Yards, in order to maintain balanced competition in the Indianapolis area. NS's own "Principles of Balanced Rail Competition" advocate an ownership interest as the best means of assuring vigorous competition. IPL Exhibit 5 (McClellan Dep'n Exhibit 1). NS remains committed to its Principles, IPL Exhibit 5 (Goode Dep'n Tr. 38, 71-72), but did not achieve them in Indianapolis. That explains why NS

Witness Mohan volunteered that "Indianapolis will be primarily served by CSX." Application, Vol. 3B at 28.

If it had an ownership interest, it could serve shippers directly, including IPL's Stout Plant via a build-out or build-in, because Conrail has that right today on the Indianapolis Belt Secondary Route ("Indianapolis Belt").² NS should also be allowed to serve IPL's Perry K Plant, which Conrail serves directly today through joint access, since Applicants are treating Perry K as a "2 to 1" point. Application, Volume 8B at 526; IPL Exhibit 5 (Hart Dep'n Exhibit 8); IPL Exhibit 4 (Crowley V.S.). Finally, NS could and should be able to connect with the short lines operating in and around Indianapolis.

There was not any principled basis on which Applicants determined to make some areas shared assets areas and not others. IPL does not dispute Applicants' determination to make New Jersey, Detroit and Philadelphia shared assets areas, but why not others? The only answer from Applicants' witnesses is that they

² Applicants recognize that Conrail also can today serve the Stout Plant via switching over The Indiana Rail Road, and NS should have that right, just as Conrail does, at a reasonable switching charge and without the inefficiencies of diverting that traffic into and out of the Hawthorne Yard, as discussed below. See IPL Exhibit 5 (Hart Dep'n Exhibit 7, p. 5-6).

did not negotiate that result. But Indianapolis is, by Applicants' Witness Hart's admission, the largest metropolitan "2 to 1" area affected by the proposed transaction. Application, Vol. 2A at 147-49. It stands to reason, therefore, that if the proposed transaction does not preserve existing competition, the only logical way to preserve service from two Class I railroads in Indianapolis, while permitting CSX to acquire the main line from Cleveland to St. Louis which bisects Indianapolis, is by requiring Applicants to set up a "shared assets area" in Indianapolis.

NS cannot deny that it believes an ownership interest in track to be superior, since that is what it said in its "Principles of Balanced Rail Competition" less than one year ago -- the same Principles that NS President, Mr. David Goode, recently re-affirmed in his deposition. IPL Exhibit 5 (Goode Dep'n Tr. 38, 71-72); IPL Exhibit 5 (McClellan Dep'n Tr. 79). Similarly, CSX supports shared assets areas for New Jersey, Detroit and Philadelphia so that both CSX and NS will have an equal opportunity to obtain the business in those areas. The same logic should apply to Indianapolis.

A shared assets area would increase efficiency for shippers and the Applicants. NS witness Fox stated in his deposition that, if congestion occurs at Hawthorne Yard, which he admitted was a possibility, it may not be sensible or efficient to route IPL's unit trains of coal into and out of the Hawthorne Yard, but rather it may be more sensible to route them directly to the Stout Plant. IPL Exhibit 5 (Fox Dep'n Tr. 148-52).³ This is not provided for in the proposed transaction, but would obviously be likely if Indianapolis were a shared assets area, since NS would have equal say with CSX. Similarly, if Indianapolis were a shared assets area, NS could serve the Stout Plant directly via a build-out, but could not do so under the proposed transaction unless the Board alters that proposal.

NS should also be an equal owner of both the Hawthorne and Avon Yards in Indianapolis, so that NS has an incentive to compete in Indianapolis. As Mr. Goode correctly recognized in his deposition, if NS has made an investment in a place, it will have a strong incentive to be active in that area and to compete with CSX. See IPL Exhibit 5 (Goode Dep'n Tr. 44-45). Mr. Goode

³ NS Executive Vice President, Mr. Tobias, testified that the Hawthorne Yard will be subjected to "an increase of 262 cars per day" if the proposed transaction is approved. IPL Exhibit 5 (Tobias Dep'n Tr. 144).

also recognized, however, that NS has not made such an investment in Indianapolis. IPL Exhibit 5 (Goode Dep'n at Tr. 45) ("I guess I'm not aware of any [investment] that's planned" for Indianapolis). Without such investment, NS has little incentive to compete with CSX and, therefore, in order to maintain competition in Indianapolis, NS should be permitted to have equal ownership interests in the Avon and Hawthorne Yards. In this fashion, NS and CSX could compete effectively in the marketplace without the need for constant regulatory involvement.

CSX is, obviously, trying to improve its competitive position in Indianapolis through the proposed transaction, which is inappropriate and unlawful. The Board's precedents clearly entitle, and indeed require, the Board to prevent the loss of competition due to a merger with, acquisition of, or control of, one Class I carrier by another. That is precisely what will occur in Indianapolis unless the Board intervenes.

In sum, the simple, straight-forward solution to remedying the disruption of balanced competition in Indianapolis that would occur under the Applicants' proposal is to establish a shared assets area of the type Applicants have proposed for

Detroit and New Jersey. This would be the most efficient solution, requiring the least regulatory involvement.

III.

IN THE ALTERNATIVE, NS SHOULD HAVE DIRECT ACCESS TO IPL'S PERRY K AND STOUT PLANTS, BOTH PERRY K AND STOUT SHOULD BE TREATED AS "2 TO 1" DESTINATIONS, AND IN ANY EVENT IPL SHOULD BE FOUND TO BE ABLE TO BUILD OUT TO CONRAIL FROM THE STOUT PLANT.

A key factor limiting NS's ability to compete with CSX under the proposed transaction is the lack of fully effective trackage rights over the Indianapolis Belt. NS would have overhead trackage rights only, which will not allow NS to serve Indianapolis shippers directly. IPL Exhibit 5 (Hart Dep'n Exhibit 8).⁴ Instead, under the proposed transaction, all NS traffic would be routed through the Hawthorne Yard, where

⁴ Curiously, CSX Witness Orrison, CSX's General Manager, Field Operations Development, testified that it was his understanding that the "overhead" trackage rights granted NS in and around Indianapolis would entitle NS to serve shippers along the Indianapolis Belt (and apparently without having to route the traffic through the Hawthorne Yard). IPL Exhibit 5 (Orrison Dep'n Tr. 420). NS Witness Fox, the head of its Coal Marketing Group, also admitted that NS would probably hand an NS train of IPL western coal (were such to be shipped) off to CSX west of Stout and never run the trains into the Hawthorne Yard (despite what is proposed in the Application). IPL Exhibit 5 (Fox Dep'n Tr. 149-52). Mr. Orrison's definition of "overhead" trackage rights, such as those NS would obtain under the proposed transaction, allow a train to operate on another carrier's tracks, and he did not say overhead trackage rights would exclude local service.

CSX/Indiana Rail Road would perform switching services for NS (with the one exception of a GM plant that NS could serve directly). In order to maintain meaningful, balanced competition in Indianapolis, NS must be granted fully effective trackage rights that enable it to serve shippers directly, including through build-outs.

NS must therefore have direct access to the Stout and Perry K Plants. Today, Conrail operates over the Indianapolis Belt, which comes within 3 miles of IPL's Stout Plant in Indianapolis. See Verified Statements of Thomas D. Crowley and John E. Porter. As the sole carrier operating over the Indianapolis Belt, Conrail clearly has the right -- and the common carrier duty if it were unwilling to exercise its right -- to serve the Stout Plant directly through a "build-in" or "build-out".⁵ Yet, the proposed transaction apparently would bar NS from serving shippers in Indianapolis directly (except for one General Motors Plant), even via such build-ins or build-outs,

⁵ For an explanation of the competitive benefits the potential build-out creates for IPL,

since Applicants' response to IPL's interrogatories claimed that NS would not have the right to serve shippers through "build-ins" or "build-outs." See Testimony of Michael Weaver and Thomas D. Crowley, attached hereto.

This is further confirmed by NS Executive Vice President Stephen C. Tobias who testified:

Q. If that were to happen, and let's assume that it does happen, that there is a build-out to the Indianapolis Belt by IPL from its Stout plant, post-transaction would Norfolk Southern be in a position to provide direct service to the Stout plant at that point?

A. It's my understanding that NS has overhead trackage rights. And I'm not aware that those overhead trackage rights would permit the local service configuration as you suggest.

IPL Exhibit 5 (Dep'n Tr. 155).

Obviously, this continued limitation on NS's access to the Stout Plant is inefficient. NS Vice President-Strategic Planning, McClellan, when asked what the most efficient arrangement for serving the Stout Plant would be, testified "[w]e would run it right into the plant." IPL Exhibit 5 (McClellan Dep'n Tr. 113-14). He also testified that doing so would be the lower-cost alternative if IPL were to build out to reach NS. Id. As for Perry K, Conrail acts, in essence, as a neutral

destination carrier today, whether coal originates on Indiana Southern or CSX/Indiana Rail Road. Since the neutral destination carrier would be lost under the proposed transaction, it must be replaced with a meaningful competitor to CSX, under circumstances that permit NS to compete. The limitation on NS's trackage rights in Indianapolis is totally unnecessary, and totally inappropriate, since Conrail could provide such service today.

A vivid illustration of why NS should have direct access to the Stout and Perry K Plants, rather than rely on CSX/Indiana Rail Road to switch the traffic, was provided through an admission of a senior NS official in his deposition.

NS Vice President-Strategic Planning, McClellan, admitted in deposition that NS could receive less-than-adequate switching and other services from CSX in Indianapolis, but he testified that (Dep'n Tr. 129):

[T]here are a number of places where CSX will be relying on NS and vice versa. So there isn't a reasonable -- there's pressure on both sides. Let me be blunt about it. We have some places where, if they're not reasonable in Indianapolis, we can be somewhat unreasonable with them. And that's the way it works.

IPL Exhibit 5 (McClellan Dep'n Tr. 129). Frankly, and to "be blunt about it," IPL is not satisfied with a "Mutual Assured

Destruction" ("MAD") of competition approach whereby CSX and NS threaten to retaliate against one another, with innocent shippers the victims, if the two carriers are in dispute in different locations. Since NS and CSX are unwilling to change the terms of the agreement they negotiated, it is incumbent upon the Board to prevent the MAD approach from occurring by providing for direct access by NS to all the shippers in Indianapolis.

In fact, Applicants have not determined how operations by NS would be conducted and, therefore, it is important that the Board delay the effective date of its decision until labor implementing agreements and detailed operational plans are in place.

Through discovery efforts, IPL has deduced that Applicants' counsel, if not Applicants' Witnesses, apparently have a convoluted theory for denying IPL the right to interconnect directly with NS at the Stout Plant. First, they point to a 1883 Agreement between 13 railroads, some of whose successors are Conrail, CSX, and Indiana Rail Road (which is 89 percent owned by CSX), and which (as amended) governed the operation of the Indianapolis Belt thereafter. That Agreement, they seem to say, did not provide for build-ins or build-outs.

The fact that the Agreement did not provide for such things does not mean it precluded them. The 13 carriers were common carriers, and would have had the duty to serve a shipper that built out to reach the Indianapolis Belt.

Applicants concede in any event that Conrail, CSX, and Indiana Rail Road terminated the 1883 Agreement in 1996 (perhaps anticipating a Conrail/CSX merger). Conrail became the sole owner of the Indianapolis Belt as a result of the termination of the 1883 Agreement. Thus, whatever the 1883 Agreement provided, any alleged limitation it may have imposed on the carriers who were parties to it (even if only by implication, as is the argument made by Applicants here, since they do not contend that the Agreement explicitly barred build-ins and build-outs) must have terminated with the termination of the Agreement itself. The 1883 Agreement did not need to address build-ins/build-outs, since the fundamental purpose for the Belt was to provide efficient access and interchange to all connecting carriers.

Quite clearly, Conrail not only has the right but also the duty to serve the Stout Plant today (either via switching or directly if a build-in or build-out were constructed), as does CSX's 89 percent-owned subsidiary of a subsidiary, Indiana Rail

Road (See Application, Vol. 1 at 271). Stout thus has two-carrier access today, and would only effectively have one carrier serving Stout if CSX were to displace Conrail, since CSX obviously does not compete with one of its almost wholly owned subsidiaries.

Under the Board's regulations and Decision No. 7, The Indiana Rail Road is considered an "Applicant carrier" for purposes of this proceeding because CSX "now holds, directly or indirectly, a majority interest" in Indiana Rail Road. Decision No. 7 at 6; see also 49 C.F.R. § 1180.3(b) (1996). The Board's approach is premised on the fact that Applicants control the companies in which they hold majority interests.⁶ Furthermore, in ruling on a discovery dispute, Judge Leventhal also recognized that CSX controls Indiana Rail Road. September 25, 1997

⁶ See also Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 771-72 (1984) (footnote omitted) ("A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousness, but one They share a common purpose whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent's interest."); United States v. Penn-Olin Chem. Co., 378 U.S. 158, 168 (1964) ("Realistically . . . parents would not compete with their progeny" and, therefore, the court must consider the anti-competitive impact of two competitors forming a joint venture).

Discovery Conference Tr. at 20-22. Thus in no sense can the Board assume that CSX and Indiana Rail Road compete. Clearly, they do not.

Furthermore, CSX

Witness Hart admitted that the Stout Plant would be a "2 to 1" destination if CSX and Indiana Rail Road are thought of (as they must be) as alter egos of one another. Hart Dep'n Tr. 30-31. In fact, CSX controls Indiana Rail Road, and its Vice President Sharp, who is in charge of Coal Marketing for CSX, sits on the Board of Directors of Indiana Rail Road (Sharp Dep'n Tr. 14).

and Mr. Sharp (Dep'n Tr. 14) both conceded that CSX controls Indiana Rail Road. See also Goode Dep'n Tr. 42-43.

Applicants claim, however, that Stout is technically not a "2 to 1" shipper because CSX does not serve it. E.g., IPL Exhibit 5 (Hart Dep'n Tr. 30-31) IPL's response is that Applicants' claim is complete nonsense. Obviously, IPL is losing

the ability to build out to one of its two carriers today, and the ability to build out to CSX at the Indianapolis Belt rather than Conrail does not create effective competition with Indiana Rail Road, since CSX controls Indiana Rail Road. Witness Hart conceded that the Stout Plant would be a "2 to 1" plant if CSX, rather than Indiana Rail Road, served Stout directly, but since CSX controls Indiana Rail Road, this is a distinction without a difference. IPL Exhibit 5 (Hart Dep'n Tr. 30-31). So IPL needs a carrier other than CSX to provide effective competition at Stout, to replace Conrail.

Thus, the Board must permit IPL to be served by NS directly, if a build-in or build-out from the Indianapolis Belt is feasible, since IPL has the right today, or the Board could order Conrail to provide such service to IPL. See Union Pacific/Southern Pacific Merger, F.D. 32760 (served Aug. 12, 1996). The accompanying testimony of Witnesses Crowley and Porter demonstrates that such a build-out, if financed by IPL, would cost between approximately million, at most and is entirely feasible along the route shown in the map accompanying the testimony of Witness Porter. IPL Exhibit 2 (JEP-1).

It is therefore necessary for the Board to adopt a protective condition that Applicants may not proceed with the proposed transaction unless CSX permits, and NS accepts, local trackage rights, not just overhead rights, over the Indianapolis Belt, and that NS is specifically obliged to serve IPL's Stout Plant upon request by IPL, and to quote reasonable rates and terms of service for such transportation if IPL so requests.

IV.

IF INDIANAPOLIS IS NOT A SHARED ASSETS AREA, NS SHOULD BE CHARGED A TRACKAGE RIGHTS FEE (IF IT PROVIDES DIRECT SERVICE TO IPL'S PLANTS), OR A SWITCHING CHARGE (IF CSX PROVIDES DIRECT SERVICE), BUT NOT BOTH.

Assuming arguendo that the Board does not require that Indianapolis be a "shared assets area," there are substantial problems with the proposed transaction that the Board must overcome to preserve existing competition.

Applicants' proposal would impose on NS shippers both a trackage rights fee and a switching charge, rather than one or the other. One such fee or the other (at reasonable levels) is appropriate if NS does not have an ownership interest in the lines in Indianapolis, but not both, for the following reasons.

Appropriate Circumstances for a Trackage Rights Fee.

If NS were to provide direct service to a shipper, as Conrail could today, to IPL's Stout Plant (either to a build-out, or via switching on the Indiana Rail Road) or to the Perry K Plant, it would be appropriate to require NS to pay CSX for the trackage rights it uses. But it would not be appropriate to require NS to pay CSX for switching, since CSX need not provide any switching service under that scenario. (NS Witness McClellan admitted in his deposition that NS should not have to pay CSX a switching charge if CSX does not participate in a movement, regardless of what the Application provides, since that would not be logical. IPL Exhibit 5 (Dep'n Tr. 128).)

The only reason that Applicants' proposal would require the payment of a switching charge to CSX is that CSX would deny NS local trackage rights and instead require it to take all traffic to the Hawthorne Yard, even if that is less efficient than direct service. Not only would such a proposal violate the statute by harming competition and providing inadequate service under those circumstances, but it would also violate the railroads' oft-repeated claims in proceeding after proceeding before the ICC/STB that they may be presumed to act in accordance

with economic theory and to choose the most efficient routing.

No one could review their proposals for Indianapolis and conclude that they have negotiated the most efficient arrangements there.

Thus, when NS provides direct service to a shipper, or interchanges the shipper's traffic with a carrier other than CSX, it should only be required to pay CSX for the trackage rights it uses, and not pay for non-existent or unnecessary switching services.

Appropriate Circumstances for a Switching Charge.

Conversely, if NS does not provide direct service to a shipper, but instead CSX/Indiana Rail Road provides switching services to reach a shipper's facility, CSX/Indiana Rail Road deserves to be paid for those switching services. But again the switching must be performed efficiently. Applicants' proposal to route coal unit trains or trainload shipments through Hawthorne Yard would be highly inefficient. If CSX or Indiana Rail Road provide necessary switching services, they should be paid for them; if it is not necessary for CSX or Indiana Rail Road to switch a particular train, there should be no switching charge, and the Board should so provide.

Instead of requiring NS to route all traffic into Hawthorne Yard, as is proposed, NS should be able to interconnect with any railroad that Conrail can interconnect with today. Specifically, NS should be able to interconnect directly with Indiana Rail Road or with Indiana Southern.

When NS interconnects with Indiana Rail Road while using CSX's tracks (from Lafayette or Muncie) it should pay CSX a trackage rights fee set at cost, it should not also pay CSX a switching charge. This is reasonable because today Conrail can interconnect directly with Indiana Southern and with Indiana Rail Road, with only the payment of a

Thus, when NS replaces Conrail as CSX/Indiana Rail Road's chief competitor, it should not be put in a worse position than Conrail is today.

Finally, if instead NS interconnects with CSX at the point (Lafayette or Muncie) at which NS's ownership interest in lines into Indianapolis may end, and CSX/Indiana Railroad takes IPL's coal trains into the Stout and Perry K Plants, CSX or

Indiana Rail Road should charge only a switching charge and not also a trackage rights fee (since CSX will own the lines).

These changes in the proposed transaction would allow NS to interconnect in the same fashion with Indiana Rail Road or Indiana Southern as Conrail can today and would simply entitle IPL to the same rail service it has today.

V.

IF INDIANAPOLIS IS NOT A SHARED ASSETS AREA,
THE TRACKAGE RIGHTS FEE AND THE SWITCHING CHARGE
PAID BY NS SHOULD BE SET AT CSX'S COSTS, WITH
A DIRECT PASSTHROUGH TO THE SHIPPERS, AND THE BOARD
AND SHIPPERS MUST BE ALLOWED TO AUDIT AND CHALLENGE
THOSE COSTS IF APPROPRIATE.

The proposed trackage rights fee for NS of 29 cents per car-mile is unreasonable and would serve to prevent NS from providing effective competition to its landlord, CSX. Crowley V.S. at 18-19 (trackage rights should be set at _____ cents per car mile). Even if the Board is not persuaded that trackage rights in general create competitive disadvantages, as NS said in its "Principles of Balanced Rail Competition" (and BNSF's recent experience using trackage rights to compete over the UP/SP system is proof that NS was right), the high fee proposed by Applicants, particularly when coupled with other factors such as the routings to Hawthorne Yard (even if the NS train went right by a shipper's

facility, or a build-out from it, such as the Stout Plant), will clearly prevent NS from competing, as Conrail can and does today, with CSX in Indianapolis on equal terms.

NS should have trackage rights over CSX's tracks, paying only CSX's costs for those rights. Otherwise, the landlord, CSX, will have an inherent advantage in competing with its tenant NS. Setting the trackage rights fee at cost would not be unfair to CSX, since the Applicants have agreed that CSX will charge NS a switching charge set at cost, and there is no conceptual reason why the trackage rights fee and switching charge should be imposed on a different basis.

Commendably, the Applicants have proposed that NS be charged only a "cost-based" switching charge. (Application, Vol. 2A at 148) which NS Witness Fox clarified was intended only to equal CSX's costs, and not some multiple of them, and NS Vice President-Strategic Planning, McClellan, admitted the same thing, defining costs to be CSX's internal costs. IPL Exhibit 5 (Fox Dep'n Tr. 140); *id.* (McClellan Dep'n Tr. 124). At the same time, Applicants refuse to agree that Shippers should be allowed to audit the costs that CSX will claim it incurred, with Mr. Fox testifying flatly "we don't share our costs with shippers." IPL

Exhibit 5 (Fox Dep'n Tr. 143). This is a ludicrous position in this context; if the shipper must pay a switching charge equal to cost, it and the Board must have access to the carrier's costs to verify them. "Trust but verify," said President Reagan in a different context, and the same principle applies here.

Applicants can hardly expect shippers to "buy a pig in a poke," but that is what their proposal amounts to without shipper input and Board oversight or review.

The Board should condition the proposed transaction by (a) specifying that the "cost-based" switching charge imposed by CSX will equal its "costs;" (b) the trackage rights fee CSX charges NS should also be set at the level of CSX's costs; (c) the Board should audit those costs, and allow shippers to do so; and (d) the Board should provide for expeditious challenges, without a finding of market dominance being necessary to proceed, to the switching charge if CSX attempts to impose excessive or unreasonable costs through the imposition of that charge.

VI.

THE PROPOSED TRANSACTION SHOULD NOT BE PERMITTED TO
DISRUPT TODAY'S BALANCED COMPETITION FOR
MOVEMENTS OF WESTERN COAL TO INDIANAPOLIS.

Other aspects of the proposed transaction outside of the immediate Indianapolis area could adversely impact IPL by altering today's balanced competition for the potential movement of western coal to Indianapolis. Maintaining existing competition for moving western coal is of critical importance to IPL because it may find it necessary to use lower-sulfur coal at Stout to meet its environmental obligations⁷ after its current transportation contracts with Indiana Rail Road expire in 2002. IPL would have to rely on sources outside of Indiana to obtain low-sulfur coal. Given that low-sulfur coal reserves in the East are quite limited and in demand, it is more likely that IPL would buy western compliance coal. Under the proposed transaction, because CSX controls access to the Stout Plant (via Indiana Rail

⁷ These obligations could include, but are not limited to, requirements under Phase II of the Clean Air Act, EPA's recent ozone and particulate regulations, and requirements under EPA's recent proposal for reductions of nitrogen oxide emissions. These and other environmental requirements may accelerate IPL's need to reduce emissions through the use of compliance coal in the future. The effect of the Board's approval of the proposed transaction will be permanent and, therefore, competitive options for compliance coal must be addressed in this proceeding.

Road and because of its proposed acquisition of the Conrail line) it could effectively prevent the use of western compliance coal by favoring its own low-sulfur coal origins even if they do not produce the best outcome for IPL's ratepayers or the environment.⁸ Today, Stout would have competitive options for compliance coal that it would lose under the proposed transaction, unless the Board imposed appropriate conditions.

The originating carriers of the western coal would almost certainly be Union Pacific or BNSF. Today, IPL could ship western coal efficiently either over Conrail via St. Louis and over CSX via Chicago, thus having two competitors. Under the proposed transaction, CSX would take over the Conrail line, thereby monopolizing the two efficient routes to Indianapolis. In contrast, NS's proposed routes out of St. Louis and Chicago to Indianapolis would be circuitous and inefficient at best. The most competitive alternative for NS would be an interchange at Kansas City; however, there are serious impediments to NS providing effective competition to CSX from Kansas City.

⁸

First, it is well-known that Kansas City has severe congestion problems that may not be of limited duration. (The \$90 million facility recently built in Kansas City by BNSF to reduce congestion was not built to alleviate congestion affecting unit trains of coal.) Carriers and shippers often try to avoid Kansas City because of its congestion.

Second, BNSF and UP are likely to be reluctant to be "short-hauled" to Kansas City, and instead may only quote rates to St. Louis and Chicago, where NS would then be at a clear competitive disadvantage vis-a-vis CSX to get to Indianapolis. Accordingly, NS may not be able to compete with CSX for coal shipments to Indianapolis, whereas Conrail could today. In contrast to NS, CSX would have efficient interchanges at St. Louis and Chicago that would allow it to serve IPL's Stout Plant over non-circuitous routings, thereby effectively precluding the competition from NS for movements of western coal.

It is critical that the Board ensure that balanced competition for movements of western coal to Indianapolis is maintained. Therefore, the Board should preserve an indefinite oversight role for it to ensure that routings via Kansas City or other interchanges to NS from western carriers will be efficient,

and that NS will be able to compete effectively with CSX for western coal shipments to Indianapolis. This oversight can not be limited to five years, as IPL's current coal supply and transportation agreements do not expire until 2002. Thus, oversight must extend well beyond that time. In addition, IPL or NS or both must be able to request that the Board compel UP or BNSF (a) not to discriminate against Kansas City in favor of interchanges at points further east and (b) to participate in a through rate with NS in Kansas City on a nondiscriminatory basis. In the alternative, if the proposed transaction is approved, CSX should be required to give NS access over one of its lines, from either St. Louis or Chicago, to Indianapolis. Without this relief, balanced competition can not be maintained for western coal shipments to Indianapolis.

