

STB

FD-33388

1-14-98

D

196886

2 OF 3

- 13 -

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

Interrogatory No. 11

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

Subject to their general objections, Applicants respond as follows:

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

CSX/NS-51

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

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

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

GENERAL RESPONSES

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

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

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

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

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

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

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

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

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

* * *

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

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

Respectfully submitted,

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
J. GARY LANE
JAMES L. HOWE, III
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

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL
11 Washington, D.C.
12 Wednesday, September 24, 1997
13 Deposition of WILLIAM M. HART, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at 9:05 a.m.,
21 Wednesday, September 24, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY,
24 RPR, and transcribed under their direction.

25

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

4 A. No.

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

7 A. I wasn't thinking about it.

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

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

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

21 A. Yes.

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

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?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

DEPOSITION OF DONALD W. KNIGHT

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

REPORTED BY:
CRAIG L. KNOWLES

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

4 Q So you have no recollection of --

5 A No.

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

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

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

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

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

18 Q Okay.

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

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

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

8 A Yes --

9 Q Does IP&L?

10 A Yes, we do.

11 Q When was that contract negotiated?

12 A '95, I think.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

- - - - - x

DEPOSITION OF DONALD W. KNIGHT

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

REPORTED BY:
CRAIG L. KNOWLES

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

- 12 -

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

Interrogatory No. 9

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

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

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

Interrogatory No. 10

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

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

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

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

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

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

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

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

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

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

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

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

8 MS. TAYLOR: Off the record.

9 (Discussion off the record.)

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

12 MR. MC BRIDE: No redirect.

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

15

16

17

18

19

20

21

22

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

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Thursday, September 18, 1997

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

25

163

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

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

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

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

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

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

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

17 Q. Right, but you do understand that?

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

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

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

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

BSA

the

[20] BN Sante Fe merger. I filed two verified statements on

[21] that merger. The first one did essentially similar

[22] tasks, similar work as the statement I just filed in this

Page 10

[1] proceeding.

[2] Q. Have you had similar responsibilities in

[3] mergers involving other industries?

[4] A. Yes.

[5] Q. Many or few would you characterize?

[6] A. I have probably done about -- worked on about

[7] half a dozen merger filings where the level of analysis

[8] was similar to this, and I've worked on many more

[9] mergers, merger filings but only maybe half a dozen in

[10] this detail.

[11] Q. When you analyze merger acquisition

[12] transactions, do you typically accept the representations

[13] made to you by the parties to the transaction?

[14] A. I do generally. If there's a way of verifying

[15] the representations or perhaps seeing if there are other

[16] ways of looking at the same facts that everyone is

[17] looking at, I try to do those. I try to screen all of

[18] the information I get as well as I can to see, to look

[19] for possible errors or exaggerations, that kind of thing.

[20] Q. Do you treat the representations made by other

[21] parties interested in the transaction the same way?

[22] A. Yes.

Page 11

[1] Q. How do you use as an economist resolve

[2] situations in which you find conflicting presentations

[3] made to you by different parties interested in the

[4] transaction?

[5] A. Well, I try to resolve them in the way that

[6] either the -- if there's a factual dispute, I choose the

[7] facts which I -- either there's the most factual support

[8] for a particular other fact or when there's -- then

[9] there's different views on the issue of economic theories

[10] of competitive behavior, then I rely on what economic

[11] theory I think is the more plausible one, perhaps one

[12] which has been tested more successfully than another

[13] theory which is being advanced. Those kinds of criteria.

[14] Q. On page 8 of your verified statement which

[15] was submitted as part of the document captioned DOJ-1,

[16] indicated -- and this is, I believe, a quote -- "The

[17] status station is served directly only by one rail,

[18] Indiana Railroad, but is also served by Conrail, the

[19] reciprocal switch." That's about in the middle of page

[20] 8. Do you see that?

[21] A. Yes, I see it in my copy.

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

Page 12

[1] status station is served by Conrail by reciprocal switch?

[2] A. That's based on information from IP&L.

[3] Q. How did you obtain that information?

[4] A. I conducted a couple of interviews with people

[5] at IP&L. Attachment 7

[6] Q. Did you interview anyone else about this fact?

[7] A. I may have gotten the same information from

[8] Indiana Southern Railroad. I'm thinking of other sources

[9] of that information. Those I think are the only two, the

[10] only two sources.