Conclusion

Therefore, the Board should not approve the proposed transaction unless it adopts the following protective conditions:

1. Indianapolis must be a "shared assets area", including an equal sharing of trackage, the Avon and Hawthorne Yards, and direct access to each of the short lines that serve Indianapolis;

2. Regardless of the access option for Indianapolis, IPL must continue to have the right to build out to the Indianapolis Belt so as to be served directly by NS at its Stout Plant;

3. In the alternative to condition No. 1, NS should have direct access to local shippers, direct access to short lines serving Indianapolis, and especially direct access to IPL's Stout and Perry K Plants;

4. Both Perry K and Stout Plants should be deemed "2 to 1" points;

5. In the alternative to condition No. 1, NS should be required to pay CSX either a trackage rights fee set at CSX's costs, or a switching charge set at CSX's or Indiana Rail Road's costs (depending on which carrier delivers the traffic to IPL's plants) but not both, on a direct passthrough basis to IPL;

6. Traffic in Indianapolis handled by NS, especially IPL's unit trains of coal, need not be delivered to, or picked up from, the Hawthorne Yard, but instead may be delivered by NS, or picked up by NS, directly from shippers;

7. Oversight of CSX's switching services will be provided to ensure that NS receives efficient, non-discriminatory service;

8. The Board and the shippers, including IPL, must have the ability to audit CSX's costs that are the bases for the trackage rights fee and the switching charge that NS must pay, with the Board empowered to review and prescribe a lower, reasonable fee or charge if appropriate, on an expedited basis;

9. Indefinite oversight is required to ensure that traffic via Kansas City or other interchanges to NS from western carriers is efficient;

10. The transaction should not be permitted to take effect until all necessary labor implementation agreements and detailed operations plans are in place; and

11. Union Pacific and BNSF be required, if requested by IPL or NS, to participate in a through rate with NS at Kansas City on a nondiscriminatory basis vis-a-vis Chicago and St. Louis, or in the alternative, CSX be required to give NS access on a nondiscriminating basis over one of its lines from St. Louis

or Chicago to Indianapolis, so that NS can compete effectively
with CSX for probable western coal movements to Indianapolis.

Respectfully submitted,

Michael F. McBride

Michael F. McBride

Brian D. O'Neill

Bruce W. Neely

Linda K. Breggin

Brenda Durham

Joseph H. Fagan

LeBOEUF, LAMB, GREENE

& MacRAE, L.L.P.

Suite 1200

1875 Connecticut Ave., N.W.

Washington, D.C. 20009-5728

(202)986-8000

Attorneys for Indianapolis
Power & Light Company

Due Date: October 21, 1997

Dated: October 21, 1997

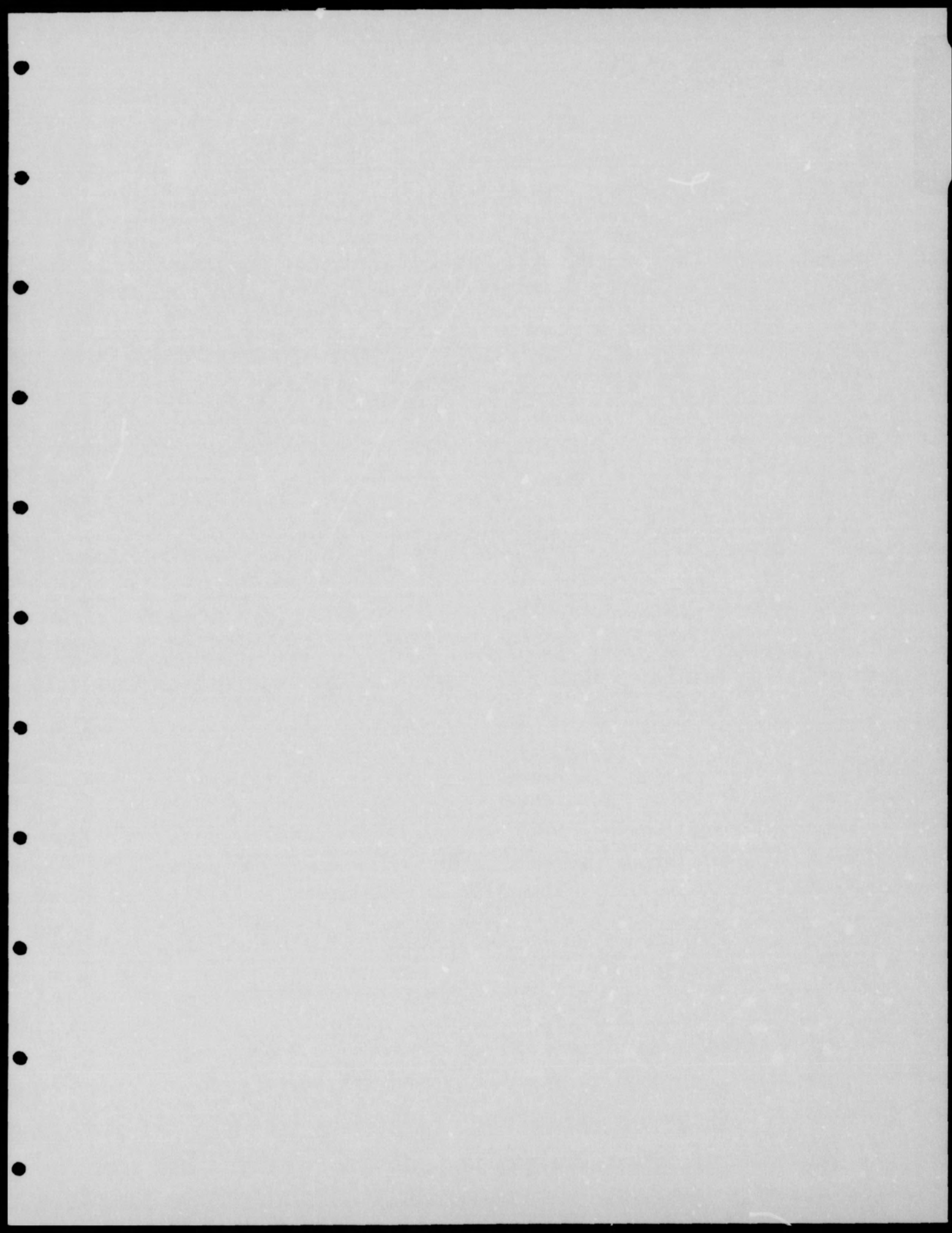


EXHIBIT 1

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

IPL Exhibit No. 1

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

VERIFIED STATEMENT OF MICHAEL A. WEAVER

My name is Michael A. Weaver. I am the Manager of the Fuel Supply Organization of Indianapolis Power & Light Company ("IPL"), headquartered in and serving the metropolitan Indianapolis, Indiana. As Manager of the Fuel Supply Organization, I have responsibility for all fuel purchases and deliveries to our powerplants, reporting to our Vice-President Fuels.

Professional Qualifications

I am a civil engineer with a B.S. degree from the University of Pittsburgh. I also hold a Masters Degree in Mining Engineering, as well as a Masters in Business Administration from the University of Pittsburgh. In addition, I received my law degree from Indiana University.

I began my professional career with the John T. Boyd Company, from 1970 to 1975. From 1975-1980, I worked for the U.S. Bureau of Mines. From 1980-1982, I was a mining engineer with the Colorado-UTE Electric Association, Montrose Company. I was an associate professor in the School of Business and Earth and Mineral Sciences at Pennsylvania State University from 1982 to 1989. I have served in various positions in the Fuel Supply Organization at IPL since 1989.

Summary of Statement

The purpose of this statement is to explain how the proposed transaction would affect IPL. IPL is opposed to the proposed transaction unless the Board adopts changes to the transaction to avoid harm to IPL and to the Indianapolis metropolitan area, as well as to address the problem the proposed transaction would create for movement of western coal to Indianapolis.

The proposed transaction would seriously harm IPL because it would eliminate the major provider of rail transportation in Indianapolis, Conrail, and not adequately replace it with Norfolk Southern or another substantial competitor to CSX (which also now serves Indianapolis). It is my understanding that NS and CSX have acknowledged that Indianapolis is the largest "2 to 1" metropolitan area affected by the proposed transaction, but they have not proposed that NS have an ownership interest in Indianapolis rail assets or direct access to local shippers (with one exception, a General Motors plant).

Instead of allowing NS to compete on equal footing with CSX, Applicants have proposed that NS will have "overhead" trackage rights only, with direct access to only the one

GM facility. NS would be barred from serving shippers directly through local trackage rights, and it would be barred from serving shippers via build-outs or build-ins, or from serving new facilities. Furthermore, all NS traffic would have to be routed through the Hawthorne Yard where NS will have to depend on CSX for dispatching. NS's rights to use the Hawthorne Yard have in no manner been specified. In addition, the Applicants' proposal would impose a trackage rights fee and a switching charge, rather than one or the other. Moreover, the proposed trackage right fee is too high, as it exceeds costs, and the switching charge, while allegedly cost-based, can not be audited by shippers which could allow unreasonable or inaccurate costs to be passed through to shippers. These factors, particularly when considered in aggregate, ensure that NS will be unable to compete on equal footing with CSX in Indianapolis.

Applicants -- especially CSX -- have been unwilling to address the obvious competitive problems with their Indianapolis proposal. Since CSX would acquire Conrail's lines in Indianapolis, and would perform "pickup/delivery" services for NS and other carriers, CSX is the primary obstacle to resolving the problems in Indianapolis. The key problem is that CSX maintains that The Indiana Rail Road, its subsidiary, is an "independent" competitor of CSX, and that IPL will receive adequate competition at its E.W. Stout Plant from CSX and The Indiana Rail Road. Common sense dictates, however, that CSX will not meaningfully compete with a company that it controls. Given that CSX controls Indiana Rail Road, it is obvious that the Stout Plant is a "2 to 1" facility, as Applicants are treating IPL's C.C. Perry

K Plant, and that IPL needs direct access to both the Stout and Perry K Plants from a carrier other than CSX/Indiana Rail Road to maintain existing competition.

Accordingly, IPL strongly opposes the proposed transaction unless the Board revises the proposed arrangement to make Norfolk Southern an equal competitor with CSX/Indiana Rail Road in Indianapolis, as Conrail is today. IPL is not seeking any advantage over today's circumstances, because Indianapolis today has balanced competition between Conrail and CSX/Indiana Rail Road. This competition was evidenced prior to the announcement of the proposed transaction by the "Express Group" -- a group organized by Conrail and the short lines for the specific purpose of providing more competitive service. IPL seeks only to preserve that balanced competition.

The most simple and effective way to preserve balanced competition is by designating Indianapolis a shared asset area, including both the Avon and Hawthorne yards. If NS is an equal owner of Conrail's tracks in and around Indianapolis, has access to the short lines, and is an equal owner of the Avon and Hawthorne Yards, NS and CSX/Indiana Rail Road will be able to compete on equal footing. I understand that Applicants have endorsed this approach for northern New Jersey, southern New Jersey, Philadelphia and Detroit, as a means of ensuring effective competition. There is no reason not to do the same for Indianapolis. This approach would allow NS and CSX to compete in the marketplace without recurring regulation. Only oversight by the Board would be required.

In the alternative, NS should have fully effective -- i.e., local -- trackage rights that provide direct access to shippers in Indianapolis. Not only would local trackage rights

allow direct access to shippers but the inefficient routing of all traffic through Hawthorne Yard would be unnecessary and NS would be able to provide local service, as well as serve build-ins, build-outs and new facilities. In short, direct access to local shippers would enable NS to compete with CSX on an equal footing, as Conrail does today with Indiana Rail Road at Stout and with CSX/Indiana Rail Road at the Perry K Plant (via a short truck haul from the Stout Plant).

If Indianapolis is not required to be a shared asset area, the terms and conditions of the trackage rights and switching services provided by CSX to NS (whether under the proposed plan or in connection with the fully effective trackage rights proposed by IPL) must be improved, to permit NS to compete effectively.

First, the CSX/INRD competitor should not be charged both a trackage rights fee and a switching charge. If the competitor provides direct service to a shipper, only a trackage rights fee is appropriate. If CSX provides the direct service, only a switching fee is appropriate. Applicants propose to impose both a trackage rights fee and a switching charge which will result in NS being unable to provide competitive service to Indianapolis shippers.

Second, the trackage rights fee of 29 cents per car mile is too high, as shown by IPL Witness Crowley. The fee should instead be set at CSX's costs, as the switching charge will be, so that CSX cannot always undercut NS in competing for a shipper's traffic. Only by reducing the proposed trackage rights fee can Indianapolis shippers perhaps obtain the balanced competition they currently enjoy.

Third, IPL supports the cost-based switching charge proposed by Applicants, provided that the charge will equal CSX's actual costs and the shippers are allowed to audit the costs that CSX claims it incurred. In addition, the Board should review such charges expeditiously if challenged. Again, this will ensure that NS is able to compete on equal footing with CSX.

Fourth, the transaction should not be permitted to take effect until all necessary labor implementation agreements and detailed operations plans are in place. This will ensure that IPL continues to receive adequate and competitive service during the transition period.

In addition, Applicants' proposals for Conrail lines outside of the immediate Indianapolis area could result in substantial harm to IPL, because NS may not be able to compete effectively with CSX for the movement of western coal to Indianapolis, if that becomes necessary to comply with IPL's environmental obligations. Today, CSX has a direct route to Indianapolis from Chicago, and Conrail has a direct route from St. Louis. Under the proposed transaction, CSX would be able to interchange with the western carriers at either Chicago or St. Louis and efficiently move the coal to Indianapolis. In contrast, NS's proposed routes from Chicago and St. Louis to Indianapolis are circuitous and inefficient. Furthermore, Kansas City may not be a viable interchange to NS for western coal, because of long-standing congestion problems there and because of the western carriers' likely preference for destinations east of Kansas City as interchange points for western coal shipments.

Accordingly, IPL strongly urges the Board to provide continuing oversight to ensure that any IPL traffic via Kansas City or other interchanges to NS from western carriers

will be handled efficiently and that through rates are quoted through Kansas City. It is essential to maintaining balanced competition that the western carriers do not discriminate against Kansas City in favor of Chicago or St. Louis where NS is at a competitive disadvantage. Therefore, IPL also requests that the Board ensure that the western carriers participate in a through rate with NS in Kansas City on a nondiscriminatory basis. In the alternative, NS should be granted trackage rights on a non-discriminatory basis over CSX lines from St. Louis or Chicago to Indianapolis to ensure that NS can effectively compete with CSX for the movement of western coal to Indianapolis.

Background

IPL serves primarily the Indianapolis metropolitan area, but because it gets its coal elsewhere (today from downstate Indiana), the effects of the proposed transaction both on Indianapolis and elsewhere were potentially of significance to IPI. After some consideration, however, we concluded that the primary effects of the transaction on IPL are those changes that will occur in and around Indianapolis. Secondly, however, since IPL gets coal from downstate Indiana today, but may be required to purchase low-sulfur coal from outside Indiana in the future, IPL is also concerned that the competition it enjoys today for rail deliveries of coal continue in the future, and that changes throughout the Applicants' systems not adversely affect IPL. We have concluded that the proposed transaction may be very harmful to IPL's existing and future rail competition, and thus IPL has chosen to participate in this proceeding for both reasons.

IPL operates four coal-fired plants. Two are located well south of Indianapolis and apparently will not be affected by the proposed transaction. The other two are in the Indianapolis area and will be affected by the proposed transaction. Those latter two plants, Perry K and Stout, are IPL's primary concern in this proceeding.

Today, the configuration is as follows. The Indiana Southern Railroad originates coal for IPL and hauls it north to Conrail, which must switch the cars for Indiana Southern into the Perry K Plant. Indiana Southern-originated coal can also be delivered to Conrail which, in turn, can deliver it to The Indiana Rail Road, a subsidiary of CSX, for switching into IPL's Stout Plant. Under a negotiated switching charge with IPL that results in

The execution of that contract followed several years of litigation in which Illinois Central, the predecessor to The Indiana Rail Road, tried to charge IPL an outrageous switching charge of \$1000 per car after first setting it at \$250 per car. The Indiana Public Service Commission reduced it to \$17.50, but the ICC raised it to \$35.00 and remanded the matter to the Indiana PSC for a new hearing. We were urged by the Indiana PSC to settle, which we did, for a switching charge of \$ per car.

When Conrail sold the Petersburg Secondary which is now Indiana Southern,

The point is that Stout has two-carrier access through switching via Conrail (or a potential for a build-out to Conrail), as well as direct access via Indiana Rail Road (which also serves one of our downstate coal producers).

Indianapolis Should Be a Shared Asset Area.

Indianapolis is today served by two Class I railroads. When Conrail disappears, and NS appears in Indianapolis, it should do so under the same terms that control Conrail's competition with CSX/Indiana Rail Road today. The simple solution to the problems created by the disappearance of Conrail is to let NS compete on an equal footing with CSX. The simple method of achieving that result is to allow NS to be a joint owner of Conrail's tracks in and around Indianapolis, especially the Indianapolis Belt Secondary ("the Belt"). NS should also be an equal owner of the Avon and Hawthorne Yards. CSX supports shared asset areas within New Jersey, Detroit, and Philadelphia so that both CSX and NS will have an equal opportunity to obtain the business in those areas. The same logic should apply to Indianapolis.

In fact, I understand that NS has advocated ownership interests as the best means of assuring vigorous competition, but did not achieve that in Indianapolis. Without substantial investment in Indianapolis, NS has little incentive to compete directly with CSX.

If it had an ownership interest, NS could serve directly shippers on the Belt, including IPL's Stout Plant via switching or via a build-out or build-in, as Conrail can today.

NS would also be allowed to serve IPL's Perry K Plant, which Conrail serves directly today through joint access. In addition, NS could and should be able to connect with the short lines in and around Indianapolis.

Furthermore, a shared asset area would increase efficiency for shippers and the Applicants, by avoiding the congestion that is likely to occur at Hawthorne Yard, as a result of the inefficient routing of IPL's unit trains of coal into and out of the Hawthorne Yard. It is much more sensible to route them directly to the Stout Plant which would be possible if Indianapolis were a shared assets area, since NS would have equal say with CSX.¹

In sum, the simple, straight-forward solution to remedying the disruption of balanced competition in Indianapolis that would occur under the Applicants' proposal is to establish a shared assets area of the type Applicants have proposed for parts of Detroit, New Jersey, and Philadelphia.

In the Alternative, NS Should Have Direct Access to IPL's Perry K and Stout Plants and, in Any Event, IPL Should Be Found to Be Able to Build Out to Conrail from the Stout Plant.

A key factor limiting NS's ability to compete with CSX under the proposed transaction is the lack of fully effective trackage rights over the Belt. NS would have overhead trackage rights only, which will not allow NS to serve Indianapolis shippers directly.

¹ This would also mitigate the negative environmental impact of the proposed use of Hawthorne Yard. Indianapolis is only marginally in compliance with the ozone ambient air quality standards, and attempts to enforce "nozone" limitations on commuters, people who cut their lawns with gas lawn mowers, and others, in an effort to avoid the risk of violating the ozone NAAQS. Applicants' approach creates a "bottleneck" problem for shippers, as opposed to providing direct access to shippers for NS and, therefore, is particularly inappropriate from an environmental perspective.

Instead, under the proposed transaction, all NS traffic would be routed through the Hawthorne Yard, where CSX/Indiana Rail Road would perform switching services for NS (with the one exception of a GM plant that NS could serve directly).² In order to maintain meaningful, balanced competition in Indianapolis, NS must be granted fully effective trackage rights that enable it to serve shippers directly, including through build-outs.

Today, Conrail operates over, and owns, the Belt, which comes within 3 miles of IPL's Stout Plant in Indianapolis. As the sole carrier operating over the Belt, Conrail has the right to serve the Stout Plant directly through a build-in or build-out. Yet, the proposed transaction would bar NS from serving shippers in Indianapolis directly, even via such build-ins or build-outs. This continued limitation on NS's access to the Stout Plant is inefficient, unnecessary, and totally inappropriate, since Conrail could provide such service today. CSX is trying to improve its competitive position in Indianapolis through the proposed transaction, since CSX obviously does not compete with one of its almost wholly owned subsidiary.

Applicants' claim that Stout is technically not a "2 to 1" shipper because CSX does not serve it is complete nonsense, because IPL is losing the ability to build out to one of its two carriers today, and the ability to build out to CSX at the Belt rather than Conrail does not create effective competition with Indiana Rail Road, since CSX controls Indiana Rail Road. IPL needs a carrier other than CSX to replace Conrail in order to provide effective competition at Stout.

² In fact, Applicants have not determined how operations by NS would be conducted and, therefore, it is important that the Board delay the effective date of its decision until labor implementing agreements and detailed operational plans are in place.

The Board should permit IPL's Stout Plant to be served by NS directly, if a build-in or build-out from the Belt is feasible, since IPL has the right today. The accompanying testimonies of John E. Porter and Larry Anacker demonstrate that such a build-out, if financed by IPL, would cost between approximately \$

at most and is entirely feasible along the route shown in the map accompanying Mr. Porter's testimony IPL Exhibit 2 (JEP-1).

As for IPL's Perry K plant, Conrail acts, in essence, as a neutral destination carrier today, whether coal originates on Indiana Southern or CSX/Indiana Rail Road. Since the neutral destination carrier would be lost under the proposed transaction, it must be replaced with a meaningful competitor to CSX, under circumstances that permit NS to compete.

In sum, the Board should adopt a protective condition that Applicants may not proceed with the proposed transaction unless CSX permits, and NS accepts, local trackage rights, not just overhead rights, over the Belt, and that NS should be specifically obliged to serve directly IPL's Stout and Perry K Plants upon request by IPL, and independently to quote rates and terms of service for such transportation if IPL so requests.³

³ Furthermore, and with due respect to the Board, IPL does not believe that the two carriers will assure competition under the circumstances of the Conrail acquisition (*i.e.*, the closed-door negotiations of NS and CSX and the magnitude of the acquisition premium). In order to assure effective competition to Stout and Perry K Plants while IPL uses Indiana coal and before it may be obliged to switch to non-Indiana coal, IPL requests the Board also grant effective trackage rights for Indiana Southern Railroad to serve directly IPL's Stout and Perry K Plants.

provides direct service to IPL, or interchanges IPL's traffic with a carrier other than CSX, NS (and thus IPL) should only be required to pay CSX for the trackage rights it uses, and not pay for non-existent or unnecessary switching services.

Conversely, if NS does not provide direct service to IPL, but instead CSX/Indiana Rail Road provides switching services to reach IPL's facility, CSX/Indiana Rail Road deserves to be paid for those switching services. However, the switching should be performed efficiently. Applicants' proposal to route coal unit trains or trainload shipments through Hawthorne Yard would be highly inefficient. If CSX or Indiana Rail Road provide necessary switching services, they should be paid for them; if it is not necessary for CSX or Indiana Rail Road to switch a particular train, there should be no switching charge.

Instead of requiring NS to route all traffic into Hawthorne Yard, as proposed, NS should be able to interconnect with any railroad that Conrail can interconnect with today. Specifically, NS should be able to interconnect directly with Indiana Rail Road or with Indiana Southern.

When NS interconnects with Indiana Rail Road while using CSX's tracks (from Lafayette or Muncie) it should pay CSX a trackage rights fee set at cost, it should not also pay CSX a switching charge. This is reasonable because today Conrail can interconnect directly with Indiana Southern and with Indiana Rail Road, with only the payment of a reasonable, per car switching charge (

Thus, when NS replaces Conrail as CSX/Indiana Rail Road's chief competitor, it should not be put in a worse position than Conrail is today.

Finally, if instead NS interconnects with CSX at the point (Lafayette or Muncie) at which NS's ownership interest in lines into Indianapolis may end, and CSX/Indiana Railroad takes IPL's coal trains into the Stout and Perry K Plants, CSX or Indiana Rail Road should charge only a switching charge and not also a trackage rights fee (since CSX will own the lines).

These changes in the proposed transaction would allow NS to interconnect in the same fashion with Indiana Rail Road or Indiana Southern as Conrail can today and would simply entitle IPL to the same rail service it has today.

If Indianapolis Is Not a Shared Asset Area, The Trackage Rights Fee And Switching Charge Paid by NS Should Be Set at CSX's Costs, With a Direct Passthrough to The Shippers, And The Board And Shippers Should Be Allowed to Audit And Challenge Those Costs If Appropriate.

Based on the testimony of IPL Witness Crowley, the proposed trackage rights fee for NS of 29 cents per car-mile is too high and would serve to prevent NS from providing effective competition to its landlord, CSX. The trackage rights fee should be at the level recommended by Mr. Crowley. According to the Applicants, the Board has in the past approved fees at a level approximating the trackage rights fees of 29 cents per car mile proposed by Applicants, but such fees have been too high. BNSF, for example, apparently is having difficulty competing with UP-SP to use UP's and SP's tracks. Even if the Board is not persuaded that trackage rights in general create competitive disadvantages, the high fee

proposed by Applicants, particularly when coupled with other factors such as the routings to Hawthorne Yard (even if the NS train went right by a shipper's facility, or a build-out from it, such as the Stout Plant), will clearly prevent NS from competing, as Conrail does today, with CSX/Indiana Rail Road in Indianapolis on equal terms.

NS should have trackage rights over CSX's tracks, paying only CSX's costs for those rights. Otherwise, the landlord CSX will have an inherent advantage in competing with its tenant NS. Setting the trackage rights fee at cost would not be unfair to CSX, since Applicants have agreed that CSX will charge NS a switching charge set at cost, and there is no conceptual reason for setting the two differently.

The Applicants have proposed that NS be charged only a "cost-based" switching charge. IPL and other shippers should be allowed to audit the costs that CSX will claim it incurred. If IPL must pay a switching charge equal to cost, IPL, other shippers, and the Board should have access to the carrier's costs to verify them. Applicants can hardly expect shippers to "buy a pig in a poke," but that is what their proposal amounts to without shipper input and Board oversight or review.

In sum, the Board should condition the proposed transaction by specifying that the "cost-based" switching charge imposed by CSX will equal its "costs" and that the trackage rights fee CSX charges NS should also be set at the level of CSX's costs. The Board should also audit those costs, and allow shippers to do so, and provide for expeditious challenges to the switching charge (without a finding of market dominance being necessary to proceed), if CSX attempts to impose excessive or unreasonable costs through the imposition of that charge.

The Proposed Transaction Should Not Be Permitted to Disrupt Today's Balanced Competition for Movements of Western Coal to Indianapolis.

Other aspects of the proposed transaction outside of the immediate Indianapolis area could adversely impact IPL by altering today's balanced competition for the potential movement of western coal to Indianapolis. Maintaining existing competition for moving western coal is of critical importance to IPL because it may need to use western coal to comply with its environmental obligations under the Clean Air Act and other statutes or regulations. IPL would have to rely on sources outside of Indiana to obtain low sulfur coal. Given that low-sulfur coal reserves in the East are quite limited and in demand, it is more likely that IPL would buy western compliance coal. The originating carriers of the western coal would almost certainly be Union Pacific or BNSF.

The environmental obligations could include, for example, but are not limited to, requirements under Phase II of the Clean Air Act. For example, in the year 2000, much uncertainty in utility coal markets will develop, as Phase II of the Clean Air Act Amendments of 1990 become effective. Under Phase II, IPL may have to "scrub" more of the sulfur from its emissions, or otherwise have to use low-sulfur coal. (It may not have to do so precisely in the year 2000, because IPL can accumulate credits, deferring such a decision.) Depending on the cost of low- and high-sulfur coal, the cost of scrubbing, the cost of sulfur dioxide credits, and other factors, IPL may well be required to change coal supplies to meet the then-applicable emission limitation requirements, after our current contract for high-sulfur coal expires in 2002. In addition, EPA's recently proposed ozone and particulate regulations and EPA's

recent proposal to reduce nitrogen oxide emissions may accelerate IPL's need to buy western compliance coal.

It is necessary to ensure that balanced competition for the movement of western coal is addressed in this proceeding. Even though IPL's need for western coal may develop after this proceeding is over, the Board's decision will have a permanent impact on IPL's ability to obtain western coal and meet its environmental obligation.

Under the proposed transaction, because CSX controls access to the Stout plant (via Indiana Rail Road and because of its proposed acquisition of the Conrail line) it could effectively prevent the use of western compliance coal by favoring its own eastern low-sulfur coal origins, even if they do not produce the best outcome for IPL's ratepayers or the environment.

Today, Stout has competitive options for compliance coal that it would lose under the proposed transaction unless the proposal is properly conditioned. For example, IPL could ship western coal over Conrail via St. Louis and over CSX via Chicago and thus has two competitors. Under the proposed transaction, however, CSX would take over the Conrail line, thereby monopolizing the two efficient routes to Indianapolis. In contrast, NS's proposed routes out of St. Louis and Chicago to Indianapolis would be circuitous and inefficient at best. The most competitive alternative for NS would be an interchange at Kansas City; however, there are serious impediments to NS providing effective competition to CSX from Kansas City.

First, it is well-known that Kansas City has severe congestion problems that may not be of limited duration. (The \$90 million facility recently built in Kansas City by BNSF to reduce congestion was not built to alleviate congestion affecting arriving unit trains of coal.) Carriers and shippers often try to avoid Kansas City because of its congestion.

Second, BNSF and UP are likely to be reluctant to be "short-hauled" to Kansas City, and instead may only quote rates to St. Louis and Chicago, where NS would then be at a clear competitive disadvantage vis-a-vis CSX to get to Indianapolis. Accordingly, NS may not be able to compete with CSX for western coal shipments to Indianapolis, whereas Conrail could today.

The Board must ensure that balanced competition for movements of western coal to Indianapolis is maintained. Therefore, the Board should preserve an indefinite oversight role for it to ensure that routings via Kansas City or other interchanges to NS from western carriers will be efficient, and that NS will be able to compete with CSX for western coal shipments to Indianapolis. This oversight can not be limited to five years, as IPL's current coal supply and transportation agreements do not expire until 2002. Oversight must extend well beyond that time.

In addition, IPL or NS, or both, must be able to request that the Board compel UP or BNSF not to discriminate against Kansas City in favor of interchanges at points further East and to participate in a through rate with NS in Kansas City on a nondiscriminatory basis. In the alternative, if the proposed transaction is approved, CSX should be required to give NS access on a nondiscriminatory basis over one of its lines, from either St. Louis or Chicago, to

Indianapolis. Without this relief, balanced competition can not be maintained for western coal shipments to Indianapolis.

Conclusion

IPL opposes the proposed transaction unless the Board adopts protective conditions that remedy the Applicants' proposal for Indianapolis in a manner that ensures that competition is maintained in the Indianapolis area. The following conditions will help address the serious flaws in the Applicants' proposal:

1. Indianapolis should be a "shared asset area," including a sharing of trackage and yards, and direct access to short lines serving Indianapolis;
2. Regardless of the access option for Indianapolis, IPL should continue to have the right to build out to the Belt so as to be served directly by NS at IPL's Stout Plant;
3. In the alternative to condition No. 1, NS should have direct access to local shippers, direct access to shortlines serving Indianapolis and especially direct access to IPL's Stout and Perry K Plants, as should Indiana Southern;
4. Both Perry K and Stout Plants should be deemed "2 to 1" points;
5. If Indianapolis is not a shared asset area, NS should be required to pay CSX either a trackage rights fee set at CSX's costs, or a switching charge set at CSX's or Indiana Rail Road's costs (depending on which carrier delivers the traffic to IPL's plants) but not both, on a direct passthrough basis to IPL;

6. Traffic in Indianapolis handled by NS, especially IPL's unit trains of coal, need not be delivered to, or picked up from, the Hawthorne Yard, but instead may be delivered by NS, or picked up by NS, directly from shippers;
7. The Board should provide oversight of CSX's switching services to ensure that NS receives efficient, non-discriminatory service;
8. The Board and the shippers, including IPL, should have the ability to audit CSX's costs that are the bases for the trackage rights fee and the switching charge that NS must pay, and the Board should review and prescribe a lower, reasonable fee or charge if appropriate, on an expedited basis;
9. The transaction should not be permitted to take effect until all necessary labor implementation agreements and detailed operations plans are in place;
10. Union Pacific and BNSF should be required, if requested by IPL or NS, to participate in a through rate with NS in Kansas City on a nondiscriminatory basis vis-a-vis Chicago and St. Louis, or in the alternative, CSX should be required to give NS access on a nondiscriminatory basis over one of its lines from St. Louis or Chicago to Indianapolis, so that NS can compete effectively with CSX for probable western coal movements to Indianapolis; and
11. The Board should provide indefinite oversight to ensure that routings via NS to Indianapolis are efficient when and if the coal originates in the West.

STB

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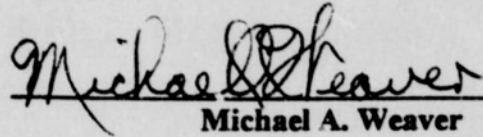
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VERIFICATION

I, Michael A. Weaver, verify 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 October 17, 1997.


Michael A. Weaver

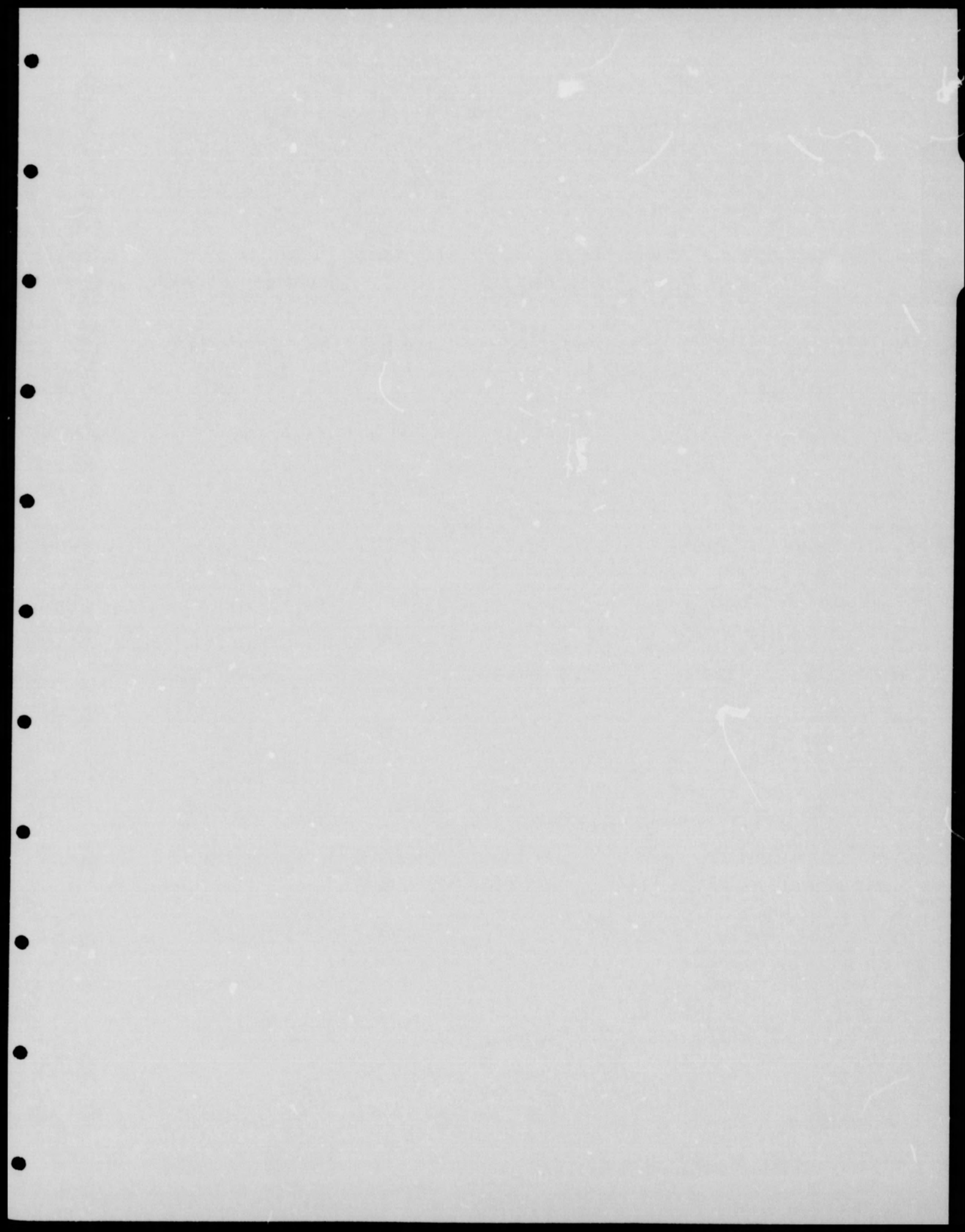


EXHIBIT 2

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 -
CONTRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**VERIFIED STATEMENT OF
JOHN E. PORTER**

My name is John E. Porter. I am President and Owner of Porter & Associates, located in Sunman, Indiana. As President, I have responsibility for daily operation of the business. I am a professional registered land surveyor in Indiana, Ohio and West Virginia. I began my professional career with CSX Transportation from 1969 to 1988. While at CSXT, my duties and responsibilities included railroad design, estimating, surveying, and construction management.

The purpose of this statement is to provide a description of the results of my study of the feasibility of constructing a line of railroad from Indianapolis Power and Light's ("IPL") E.W. Stout Plant (Stout) to the Indianapolis Belt Secondary Route ("the Belt"). The factors I considered in determining the preferred route for such a line were: land suitability, shortness of routes and potential costs.

To the best of my knowledge and belief, the most efficient and economical route for such a line from Stout to the Belt is depicted on the attached map (Exhibit JEP-1). The route

I have selected actually would connect to a short section of Conrail track (the "Conrail Stub"), that in turn connects to the Belt. The build-out identified was determined to be the most feasible because of the cost and, to a lesser extent, the construction time. The terrain is relatively flat, and the only significant obstacle is the required construction of a bridge over the White River, which is reflected in my estimate.

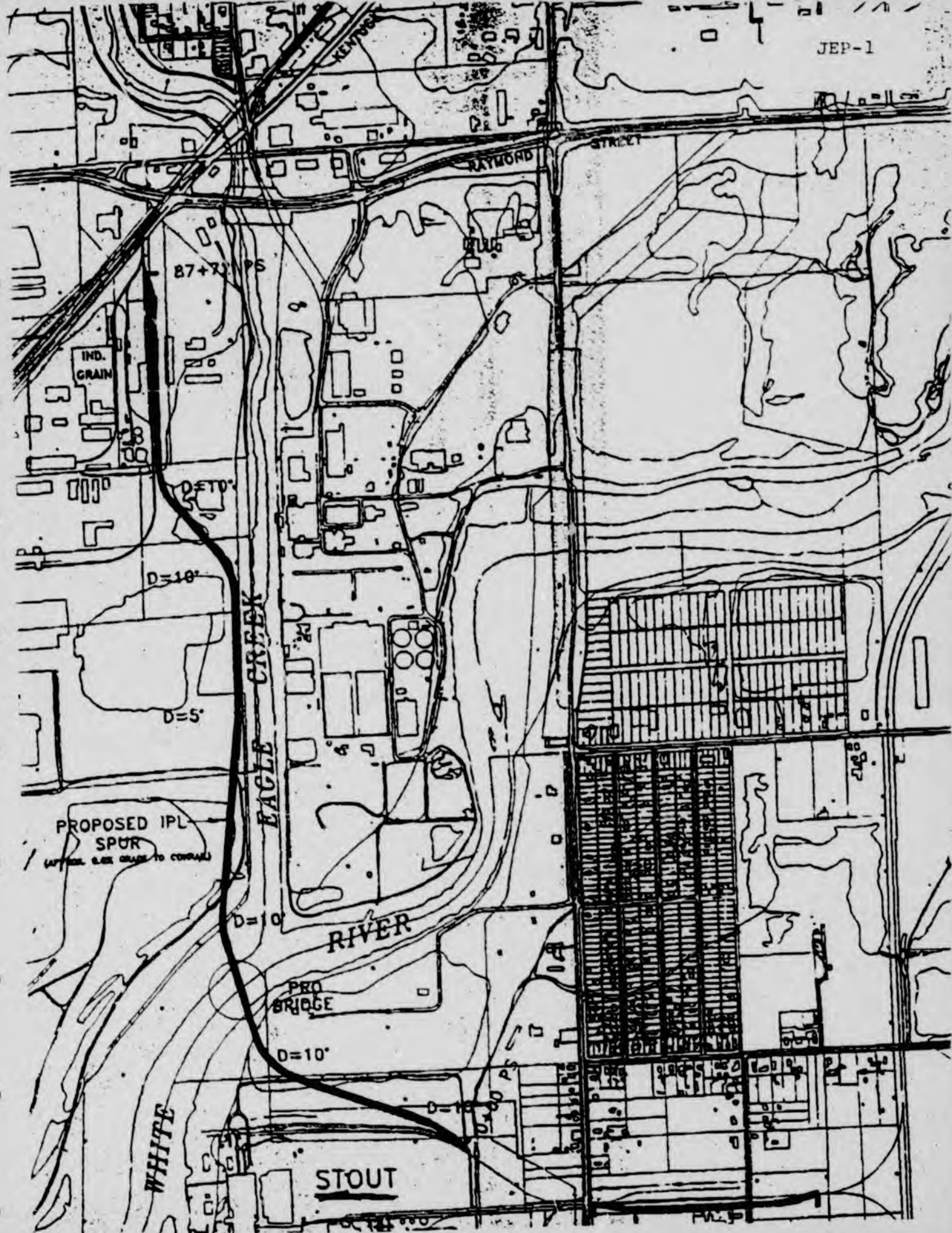
Taking into account the various factors I have listed, the estimated cost of the line from Stout to the Belt would be approximately _____ exclusive of land costs. The cost components that I considered in developing my estimate are set out in the attached table (Exhibit JEP-2).

It is my understanding that a real estate expert with IPL has provided in a separate verified statement the basis for the estimated cost of purchasing the real estate that would be required to construct the build-out described above.

**BUILD-OUT OPTION FOR INDIANAPOLIS POWER & LIGHT'S
E.W. STOUT PLANT TO THE INDIANAPOLIS BELT
SECONDARY ROUTE, CONRAIL STUB**

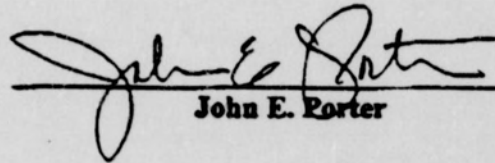
JEP-2

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>COST</u>
<u>GRADING:</u>				
CUT TO BE USED AS FILL		CY		
FILL FROM BORROW		CY		
CLEARING AND GRUBBING		SY		
SUB-BALLAST		TONS		
SEEDING AND MULCHING		SY		
TOTAL GRADING				
<u>STRUCTURES:</u>				
CULVERTS		LS		
BRIDGE SPANS - 4 EA		LS		
TOTAL STRUCTURES				
<u>GRADE CROSSINGS:</u>				
SURFACES - BUILD		TF		
TOTAL GRADE CROSSINGS				
<u>TRACK CONSTRUCTION:</u>				
BUILD TRACK		TF		
BUILD TURNOUTS (NO. 8)		EA		
TOTAL TRACK CONSTRUCTION				
<u>UTILITY RELOCATIONS:</u>				
RELOCATE AND/OR RAISE POWER LINES				
TOTAL UTILITIES				
<u>MISCELLANEOUS:</u>				
ENGINEERING (5%)				
CONTINGENCIES (5%)				
TOTAL MISCELLANEOUS				
SUBTOTAL (exclusive of land):				
<u>RIGHT OF WAY (by IPL):</u>				
PROPERTY TO BE ACQUIRED				
TOTAL ESTIMATE (including land acquisition)				



VERIFICATION

I, John E. Porter, verify 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 October 20, 1997.



John E. Porter

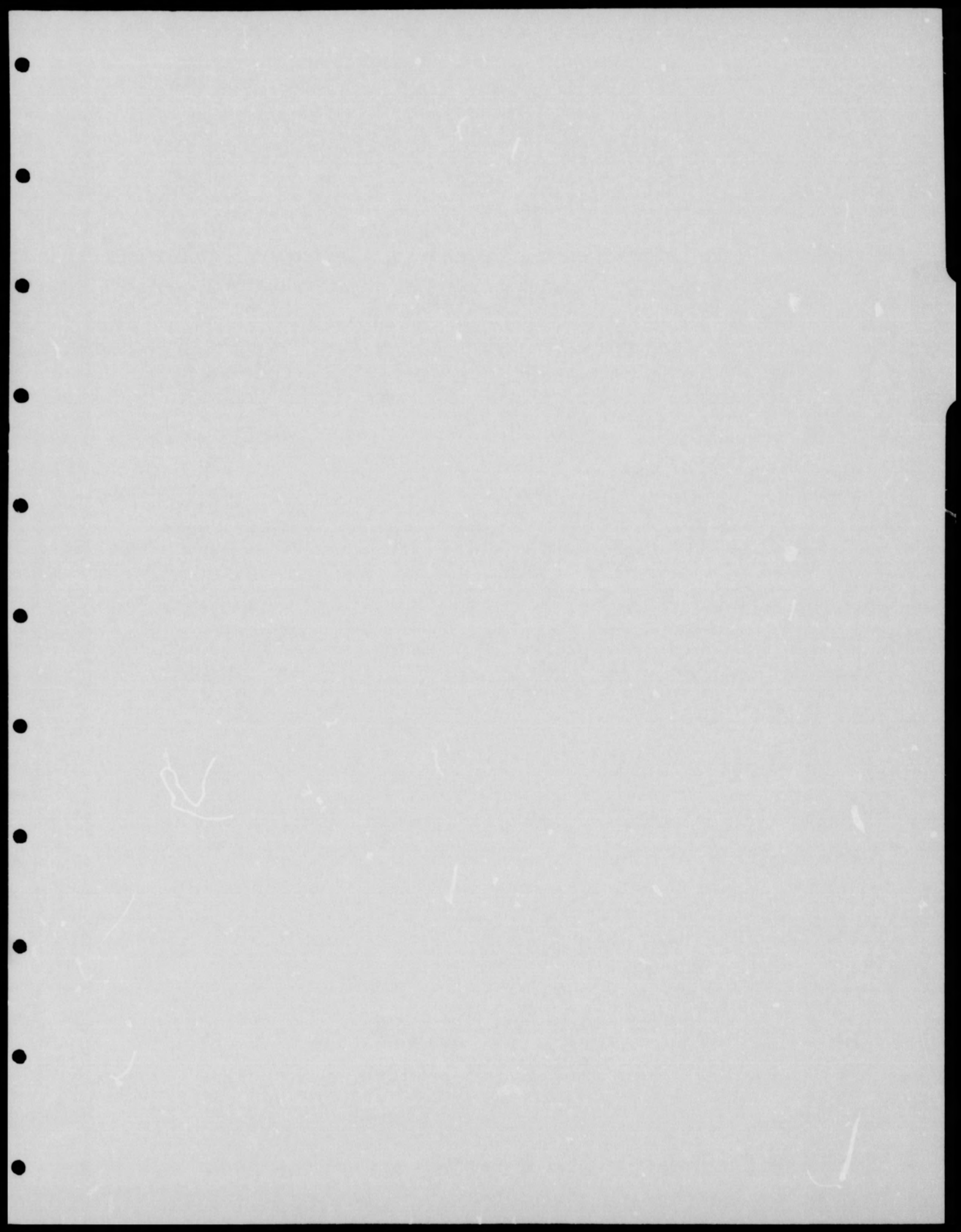


EXHIBIT 3

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

**VERIFIED STATEMENT OF
LARRY A. ANACKER**

My name is Larry A. Anacker. I am Supervisor of the Real Estate Services Division of Indianapolis Power & Light Company ("IPL"), located in Indianapolis, IN. I have responsibility for the purchase and sale of IPL properties. I graduated from Washington High School in 1955 with a high school diploma. I began my professional career with IP&L in 1957. I have been involved with real estate for IPL for over twenty (20) years. I have been supervisor of the division for six (6) years.

The purpose of this statement is to provide an estimate of the cost of acquiring real property for purposes of constructing a build-out from IPL's E.W. Stout Plant in Indianapolis, Indiana to the Indianapolis Belt Secondary Route. My cost estimates are based on the results of the feasibility analysis conducted by John Porter of Porter & Associates and described in his Verified Statement, filed contemporaneously.

I calculate that approximately _____ acres of property would be necessary to construct the build-out. I estimate that the per acre cost for the purchase of the property required for a build-out would range between _____ per acre. My analysis is based on the price of land in other Indianapolis locations. In aggregate, the cost of purchasing the required property would range between _____ The property value of the proposed route is probably near the low end of the range because it is unused industrial property with almost no alternate use other than for right of way. It is too small and narrow for other uses.

Examples of such purchases in and around Indianapolis for the last few years, from which I derived my estimated cost range, are as follows:

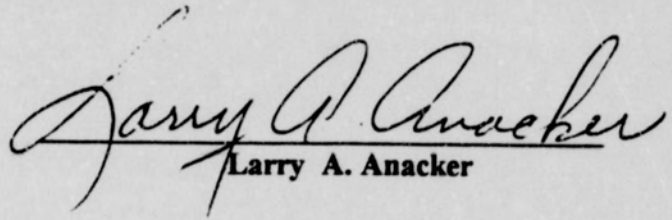
<u>Address</u>	<u>Size of Parcel</u>	<u>Price Per Acre</u>	<u>Other Considerations</u>
			Former industrial site ¹
			Active business ²
			Semi-rural area in Indianapolis

1

2

VERIFICATION

I, Larry A. Anacker, verify 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 October 17, 1997.


Larry A. Anacker

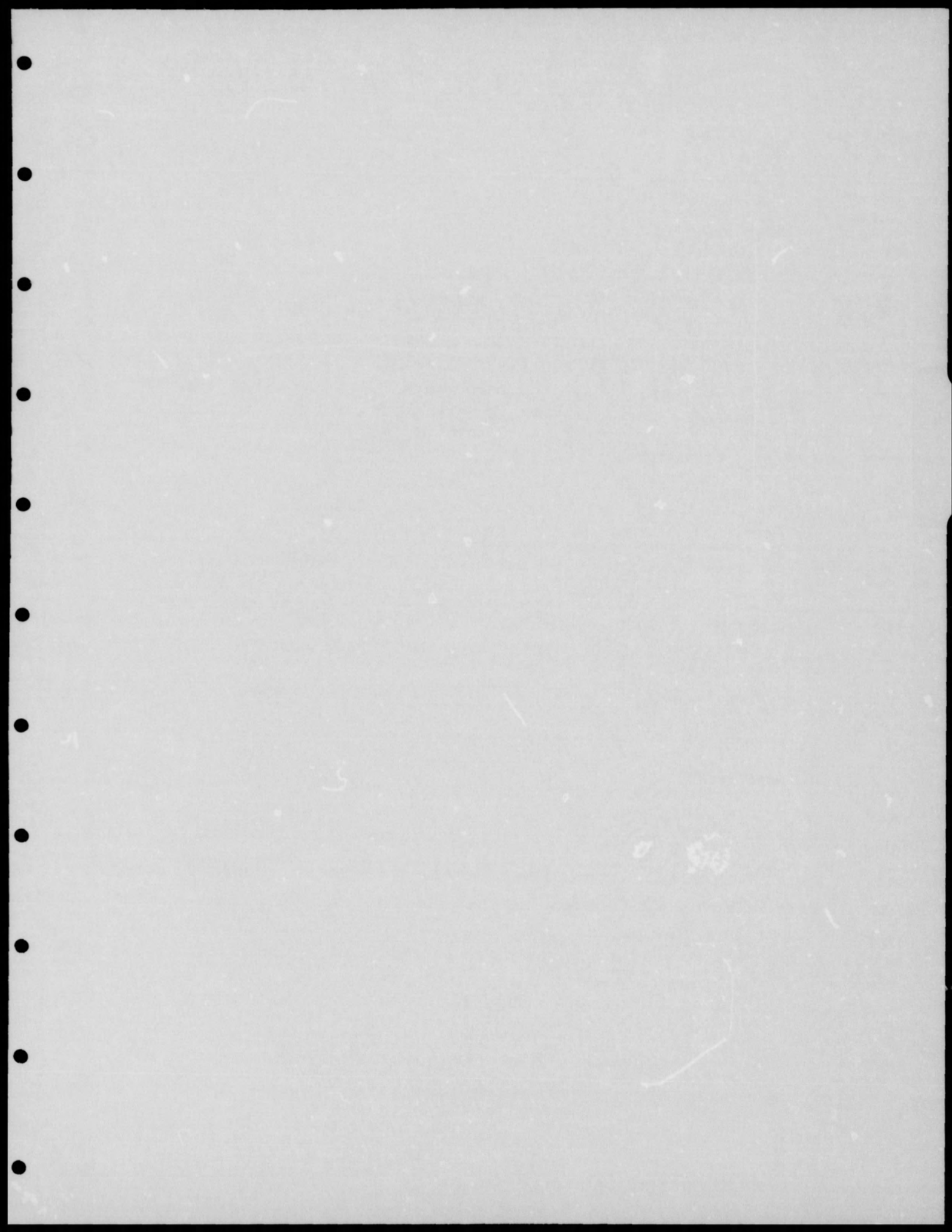


EXHIBIT 4

PUBLIC VERSION

IPL Exhibit 4

**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**

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

On Behalf of
Indianapolis Power & Light Company

Due Date: October 21, 1997

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LIST OF EXHIBITS

IPL EXHIBIT NO. 4 (1)	DESCRIPTION (2)
(TDC-1)	Statement of Qualifications
(TDC-2)	Schematic of Routes to IPL Power Plants

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. My qualifications and experience are attached this Verified Statement as IPL Exhibit 4 (TDC-1).