[11] Q. Do you know who provides the reciprocal

[12] switching service for Conrail that you referred to in

[13] your testimony?

[14] A. I believe it's the Indiana Railroad.

[15] Q. Did you interview anyone at the

[16] Indiana Railroad in connection with preparation of your

[17] testimony?

[18] A. No.

[19] Q. Did you interview anyone at Conrail in

[20] connection with your preparation of your testimony?

[21] A. No.

[22] Q. Did you ask at any point to be able to

Page 13

[1] interview anyone at Conrail in connection with the

[2] preparation of your testimony?

[3] A. No.

[4] Q. Did you ask at any point to interview anyone at

[5] the Indiana Railroad in connection with the preparation

[6] of your testimony?

[7] A. No, I didn't.

[8] Q. Do you know whether the reciprocal switch that

[9] you refer to in the sentence that we just read was the

[10] subject of a file tariff?

[11] A. No.

[12] Q. Do you know whether party that provides

[13] reciprocal switch service to Conrail is under any

[14] obligation to continue to do so?

[15] A. After -- if the merger goes through or --

[16] Q. Absent the transaction.

[17] A. No. I guess -- let me just amend that. My

[18] understanding from talking to IP&L and Indiana Southern

[19] representatives is that if the merger were not to occur,

[20] that the current or the recent situation that I

[21] described in my testimony about how Conrail served IP&L, that

[22] that would continue.

Page 14

[1] So that the implication from the conversations

[2] I had with the people I mentioned was that this

[2] arrangement would continue. If it were not for the
[4] merger, we would assume we would go on. That's my
only

[5] understanding of the situation.

[6] Q. If there was a written agreement that governed
[7] this arrangement, would that be relevant to your
[8] analysis?

[9] A. A written agreement between? Between
Conrail
[10] and -

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

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

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

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

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

Page 15

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

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

[6] reach, although as I argue in my statement, the
[7] incentives or taking what I say in my statement and
[8] adding something to it, the incentives that IP&L -
[9] excuse me, the incentives that Indiana Railroad
would
[10] have towards accepting an agreement with Conrail or
[11] continuing the existing agreement I see those are
[12] strongly affected by Conrail's position relative to
being

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

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

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

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

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

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

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

Page 16

[1] power back and forth.

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

[3] A. I don't know.

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

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

information

[7] that I mentioned.

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

[9] Interconnection Network works?

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

[13] no.

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

[16] the ECAR Interconnection Network?

[17] A. No.

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

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

Page 17

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

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

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

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

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

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

[8] from that network specifically, no.

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

[11] do so?

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

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

Page 18

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

[4] A. I don't remember.

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

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

switching

[15] fees in Indianapolis?

[16] A. No.

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

[19] A. That would be because the switching fee would affect ultimately the prices, that and other things would

[21] affect the prices that Norfolk Southern would offer to IP&L.

Page 27

[1] Q. Further down on page 17 of your statement you

[2] indicate this is a point you alluded to earlier that the possibility of a build out from IP&L. I take it this is referring to the stout facility, was an important lever, to use your words. Did you in connection with the preparation of your testimony - first, am I understanding that portion correctly?

[8] A. Yes, I think so.

[9] Q. In connection with your evaluation of this build out, as you refer to it, did you interview anyone at Indiana Railroad to determine whether the possibility of this build out had any influence on their pricing behavior to IP&L?

[14] A. No, because I didn't interview anyone at Indiana Railroad.

[16] Q. Do you have a view as to whether it would be economically rational for IP&L to complete the build out that you refer to in your testimony?

[19] A. I think making a very rough guess based on the cost estimates and IP&L's representation of the kind of savings they were able to get with competition which was

[22] essentially supported by a build out and the tonnage that

Page 28

[1] goes to stout, it would appear to be a reasonable investment for IP&L to make. IP&L certainly has represented that that is the case. But just based on the

[4] cost and the likely rate savings I think it is something that would make sense.

[6] One thing I might add I think what happens a lot of times that happens in these build out situations that the build out never occurs, but it's a reasonable enough threat to the incumbent railroad, the serving railroad, in this case Indiana Railroad, that it's taken seriously, and the threat has an effect on the rates. As long as it's something which is a credible threat in the economics terminology, it can often have an effect on the

[14] rates of the serving railroad charges.

[15] And on the surface of it it looks like the economics would support it, given the cost estimates.

[17] Q. Did you do any written analysis of whether the

[18] costs of this build out would be worth it?