If the CSX/NS¹ control application of Conrail¹ is approved in its current form, Indianapolis Power & Light Company ("IP&L") will lose the existing competitive rail alternatives to its E. W. Stout ("Stout") and C.C. Perry K ("Perry K") Generating Stations. IP&L is therefore requesting that the Surface Transportation Board ("STB") condition its approval of the acquisition of Conrail by requiring the Conrail lines and facilities serving Indianapolis to become a "Shared Assets Area" where CSX and NS would have equal joint ownership of the Conrail assets. If this "pro-competitive measure" is not incorporated, IP&L's concerns would at the very least require CSX to grant cost-based trackage rights to another carrier to operate over previous Conrail lines in Indianapolis, Indiana that would sufficiently enable 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 does today.

I have been asked by IP&L to review the CSX/NS control application and evaluate its 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. In making this evaluation, I reviewed the CSX/NS control application, the depositions of various CSX and NS witnesses, and the CSX and NS responses to IP&L's Interrogatories and Document Requests.

¹ 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").

I have also analyzed whether there are rail transportation alternatives available to IP&L's two stations, assuming the acquisition is approved as presented by CSX and NS, which would enable IP&L to maintain the competitive situations it enjoys today if the conditions IP&L is seeking in this proceeding are not adopted by the STB. I have included as IPL Exhibit 4 (TDC-2) a schematic of the rail facilities in the vicinity of IP&L's Stout and Perry K Stations which are discussed in this Verified Statement.

My comments are organized below under the following topical headings:

- II. Background
- III. Summary and Findings
- IV. Transportation Alternatives for Stout and Perry K
- V. Applicants Acknowledge Perry K and Stout as "2-to-1" Locations
- VI. Impact on Controlled Conrail Lines on IP&L's Stout and Perry K Stations
- VII. Request for Conditions for Competitive Access at Perry K and Stout

II. BACKGROUND

The Perry K and Stout Stations are two (2) of IP&L's four (4) coal-fired generating plants located in Indiana. The H.T. Pritchard and Petersburg stations are located in Martinsville and Petersburg, IN, respectively, south of Stout and Perry K which are located in Indianapolis. Today, the IP&L plants receive coal from southern Indiana mines, having burned over 6.5 million tons in 1995, more than 6.8 million tons in 1996 and an estimated 7.4 million tons for 1997.

A long term coal supply concern for IP&L is that once Phase II of the Clean Air Act becomes effective, alternatives to the current high-sulfur coal will need to be implemented. Other Clean Air Act requirements or environmental restrictions may oblige IP&L to change coal suppliers even before Phase II becomes effective. Whether through scrubbing the coal moved from IP&L's present sources or shipping low-sulfur coal from the east and west, IP&L's present uncertainty for their coal supply is now augmented by the NS/CSX proposal to acquire the Conrail lines. IP&L cannot make a decision with respect to its coal supply until IP&L determines if it will be able to maintain the railroad competition it has today for its coal movements.

Today, the City of Indianapolis is served by two (2) railroads -- CSX and Conrail (over its own lines as well as the former Indianapolis Belt Secondary)². The Indiana Railroad ("INRD") and the Indiana Southern Railroad ("ISRR") are short lines in the Indianapolis area. CSX owns 89% of the INRD which means the INRD is a component part of CSX and not an independent railroad. The ISRR is an independent short-line that connects only to Conrail, south of the Belt.

² 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 IPL Exhibit 4 (TDC-2).

Indianapolis is considered a "two-railroad town" which will only be served by one Class I railroad, i.e. CSX, if the proposed acquisition is approved as it was filed by CSX and NS. Specifically, and as discussed in greater detail in the remaining parts of this Verified Statement, CSX will assume Conrail's existing operations in the Indianapolis area and NS will be awarded overhead operating trackage rights as well as access to the Hawthorne Yard located east of the City of Indianapolis. This proposed change in operations will adversely affect the existing rail competition between Conrail and CSX that exists today at both the Perry K and Stout Stations as for all Indianapolis Shippers.

III. 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. CSX and NS both have stated that the City of Indianapolis will have the most "2-to-1" shippers^{3/} from this proposed transaction and specifically have designated IP&L as one of 66 impacted shippers in the Indianapolis area.

The following summary and findings are derived from my analyses on behalf of IP&L of the NS/CSX control application to acquire the existing Conrail lines.

- 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 reciprocal switch move on INRD; 3) CSX/INRD; and 4) alternate build-out/build-in scenarios to access Conrail direct.
- For existing and future movements of coal to Perry K, IP&L currently has access to two alternatives: 1) ISRR/Conrail direct; and 2) INRD to Stout and truck to Perry K.
- If the NS/CSX acquisition of Conrail is approved in its current form, CSX will control deliveries to both Stout and Perry K because CSX will gain control of the existing Conrail lines.
- Following the NS/CSX proposed acquisition of Conrail, NS will gain "overhead" trackage rights on the Belt to the Hawthorne Yard. These "overhead" trackage rights will not provide effective competition to CSX at either Perry K or Stout.
- The reasons the proposed CSX/NS plan competitively disadvantages 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 a Class I railroad other than CSX; c) CSX will control the Conrail Belt and connecting rail lines which eliminates build-out or build-in options to a 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.

^{3/} A "2-to-1" shipper is a shipper that has two effective transportation alternatives before the merger but only one alternative after the merger unless a specific condition is identified which maintains the two effective pre-merger alternatives.

- The reason the proposed CSX/NS plan competitively disadvantages movements to IP&L's Perry K plant is that CSX will control direct rail deliveries and also will control truck deliveries from Stout because it is the only rail carrier to Stout. Stated differently, CSX will control both effective transportation options to Perry K.
- In order for IP&L to maintain its pre-merger status quo at Stout and Perry K, Indianapolis should be designated as a "Shared Assets Area" where both CSX and NS would serve and compete for the same Shippers.
- If Indianapolis is not a shared assets area, Stout and Perry K at the very least would require that local trackage rights over the current Conrail lines be granted to NS as a condition of the merger.
- The local trackage rights requested are applicable to: 1) the Conrail lines that access Stout and Perry K; 2) the Conrail lines that connect to ISRR at Mile Post 6; 3) the Conrail lines to be "built-out" to or "built-in" from; and, 4) the Conrail lines that connect to existing NS lines located east and west of the "Belt".
- The trackage rights agreement requested would be an arms-length transaction, designed solely to ensure IP&L of continuance of its pre-merger competitive status quo. As such, compensation for trackage rights should be limited to IP&L's pro-rata volume share of return on investment and maintenance of the involved rail lines.
- Specifically, the trackage rights compensation should equal \$____ per car-mile or \$____ per trailing gross ton-mile at 4Q97 levels and should be adjusted quarterly beginning 1Q98 based on the change in the RCAF-A or RCAF-5.
- Switching charges and fees should be cost-based and audited by shippers once defined.

CSX's Witness Hart stated that the Indianapolis area has 66 of the 83 2-to-1 locations resulting from the transaction and that "these shippers represent less than seven-tenths of one percent of the combined revenues for Conrail and CSX in 1995.⁴ A small number although "...no customer should suffer from the elimination of meaningful competition."

IP&L considers the role of Conrail more as essential than "meaningful competition". The STB must grant these conditions in order for IP&L to maintain its present negotiating leverage through competitive transportation alternatives.

⁴ Railroad Control Application, Volume 2A of 8, page 147.

IV. TRANSPORTATION ALTERNATIVES FOR STOUT AND PERRY K

A. TRANSPORTATION ALTERNATIVES TO STOUT

IP&L's Stout plant has received approximately 1.3 million tons of coal annually for the past three years from Davies, Green, Knox and Sullivan counties in southern Indiana. This coal could be originated by the INRD, ISRR, SOO and/or truck. Today, IP&L has a number of viable competitive alternatives for the delivery of coal to its Stout plant: 1) INRD direct; 2) ISRR/CR and delivery by INRD pursuant to a Conrail absorbed switch charge; 3) CSX origination and an INRD delivery; and, 4) a build-out to Conrail with connection to rail carrier(s) that access eastern and western compliance coals. The first two alternatives are used by IP&L today to move coals mined in southern Indiana to the Stout Plant. The next two alternatives are also important considerations for IP&L as it looks at other origins for low-sulfur coal such as the Powder River Basin ("PRB") in Wyoming or compliance coals located in the east.

1. INRD Direct

Stout is served directly by the INRD from coal mines located to the south. The INRD line also continues north from Stout where it connects with the "Belt" which is owned by Conrail.

2. ISRR/CR

Stout can also receive coal from the ISRR through an interchange with Conrail at Mile Post 6 ("MP6"). Conrail would then move the coal over the Conrail owned "Belt" to the interchange with INRD utilizing the existing reciprocal switch agreement, IP&L trains would then move south on the INRD to the plant. Conrail absorbs \$__ of the current \$__ switch charge.

3. CSX/INRD

As Phase II of the Clean Air Act approaches and other environmental regulatory requirements, IP&L will have to decide if and where it purchases compliance coals i.e., from the eastern coal fields or from the western coal fields. The most viable access to the eastern coal fields would be to mines located on CSX because CSX owns the INRD. Through this financial arrangement CSX can effectively preclude NS as an effective transporter of eastern coals.

4. Conrail-"Belt"/Build-Out

IP&L also relies on a "build-out" or "build-in" as a viable option and competition to the alternatives described above. The build-out/build-in option can serve as a competitive check on existing coal movements originating in southern Indiana and as a competitive check of the acquisition of compliance coals from the west.

Line construction would allow Conrail direct access to the Stout plant bypassing CSX's INRD line. The "build-out" option would access the Stout plant from Conrail's "Belt" via the former Petersburg Secondary Track as shown in IPL Exhibit 4 (TDC-2) (the "Conrail Stub"). Details regarding the track construction can be found in the accompanying Verified Statement of John E. Porter.

B. TRANSPORTATION ALTERNATIVES TO PERRY K

The Perry K plant expects to burn approximately 200,000 tons in 1997 which is slightly less than the 250,000 tons burned annually in 1995 and 1996. The coal burned at Perry K originates in Green and Sullivan Counties in Indiana on either the INRD, ISSR or truck. Today, IP&L's Perry K plant can receive its coal supply from either: 1) ISRR/CR; or 2) truck from Stout.

1. ISRR/CR

Perry K is able to receive coal shipments via a Conrail joint line move with the ISRR. Similar to the Stout move, the ISRR brings the southern Indiana coal north where it is interchanged with Conrail at Mile Post 6. Conrail then moves the coal directly to the Perry K plant.

2. Truck from Stout

Perry K can also receive coal trucked from Stout, therefore having the same alternatives available to the Stout plant. The most obvious is the INRD(CSX) direct move to the plant along with the "build-out" options to Conrail.

**V. APPLICANTS ACKNOWLEDGE PERRY K AND
STOUT AS "2-TO-1" LOCATIONS**

In CSX's Application, Witness Hart's testimony addresses the "2-to-1" locations created by the CSX control of the Conrail lines. He admits that aside from their claimed benefits, allocating the Conrail lines between CSX and NS will create "issues for some customers and for other railroads."^{5/} Witness Hart states:

"This transaction will result in a few 2-to-1 customers. Both CSX and NS are committed to the proposition that no customer should suffer from the elimination of meaningful competition. We will work with those few 2-to-1 customers to preserve their options."^{6/}

Witness Hart's definition of "2-to-1" locations and the criteria used to identify the specific shippers can be found in his statement^{7/} and Under the various scenarios he provides, Witness Hart claims that only 83 active shippers were identified and categorized as "2-to-1", and admits that 66 of the 83 are located on the Conrail lines in Indianapolis.^{8/}

Although CSX's Witness Sharp acknowledges in his deposition (page 16) that the Perry K and Stout plants are designated as "2-to-1" destinations, Witness Hart does not believe the Stout plant qualifies under his definition. On page 30 of his deposition, Hart was presented with the following scenario:

^{5/} Volume 2A, page 143.

^{6/} Volume 2A, page 143.

^{7/} Volume 2A, page 146.

^{8/} Volume 2A, page 147.

"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, where one were to acquire the other, is it your understanding that that would be a two-to-one situation as defined on your Exhibit No. 2?"

Witness Hart's response was "Yes".

However, but when the same scenario was explained with Conrail being the carrier with access via a switching charge to the plant (Stout) that is served directly by the INRD (which is owned by CSX), Witness Hart did not believe that CSX control of the Conrail line would be considered a "2-to-1". In other words, the CR/INRD(CSX) and INRD(CSX) moves before the acquisition are 2 alternatives, and so will CSX/INRD(CSX) and INRD(CSX) moves after the acquisition be 2 alternatives because as Witness Hart explains "the Indiana Railroad is an independently run operation. So I don't think it's the same case" (Hart deposition, page 31).

Although Witness Hart is sure that these are the same scenarios because the INRD is an independent railroad, he admits that CSX owns the Indiana Railroad whose rail line directly serves IP&L's Stout plant (page 28).^{11/} On page 14 of CSX's Witness Sharp's deposition, Witness Sharp acknowledges that CSX owns 89% of the INRD and that he is also on the INRD's Board of Directors.

^{11/} Volume 1, page 271 of the Application shows that the Indiana Railroad is a subsidiary of CSX and that CSX has 89% controlling interest.

**VI. IMPACT OF CONTROLLED CONRAIL LINES
ON IP&L'S STOUT AND PERRY K STATIONS**

**A. CURRENT AND PROJECTED
OPERATIONS FOR CONRAIL
LINES IN INDIANAPOLIS**

Before the control of the Conrail lines was pursued by CSX and NS, Indianapolis was considered a major traffic origination area for Conrail.^{12/} From Indianapolis, the Conrail lines could reach the major cities and gateways of Detroit, Chicago, St. Louis, Cleveland and Columbus and shared competition from another Class I carrier, the CSX. The NS could even move to the same destinations and was also the only one of the three carriers that had direct access west to Kansas City. Yet, the closest NS was able to get to Indianapolis was their Muncie, IN - Lafayette, IN line which runs east-west (moving parallel to Indianapolis 54 miles northeast and 85 miles northwest, respectively). Although one carrier may be less circuitous than another depending on the gateway, only Conrail and CSX can reach the various industries in Indianapolis.

Once the CSX/NS Application was filed, IP&L's greatest concerns were not necessarily whether the eastern and western gateways were more accessible, but how the shippers could get back the direct competitive access they had after the only two Indianapolis main carriers became one i.e., once CSX received control of all Conrail's Indianapolis lines. NS' Witness McClellan admits that "Indianapolis is by far the largest "2-to-1" point created by this transaction."^{13/}

IP&L's loss of Conrail as a competitor in Indianapolis will have a significant impact on the alternative competitive routes for the Stout and Perry K plants which I described previously. The Applicants feel they have addressed the competitive access issues in Indianapolis by granting

^{12/} Volume 3A, page 209.

^{13/} Volume 1, page 548.

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.¹⁴ With "overhead" trackage rights, NS will not be able to directly serve any industries including the IP&L plants, any short-lines, "build-outs" or new facilities as they could if they had been given "local" trackage rights, and would be required to deliver and pick up all loaded and empty cars to and from CSX's Hawthorne Yard. CSX has designated Hawthorne Yard for all the CSX and NS traffic and will provide switching on a "contractual" basis.¹⁵ These operations will result in less efficient and more expensive rail operations for IP&L's Stout and Perry K plants and each transportation alternative will be impacted physically, operationally and competitively.

B. STOUT

First, the INRD, which CSX owns 89%, will still serve Stout directly. As for the "ISRR/CR" 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 CR/INRD switch and the CR-build out. Now that CSX has control of the Conrail lines in addition to their control of the INRD, Stout is looking at CSX as their only alternative, especially for the delivery of the southern Indiana coal.

¹⁴ Volume 3A, page 211.

¹⁵ Volume 3A, page 211.

Even if IP&L chooses another source from the east or west outside of Indiana from either of the gateways mentioned earlier, NS would not be able to access Stout directly. Again, NS would have to leave the IP&L cars with its other traffic at the Hawthorne Yard for switching with CSX. The proposed operations are considerably more expensive than the existing operations because of the additional miles involved (NS would move directly past the switch to Stout in order to access CSX's Hawthorne yard); and, the additional handling and congestion involved (both NS and CSX will have to handle the traffic). Additionally, IP&L is concerned that if its coal traffic has to be placed in the Hawthorne Yard, it will not take priority over CSX traffic in the Hawthorne Yard which will also increase cycle times and associated costs of handling the traffic.

C. PERRY K

The scenarios for Perry K are similar to those described for the Stout moves. One existing Perry K move involves Conrail switching with the ISRR for direct service to the plant. CSX will now be replacing Conrail. The competitive alternative to the existing Conrail move is trucking the coal from Stout as described before. As stated above, the INRD and the moves to Stout were competitive alternatives before the INRD was affiliated with the competing carrier. Trucking coal from Stout is not a competitive alternative if CSX is in control of each and every scenario.

**VII. REQUEST FOR CONDITIONS FOR COMPETITIVE
ACCESS AT PERRY K AND STOUT**

The unconditional approval of the CSX control of the Conrail lines in Indianapolis would result in the loss of IP&L's existing competitive rail alternatives to its Stout and Perry K Generating Stations. Removal of IP&L's negotiating leverage and the competitive constraints on the rail rates will result in rate increases on IP&L's coal movements from origin to destination. The only feasible and equitable conditions under which IP&L will retain its existing competitive options would be to: 1) designate Indianapolis as a "Shared Assets Area"; 2) impose local trackage rights to a non-CSX carrier over the Conrail lines to Stout and Perry K; and, 3) set compensation for the local trackage rights at the equivalent of what IP&L is paying today.

**A. INDIANAPOLIS AS A
"SHARED ASSETS AREA"**

Under the present Application, there will be three Shared Assets Areas: North Jersey, South Jersey/Philadelphia, and Detroit. As described by the Applicants in their Application, this is a "pro-competitive measure" which permits both CSX and NS to serve Shipper facilities within these "Shared Asset Areas".^{16/}

It has already been acknowledged by CSX and NS witnesses that 80% of the "2-to-1" scenarios resulting from the proposed transaction would be Indianapolis Shippers left to be served by only CSX. The Applicants are proud that the whole transaction involving the entire systems of the three carriers would only result in 83 "2-to-1" situations, yet 66 of these industries and Shippers are in one area, Indianapolis. It seems that designating as a "Shared Assets Area" the Conrail lines and facilities serving the Indianapolis industries, would be a

^{16/} Volume 1, p. 45.

simple and efficient resolution to the present day and future concerns including potentially decreasing greatly the amount of oversight required of the STB.

If the CSX and NS were to enter into a Shared Assets Area Operating Agreement with Conrail, the Carriers could share the Conrail lines and facilities serving Indianapolis such as Avon and Hawthorne Yards and would each have competitive access to all short lines, build-outs and new facilities. Besides the obvious benefit of competitive alternatives for the Shippers, the Shippers and carriers will also be guaranteed that all traffic will be treated equally because the same Conrail Board of Directors responsible for the oversight of each of the three Shared Assets Areas can also operate and maintain the Indianapolis area.

The Applicants in the New Jersey and Detroit areas will be granted the right to operate their own trains, crews and equipment on the lines in the designated areas and will be able to set their own rates, charges and operations without Conrail or the other carriers' involvement. Conrail will be responsible for the track and facility maintenance and more importantly, control of dispatching and train movements in the areas.

If Indianapolis is designated as a Shared Asset Area, IP&L and Indianapolis Shippers as a whole will be guaranteed competition between two carriers that will share equal access and operations and would not be subjected to unnecessary additional fees and charges that would make it difficult for another carrier to compete enabling them the freedom to set their own rates and charges. The carriers would each have better access to the Indianapolis Shippers than they had prior to the Application and would have no less access than they would receive if the Application is approved. Indianapolis as a Shared Assets Area could also potentially decrease the amount of oversight and involvement that could be required of the STB.

B. TRACKAGE RIGHTS

1. "Local" Trackage Rights

As described earlier in this Verified Statement, NS has been granted "overhead" trackage rights to Indianapolis from Lafayette and Muncie and over the "Belt" to the Hawthorne Yard with CSX serving the delivering railroad. For the same reasons stated earlier, IP&L routes must have the same efficient movements and charges to Stout and Perry K that applied before the proposed railroad control in order to maintain its existing competitive position with CSX/INRD. Under the proposed transaction, NS will not be able to serve shippers on the "Belt" the way Conrail served them but rather will have to deliver all traffic to the Hawthorne Yard for subsequent delivery by CSX bypassing all direct service, all connections to short lines or "build-outs", and service to all new facilities.

2. Stout Alternatives

If NS were granted "local" trackage rights over the Conrail line and "Belt" from Conrail's connection with the ISRR, competition with CSX/INRD would exist and Stout would continue to have two rail alternatives. If Stout had access to the NS, IP&L would also have the ability to employ "build-out" scenarios, avoiding the INRD line and related switching. NS trackage rights would also address IP&L's concerns related to the potential need for low-sulfur coal from the east or west. For example, an NS joint move for western coal with either UP or BN out of Kansas City could effectively compete with CSX joint moves out of Chicago and St. Louis. For eastern coal, CSX and NS could compete directly to move that product in competition with themselves and western coals.

3. Perry K

The trackage rights solutions for Perry K are similar to those at IP&L's Stout plant. If NS had trackage rights from the ISRR/CR connection, NS could deliver the coal directly to the Perry K plant. Since the competitive alternative to this move is trucking from Stout, the trackage rights requests for Stout described above would also apply.

C. COMPENSATION

1. Trackage Rights

Since the "local" trackage rights condition is designed to simply maintain IP&L's competitive status quo, it should be designed as an arm's length agreement. The proposed trackage rights fee is 29¢ per car mile, which equates to mills per trailing gross ton-mile. At this level of compensation the landlord is making a considerable profit which the tenant is paying and passing-on to the shippers.

Equitable compensation to CSX should be limited to a pro-rata share of investment in the trackage rights line, IP&L's pro-rata share of annual maintenance expenses and a pro-rata return on investment according to the relative volume of IP&L traffic over the line. Compensation at a level any higher than a pro-rata share of the costs incurred would reward CSX for eliminating IP&L's rail competitive alternative to its Stout and Perry K stations.

Specifically, I am proposing that the STB set trackage rights at ¢ per car-mile, which equates to mills per trailing gross ton-mile for the movement by NS over CSX trackage needed to access Stout and Perry K. My development of the proposed trackage rights compensation is provided in the following table.

<u>Item</u> (1)	<u>Amount Per Car-Mile</u> (2)	<u>Amount Per Trailing Gross Ton-Mile</u> (3)
1. Combined CSX/Conrail Portion 1995 cost per gross ton-mile for roadway operation, depreciation and lease expenses		
2. Index from 1995 to 4Q97		
3. Combined CSX/Conrail Portion 4Q97 cost per gross ton-mile for roadway operating, depreciation and lease expenses (L1xL2)		
4. Combined CSX/Conrail Portion 1995 return on road property cost per gross ton-mile ^{2/}		
5. Compensation per gross ton-mile -- 4Q97 (L3 + L4)		
^{1/} 1995 CSX/Conrail Portion URCS per car-mile -- ((D1L157C07 x D8L607C01) + (D1L234C07 x D8L608C01)) ÷ (A1L114C01).		
^{2/} 1995 CSX/Conrail Portion URCS per gross ton-mile -- (D1L157C10 x D8L607C01) + (D1L234C10) x (D8L608C01).		
^{3/} 1995 CSX/Conrail Portion URCS per car-mile -- ((D1L251C07 x D8L609C01) + ((D1L248C07 + D1L250C07) x D8L609C01)) ÷ (A1L11401).		
^{4/} 1995 CSX/Conrail Portion URCS per gross ton-mile -- (D1L251C10) x D8L609C01 - ((D1L248C10) + D1L250C10) x D8L609C01).		

In addition, the ___c per car-mile or the \$_____ per gross ton-mile trackage rights fee should be adjusted quarterly beginning 1Q98 based on the change in the STB's Rail Cost Adjustment Factor including consideration of productivity, i.e., the RCAF-A or the RCAF-5.

2. Switching Charges

If the Application is granted, IP&L would have to pay both the new charges associated with the switching at Hawthorne Yard and the new trackage rights fees, and would continue to pay the reciprocal switch charge for coal moving to Stout.

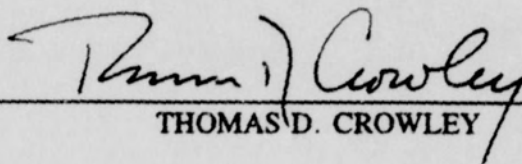
The Applicants' proposal states that the switch charges will be cost-based but will not be able to be audited by the Shippers unless the STB requires it. Since all charges will be added

to NS rates and passed on to IP&L, IP&L can only support cost-based switching charges and costs that can be defined and audited to ensure NS can compete for IP&L's traffic and that the compensation, like the trackage rights, is at the level of costs incurred so that CSX is not rewarded for eliminating the competitive alternative to IP&L's Stout and Perry K stations.

VERIFICATION

I, Thomas D. Crowley, verify 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 October 18, 1997


THOMAS D. CROWLEY

STATEMENT OF QUALIFICATIONS

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 a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United

STATEMENT OF QUALIFICATIONS

States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities to various destinations in all portions of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.^{1/}

^{1/} Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

STATEMENT OF QUALIFICATIONS

I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations. I have been involved in the URCS process, either directly or indirectly, since the first interim report of the contractors was released.

I have frequently presented both oral and written testimony before the Surface Transportation Board (and its predecessor, the Interstate Commerce Commission), Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity, and cost-based ancillary charges. In particular, I have advised shippers on the theory and application of different types of rate adjustment mechanisms

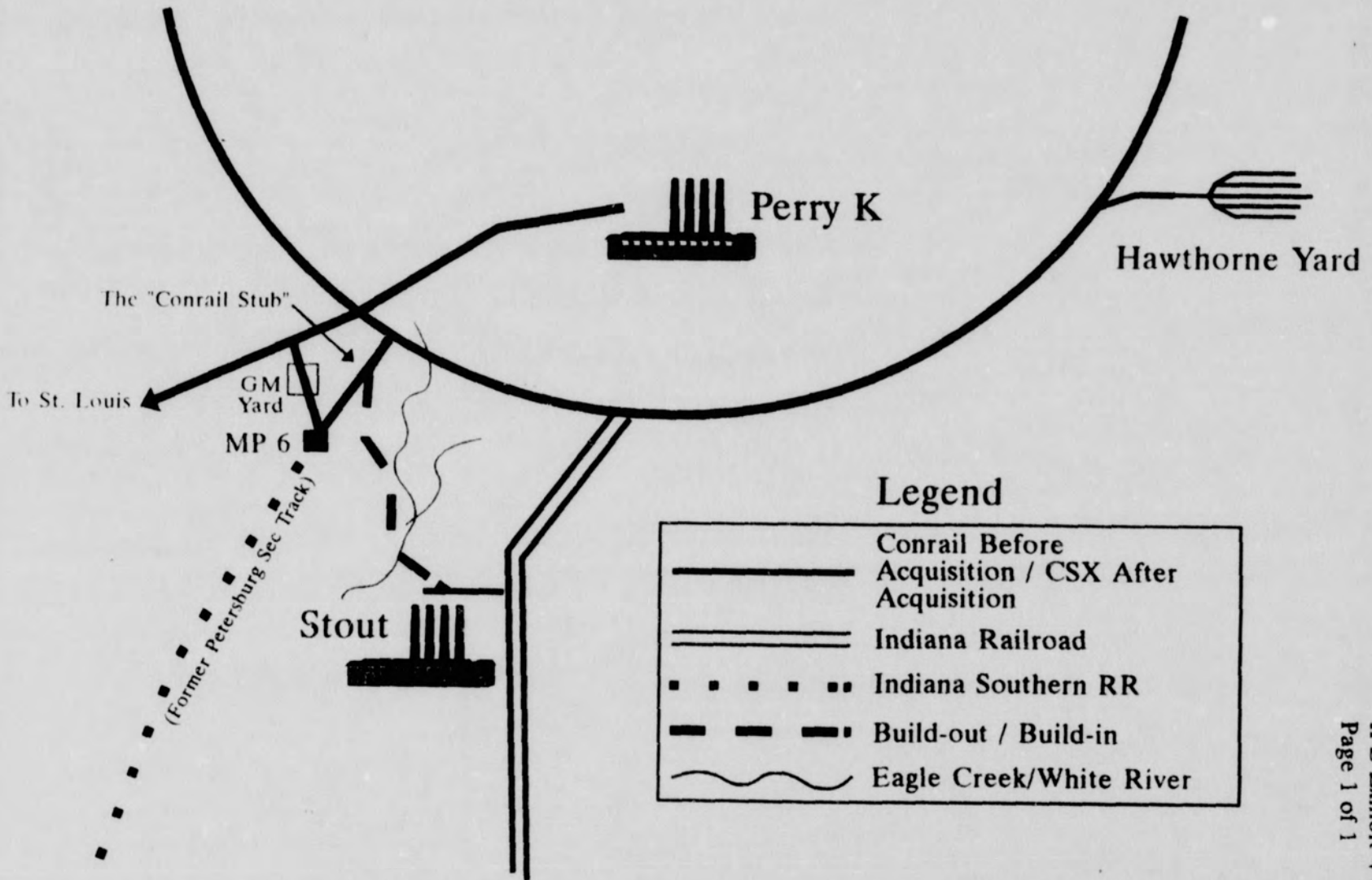
STATEMENT OF QUALIFICATIONS

for inclusion in transportation contracts. As a result of assisting shippers in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move traffic over the major rail routes in the United States as well as their cost and pricing practices.

In the two recent Western rail mergers that resulted in the creation of BNSF and UP/SP, I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

Schematic of Routes to IPL Power Plants



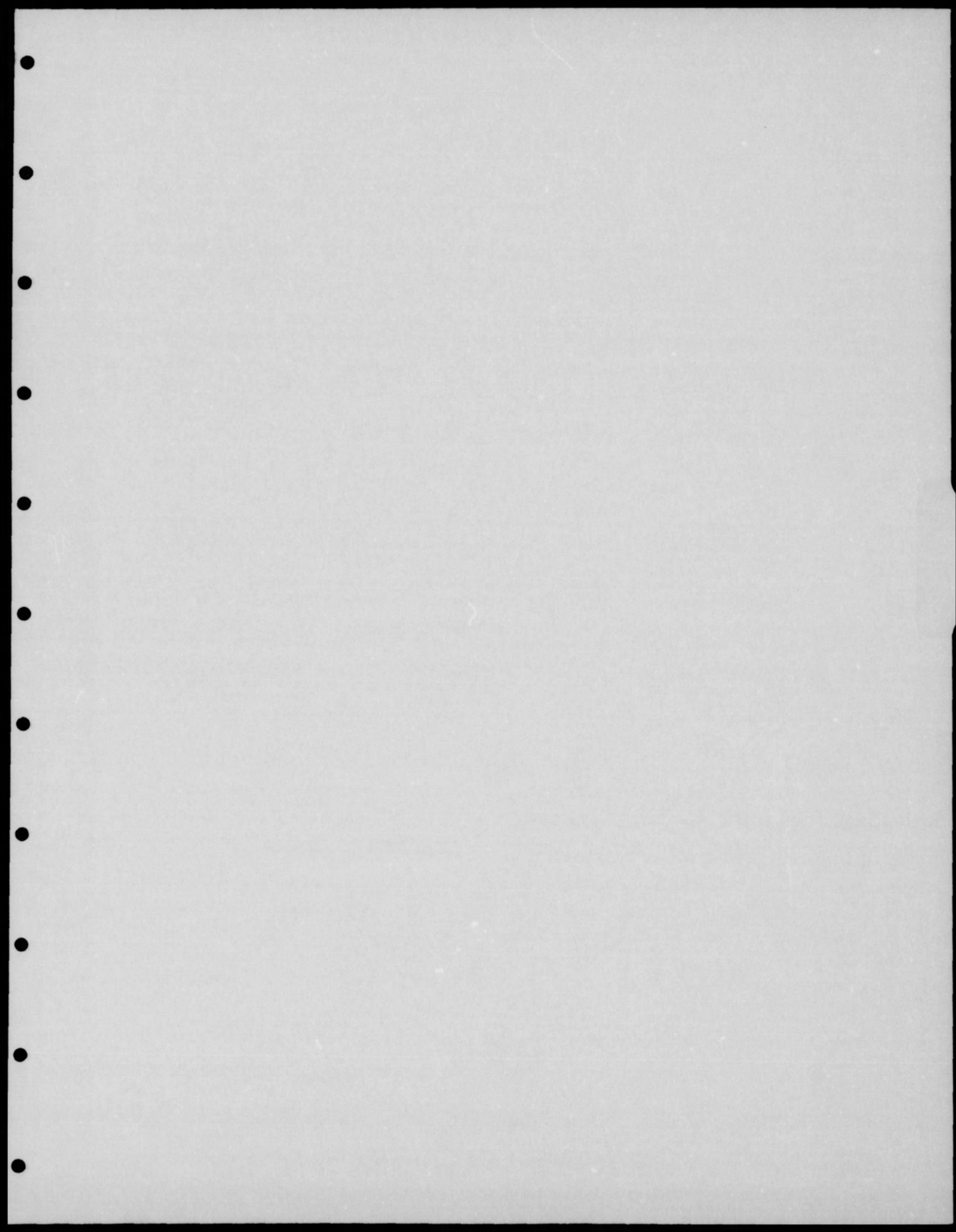


EXHIBIT 5

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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

Washington, D.C.
Monday, August 25, 1997

Deposition of JOHN WILLIAM FOX, 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 Zuckert, Scoutt & Rasenberger, L.L.P.,
888 Seventeenth Street, N.W., Washington, D.C.,
20006-3959, at 10:05 a.m., Monday, August 25,
1997, and the proceedings being taken down by
Stenotype by JAN A. WILLIAMS, RPR, and
transcribed under her direction.

1 pickup/delivery. But there will be a switching
2 charge you believe, and that's in addition to the
3 trackage rights fee you just referred to?

4 A. Yes.

5 Q. How much will the switching charge be?

6 A. Cost based, whatever.

7 Q. When you say cost based, to me cost
8 based could be cost, could be half cost, could be
9 ten times cost. When you say cost based, is that
10 intended to mean cost, period?

11 A. That's my understanding.

12 Q. By whose definition?

13 A. Well, it's a fairly well-established
14 concept, you come up with a number that you think
15 is about right and then six months later you do a
16 detailed study of the operation; and that's with
17 both parties represented, in this case it would
18 be CSX and NS. And we would agree that the
19 charge was appropriately based.

20 Q. Okay. So it's your understanding that
21 the charge CSX will pass through will be equal to
22 cost on a six-month determination?

23 A. Well, that's typically the way it
24 works. I don't know about this one. But
25 typically there's a period of time to establish

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1 would be.

2 Q. I didn't find it. I'm not trying to
3 trick you. I didn't find anywhere that NS was
4 assuming it was going to do business with
5 Indianapolis Power & Light Company. I'm
6 perfectly happy to be corrected on that. I just
7 wondered if you have any way of checking on that?

8 A. I don't. We got some big numbers on HC
9 00184 from John Williams' study that does not
10 indicate it. But I understand that there are
11 some smaller pieces of business that were lumped
12 together, wherein it may be included.

13 Q. Is it your belief that NS is going to
14 be able to compete on an equal playing field, if
15 you will, in Indianapolis with CSX or is CSX's
16 ownership and the fact that all the traffic goes
17 to Hawthorne Yard and the fact that CSX does the
18 switching going to give CSX an advantage over NS?

19 A. It seems to me the supply change
20 connections that are in place will be preserved
21 through phase -- or into Phase II. And at that
22 time I think NS will have an equal opportunity.
23 I don't see that we're going to be able to get
24 into that market on day one. But we will have
25 equal opportunities probably a year after

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1 closing.

2 Q. Well, just imagine this movement I
3 hypothesized earlier which you testified, you
4 know, was possible under Phase II, PRB coal into
5 one of those three gateways, I mentioned two and
6 you mentioned a third, Kansas City, and then NS
7 to the plant. If there were a build-in/build-out
8 to Stout, NS could go straight into the plant,
9 correct? I think you testified to that?

10 A. I guess somebody has to figure that
11 out.

12 Q. I'm saying, if there were and you had
13 those rights, you could go straight into the
14 plant?

15 A. If the overhead agreement allowed it
16 and there were a build-out, yes, we could.

17 Q. Now, are you aware that the Hawthorne
18 Yard is some number of miles to the east of the
19 Stout plant?

20 A. Yes.

21 Q. Okay. And so under this hypothetical
22 PRB movement of coal would have to go further
23 east than the Stout plant, be dropped off at the
24 Hawthorne Yard, and then switched back via CSX,
25 correct?

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1 A. Yes.

2 Q. And, all other things being equal,
3 wouldn't the build-in/build-out situation be more
4 efficient?

5 A. I doubt it.

6 Q. Why is that?

7 A. Well, mileage from PRB is such that
8 another couple miles on the destination end won't
9 make any difference.

10 Q. But you don't think CSX can have a
11 switching locomotive sitting there waiting for
12 the unit train the moment it gets to the
13 Hawthorne Yard and go back again, do you?

14 A. I think it's possible. The more likely
15 scenario would be that the road engines with the
16 delivery would stay on until final delivery.

17 Q. Okay. The NS locomotives would still
18 be used to make the delivery?

19 A. Yes.

20 Q. And then we're going to assume I guess
21 for purposes of your earlier answer that CSX is
22 going to have a crew standing by to do the
23 switching?

24 A. I would hope. I would think they would
25 be, yes.

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1 Q. And the moment the NS locomotives
2 arrive, the NS crew jumps out and the CSX crew
3 jumps in; is that what we're assuming?

4 A. Yes.

5 Q. And then the CSX crew drives the train
6 back to the Stout plant?

7 A. Yes.

8 Q. And all this is going to happen just as
9 fast as if NS took it straight into the plant?

10 A. More than likely, because of operating
11 convenience, CSX would get on at the most
12 convenient location to take delivery to the
13 plant. It may not have to go all the way to
14 Hawthorne. I mean operational processes will
15 get -- will be determined on the most efficient
16 basis over time.

17 Q. Okay. So a crew of CSX could get on
18 this train west of the Stout plant and take it
19 under this hypothetical build-out?

20 A. As long as we're being hypothetical,
21 yeah, they could hypothetically get on it there.

22 Q. Whose yard is it to the west of
23 Indianapolis by the way, do you know, that
24 Conrail uses today for traffic?

25 A. I don't know that.

1 Q. NS won't have access to that yard, will
2 they, do you know?

3 A. I don't know.

4 Q. I didn't find any reference anywhere,
5 I'm not trying to trick you, that NS would. I
6 understand that everything would have to go into
7 the Hawthorne Yard as you earlier said?

8 A. Yes.

9 Q. But is that yard to the west a possible
10 place where the kind of operational convenience
11 that you just described could occur?

12 A. These type arrangements typically take
13 place on a main line, they don't necessarily have
14 to go through a yard.

15 Q. Where would I find in NS's assumed
16 revenues postacquisition traffic from Ohio Valley
17 Coal Company into Eastlake and Ashtabula, would
18 that be in your testimony, in the studies to back
19 it up, in Mr. Williams' study, or no place
20 because it's neither a benefit nor a diversion?

21 A. It's neither a benefit nor a
22 diversion. It's part of the big number of what
23 we bought.

24 Q. Speaking of that, did you ever hear the
25 expression that CSX bought Indianapolis?

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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

Washington, D.C.

Tuesday, September 30, 1997

Deposition of DAVID R. GOODE, 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 Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:00 a.m., Tuesday, September 30, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

1 always done in the past, CSX and Norfolk Southern
2 would work together in the appropriate instances
3 to provide service to the shippers.

4 Q. Do you believe, besides merchandise
5 traffic for which I gather you'll have some kind
6 of a base with the General Motors stamping plant
7 in Indianapolis, that Norfolk Southern really
8 will be a significant presence for traffic in
9 Indianapolis, especially for coal?

10 A. Well, I guess time will tell on that.
11 We do have the GM base. And certainly we will
12 seek to develop a presence at Indianapolis.

13 Q. Are you by the way aware of the
14 ownership circumstances of the Indiana Railroad?

15 A. No.

16 Q. Would it refresh your recollection if I
17 told you that it was a subsidiary, wholly-owned
18 subsidiary of a subsidiary that CSX owns 89
19 percent of?

20 A. I know that there is some chain of
21 ownership there, but I've forgotten the details
22 of it.

23 Q. Well, under those circumstances does NS
24 view CSX and Indiana Railroad as two independent
25 competitors or as essentially one competitor?

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1 A. I really haven't thought about that one
2 way or the other.

3 Q. You're a pretty sophisticated fellow.
4 And I just wonder, in thinking about it for a
5 moment, you really think Indiana Railroad and CSX
6 are going to be competing head-to-head against
7 you or whether essentially you're facing one
8 competitor?

9 A. You've suggested a pretty strong chain
10 of ownership on CSX. I'm not really familiar
11 with how the Indiana Railroad operates, though.

12 Q. You mentioned a switching charge being
13 set at cost. And again, not to hide any balls
14 from you, I asked Mr. McClellan about that. And
15 it was his opinion that it would be based on
16 CSX's internal costs. And I want to just be
17 frank with you and express a concern the shippers
18 have, that apparently your folks believe that NS
19 will have the right to audit those costs, but the
20 shippers will not.

21 And what I'm trying to figure out,
22 since everybody has a different definition of
23 cost, is how the shippers or the STB can be
24 satisfied that that switching charge you have to
25 pay truly is at the lowest level consistent with

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1 an accurate definition of CSX's costs?

2 A. Well, I guess we'll have every
3 incentive to make sure that charge is as low as
4 possible so that Norfolk Southern can get as much
5 traffic as possible. So we'll certainly have
6 the -- it would seem to me that we would have the
7 same incentive that the shippers would in
8 auditing that cost.

9 Q. But that assumes, does it not, that CSX
10 won't have most or all of the business in
11 Indianapolis and that NS, in fact, will capture a
12 significant share?

13 A. Well, I mean it assumes that we'll be
14 in there trying to compete for the business in
15 Indianapolis. I'm sure we will be. We are --
16 you know, I anticipate that following this CSX
17 and Norfolk Southern will continue to be strong
18 competitors as we have historically been. And my
19 view of that is to try to get business.

20 Q. Is there anything more you can tell me
21 to really provide some concrete assurance to the
22 shippers in Indianapolis that NS will be there
23 for them other than that General Motors plant?

24 A. Well, we worked hard to get the best
25 access deal we could in order to get into

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1 Indianapolis. We have a good base of business in
2 Indianapolis which will enable us to be there as
3 a competitor.

4 So we have every incentive, again
5 having made the investment that we have in all of
6 the pieces of Conrail in this transaction, we
7 have every incentive to go in and try to make
8 this produce business. I think that's a pretty
9 powerful incentive on our part, to be active in
10 Indianapolis and other places.

11 Q. And I understand the point you just
12 made, but I just want to follow it up in
13 Indianapolis with this question, are you making
14 any substantial investment in Indianapolis?

15 A. I can't answer that. I guess I'm not
16 aware of any that's planned in the transaction
17 thus far.

18 Q. Would it have violated your sense of
19 balanced outcome if Indianapolis had become a
20 shared asset area such as New Jersey and Detroit
21 are?

22 A. Well, I would suppose you could look at
23 any -- but the bargain was struck over a period
24 of time. And the access to Indianapolis which we
25 gained was satisfactory to Norfolk Southern. So

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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

Washington, D.C.

Wednesday, September 24, 1997

Deposition of WILLIAM M. HART, 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 9:05 a.m.,
Wednesday, September 24, 1997, and the
proceedings being taken down by Stenotype by
JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY,
RPR, and transcribed under their direction.

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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
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

Washington, D.C.

Thursday, September 25, 1997

Deposition of JAMES W. McCLELLAN, 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 Zuckert, Scoutt & Rasenberger, L.L.P.,
Suite 700, 888 Seventeenth Street, N.W.,
Washington, D.C., 20006-3939, at 10:05 a.m.,
Thursday, September 25, 1997, and the proceedings
being taken down by Stenotype by JAN A. WILLIAMS,
RPR, and transcribed under her direction.

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1 to achieve or were your instructions just to try
2 to reach a deal with CSX?

3 A. That process was one of continued
4 dialogue inside Norfolk Southern, starting on
5 October 15, in terms of what route scenarios made
6 sense. We knew a lot about the system
7 obviously. And then there were a number of
8 ongoing, night and day, conversations.

9 So it was all continuing, what made
10 sense, what would the price be, et cetera,
11 et cetera. And those dialogues were carried out
12 with a number of people including the chairman.

13 Q. You indicated in response a short while
14 ago that among the other things that were going
15 on was this continued public relations program.
16 Was among those efforts a letter to shippers that
17 was sent by Mr. Goode in October of '96?

18 A. We sent out -- largely generated by my
19 department, but we sent out a huge number of
20 documents.

21 MR. ALLEN: If you recall.

22 THE WITNESS: I'm sure we sent
23 something to shippers, I don't know when it was.

24 BY MR. WOOD:

25 Q. You don't recall a specific letter

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1 planning team for Norfolk Southern?

2 A. No, I'm not.

3 Q. Do you know who is on that team for
4 Norfolk Southern or who heads that team?

5 A. Nancy Fleischman is the vice president
6 who coordinates the transition teams.

7 Q. Did Ms. Fleischman provide you the
8 information that's included in this description
9 of the transition planning on these two pages of
10 your statement?

11 A. This information was provided by
12 members of the then existing teams to me. We had
13 not formalized the coordinating role at the time
14 this was written.

15 Q. So, at the time this was written, you
16 were part of the transition team?

17 A. No, sir. The transition teams were
18 formed to deal with very, very specific issues
19 such as accounting, et cetera. And, while I was
20 involved with those teams and very much aware of
21 their activities, I wasn't formally a member
22 other than all the vice presidents at that time
23 met and reviewed. It was a formative time of
24 this effort.

25 Q. Are there any specific transition teams

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1 that you're aware of that are involved with
2 specifically determining how Norfolk Southern
3 will operate in what's referred to in this
4 proceeding as the shared assets area?

5 A. Yes, sir, we have a shared asset team,
6 yes.

7 Q. And who is the head of that team?

8 A. I believe Dick Kimball.

9 Q. I'm sorry?

10 A. Dick Kimball.

11 Q. Could you spell his last name.

12 A. K-i-m-b-a-l-l.

13 Q. Do you have any knowledge as to when
14 Mr. Kimball and his team expect to complete their
15 transition plan for the shared assets area?

16 A. No, I don't.

17 Q. Have you seen any of the plans that
18 that team has produced?

19 A. I have received some oral reports,
20 nothing more.

21 Q. What was the essence or the nature of
22 that oral report, what information did they
23 convey to you?

24 A. Simply that they were meeting on --
25 among other things meeting with CSX to structure

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1 determine the number of the subsequent divisions
2 of Conrail assets; that is to say, and I think
3 you referred to it earlier this morning as at the
4 margin, that there were a number of other lines
5 that seemed logically to connect to whichever
6 part of the X you or CSX acquired?

7 A. The basic rule, and I think it's
8 covered pretty well in my verified statement, was
9 that we had a number of guidelines. But we were
10 certainly seeking to avoid two-to-one problems,
11 we were certainly trying to give the through
12 routes some equality, and to avoid disruption we
13 took the pieces that naturally attached to
14 railroad A or railroad B, and that was it.

15 Q. Now, what was your highest priority in
16 the negotiations of which you were a part? For
17 example, were you trying to maximize competition?

18 A. No, no. We were trying to -- I guess I
19 ought to refer to my verified statement. But we
20 had made a major effort with our principles of
21 balanced competition to state that the vision of
22 the Northeastern solution should look something
23 like what we have in the Southeast.

24 That was my role model as a planner,
25 that each carrier would have reasonable balance

1 Conrail that it's acquiring is something that the
2 customers are obliged to pay for or is it a risk
3 that NS takes?

4 A. It's a risk NS takes.

5 Q. Further up that page, do you see I
6 think it's the third paragraph above the solid
7 line that begins where trackage rights are the
8 best alternative for market access, do you see
9 that line?

10 A. Is it in the big paragraph?

11 Q. No.

12 A. Okay.

13 Q. It goes on to say, they should be on
14 the CMA, UP/SP model, permitting access to new
15 plants, build-outs, and terminals and other
16 necessary infrastructure.

17 A. Yes, sir.

18 Q. That was NS's position in the
19 principles of balanced rail competition back in
20 October of '96, correct?

21 A. Yes, it was.

22 Q. Is that still NS's position as the
23 optimal design for trackage rights?

24 A. We negotiated something different.

25 Q. But is that still your view as to the

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1 it's not just you want to reach in and get all
2 the industry. There's a cost consideration in
3 the local terminal area.

4 Q. Let's talk specifically about coal.
5 You did say earlier coal is different from
6 merchandise?

7 A. That's right.

8 Q. And coal is different not only in the
9 sense that it's black and merchandise may come in
10 a box, but it's different in the sense that it
11 often moves in unit trains; is that correct?

12 A. Yes.

13 Q. And, when it moves in unit trains,
14 there's no reason to be breaking it up and
15 recombining it, correct?

16 A. None whatsoever.

17 Q. And you want to run it in and out of a
18 power plant as efficiently as you can to maximize
19 the use of the equipment, whether it's the
20 shipper's or the railroad's, correct?

21 A. That's true.

22 Q. Do you have an opinion as to what the
23 most efficient arrangement for serving the Stout
24 plant would be if Norfolk Southern were doing so?

25 A. Sure. We would run it right into the

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1 plant. But, of course, it's on the Indiana
2 Railroad which is a problem.

3 Q. But, if Stout built out to the line
4 that you had rights on under this proposed
5 transaction in an efficient build-out, would that
6 then permit the most efficient routing in and out
7 of the plant for Norfolk Southern?