[19] A. No, I didn't.

[20] Q. So the analysis that you just described for me, is that some analysis that you just did in response to my question or is that analysis that you did at some earlier

Page 29 Attachment 7

[1] time? Page 3 of 3

[2] A. No, I knew the key values here, the cost of the

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

[5] the cost. I had done this earlier in my head and given current low interest rates it struck me as an investment

[7] that would pay off, given, say, a 20 year or more life span of the track. Of course some of the costs - well, it seemed like a sensible investment, and I did some sketches of that earlier.

[11] Q. Did you inquire of anyone whether there were environmental restrictions that might preclude this build out from occurring?

[14] A. No, no not before I wrote my statement.

[15] Q. Given the parameters that you were referring to earlier that you considered in evaluating the build out at what price would the build out be too expensive to be a credible threat to use the terminology that I believe you used in your earlier answer?

[20] A. That's hard to say. I don't know what interest

[21] rate IP&L would use in its internal calculations about

[22] whether there was a worthwhile use of its capital. I

Page 30

[1] suppose if it were three times as high as the 8 or 9 million it might approach being not a profitable option

[3] and might not be taken seriously by Indiana Railroad.

[4] But it's hard to answer without knowing the cost of the capital to Indiana Power & Light and whether

[6] there's any risk involved which they would have considered in their decision.

[8] Q. Would you regard the build out threat as relevant to your analysis if IP&L had concluded internally that it would never do the build out but that the Indiana Railroad perceived that IP&L might?

[12] A. Well, it might not change much in my analysis

[13] because if I understand your question right, what's important here is whether Indiana Railroad believes this

[15] is a threat to deal with if they are risk averse and they attach a low probability that the build out ever happened. But they're still very nervous about losing all of this coal traffic to somebody via a build out, they might still - the build out might still be an important aspect of competition to them, even if

switching

[15] fees in Indianapolis?

[16] A. No.

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

[19] A. That would be because the switching fee would affect ultimately the prices, that and other things would

[21] affect the prices that Norfolk Southern would offer to IP&L.

Page 27

[1] Q. Further down on page 17 of your statement you

[2] indicate this is a point you alluded to earlier that the

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

[4] referring to the stout facility, was an important lever,

[5] to use your words. Did you in connection with the

[6] preparation of your testimony - first, am I

[7] understanding that portion correctly?

[8] A. Yes, I think so.

[9] Q. In connection with your evaluation of this

[10] build out, as you refer to it, did you interview anyone

[11] at Indiana Railroad to determine whether the possibility

[12] of this build out had any influence on their pricing

[13] behavior to IP&L?

[14] A. No, because I didn't interview anyone at

[15] Indiana Railroad.

[16] Q. Do you have a view as to whether it would be

[17] economically rational for IP&L to complete the build

[18] out

[19] that you refer to in your testimony?

[20] A. I think making a very rough guess based on

[21] the

[22] cost estimates and IP&L's representation of the kind

[23] of

[24] savings they were able to get with competition which

[25] was

[26] essentially supported by a build out and the tonnage

[27] that

Page 28

[1] goes to stout, it would appear to be a reasonable

[2] investment for IP&L to make. IP&L certainly has

[3] represented that that is the case. But just based on

[4] the

[5] cost and the likely rate savings I think it is something

[6] that would make sense.

[7] One thing I might add I think what happens a

[8] lot of times that happens in these build out situations

[9] that the build out never occurs, but it's a reasonable

[10] enough threat to the incumbent railroad, the serving

[11] railroad, in this case Indiana Railroad, that it's taken

[12] seriously, and the threat has an effect on the rates. As

[13] long as it's something which is a credible threat in the

[14] economics terminology, it can often have an effect on

[15] the

[16] rates of the serving railroad charges.

[17] And on the surface of it it looks like the

[18] economics would support it, given the cost estimates.

[19] Q. Did you do any written analysis of whether the

[18] costs of this build out would be worth it?

[19] A. No, I didn't.

[20] Q. So the analysis that you just described for me,

[21] is that some analysis that you just did in response to my

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

Page 29 Attachment 8

[1] time? Page 1 of 2

[2] A. No, I knew the key values here, the cost of

[3] the

[4] build out, the apparent savings from the build out

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

[6] and

[7] the cost. I had done this earlier in my head and given

[8] current low interest rates it struck me as an

[9] investment

[10] that would pay off, given, say, a 20 year or more life

[11] span of the track. Of course some of the costs - well,

[12] it seemed like a sensible investment, and I did some

[13] sketches of that earlier.