8 A. I would want to think about the cost of
9 that build-out. If the build-out was free,
10 probably avoiding the Indiana Railroad would be
11 lower cost.

12 Q. And, when you say if the build-out were
13 free, if the shipper paid for the build-out, then
14 it would be free to Norfolk Southern?

15 A. That's what I'm saying.

16 Q. That's what you mean?

17 A. That's what I mean.

18 Q. Have you discussed the Ohio Valley
19 problem with anyone at Norfolk Southern?

20 A. I discussed it tangentially with Bill
21 Fox mainly regarding our overall relations with
22 the Ohio DOT and the state of Ohio.

23 Q. Are you the one who deals with the Ohio
24 governmental people?

25 A. Some of my people do, yes.

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1 Q. Okay. In Indianapolis there would be a
2 cost base switching fee that CSX will charge NS
3 for pickups or deliveries; is that correct?

4 A. That's what we negotiated, yes.

5 Q. When the term cost based is used, does
6 that mean cost or something else to NS?

7 A. It means cost.

8 Q. CSX's costs?

9 A. It means the costs that are incurred by
10 CSX in that specific operation, yes.

11 Q. And did you have any understanding as
12 to how those costs would be measured, would they
13 be measured using CSX's internal costs or the
14 Uniform Rail Costing System or some other means?

15 A. I believe the intention was -- the
16 intention, as I understand it, was we would use
17 CSX's internal costs as related to that
18 particular set of operations.

19 Q. And then NS would have the right to
20 audit those costs; is that correct?

21 A. Yes.

22 Q. And would they be subject to review for
23 reasonableness by the Surface Transportation
24 Board under the proposed transaction?

25 A. I do not know whether that's true or

1 And then I'm going to take all that money and I'm
2 going to get with you and see what I'm going to
3 get from you and see if I make any money.

4 Q. I understand the process. Let me be
5 very specific. For such a movement I'm asking
6 whether Norfolk Southern is also going to have to
7 pay CSX that same cost based switching charge
8 that it would pay CSX to serve any other facility
9 that CSX gets to directly?

10 A. No.

11 Q. As well as paying Indiana Railroad?

12 A. No.

13 Q. That's what I'm concerned about.

14 A. No, I would not think that's the case.
15 I think -- no. Because they're not switching --
16 they're not switching the plant.

17 Q. Do you know anywhere in the application
18 that says that?

19 A. No. But it just seems logical to me.
20 The intention was, if they were switching the
21 plant, then we would pay them cost based
22 switching. But, if they're not switching the
23 plant, if I'm interchanging with the Indiana
24 Railroad, CSX isn't performing that service.

25 Q. And you're sure that Indiana Railroad

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1 can get into the Hawthorne Yard to interchange
2 with Norfolk Southern?

3 A. I'm virtually sure they can.

4 Q. They can?

5 A. Yes.

6 Q. And is NS going to have any ownership
7 interest in the Hawthorne Yard?

8 A. No.

9 Q. And how is it that you could be so
10 confident that Norfolk Southern will have
11 adequate capacity for traffic in and out of the
12 Hawthorne Yard?

13 A. Because we have -- the agreement says
14 that we will have adequate capacity. And I
15 believe that we could, if there's a disagreement,
16 make a case that they were trying to squeeze us
17 there.

18 And, furthermore, the nature of this
19 transaction, there are a number of places where
20 CSX will be relying on NS and vice versa. So
21 there isn't a reasonable -- there's pressure on
22 both sides. Let me be blunt about it. We have
23 some places where, if they're not reasonable in
24 Indianapolis, we can be somewhat unreasonable
25 with them. And that's the way it works.

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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

Washington, D.C.

Thursday, September 11, 1997

Deposition of JOHN W. ORRISON, 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
10:05 a.m., Thursday, September 11, 1997, and the
proceedings being taken down by Stenotype by
JAN A. WILLIAMS, RPR, and transcribed under her
direction.

1 serve that customer?

2 A. For the record the paragraph that's on
3 page 211 reads as follows, NS will have overhead
4 trackage rights on Conrail's Indianapolis line
5 from Muncie, Indiana, and on CSX's
6 Lafayette-Crawfordsville line, Conrail's
7 Crawfordsville-Indianapolis line, and Conrail's
8 Indianapolis Belt line to serve two-to-one
9 shippers and shortlines in Indianapolis.

10 Q. Okay. So, as you understand it, these
11 overhead trackage rights that NS will have, will
12 it permit NS to serve directly these customers?

13 A. It will allow NS to serve directly,
14 two-to-one shippers, yes, and shortlines.

15 Q. Are you aware of the current capacity
16 at the Hawthorne Yard?

17 A. I have some general understanding of
18 it, yes.

19 Q. Currently do they have sufficient
20 capacity to handle all their traffic?

21 A. They do, yes.

22 Q. On page 211 of the operating plan, it's
23 stated that the State Street Yard will be closed
24 and that traffic will be consolidated at
25 Hawthorne. And there's a statement saying in

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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

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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

Washington, D.C.

Thursday, September 18, 1997

Deposition of JOHN W. SNOW, 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 MARY
GRACE CASTLEBERRY, 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, September 18, 1997, and the proceedings
being taken down by Stenotype by MARY GRACE
CASTLEBERRY, RPR, and transcribed under her
direction.

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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

~~HEAVILY CONFIDENTIAL~~ PUBLIC

Washington, D.C.
Tuesday, September 9, 1997

Deposition of STEPHEN C. TOBIAS, 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 Zuckert, Scoutt & Rasenberger, L.L.P.,
Suite 700, 888 Seventeenth Street, N.W.,
Washington, D.C., 20006-3939, at 10:05 a.m.,
Tuesday, September 9, 1997, and the proceedings
being taken down by Stenotype by JAN A. WILLIAMS,
RPR, and transcribed under her direction.

1 participate in the model.

2 Q. Okay. In any event do you think it's
3 reasonable to conclude from this that there will
4 be a substantial increase in the activity at the
5 Hawthorne Yard by virtue of this postacquisition
6 plan?

7 MR. PLUMP: You mean overall activity
8 or NS activity?

9 BY MR. O'NEILL:

10 Q. Activity.

11 A. I think it's reasonable to conclude
12 based on this chart that there's an increase of
13 262 cars per day in Hawthorne Yard.

14 Q. Thank you.

15 A. I don't know what assumptions were
16 taken into consideration in the model as to
17 whether --

18 Q. I understand, you didn't prepare this.
19 By the way, who is responsible for the data on
20 that chart?

21 A. That would be John Williams as I
22 understand it.

23 Q. All right. Post-transaction, if a
24 shipper wanted to utilize Norfolk Southern
25 service over the Indianapolis Belt, the shipper

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1 MR. PLUMP: First of all, with regard
2 to local service on the Indianapolis Belt today,
3 is that service, in fact, provided by Conrail?

4 THE WITNESS: Yes.

5 MR. PLUMP: With regard to service to
6 the Stout plant today, is it the Indiana Railroad
7 that provides that service now?

8 THE WITNESS: That's correct.

9 MR. PLUMP: And after the transaction
10 is it your understanding that the Indiana
11 Railroad will continue to provide service?

12 THE WITNESS: Yes, that's correct.

13 MR. PLUMP: Okay. Would you like to
14 ask any questions about that?

15 MR. O'NEILL: Yes, I would.

16 BY MR. O'NEILL:

17 Q. Mr. Tobias, I take it that your
18 colleagues informed you of the inaccuracy of your
19 prior statements in that regard and that's what
20 caused the need for this clarification?

21 A Yes, sir.

22 Q. Well, let me ask you a few follow-up
23 questions associated with that. Do you know
24 whether there is any operational reason why
25 Indianapolis Power & Light couldn't build out

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1 from the Stout plant to Conrail's Indianapolis
2 Belt today?

3 A. I couldn't take a position on that
4 without having some basis in fact on the
5 engineering feasibility of it, if you're asking
6 me in the operational context.

7 Q. Yes.

8 A. I don't know.

9 Q. If that were to happen, and let's
10 assume that it does happen, that there is a
11 build-out to the Indianapolis Belt by
12 Indianapolis Power & Light from its Stout plant,
13 post-transaction would Norfolk Southern be in a
14 position to provide direct service to the Stout
15 plant at that point?

16 A. It's my understanding that NS has
17 overhead trackage rights. And I'm not aware that
18 those overhead trackage rights would permit the
19 local service configuration as you suggest.

20 Q. Thank you. Do you know where the
21 Indianapolis Power & Light's Perry K plant is
22 located in Indianapolis?

23 A. No, not specifically.

24 Q. Do you know what service is provided
25 directly to the Perry K plant?

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1 A. No, sir.

2 Q. So, as a corollary to that, you don't
3 know how Norfolk Southern could provide service
4 to the Perry K plant post-transaction, do you?

5 A. No, sir.

6 MR. O'NEILL: Thank you very much.

7 MR. PLUMP: Thank you.

8 EXAMINATION BY COUNSEL FOR CENTERIOR
9 ENERGY CORPORATION, NATIONAL RAILROAD
10 PASSENGER CORPORATION (AMTRAK), and
11 THE DETROIT EDISON COMPANY

12 BY MR. PERGOLIZZI:

13 Q. Mr. Tobias, my name is Frank Pergolizzi
14 with Slover & Loftus. I'm going to have
15 questions on behalf of three clients, Centerior
16 Energy Corporation, Detroit Edison Company, and
17 Amtrak. And it should be I think pretty clear to
18 you when we're switching gears. But, before we
19 get into the specifics, I did want to just go
20 over your background briefly.

21 You list a number of operating
22 positions that you've held at NS. And I just
23 wanted to get a better understanding of when you
24 held those positions and what your general duties
25 were in each of the positions. And if you could

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UNITED STATES OF AMERICA

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SURFACE TRANSPORTATION BOARD

- + + + +

DISCOVERY CONFERENCE

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 --
TRANSFER OF RAILROAD LINE BY
NORFOLK SOUTHERN RAILWAY COMPANY
TO CSX TRANSPORTATION, INC.

Finance Docket
No. 33388

Thursday,
September 25, 1997

Washington, D.C.

The above-entitled matter came on for a
oral argument in Hearing Room 4 of the Federal
Energy Regulatory Commission, 888 First Street, N.E.
at 9:30 a.m.

BEFORE: THE HONORABLE JACOB LEVENTHAL
Administrative Law Judge

NEAL R. GROSS

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WASHINGTON, D.C. 20005-3701

APPEARANCES:

On Behalf of American Electric Power, Atlantic City Electric, Delmarva Power and Light, The Indianapolis Power and Light Company, and The Ohio Valley Coal Company:

MICHAEL F. McBRIDE, ESQ.
BRENDA DURHAM, ESQ.
of: LeBoeuf, Lamb, Green & MacRae, LLP.
Suite 1200
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728
(202) 986-8050 (MFM)
(202) 986-8213 (BD)

On behalf of Conrail:

PAUL A. CUNNINGHAM, ESQ.
JAMES M. GUINIVAN, ESQ.
GERALD P. NORTON, ESQ.
of: Harkins Cunningham
Suite 600
1300 19th Street, N.W.
Washington, D.C. 20036
(202) 973-7601 (PAC)
(202) 973-7608 (JMG)
(202) 973-7605 (GPN)

On behalf of CSX:

FRED R. BIRKHOLZ, ESQ.
of: CSX Transportation
500 Water Street, J150
Jacksonville, Florida 32202
(904) 359-1191

1 JUDGE LEVENTHAL: Didn't Mr. McBride, in
2 making his original discovery request, define that he
3 was seeking discovery not only from CSX but from all
4 its subsidiaries as well? Isn't that --

5 MR. COBURN: I have it right here, Your
6 Honor.

7 JUDGE LEVENTHAL: I think Mr. Coburn is
8 looking at it now.

9 MR. COBURN: I believe he did, Your Honor.

10 MR. McBRIDE: And I can cut through some
11 of this. He doesn't have to go ask the other 59, or
12 however many, companies for documents, I'm not
13 interested in them. I'm only interested in Indiana
14 Railroad.

15 JUDGE LEVENTHAL: Perhaps we can put a
16 finality to this dispute. Is this the only subsidiary
17 you're looking for information from?

18 MR. McBRIDE: That's correct.

19 JUDGE LEVENTHAL: And there will be no
20 others?

21 MR. McBRIDE: There will be no others.

22 JUDGE LEVENTHAL: Mr. Coburn, I just got

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1 an important concession from Mr. McBride. He says
2 just this one.

3 MR. COBURN: Your Honor, we have made
4 informally the request to Indiana Railroad. We've
5 alerted them as to what the documents that Mr. McBride
6 is seeking are. We haven't heard back from them. I
7 imagine that they will be cooperative. I imaging that
8 he'll get his documents. He did not raise this issue,
9 as Mr. McBride acceded. He knew that he didn't have
10 company documents as of August 8. Here we are in late
11 September and the issue is first --

12 JUDGE LEVENTHAL: But he specifically
13 asked for them, particularly in a letter to me, served
14 upon all parties.

15 MR. COBURN: On September --

16 JUDGE LEVENTHAL: -- after my original
17 ruling including Indianapolis -- including his request
18 information from Indianapolis Railroad.

19 MR. COBURN: And it was after that, Your
20 Honor, that we wrote to him saying that we, CSX, do
21 not have any such documents. It was our August 8th
22 letter that came after your ruling extending the order

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1 to the Stout plant.

2 JUDGE LEVENTHAL: I prefer people do
3 things voluntarily rather than under the duress of an
4 order. However, I have to recognize Mr. McBride's
5 concern that time is running short. And so I'm going
6 to help you get this information from Indiana Railroad
7 by requiring you to do so.

8 MR. COBURN: May I say, Your Honor, for
9 the record, we respectfully disagree that we have --
10 to the extent your ruling might suggest we have
11 control over those documents for purposes of the
12 discovery rules, we disagree --

13 JUDGE LEVENTHAL: No, but you have control
14 over Indiana Railroad, do you not?

15 MR. COBURN: We have financial control
16 over Indiana Railroad, that's correct.

17 JUDGE LEVENTHAL: What stronger control is
18 there?

19 (Laughter.)

20 MR. COBURN: Thank you, Your Honor.

21 JUDGE LEVENTHAL: Mr. Norton?

22 MR. NORTON: Your Honor, I think we need

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HART-37

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.

EXHIBIT
HART 7
9/24/97 mc

9. With respect to Definition and Instruction No. 3, Applicants object to the extent the definition of "Belt Track" is vague and ambiguous, as there is a track known as Indianapolis Union and a separate one known as Indianapolis Belt Running Track. Applicants are construing "Belt Track" to include only the tracks of the former Belt Railway Co., known as the Indianapolis Belt Running Track.

10. Applicants object to the use of the term "access" in Interrogatory Nos. 1, 3, 8, 9, and 11 as vague and ambiguous. Applicants construe "access" to include the right to serve a customer via owned or leased track, or through trackage rights, haulage rights, or switching service.

INTERROGATORIES

Interrogatory No. 1:

1. Identify all rail carriers who have access on or after June 16, 1997 to all or part of the Belt Track and provide the following information for each such carrier: (a) the basis for, and extent of, access of each carrier to the Belt Track; (b) whether the carrier has access to the Perry K Plant, the Stout Plant, or both; (c) what changes to the information provided in your responses to parts (a) and (b) to this Interrogatory will take place if the proposed transaction is consummated; and (d) whether and to what extent your responses to parts (a) and (b) would differ if the date used in this Interrogatory had been January 1, 1997.

The Applicants object to Interrogatory No. 1 to the extent that the interrogatory calls for information as of apparently arbitrary dates, January 1, 1997 and

June 16, 1997, which entail undue burden. Applicants will treat the interrogatory as calling for information as of June 23, 1997, which corresponds with the reference in other questions and to the date the Application was filed. In addition, Applicants object to subpart (b) of this interrogatory on the grounds that it seeks information within the possession of IP&L: IP&L should know which rail carriers currently has access to its plants. Subject to the foregoing and to their general objections, Applicants respond as follows:

(a) The Indiana Rail Road Company ("INRD") holds overhead trackage rights on the Belt Track, which was leased to a predecessor of Conrail in 1882 for a period of 999 years, from the northeast end of the Belt Track to Raymond Street. Customers located on that track may receive service from Conrail or from the INRD and CSX by means of a reciprocal switch performed by Conrail.

(b) Conrail directly serves IP&L's Perry K plant, which is on trackage owned by Conrail that does not constitute part of the Belt Track. IP&L's Stout plant is on trackage owned by the INRD. In order for Conrail to serve IP&L's Stout plant, INRD must supply switching service to Conrail. Neither CSX nor NS currently has access to the Perry K plant or to the Stout plant.

(c) If the proposed transaction is consummated, there will be the following changes to the information

responsive to the foregoing requests. Responsive documents are being placed in Applicants' depository.

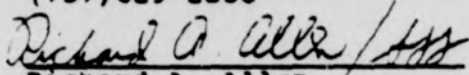
3. Provide all documents relating to IP&L.

In seeking all documents related to IP&L, the request is unduly broad and burdensome and not likely to lead to discovery of relevant evidence. Subject to the general objections stated above, Applicants respond as follows:

See response to Document Request No. 2.

Respectfully submitted,

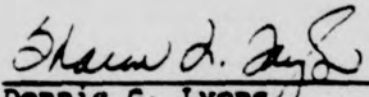
James C. Bishop, Jr.
William C. Wooldridge
James L. Howe, III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corp.
Three Commercial Place
(757) 629-2838


Richard A. Allen
James A. Calderwood
Andrew R. Plump
John V. Edwards
Zuckert, Scout &
Rosenberger LLP
888 Seventeenth St., N.W.
Washington, D/C/ 20006-3939
(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7400

Mark G. Aron
Peter J. Schudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100


Dennis G. Lyons
Drew A. Marker
Sharon L. Taylor
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004
(202) 942-5000

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail Corp.
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
(215) 209-4000

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue
Washington, D.C. 20036
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

Paul A. Cunningham / HJF
Paul A. Cunningham
Gerald P. Norton
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, DC 20036
(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Dated: August 7, 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

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
ROBERT J. COONEY
GEORGE A. ASPATORE
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838

MARK G. ARON
PETER J. SHUDTZ
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129
(804) 782-1400
P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
DOUGLAS R. MAXWELL

Richard A. Allen

RICHARD A. ALLEN
JOHN V. EDWARDS
PATRICIA E. BRUCE
Zuckert, Scoutt &
Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939
(202) 298-8660

JOHN M. NANNES
SCOT B. HUTCHINS
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

TIMOTHY T. O'TOOLE
CONSTANCE L. ABRAMS
Consolidated Rail
Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19101
(215) 209-4000

Paul A. Cunningham

PAUL A. CUNNINGHAM
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail
Corporation

August 27, 1997

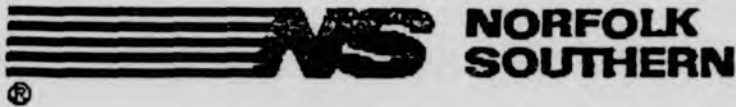
NICHOLAS S. YOVANOVIC
CSX Transportation, Inc.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

Sharon L. Taylor

DENNIS G. LYONS
DREW A. HARKER
SHARON L. TAYLOR
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202
(202) 942-5000

SAMUEL M. SIPE, JR.
TIMOTHY M. WALSH
Steptoe & Johnson LLP
1330 Connecticut Avenue,
N.W.
Washington, DC 20036-1795
(202) 429-3000

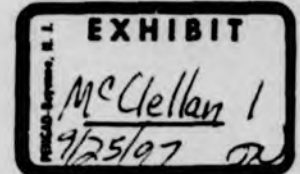
Counsel for CSX Corporation
and CSX Transportation, Inc.



Balanced Rail Competition

Norfolk Southern's Commitment To The Customers Of NS/Conrail

[Click here for a brief summary of this letter](#)



October 29, 1996

To All Rail Shippers:

Norfolk Southern's Chairman, President and Chief Executive Officer David R. Goode announced NS's \$100 a share tender offer for Conrail on October 23. At the same time he emphasized that NS, in acquiring Conrail, would be receptive to competitive enhancements going far beyond anything envisaged by CSX's stonewall advocacy of the status quo. Specifically, he said that the nation's largest consumer market, the New York/New Jersey area, had been neglected.

Today we want to spell out, for the benefit of customers and communities, exactly how Norfolk Southern would be willing to shape its transaction to improve competition.

Let us say that we provide this outline not entirely out of altruism. In the first place, Norfolk Southern year in and year out is the nation's most efficient railroad and does not fear the impact of balanced competition. In fact, we think we will thrive in that environment. Secondly, we do not read the UPSP decision in the narrow, self-serving, hypertechnical way that CSX does. We read it to say that a region is best served by having two railroads of comparable size and scope competing for the business of customers. So we are willing to act consistently with that interpretation.

These are the principles of balanced competition, the fundamentals of competition in reality and not just in name.

First, balanced competition requires that the competing systems operate with comparable scale and scope, though absolute equality is unnecessary. While one hesitates to apply a mathematical formula, the 70-30 split which would result from a CSX acquisition of Conrail precludes effective competition. NS and CSX now have, respectively, about 45% and 55% shares of their total business. The spread of 10 percentage points is already an advantage for CSX if you credit Conrail -- it said at the time of the announcement that one reason for preferring CSX was its wider market reach. In the West, the respective shares of UP and of BNSF, before the concessions to BN, were 53/47. A NS/Conrail combination produces approximately a 60/40 split in the East, clearly preferable to approximately 70/30 with CSX/Conrail. And, applying the principles spelled out here, we are willing to work towards something even closer to an even split than 60/40.

Significant market dominance would exist across all industry sectors with a CSX/Conrail combination. One glaring example is that CSX/Conrail would serve approximately 110 power generating plants and NS would serve only 39.

These are not just numbers. Railroading is a network business with increasing economies of scale. This reality means that if you are much smaller than your competitor, you are competing with a handicap. We can cite case after case in which our system's ability to compete hinged not on its presence in some particular market but on

the scope of our network and efficiency of our overall operations.

Perhaps the best example is the most recent. As you may know, with the present rough parity between NS and CSX, we recently won a 12-year contract for Ford's new mixing centers. We were able to give Ford a proposal for NS operation of centers as far west as Kansas City. And, of course, we serve many Ford destinations. Our ability to link all these points on our own rail network clearly appealed to Ford, and Norfolk Southern will ultimately increase its Ford business by approximately 60% as a result.

In short, in addition to the volume efficiencies which permit competitive pricing, our customers are demanding service which only a network of broad scope can provide. Real competition, long-term effective competition, depends on having railroads of comparable scale and scope. NS's acquisition of Conrail will make this goal much easier to achieve than CSX's, because the CSX/Conrail combination produces disparities so much greater than the NS/Conrail combination. Even so, we are willing to work to reduce our 60/40 disparity.

Second, balanced competition requires that the largest markets have service by two railroads. This follows from the previous discussion of balanced, effective competition -- a network cannot compete effectively, cannot meet the demands of customers operating on a global scale, if it does not reach all or most of the most important markets. Our customers do not just ask, can you get me from A to B. They ask, what can you do for my traffic moving between and among A to Z.

This is why Norfolk Southern recognized at the outset that it would have to address the New York/New Jersey port area situation. When the East is served by two railroads, competitive balance without access to the Port is a contradiction in terms. If only one large railroad provides good service to New York (or, in the case of the proposed CSX/Conrail combination, only one big railroad serves Philadelphia, Baltimore, Newark, Wilmington, Charleston, Pittsburgh, Indianapolis, Grand Rapids, and Lordstown), big customers do not really have two viable alternatives. They will need to use the railroad which has these big markets to itself.

Speaking more broadly, the port, the big city and the region which lacks a competitive rail infrastructure -- not competition to every station, but competition at and between the largest markets -- suffers a real handicap in the contest for industrial development and economic growth. While one can argue about the chicken and the egg, we offer for your consideration the lack of growth of the Port of New York during the Conrail monopoly epoch compared to the phenomenal growth of the Port of Hampton Roads, served by NS and CSX. Competitive rail service is relevant to growth and development. We have an economy and a rail system grounded on the reality that competition works better than monopoly.

As with the question of size, one hesitates to be too precise in prescribing solutions which may be affected by a host of real world complexities. But we are willing to look at New York and we are willing to look at the major markets defined by the Department of Transportation in 1974 in the process which led to the creation of Conrail. The government did not intend to fortify a rail monopoly in the Northeast. It did intend, as the report just cited and the Final System Plan show, to establish competing systems.

Third, balanced competition requires that each railroad own its own routes to major markets where feasible. At Norfolk Southern, we pride ourselves on the quality of our fixed plant and the efficiency of our operations. Our year-in-and-year-out investment in the maintenance and renewal of our lines, at the highest level in the industry, is the bedrock of our safety record (best in the industry), our efficiency (best of any major railroad), and our highly regarded service. If you do not own your line, you do not control this investment, so you also lack control over safety, efficiency, and service. In short, you cannot stay competitive.

Here is an anecdote which makes the point. Norfolk Southern has trackage rights over a CSX double-track main line in Cincinnati. We continually experienced delays and associated added costs and service failures in trying to move our trains over these trackage rights. One could attribute this to the capacity of the CSX line or to the malign influence of CSX, but in truth the problem was that CSX's priorities and self-interest are different from our priorities, and CSX owns and controls the track. So we have cooperated to build a third main through Cincinnati, which Norfolk Southern owns.

Another example is the CP's attempt to provide competitive intermodal service to the New York area over

trackage rights on Conrail. It never really worked, and CP may withdraw from the market. The route could have been adequate, and in fact had offered effective competition in the pre-Conrail era. But trackage rights over an unenthusiastic, competing owner did not suffice to give customers the service they wanted.

Norfolk Southern is not against trackage rights. We utilize them and other facilities coordinations widely. They can work well for "short cuts" and for access over branches of, say, up to 100 miles, solidly anchored on the user's own trunk line. Consider, in connection with BN's existing network, the combination of owned or jointly owned lines, trackage rights, and joint facilities prerogatives gained by BN in UPSP. You can see that contrary to popular understanding, traditional trackage rights were not accepted as a solution there. Furthermore, we are fully aware that circumstances such as tax issues, labor problems, or efficiency (density) considerations may dictate creative alternatives in which a user controls a non-owned line.

Where trackage rights are the best alternative for market access, they should be on the CMA, UPSP model, permitting access to new plants, build-outs, and terminals and other necessary infrastructure.

All that said, a railroad needs, where feasible, to own its own trunk lines to and between major markets. In the context of New York, this means we will be willing to sell a line, and will not play the game of pretending to wish our competitor success over extended trackage rights on lines owned and controlled by Norfolk Southern.

Fourth, balanced competition requires that each railroad have effective terminal access. It does not do you any good to ride the train if you can't get off. A railroad may need yards, intermodal and multi-modal terminals. It should have reasonable access from day one so competition will be a reality, and it should also have the right, where feasible, to build its own terminals.

Now it is much easier to lay out our understanding of what is necessary for effective competition than to bring it about. A host of details and problems can interfere.

We see a clear way through some of them. We will not give any competitor a free ride, but will expect them to pay, on a formula based on revenues and reflecting the costs of the acquisition to NS, for the assets they acquire. If they do not pay a proportionate price, we will not be competing on equal terms.

The last thing we want to comment on is the UPSP decision, on which CSX/Conrail had relied. That decision, as we understand it, is one of the best thought out in the long history of railroad regulation. It shows a grasp of the realities of railway economics and operations -- of the importance of scope and scale for the efficiencies which permit improving service at decreasing rates -- which our regulators have not always had in the past. It says to us that

(a) a third-place railroad like SP, despite the intrinsic value of its routes, could not provide effective competition,

(b) and in fact not even UP could provide competition comparable to the substantially larger BNSF;

(c) customers are best served when two strong railroads of comparable size operate to and between all the major markets in a region;

(d) enhanced trackage rights to particular points, when grounded on a solid infrastructure of lines owned by a railroad already having a presence in the area, can work to provide competition.

The STB decision in UPSP does *not* hold that a 70-30 split, perhaps not even a 60-40 split, is good for rail transportation and the customers who use rail transportation. It was said of the old Romans, they make a desert and call it peace. We would say of CSX/Conrail, they extend a monopoly and call it competition. They would have found cold comfort in UPSP for that kind of grab. Norfolk Southern will acquire Conrail and will apply, as it must, the real message of UPSP. NS/Conrail customers will have competitive alternatives in major

markets.

NORFOLK SOUTHERN CORPORATION



The Conrail Transaction

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

CERTIFICATE OF SERVICE

I hereby certify that I have served this 21st day of October, 1997, a copy of the foregoing "Joint Comments, Evidence, and Request for Conditions of Atlantic City Electric Company and Indianapolis Power & Light Company" (ACE, et al.-18) and "Supplemental Comments, Evidence, and Request for Conditions of Indianapolis Power & Light Company" (IP&L-3) by first-class mail, postage prepaid, or by more expeditious means, upon all parties of record. The "highly confidential" version was served on persons on the Highly Confidential Restricted Service List only; a redacted version was served on all other parties of record. The following persons were served by hand delivery:

Office of the Secretary
Case Control Unit
ATTN: STB Finance Dkt. 33388
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423-0001
VIA HAND DELIVERY

Mr. Vernon Williams, Secretary
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423-0001
VIA HAND DELIVERY

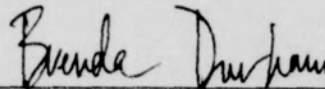
David M. Konschnik, Director
Office of Proceedings
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423
VIA HAND DELIVERY

John V. Edwards, Esq.
Patricia Bruce, Esq.
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.
Washington, DC 20006-3939
VIA HAND DELIVERY

Drew A. Harker, Esq.
Chris Datz, Esq.
Susan Cassidy, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202
VIA HAND DELIVERY

David A. Coburn, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
VIA HAND DELIVERY

Gerald P. Norton, Esq.
Harkins Cunningham
1300 19th Street, N.W.
Suite 600
Washington, D.C. 20036
VIA HAND DELIVERY



Brenda Durham

STB

FD

33388

10-21-97

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L.L.P.

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JACKSONVILLE

1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX 440274 FACSIMILE (202) 986-8102

WRITER'S DIRECT DIAL

(202) 986-8050

E-Mail Address: mfmcbri@llgm.com

LOS ANGELES
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MOSCOW
ALMATY
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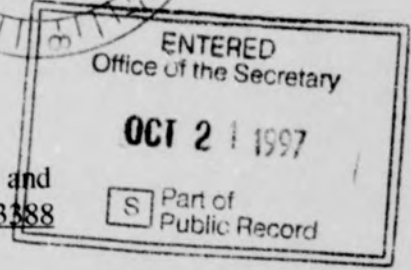
TFI-2

October 21, 1997

VIA HAND DELIVERY

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

Re: CSX Corporation/Norfolk Southern Corp. -- Control and
Leases/Agreement -- Conrail; Finance Docket No. 33888



Dear Secretary Williams:

As counsel for The Fertilizer Institute ("TFI"), this is to advise the Board that TFI joins in the Comments being filed by the National Industrial Transportation League ("NIT League") today in the above-referenced proceeding, except that TFI believes that, should the Board adopt the rate cap proposal of NIT League, as TFI advocates, it should use the Rail Cost Adjustment Factor (Adjusted) rather than the Rail Cost Adjustment Factor (Unadjusted), as the adjustment mechanism. In all other respects, TFI endorses and hereby incorporates by reference the Comments filed by NIT League.

Also enclosed is a 3.5 diskette containing the contents of this letter in WordPerfect format.

Please date stamp and return the three additional copies via our messenger.

Respectfully submitted,

Michael F. McBride

Michael F. McBride

Attorney for The Fertilizer Institute

cc: All Parties on Service List

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

CERTIFICATE OF SERVICE

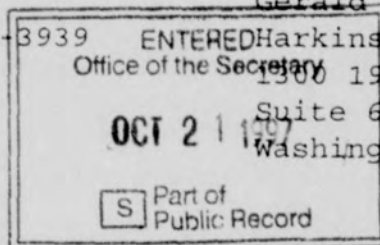
I hereby certify that I have served this 21st day of
October, 1997, a copy of the foregoing letter denominated TFI-2,
by first-class mail, postage prepaid, upon all parties of record
and by hand delivery upon each of the following persons:

John V. Edwards, Esq.
Patricia Bruce, Esq.
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.

Washington, DC 20006-3939
Drew A. Harker, Esq.
Chris Datz, Esq.
Susan Cassidy, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

David A. Coburn, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Gerald P. Norton, Esq.
Harkins Cunningham
1300 19th Street, N.W.
Suite 600
Washington, D.C. 20036



Michael F. McBride
Michael F. McBride

STB

FD

33388

10-21-97

D

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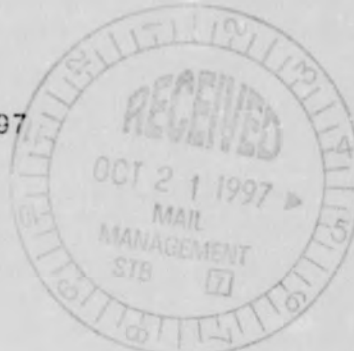


ORIGINAL

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION

WILLIAM P. HANFOWSKY
President

October 20, 1997



D

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423

RE: 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 in the above captioned docket are the original and twenty-five copies of the Joint Comments of the City of Philadelphia and the Philadelphia Industrial Development Corporation. An additional copy of the filing is enclosed for file stamp and return to the undersigned. Please note that a copy of the Joint Comments is also enclosed in a 3.5 inch diskette in Microsoft Word Version 6.0 format.

Sincerely,

G. CRAIG SCHELTER
Executive Vice President

GCS/EWD/ma

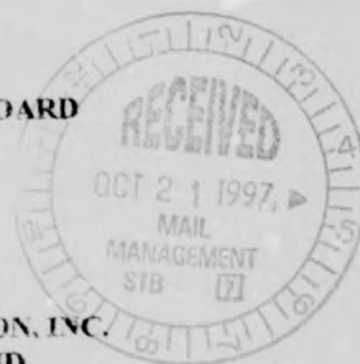
Enclosures

cc: All Parties of Record

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



JOINT COMMENTS OF THE CITY OF PHILADELPHIA AND THE
 PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION IN
 SUPPORT OF APPROVAL OF THE PROPOSED CONTROL APPLICATION

I. INTRODUCTION

The City of Philadelphia ("City") and the Philadelphia Industrial Development Corporation ("PIDC"), together with PIDC's wholly owned subsidiaries Philadelphia Authority for Industrial Development, hereinafter PAID, and Philadelphia Food Distribution Center, hereinafter PFDC, respectfully submit their comments as recognized parties of record in Finance Docket No. 33388. For the reasons set forth more fully within, the City and PIDC support approval by the Surface Transportation Board of the transaction by which CSX and Norfolk Southern would jointly acquire Conrail and divide Conrail's assets and operations between them as outlined in their respective Operating Agreements and the other transaction documents.

II. THE CITY AND PIDC

The City of Philadelphia is the fifth largest city in the United States with a population of 1,524,338, and the vital commercial and cultural hub of a region striving to maintain an economic leadership role in the life of the Nation. PIDC is a private, not-for-profit economic development corporation created in 1958 by the Greater Philadelphia Chamber of Commerce and the Commerce Department of the City of Philadelphia. It is the City of Philadelphia's economic development arm.

- 2 -

PIDC has four principal lines of business: 1) providing financing to industrial, manufacturing, and warehousing firms starting up, moving into or expanding in the City of Philadelphia; 2) selling land for industrial use in eleven fully-improved industrial parks; 3) managing major developments for public, not for profit, and private clients; and 4) working with neighborhoods to foster economic development.

Among other things, PIDC is responsible for converting the Philadelphia Naval Shipyard from military to commercial and industrial use.

In addition, PIDC owns and maintains the Northeast Philadelphia Airport Industrial Track, which is currently served by Conrail and is proposed to be served by the Conrail Shared Assets Operation. PIDC's subsidiary Philadelphia Food Distribution Center owns an extensive network of tracks that are served, according to the Philadelphia Belt Line Principle, by the three railroads at this time having access to South Philadelphia - Conrail, CSX Transportation, and Canadian Pacific Railroad. Tracks owned by PIDC and PFDC together generate traffic volume of over 3,000 rail carloads shipped or received annually. Rail customers include Allied Tube & Conduit, Stone Container, Interstate Brands, PBS Foods, M. Levin & Company, and others. Products transported by rail include steel, paper, flour, plastics, and produce.

II. Background of the City and PIDC's Position

The City and PIDC are keenly aware of the transportation implications of the proposed action. We believe that the proposed action is necessary so that the railroads serving Philadelphia will have the financial strength and the desire to continue or expand freight services, and we seriously doubt that an independent stand-alone Conrail could have fulfilled this role for very much longer. At the same time, the City and PIDC recognize the significant job loss and loss of goods and services purchased locally by Conrail.

- 3 -

Having met with Philadelphia manufacturers, distributors and other shippers who are dependent on rail transportation, the City and PIDC are appreciative of the value of restored rail-to-rail competition that has been proposed for the Philadelphia Region by the applicants.

The City and PIDC acknowledge that since 1976, Conrail management and labor have done a remarkable job of rebuilding the wreckage of the bankrupt Northeastern United States rail system into a profitable carrier. Some of its success is due to the fact that it was protected from rail competition by being granted a de facto monopoly over freight rail service, and this has presented both benefits and costs to Philadelphia rail shippers, many of whom previously had had a choice of two or more rail carriers who were Conrail predecessors.

While many Philadelphia shippers have seen their deteriorated rail infrastructure and service revitalized, the City and PIDC recognize that others lost theirs entirely through abandonments. Shippers have notified PIDC that monopoly rail service in Philadelphia may have shrunk the competitive range of their Philadelphia production facilities because of increases in rail transportation costs, particularly on the fast-growing north-south corridor, making Philadelphia a less attractive center for rail-oriented business development. The City of Philadelphia and its neighborhoods have also been impacted by Conrail decisions to close facilities without finding viable reuses or properly maintaining them. Companies faced with plant location choices and rail transportation requirements have rarely sited plants in Philadelphia in the last twenty years. For these reasons, the City and PIDC believe that the level of rail-to-rail competition proposed in this Application will be a vital improvement to Philadelphia's economy.

The City of Philadelphia and its neighborhoods have also been impacted by Conrail decisions to close facilities without finding viable reuses or properly maintaining them. Examples include Conrail's former Reading Railroad Port Richmond Terminal, a 200 acre facility that once was the Reading's rail-water intermodal hub, and is now virtually bereft of employment and activity, and the abandoned Berks Industrial Track, which has been allowed to become one of the worst unlicensed dumps in the City of Philadelphia, although it adjoins homes and a public school at Third and Ontario Streets. The City and PIDC believe that the Applicants will have the financial strength and interest to redevelop rail properties for rail-oriented industrial development uses, or else secure and divest them if future rail uses appear improbable.

IV. PROPOSED CSX PHILADELPHIA IMPROVEMENTS

CSX and Norfolk Southern have committed in their Operating Plans and in discussions with the City and FIDC to a variety of infrastructure and service investments which will greatly benefit the City's economy and environment. For CSX, these include:

1. A new intermodal facility, estimated to cost \$15 million, at Greenwich Rail Yard
2. Belmont Siding improving flow of traffic through the City, at estimated cost of \$3 million.
3. Implementation of the Eastwick Connection, at estimated cost of \$4 million. This improvement should eliminate a reverse movement of freight trains through a predominantly residential and recreational Center City area between the Philadelphia Art Museum and the Crays Ferry section of South Philadelphia. Coupled with the Belmont Siding Improvement, it will allow for greater utilization of the predominantly industrial West Bank of the Schuylkill River for freight movements, and a corresponding reduction in freight movements through Center City Philadelphia.
4. Retention of the headquarters of Conrail, Inc. in Philadelphia for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.
5. Creation of new rail-related jobs in Philadelphia as a result of CSX commercial and operational activities in the Philadelphia area, as well as the anticipated establishment of a regional office in Philadelphia to include government relations, industrial development, sales, and operations.

V. PROPOSED NORFOLK SOUTHERN PHILADELPHIA IMPROVEMENTS

For Norfolk Southern, these improvements include:

1. A new intermodal facility, estimated to cost \$19 million.
2. A new automobile facility, estimated to cost \$16 million.
3. A new intermodal "Triple Crown" facility, estimated to cost \$4 million.
4. Track connection at Zoo interlocking, estimated to cost \$1.4 million.

- 5 -

5. Retention of the headquarters of Conrail, Inc. in Philadelphia for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.
6. Creation of new rail-related jobs in Philadelphia as a result of Norfolk Southern's commercial and operational activities in the Philadelphia area as well as establishment of a Mid-Atlantic regional headquarters in Philadelphia to include a Regional Vice President.

VI. ADDITIONAL GUIDELINES AND OVERSIGHT

The City and PIDC believe that the Board will establish the necessary guidelines to insure that the actual implementation of the proposed application follows the agreements that CSX and Norfolk Southern have made with the Commonwealth of Pennsylvania, the City and PIDC, as noted more fully in the comments submitted to the Board by the Commonwealth of Pennsylvania and the attachment thereto. This is fully in keeping with, CSX and Norfolk Southern's statements that no implementation should take place until the Commonwealth of Pennsylvania, county and local governments have been given reasonable opportunity to provide comments to CSX and Norfolk Southern on their detailed operating plans. The City and PIDC plan to provide comments that will include, but is not limited to, requesting detailed maps of active and inactive rail property ownership in Philadelphia; implementation of extant City/Conrail and Conrail/Pennsylvania Public Utility Commission agreements, orders and other court actions; and identification of specific railroad employees with whom the City and PIDC will need to contact regularly for implementing engineering, design, construction and other on-going activities. The City and PIDC also plan to discuss in their operating plan dialogue with the applicants the possibilities for reactivation of abandoned branch lines where economically feasible for the Applicants. In addition, the City and PIDC remain concerned about the impact of the merger on regional rail transit passengers. Accordingly, the City and PIDC request that the Board give due consideration to the comments separately filed with the Board by SEPTA.

VII. FINAL COMMENT

The City and PIDC respectfully suggest that in 1976, the creation of a monopolistic Conrail truly served the benefit of the public because the Northeastern Region was on the brink of losing rail service altogether. The application now before the Surface Transportation Board proposes to considerably expand competition by jointly serving selected markets.

- 6 -

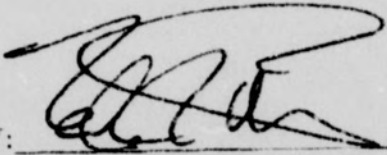
The Journal of Commerce has estimated in a July 11, 1997 article that twenty two percent of Conrail's existing traffic will be opened to competition if this application is approved. The City and PIDC recognize that this holds out the promise of being a very significant improvement, especially given the fact that many believe this transaction to carry the largest acquisition premium ever paid in any railroad merger to date - over \$4 billion, according to an estimate submitted to the Board by Consumers United for Rail Equity. The City and PIDC believe that this application strikes a proper balance between providing the public benefit of restored competition in the Northeastern United States and maintaining the financial viability of the applicants on the one hand and reemphasizing Conrail's headquarters commitment to the City and addressing the future of Conrail's employees on the other. We are confident that the present application's merits will be fairly recognized by the Surface Transportation Board.

The City of Philadelphia and Philadelphia Industrial Development Corporation appreciate the opportunity to provide these comments in support of approval of the Application before the Board. We respectfully request that they be considered by the Board and that after consideration that the transaction be approved.

VIII. PARTICIPATION IN PROCEEDINGS


The City and PIDC intend to participate formally in any proceeding held on this application. To the extent that the Board determines that any hearing is necessitated by the comments set forth herein or submitted by any other party, the City anticipates that its witnesses would be Edward G. Rendell, the Mayor of Philadelphia, and/or Denise Goren, Deputy Mayor for Transportation. PIDC anticipates that its witness would be G. Craig Schelter, Executive Vice President of PIDC, or William P. Hankowsky, President of PIDC.

CITY OF PHILADELPHIA

BY: 

WILLIAM R. THOMPSON
CHIEF DEPUTY CITY SOLICITOR
CITY OF PHILADELPHIA LAW DEPT.
1600 ARCH STREET, 10TH FLOOR
PHILADELPHIA, PA. 19103
(215) 686-0923

**PHILADELPHIA INDUSTRIAL
DEVELOPMENT CORPORATION**

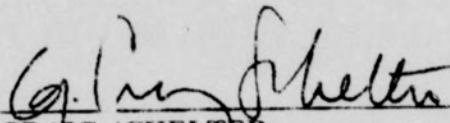
BY: 

G. CRAIG SCHELTER
2600 CENTRE SQUARE WEST
500 MARKET STREET
Philadelphia, Pa. 19102
(215) 496-3020

CERTIFICATE OF SERVICE

I hereby certify that on this 21ST day of October, 1997, I caused a true and correct copy of the within Joint Comments of the City of Philadelphia and the Philadelphia Industrial Development Corporation to be served upon all interested parties by causing same to be sent by first class mail, postage prepaid, to all parties on the service list of Finance Docket No. 33388.

BY: _____


G. CRAIG SCHELTER
EXECUTIVE VICE PRESIDENT
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORP.
2600 CENTRE SQUARE WEST
1500 MARKET STREET
PHILADELPHIA, PA. 19102

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L.L.P.

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(202) 986-8000

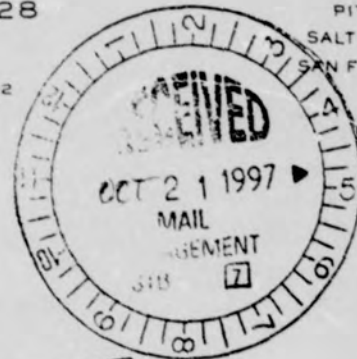
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WRITER'S DIRECT DIAL

(202) 986-8050

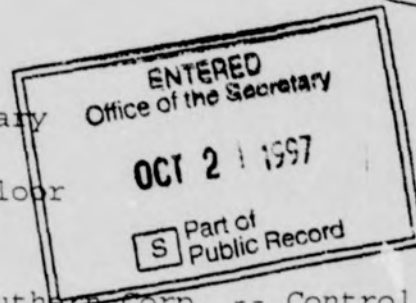
October 21, 1997

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VIA HAND DELIVERY

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



Re: CSX Corp./Norfolk Southern Corp. -- Control and
Operating Leases/Agreement -- Conrail; Finance
Docket No. 33388

Dear Secretary Williams:

Enclosed are the originals and 25 copies each of the highly confidential version of the "Joint Comments, Evidence, and Request for Conditions of Atlantic City Electric Company and Indianapolis Power & Light Company" (ACE, et al.-18) and "Supplemental Comments, Evidence, and Request for Conditions of Indianapolis Power & Light Company" (IP&L-3) for filing in the above-referenced proceeding. The highly confidential pleadings are being filed under seal in accordance with the Protective Order. Also enclosed are two 3.5" diskettes containing the documentation in WordPerfect format.

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Office of the Secretary
UNDER SEAL.

Mr. Vernon A. Williams
October 21, 1997
Page 2

Please date stamp and return the enclosed three additional copies of each pleading via our messenger.

Very truly yours,

Michael F. McBride

Michael F. McBride
Brian D. O'Neill
Bruce W. Neely
Linda K. Breggin
Erenda Durham
Joseph H. Fagan

Attorneys for Atlantic City
Electric Company and
Indianapolis Power & Light
Company

Enclosures

cc: All Parties on the Certificate of Service

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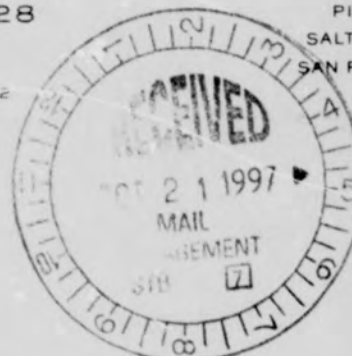
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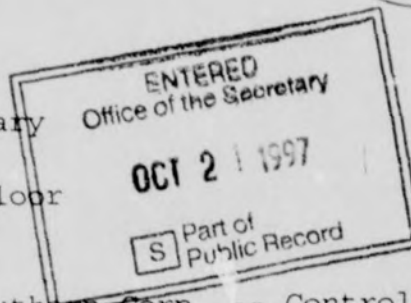
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Mr. Vernon A. Williams

October 21, 1997

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Attorneys for Atlantic City
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Company

Enclosures

cc: All Parties on the Certificate of Service

STB

FD

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10-21-97

D

182950

HOPPEL, MAYER & COLEMAN
ATTORNEYS AND COUNSELLORS AT LAW
1000 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 296-5460

ORIGINAL

NEAL MICHAEL MAYER
PAUL D. COLEMAN

TELECOPY: 202-96-5463
EMAIL: HMC1@IX.NETCOM.COM



October 21, 1997

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

Re: 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 in the above-captioned docket are an original and twenty-five copies of the Philadelphia Regional Port Authority, South Jersey Port Corporation, The Delaware River Port Authority and The Port of Philadelphia and Camden, Inc. Comments in Support of Acquisition. Also enclosed is a 3.5-inch IBM compatible disc, formatted in Word Perfect 7.0, containing these Comments.

Copies of the Comments are being served on all parties of record, on Administrative Law Judge Jacob Levantahl, and on

The Honorable Vernon A. Williams
Page No. 2
October 21, 1997

counsel for Applicants and Conrail, Inc., in accordance with the
Certificate of Service attached to the Comments.

Sincerely,

Paul D. Coleman

Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202)296-5460

Attorneys for:
PHILADELPHIA REGIONAL PORT
AUTHORITY
SOUTH JERSEY PORT CORPORATION
THE DELAWARE RIVER PORT AUTHORITY
THE PORT OF PHILADELPHIA AND
CAMDEN, INC.

PRPA-2
SJPC-2
DRPA-2
PPC-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

PHILADELPHIA REGIONAL PORT AUTHORITY
SOUTH JERSEY PORT CORPORATION
THE DELAWARE RIVER PORT AUTHORITY AND
THE PORT OF PHILADELPHIA AND CAMDEN, INC.
COMMENTS IN SUPPORT OF ACQUISITION

On behalf of the Philadelphia Regional Port Authority ("PRPA"), the South Jersey Port Corporation ("SJPC"), The Delaware River Port Authority ("DRPA"), and The Port of Philadelphia and Camden, Inc. ("PPC") (hereinafter collectively "Delaware River Port Interests" or the "Port"), we respectfully file these comments in support of approval by the Surface Transportation Board of the transaction by which CSX and Norfolk Southern would jointly acquire Conrail and divide Conrail's assets and operations between them as outlined in their respective Operating Agreements and the other transaction documents.

Factual Background

The Parties In Interest

PRPA is a Commonwealth of Pennsylvania-funded body that represents the port facilities on the Pennsylvania side of the Delaware River, and the SJPC is a State of New Jersey-funded

body, representing port facilities on the New Jersey side of the Delaware River. The DRPA historically has been a bilateral organization that acted as a marketing and promotion arm of the combined Philadelphia regional port system, but as of 1994 has been charged with unifying the Pennsylvania and New Jersey port facilities under a wholly-owned subsidiary, PPC. The unification process is in its final stages and the Delaware River Port Interests expect that it will be completed in the next few months.

Current Operations

The Delaware River Port Interests' facilities are the fourth largest in the United States for the handling of imported goods. Cargoes for which the Port is a United States leader include fruit, paper, frozen meat, steel, lumber, project cargo and cocoa beans. Over half of the United States' heavy industry lies within second-day delivery distance of Philadelphia and Camden, including such inland markets as Pittsburgh, Chicago, Detroit, Louisville and Cleveland, and is also accessible by the second day to the Canadian markets of Montreal and Toronto. The Port has an estimated \$1.84 billion in port facilities, including 37 designated berths which accommodate container ships, breakbulk vessels and roll-on/roll-off vessels, 4.7 million square feet of covered storage, including 1.1 million square feet of temperature-controlled facilities, hundreds of reefer outlets, and fourteen gantry cranes, including the largest heavy-lift gantry crane on the East Coast.