[14] Q. Did you inquire of anyone whether there were

[15] environmental restrictions that might preclude this build

[16] out from occurring?

[17] A. No, no not before I wrote my statement.

[18] Q. Given the parameters that you were referring to

[19] earlier that you considered in evaluating the build out

[20] at what price would the build out be too expensive to be

[21] a credible threat to use the terminology that I believe

[22] you used in your earlier answer?

[23] A. That's hard to say. I don't know what

[24] interest

[25] rate IP&L would use in its internal calculations

[26] about

[27] whether there was a worthwhile use of its capital. I

Page 30

[1] suppose if it were three times as high as the 8 or 9

[2] million it might approach being not a profitable

[3] option

[4] and might not be taken seriously by Indiana

[5] Railroad.

[6] But it's hard to answer without knowing the

[7] cost of the capital to Indiana Power & Light and

[8] whether

[9] there's any risk involved which they would have

[10] considered in their decision.

[11] Q. Would you regard the build out threat as

[12] relevant to your analysis if IP&L had concluded

[13] internally that it would never do the build out but that

[14] the Indiana Railroad perceived that IP&L might?

[15] A. Well, it might not change much in my

[16] analysis

[17] because if I understand your question right, what's

[18] important here is whether Indiana Railroad believes

[19] this

[20] is a threat to deal with if they are risk averse and they

[21] attach a low probability that the build out ever

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

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

[24] they might still - the build out might still be an

[25] important aspect of competition to them, even if

IP&L who

[21] perhaps had better information than Indiana Railroad even

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

Page 31

[1] would never want to make this known. This is just part

[2] of their negotiations with Indiana Railroad.

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

[7] A. And the build out occurred? I would want it

[8] I would like to answer your question in that context, is

[9] that a fair thing to do?

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

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

[19] the build out perhaps in some way that it was not very costly to get started, that might change Indiana Railroad's mind, particularly if Indiana Railroad

[22] was just wrong and very stubborn but wrong, I think that

Page 32

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

[3] some sort of rate concession from Indiana Railroad, for

[4] example, it might not be very hard for Indiana Railroad

[5] to finally become convinced of that.

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

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

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

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

assumption

[22] about the build out.

Attachment 8

Page 2 of 2

Page 33

[1] And I think eventually they would under this [2] hypothetical and whether or not the build out occurred,

[3] there would still be essentially two railroad [4] competition. The effect would be of two railroad [5] competition.

[6] Q. What is the basis for your testimony that IP&L [7] is part of the ECAR Interconnection Network - strike [8] that.

[9] We already talked about that.

[10] A. Yes, I think you asked me about that.

[11] Q. I'm sorry, I already asked you about that.

[12] Page 18 of your testimony you refer to past [13] competition between Conrail, Indiana Railroad, and with

[14] the delivery of coal to the stout plant. What is the [15] basis for that portion of your statement?

[16] A. My interviews with IP&L.

[17] Q. Did you review any documents relating to that [18] competition?

[19] A. No, I didn't - no, I didn't.

[20] Q. What is the PJM Interconnection Association [21] that you refer to on page 10 of your testimony?

[22] A. That's the Interconnection Network that covers

Page 34

[1] Pennsylvania, I believe New Jersey, Maryland, [2] District of Columbia, possibly some other areas. [3] Central Atlantic area which PEPCO is a member.

[4] Q. Is the PJM Interconnection Association an [5] entity of some sort?

[6] A. It is an entity, yes.

[7] Q. Does it have employees?

[8] A. Yes.

[9] Q. Do you know how PJM works?

[10] A. I have a basic understanding. I've reviewed [11] their web page, I've talked to one person at PJM gave me

[12] a little information on their electricity pricing. I've [13] talked to people in my Indiana Trust Division who have -

[14] who seem to have an understanding of PJM. I visited [15] the central dispatching place of PJM. I've seen a PJM report

[16] on its activity, that sort of thing.

[17] Q. When you spoke to someone at PJM regarding [18] electricity pricing, was that in connection with the [19] preparation of this statement?

[20] A. Yes.

[21] Q. And who did you speak to?

[22] A. I don't remember her name. This was a question

Page 35

[1] about my initial question, had to do with their peak and

[2] off pe

had

[3] some

answer. I

[4] don't

[5] Q.

[6] did you

[7] A.

would be

[8] the same

ECAR. I

[9] did talk

[10] of PJM

[11] the PJM

[12] Q.

[13] circum

to

[14] purchas

[15] Associa

[16] A.

[17] Q.

[18] A.

perfect

[19] substitu

[20] particul

stations.

[21] That PE

that

[22] network

substitute,

[1] that's no

generating

[2] stations.

[3] Q.

through

[4] the PJM

[5] generated

[6] A.

over

[7] all about

don't

[8] know wh

[9] answer y

it

[10] was from

[11] Q.

[12] statement

[13] capacity a

[14] PEPCO w

[15] A.

[16] Q.

the

[17] capacity M

[18] A.

[19] Q.

Southern

[20] about Lam

[21] A.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

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

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

**On Behalf of
Indiana Southern Railroad, Inc.**

Due Date: January 14, 1998

PUBLIC VERSION

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
I. INTRODUCTION	1
II. SUMMARY AND FINDINGS	3
III. IP&L/ISRR CURRENT ALTERNATIVES	5
A. Background	5
B. Transportation Alternatives for Perry K and Stout	5
IV. IMPACT ON CONTROLLED LINES ON ISRR AND SERVICE TO PERRY K AND STOUT PLANTS	7
A. Perry K	9
B. Stout	9
C. ISRR's Loss of Rail Service	10
V. APPLICANTS' REBUTTAL AND ALTERNATIVES TO IP&L/ISRR'S LOST RAIL COMPETITION	12
A. ISRR/Conrail Provide Competition at Stout	12
B.	14
C. Petersburg "Disciplines" the Railroads at Stout	17
D. Western Movements	18
VI. ISRR'S REQUESTED CONDITIONS ARE RESPONSIVE TO IP&L'S LOST COMPETITION	22
A. Conrail Has An Integral Role in IP&L's Indiana Coal Movements	22
B. Perry K	23
C. Stout	23
D. Access to ISRR Track Would Provide a Viable Alternative to CSX's Pending Monopoly of IP&L's Coal Traffic	24
1. Applicants' Rebuttal Comments on the Build-Out Option	24
2. It is a Widely Recognized Fact That Build-Out Options Have Served Effectively to Maintain or Establish Rail Competition .	26
a. The BNSF and UPSP Mergers	26
3. The Build-Out Option is Economically Feasible Under Any Reasonable Standard of Measure	28

LIST OF EXHIBITS

EXHIBIT
NO.
(1)

TITLE
(2)

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

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

I. INTRODUCTION

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

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

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

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

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

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

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

II. SUMMARY AND FINDINGS

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

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

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

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

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

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

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

III. IP&L/ISRR CURRENT ALTERNATIVES

A. BACKGROUND

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

B. TRANSPORTATION ALTERNATIVES FOR PERRY K AND STOUT

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

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

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

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

^{6/}

Also see schematic, Exhibit__ (TDC-1).

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

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

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

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

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

^{7/} CSX/NS-178, Volume 2A, pages P-653 and P-54.

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

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

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

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

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

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

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

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

^{13/}

A. PERRY K

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

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

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

B. STOUT

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

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

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

^{15/}

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

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

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

C. ISRR'S LOSS OF RAIL SERVICE

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

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

16/

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

17/

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

16/ Hoback, deposition, pages 218-219.
17/

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

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

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

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

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

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

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

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

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

B.

19/

20/

21/

22/

23/

21/
22/
23/

24/

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

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

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

^{24/}

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

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

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

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

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

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

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

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

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

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

D. WESTERN MOVEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. PERRY K

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

C. STOUT

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

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

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

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

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

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

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

37/

38/

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

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

Applicants' Witness Thomas E. Kuhn discounts the feasibility of the build-out, asserting that IP&L Witness Porter has understated the cost of the build-out. While I do not endorse Mr. Kuhn's costs, it should be observed that the build-out contemplated by IP&L is relatively short. The terrain which it traverses is relatively flat, and, based on my experience in assisting utilities with gaining competitive access the build-out is feasible. Therefore, in my opinion, the build-out could be accomplished at a cost which is reasonable when compared to other build-outs actually constructed or planned.

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

^{40/} APS, page 6.