Philadelphia/Camden is the only East Coast port to be served by three Class I railroads, Conrail, CSX, and the CP Rail System. It is not served by NS. Conrail currently is providing daily doublestack intermodal services between Chicago, St. Louis and Kansas City and the DRPA/PPC AmeriPort intermodal facility by virtue of a 1995 \$114 million tunnel and bridge enlargement project funded by the Commonwealth of Pennsylvania, Conrail and CP. Conrail also provides specialized carload services for port steel and paper customers, these cargoes being attracted to rail service in part because of weight considerations and in part because of their sensitivity to damage, as well as cocoa beans and lumber. CSX provides East-West conventional intermodal service from its Snyder Avenue facility in South Philadelphia, but this facility has a capacity of only 90 cars and requires that units larger than 10 cars be broken up before entering the yard. CSX also offers carload services direct to the marine

terminal for paper and steel, and TOFC services for breakbulk cargos that come through the Port. CP, in conjunction with its Delaware & Hudson ("D&H") subsidiary, currently provides carload service for breakbulk cargo and intermodal service for containerized cargo between Philadelphia and Canada. For example, imported beef bound for Canada is able to move in-bond, without U.S. Department of Agriculture inspection via CP from Philadelphia, by agreement of U.S. and Canadian authorities, allowing ocean carriers to drop expensive and additional port calls in Halifax, N.S., because of CP's ability to serve customers through Philadelphia. Over 60% of the Delaware River Port Interests' international containerized business that moves by rail is destined for Canada. However, CP and the D&H are restricted in their operating rights along their route structure and limited in their service to only certain Port facilities.

Proposed CSX/NS Services

CSX. CSX has committed in its Operating Plan and in discussions and/or written agreements with the Commonwealth of Pennsylvania, the City of Philadelphia, and Delaware River Port Interests' officials to a number of infrastructure and service investments that will be of benefit to the Port, including but not limited to:

- A \$4 million investment to restore connections on the CSX mainline at Eastwick Junction, reducing train operation time for CSX, NS and CP into AmeriPort and the Greenwich Yard by three hours by allowing "head-on" rail moves and direct access to the facility. Vol. 3A at 153-154.
- New and upgraded intermodal lift facilities to be installed in Philadelphia at a cost of \$2.1 million. Vol. 3A at 60, 261.
- A \$15 million investment in a new intermodal facility in the Greenwich Yard in conjunction with the closing of the Snyder Avenue facility. Vol. 2A at 303. Pursuant to the agreement between the Commonwealth of Pennsylvania and the City of Philadelphia, a copy of which is attached to the Commonwealth's Comments in this proceeding, CSX will execute an agreement with the DRPA and the PPC for the development and operation of a CSX intermodal terminal at Greenwich Yard.

- A new CSX TOFC service featuring second morning service between Atlanta/Charlotte and Philadelphia and a second morning CSX single-line intermodal service between Memphis and Cleveland and Philadelphia. Vol. 2A at 254, 299.

NS. NS also has committed in its Operating Plan and in discussions and/or written agreements with the Commonwealth of Pennsylvania, the City of Philadelphia, and Delaware River Port Interests officials to substantial infrastructure and service investments, including the following:

- NS will assume Conrail's position on the current doublestack service operating between AmeriPort and the Midwest. The frequency of the service will be maintained with the exception of Kansas City, which will receive single-line service bypassing Chicago, and Chicago which also will receive improved service. Vol. 1 at 532.
- Doublestack service will be added for Detroit, Columbus and Cleveland as soon after the STB approval as possible, with the strong possibility that service to Louisville also will be added.
- A new automobile unloading facility will be constructed in Philadelphia. Vol. 2B at 343 and Vol. 3B at 280.
- New Intermodal services between Philadelphia and Knoxville, Memphis, Huntsville, Birmingham, New Orleans and Dallas will be added. Vol. 3B at 38.
- A new North-South doublestack service will be established as soon as possible between AmeriPort and points in the Southeast including Atlanta and points in the Carolinas and Florida.
- A new intermodal service will be established between points in the central Gulf Coast and Philadelphia. Vol. 2A at 251.
- A track connection at Zoo Interlocking at a cost of \$1.4 million. See, Agreement between the Commonwealth

of Pennsylvania, the City of Philadelphia and NS which is attached to the Commonwealth's Comments.

- DRPA/PPC will design, build and finance an expansion of the existing AmeriPort facility. The DRPA/PPC and NS will agree to a proposed term sheet and will execute a more definitive agreement for the location and operation of NS's intermodal terminal needs at the AmeriPort Intermodal Terminal. See, Commonwealth Agreement with NS.

CSX/NS Both CSX and NS have committed to improved maintenance and trackage over the entire Share Asset Area, including the Delair bridge route, a vital link to South Jersey shippers

Proposed CP/D&H Services

The Delaware River Port Interests are informed that, by virtue of agreements that have been reached between CP/D&H and CSX and NS, CP/D&H will obtain the rights that will at minimum allow CP/D&H to maintain and enhance their intermodal service between Philadelphia and Canada.

Support for the Approval of the CSX/NS Acquisition

The Delaware River Port Interests fully support the CSX/NS Application for approval of the acquisition of Conrail's assets since the Applicant's proposal would replace what generally has been a rail monopoly in the Northeastern United States with two competitors. The Port is greatly concerned that without the acquisition, Conrail will not have the financial strength or the desire to continue or expand the services to and from the Delaware River Port Interests as an independent, stand-alone railroad.

As shown above and in the referenced agreements between CSX, NS and the Commonwealth of Pennsylvania, the City of Philadelphia, CP/D&H, and the Delaware River Port Interests, the proposed NS and CSX services and investments meet the goals of the Delaware River Port Interests to:

(1) add to and expand the intermodal and doublestack services provided to the Port from the South, West and North;

(2) expand the use of the DRPA AmeriPort intermodal facility and eliminate the restrictive covenants imposed by Conrail that have been inhibiting intermodal growth and expansion at this critical facility;

(3) maintain and enhance the Port's Canadian routes which carry over half of the international containerized cargo imported through the Port and provide a second railroad's services to the marine terminals in Southern New Jersey; and

(4) expand the market for the Port facilities to new shippers.

These benefits will improve transportation to the public. They meet the "adequacy of transportation" test of Burlington Northern and Union Pacific in that they will provide better frequency and types of service, more "single-line" service, and more modern facilities. Not only will CSX move to a new facility with greatly expanded capabilities, but CP/D&H will offer new and better services to shippers and NS will enter the market for the first time and on equal footing with CSX. These benefits also will improve competition among CSX, NS and CP/D&H because each party will operate with facilities and trackage that will have a positive impact on their services and should lower the costs of providing those services to shippers.

The Delaware River Port Interests are not unmindful of the need for the STB to establish guidelines and oversight requirements to insure that the actual implementation of the CSX and NS transaction does not repeat the problems currently facing the implementation of the Union Pacific/Southern Pacific merger, that the implementation follows the agreements that CSX and NS have made with various parties, and that unforeseen events may make additional filings necessary if the parties are unable to reach agreements to accommodate the changed circumstances. At minimum, the Delaware River Port Interests believe, as CSX and NS themselves have stated, that no implementation should take place until all necessary labor-enabling agreements are effective and state, county and local governments have been given reasonable opportunity to provide input to CSX and NS on their detailed operating plans. In addition, as much as the Delaware River Port Interests would like to begin utilizing the benefits of the transaction, the Port also would recommend that before implementation (a) all Conrail computer data is accessible and usable in providing customer service, (b) a determination is made as to which Conrail personnel need to be retained to provide at least the same level of service as Conrail provided and those persons are employed by CSX and NS, and (c) the train schedules as provided to the STB are ready to be implemented.

Conclusion

The Philadelphia Regional Port Authority, South Jersey Port Corporation, The Delaware River Port Authority, and The Port of Philadelphia and Camden, Inc. appreciate the opportunity to provide these comments in support of approval of the acquisition to the STB. We respectfully request that they be considered by the STB and that after consideration, that the transaction be approved.

Respectfully submitted,

Paul D. Coleman

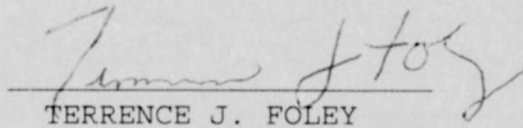
Paul D. Coleman
HOPPEL, MAYER & COLEMAN
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

Attorneys for:
Philadelphia Regional Port Authority
South Jersey Port Corporation
The Delaware River Port Authority
The Port of Philadelphia and Camden, Inc.

October 21, 1997

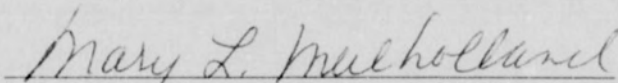
VERIFICATION

I, Terrence J. Foley, Director of Business Development, The Port of Philadelphia and Camden, Inc., have read the foregoing Comments in Support of Acquisition and hereby verify that all factual statements made are true to the best of my knowledge, information and belief.


TERRENCE J. FOLEY

District of Columbia:

Subscribed and sworn to before me
this 20th day of October, 1977.


Notary Public

My Commission Expires Dec. 14, 2000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments in Support of Acquisition have been served on Administrative Law Judge Jacob Leventhal and all parties of record listed on the Service List in Decision No. 21, as amended by Decision No. 43, in this proceeding by first-class mail, or by hand, this 21st day of October 1997.

Paul D. Coleman

Paul D. Coleman
Paul D. Coleman

STB

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10-21-97

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182947



American Public Transit Association
1201 New York Avenue, N.W.
Washington, DC 20005-6141
Phone (202) 898-4000
FAX (202) 898-4070
<www.apta.com>

D



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Ian G. Stacey
Canadian Members
Richard A. White
Management and Finance

President
William W. Millar

October 21, 1997

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

Dear Secretary Williams:

I write to provide the comments of the American Public Transit Association (APTA) regarding 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*. Many of the Association's commuter rail members are submitting their own comments directly to the STB or comments are being made on their behalf by their respective state governments. The views presented here do not necessarily represent those of the individual transit agencies or the government of states in which they are located.

Overview

The relationship of a commuter railroad to a freight railroad is that of a captive shipper - a purchaser of service who frequently pays a higher price and gets inferior service. As outlined below, APTA is concerned that the pending acquisition will perpetuate this unequal relationship, further degrading the service and economics of America's current and future publicly owned commuter railroads. Our concerns are based upon the applicants' representations in their filing, prior commuter railroad experience with the applicants, and prior commuter railroad experience with large-scale freight railroad mergers. We urge the STB to put into place, as a stipulation to this acquisition, a process that will provide a means to resolve future disputes between freight and commuter railroads, and safeguard the public's interest in and investment in passenger rail service.

Background

About APTA

The American Public Transit Association is a private, nonprofit trade association that represents the North American transit industry. Established in 1882, APTA has more than 1,100 members including local mass transit systems, manufacturers and suppliers, and consultants to the transit industry. More specifically, APTA includes among its members approximately 400 American public and private mass transit systems, which carry over 95 percent of those using public transit in the United States.

APTA's Commuter Rail Members. APTA's fourteen U. S. commuter rail members include the eleven commuter railroads that will be affected by the pending acquisition, railroads that carry over 352 million passengers a year and over 1.2 million passengers every weekday. A list of APTA's commuter railroad members is attached.

Our commuter railroad members who are affected by the acquisition are located along the length of the East Coast - from Massachusetts south through Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and Florida; as well as in the center of the nation, in Indiana and Illinois. In these corridors, commuter railroads play a central role in assuring mobility in the nation's largest and most densely populated urban areas, areas that also suffer from some of the worst traffic congestion and poorest air quality in the United States.

Significant Growth in Commuter Rail. The demand for commuter rail service is growing across the nation; indeed, ridership has increased 8.8% between 1993 and 1996. Established transit systems have gained 26 million new passenger trips a year during this period and new commuter rail operations that have recently become operational have experienced a 27% growth in ridership during the period.

Playing a role in the growth of commuter rail ridership has been the fact that since 1983 commuter railroads have invested billions of public tax dollars to improve their systems. These improvements have included investments in equipment and service, as well as investments in track and track structures. It is important to note that improvements to track and track structures have benefited both the commuter railroads and freight railroads. While a significant amount of the financing for these improvements has come from local, county and state resources, federal investments have clearly been the key element in the revival of commuter rail passenger service.

In a recently released report entitled *Commuter Rail: Serving America's Emerging Suburban/Urban Economy*, the economic benefits that commuter rail operations provide to the public were estimated to be \$5.2 billion a year. The report also noted that over 180 of the Fortune 500 companies are headquartered in areas served by the nation's commuter rail systems. These employers, as well as businesses of all sizes, rely upon the availability of efficient and effective commuter rail service to get workers to their jobs, on time, every day.

Without a doubt, the continued success and the future growth of commuter rail service is central to both regional and national economic strength, and the attainment of key national objectives. It is in this context that APTA provides comments about the proposed acquisition, an action that must be considered in light of both its current and future impact on commuter rail operators.

Comments

Transportation System Access

The most critical area of concern to commuter railroads regarding the proposed acquisition is the impact that it will have upon their ability to access railroad rights-of-way (ROW) in their service areas. While some commuter railroads own their own ROW and receive rents from freight railroads for the right to operate over commuter lines to reach freight customers and terminals, many more make rent payments to freight railroads for the right to operate over freight lines in providing commuter rail service.

All three of the freight railroads involved in this action - Corail, CSX and NS - have existing operating agreements with commuter railroads. In a very real sense, commuter and freight rail operations are interconnected and interdependent, each having the ability to affect the economics and operating success of the other. The complexities of this relationship and the potential limitations that the acquisition could place on the ability of commuter railroads to provide passenger service at current levels, as well as to grow in the future, cannot be casually dismissed -- as has been done in the current application to the STB.

The inter-relationship of the freight and commuter railroads is further complicated by the way capital investments supporting commuter rail operations have been financed. It is important to understand that improvements made to upgrade freight tracks to permit passenger rail operations are generally carried out with public funds. In financing track, signal and related improvements to increase speeds to the level needed for efficient commuter rail operations or to achieve ride conditions appropriate for passenger operations, commuter railroads use public funds. In some cases these funds are federal grant receipts and in others they involve the use of state or local funds, including proceeds from long term debt.

The freight railroads, and specifically CSX, NS and Conrail, have benefited significantly from the investment of public funds, investments that have helped them obtain additional capacity and improve their private sector operations.

These investments of public funds makes it even more imperative that commuter rail interests in and access to the freight railroads be protected.

In looking at the proposal at hand, the STB has established a three-year period in which to assess the implications and impacts associated with the acquisition. Unfortunately, that timeframe does not cover the period when many existing operating agreements expire and when the issue of trackage rights governing future commuter rail operations will be reexamined. By focusing on such short term, three-year, projections of freight traffic, the STB will not be able to ensure that existing and future commuter rail operators receive fair or even reasonable treatment from CSX and NS beyond that period.

Based upon past experience, we fully expect that commuter railroads that rent access to the trackage of or rights from CSX and NS will be faced with projections of increased freight traffic in their next round of negotiations. This increase in freight traffic will, in all likelihood, result in demands that commuter rail service be reduced or that the commuter rail operators finance additional capital improvements to accommodate the increased traffic. A close examination of the renegotiated operating rights agreements that have been approved to date will reveal that reductions have already been made in commuter rail service in order to accommodate increased freight traffic. While these reductions may have been made in light of other gains by our members, this is a one-time situation brought on by the need for CSX and NS to receive support for this merger. APTA is concerned that this will not be true in the future.

Existing service. The CSX and NS application identifies freight traffic increases that are expected to occur in the corridors that are shared with commuter rail operators. However, the application fails to demonstrate that the shared track/capacity issue has been considered in detail and that commuter rail systems can be assured that their operations will not be affected. Among the freight traffic increases that are cited in the application are seven additional trains a day in VRE's Fredricksburg corridor (a 40% increase) and seven to eight trains a day in MARC's Brunswick corridor. While some might not perceive these to be major increases, they are when considered in light of current traffic in the corridors. We expect that increases such as these could have a significant impact on commuter rail operations.

System expansions. Also of great concern is the impact of the proposed acquisition on plans that commuter rail operators have been developing to expand their operations in the future. These expansion plans, which are undertaken to address regional goals for economic development and growth, or to find low cost solutions to congestion problems, are supportive of broader national economic and environmental goals.

Because commuter railroads generally utilize federal funds to finance expansion of their systems, these plans take a long time to become operational. Many of our commuter rail members' long-term plans to expand their operations through the use of rail freight tracks/ROW, which are not currently used or are underused, could be negatively affected by the acquisition.

The two examples that follow demonstrate how important it is that assurances be made to commuter rail agencies that reasonable accommodation will be made to allow them to access the rail lines for the operation of expanded levels of rail passenger service:

NJ TRANSIT has been working on the expansion of its commuter rail network for a number of years. Using both federal and state funds, the agency has been studying the potential for commuter rail service to be restored in corridors that have been under the control of Conrail in southern New Jersey and the NYS&W in northern New Jersey. The planned expansions of the commuter rail system are important components in the State of New Jersey's plans to realize its economic, mobility, and environmental goals.

The Southeastern Pennsylvania Transportation Authority (SEPTA) is another transit agency that is actively pursuing system expansion and New Start funding. The proposed Cross County and Schuylkill Valley Metro projects are focusing on new light rail lines or commuter rail service along existing freight rail corridors, parallel to active Conrail freight service. Both projects respond to changing regional demographic, development and travel needs, as well as the need for transit agencies to serve new markets, promote economic development and support community revitalization. The Schuylkill Valley Metro would also reconnect the Philadelphia and Reading metropolitan areas for the first time since 1981.

New commuter rail starts. Across the United States, there is keen interest in initiating new commuter rail services. As part of the nation's agenda to enhance mobility and air quality through the reduction of automobile traffic and regional plans to encourage economic development and growth, these efforts are made possible through the use of federal and/or local funds, including funds raised by long-term public debt. New commuter operations, utilizing existing freight rights-of-way, are in advanced stages of planning in: Portland, Maine; Burlington, Vermont; Raleigh-Durham, North Carolina; Jacksonville and Tampa, Florida; Atlanta, Georgia; Nashville and Memphis, Tennessee; Cleveland, Ohio; Milwaukee, Wisconsin; and St. Louis, Missouri.

In light of the large number of "new starts" commuter rail operations that are actively under consideration, it is important that the CSX/NS acquisition not be allowed to become a deterrent to the development of new systems.

If this acquisition leads to greater restrictions on access to freight railroad rights-of-way, the establishment of new commuter rail operations could be affected. APTA believes that the STB should use this acquisition as an opportunity to promote cooperation between CSX and NS and commuter rail operations, ensuring that rights-of-way that are necessary for passenger service are available to the public, over the long term.

The central importance that access to CSX and NS lines has for current commuter rail operators, as well as future growth in the service, clearly indicates the need for a way to resolve disputes on this issue. In their discussions with the applicants, some commuter rail operators have been able to agree upon some form of accommodation regarding access issues. However, many of these accommodations were influenced by the need for public agency support for the proposed acquisition, a factor that will not be present in the future. APTA believes that, as a condition to the approval of this acquisition, the STB needs to define a process that will ensure that fair and reasonable operating rights agreements can be established in the future, with fair and reasonable compensation to CSX and NS. Such an action by the Board will assure that commuter rail service in freight corridors is protected for the American public interest in the future.

Operating Service and Schedules

Closely associated with the issue of operating rights and the ability of our members to access freight lines, is the issue of how freight operations affect commuter rail service and schedules. Because the proposed acquisition directly affects some of the most highly concentrated rail corridors in the nation, where freight traffic shares space with heavily-used commuter and intercity passenger service, the issue of operating performance and ability to maintain on-time service schedules is critical. We expect that where increases in freight traffic are projected on lines that are also used for passenger traffic, conflicts between freight and commuter rail service schedules will also increase. The 40% increase in freight traffic in VRE's Fredricksburg corridor is illustrative of an area where on-time performance problems could be expected.

The experience of the Southern California Regional Rail Authority (see comments dated August 1, 1997 in Finance Docket No. 32760 [Sub-No. 21]) with recent rail mergers confirms the potential for freight traffic to interfere with established passenger operations. This point has been underscored in even more recent media accounts regarding Metrolink's (California) on-time performance problems on its Riverside Line that it rents from the Union Pacific. The problems that the Union Pacific has encountered following its recent merger has made it difficult for several of our members to get railroad management to focus on commuter rail issues. Dispatching and coordination problems have gone unresolved, on-time performance is not a concern and communications in general have been difficult as the freight railroad has focused on its own problems.

Commuter rail service issues have had very low, or no, priority and commuter passengers have suffered through unnecessary delays and degradations in the quality of service that they receive. The freight railroad has focused on backed-up freight traffic and ignored its commuter rail partners.

Our concern regarding this issue is further underscored by the prior experience of our members with the parties to the acquisition and the parties' stated desire to adopt existing agreements, some of which are outdated. Both NS and CSX, in spite of the existence of operating agreements designed to protect commuter operations, have caused significant schedule problems for the Virginia Railway Express (VRE). In incidents that occurred during the summers of 1996 and 1997 that were reported in local media accounts, VRE's ability to operate its service in accordance with published schedules was negated by the actions of the freight railroad owners.

Such interference, which results in delays in commuter rail service and poor on-time performance, encourages passengers to view transit services as unreliable. When faced with poor on-time performance, these riders have the option to return to their cars and will do so, further impacting the environmental and safety of the riders (see APTA's comments STB Environmental Impact Statement). In our experience, and in survey after survey conducted by transit properties across the nation, unreliable service and poor on-time performance are the biggest factors that cause transit riders to abandon public transit service in favor of private automobiles.

We note that the operating plans that have been formulated by CSX and NS provide no details about how they will accommodate passenger operations and work cooperatively with commuter rail operators to ensure that their schedules are maintained in shared corridors. Schedule interference, dispatching, and maintenance procedures are critical to assessing the impact of the acquisition, and the STB must insure that the efforts of commuter rail operators to provide high quality service to customers will not be undermined by the actions of the freight railroads. As with the issue of access, it is important that the STB provide a means to resolve potential disputes beyond the three-year timeframe, ensuring that future freight traffic increases are not a reason for commuter rail schedules and service to be interrupted.

In addition, we think it is appropriate to move towards incentive-based operating agreements in shared corridors, an idea that most freight railroads have not been willing to consider in the past.

Railroad Retirement

The Railroad Retirement System, like Social Security, is a pay-as-you-go pension system that is a holdover from the days when freight and passenger rail operations were combined. Under the provisions of the Railroad Retirement Act, both commuter and freight railroads are charged a payroll tax based upon the number of active employees working for each system. This tax supports the pensions provided to railroad employees across the country -- the only private sector retirement system that is mandated by Congress.

Over the years, freight railroad employment has dropped significantly as employees have retired and the industry has consolidated, while commuter rail operations and their publicly funded workforces have expanded. This new environment has created a situation in which commuter rail operators -- funded by public and taxpayer dollars -- are providing large and growing subsidies to the freight railroads in the form of pension payments to freight railroad retirees. The workforce reductions that will result from the proposed acquisition, as well as the previous freight railroad mergers, have served to exacerbate the current situation in which commuter rail employer tax burdens are three times that of FICA-based employers. APTA is concerned that the proposed action will result in additional cross-subsidization of the freight railroads by publicly funded commuter railroads.

APTA suggests that the STB review the 1990 report "Commission on Railroad Retirement Reform". Further, the impact that this acquisition and further declines in freight railroad employment will have on commuter rail systems needs to be considered by the STB in conjunction with the Railroad Retirement Board. The STB needs to impose conditions to this acquisition that will ensure that CSX and NS fund any negative financial impacts of the merger upon the commuter railroads' contributions to railroad retirement.

Conclusion

In the freight industry there is a group of customers who are known as "captive shippers," railroad customers who have no other alternatives in moving their products and are tied to one railroad. Because there is no competition for their business, captive shippers frequently pay higher rates and get poorer quality service.

The relationship of a commuter railroad to a freight railroad is that of a captive shipper. Commuter railroads that rent their tracks/ROW do not have an alternative way to transport their passengers. If they cannot use the tracks/ROW at the time that their customers want to travel, there is no need for their service. If their use of the railroad is subject to frequent delays, the quality of their service will be poor and it will go unused. And if they cannot gain reliable access to the railroad -- the only alternative is to abandon their passengers.

Our nation needs to maximize the public's use of mass transportation systems in order to enhance mobility and improve the environment. The establishment of cooperative and mutually beneficial relationships – not captive shipper relationships – between freight and commuter railroads is essential to the success and efficiency of the industry. The STB's review of the acquisition of Conrail's assets and rights by CSX and NS will play a role in how those relationships are defined in the future.

The American Public Transit Association urges you and the Board to ensure that commuter rail operations can continue to provide the American public with high quality and efficient transportation service.

Sincerely,

William W. Millar

William W. Millar
President

FH:mat

cc APTA Commuter Rail Members

APTA's Commuter Railroad Members

Caltrain, San Carlos, CA

Connecticut Department of Transportation, Newington, CT

Mass Transit Administration of Maryland (MARC), BWI Airport, MD

Massachusetts Bay Transportation Authority, Boston, MA

Metra, Chicago IL

MTA - Metro-North Commuter Railroad, New York, NY

MTA - Long Island Railroad, Jamaica, NY

New Jersey Transit Corporation, Newark, NJ

Northern Indiana Commuter Transportation District (NICTD), Chester, IN

Southeastern Pennsylvania Transportation Authority (SEPTA), Philadelphia, PA

Tri-County Commuter Rail Authority, Ft. Lauderdale, FL

Trinity Railway Express, Dallas, TX

Southern California Regional Rail Authority (Metrolink), Los Angeles, CA

Virginia Railway Express (VRE), Arlington, VA