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

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

Finally,

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

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

a. The BNSF and UPSP Mergers

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

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

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

and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

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

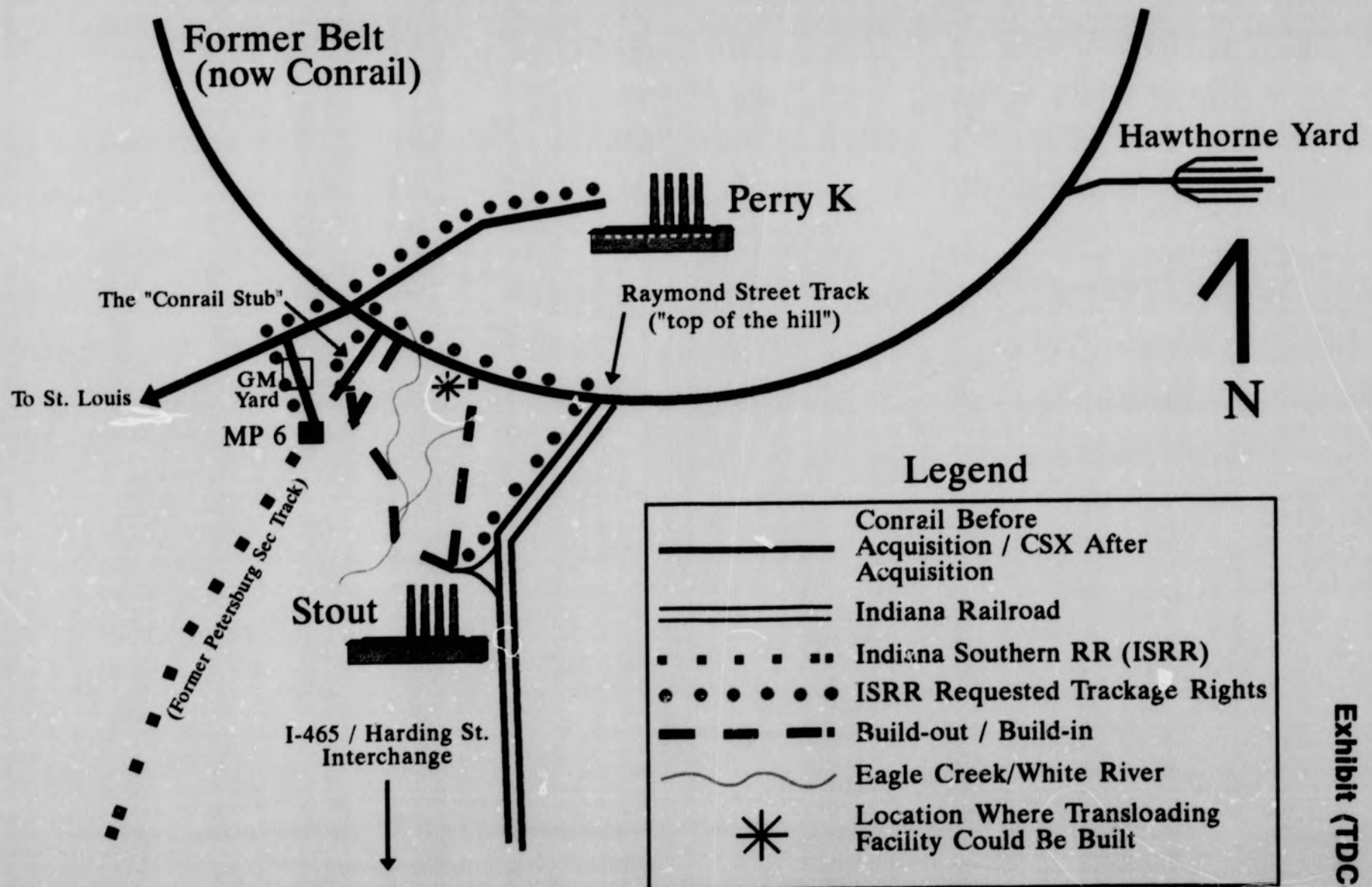
Thomas D. Crowley
Thomas D. Crowley

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

Witness my hand and official seal.

Carol J. Hellyer
my Commission Expires July 31, 2001

Schematic of Routes to IPL Power Plants



STB

FD-33388

1-14-98

D

196886

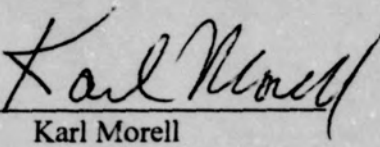
3

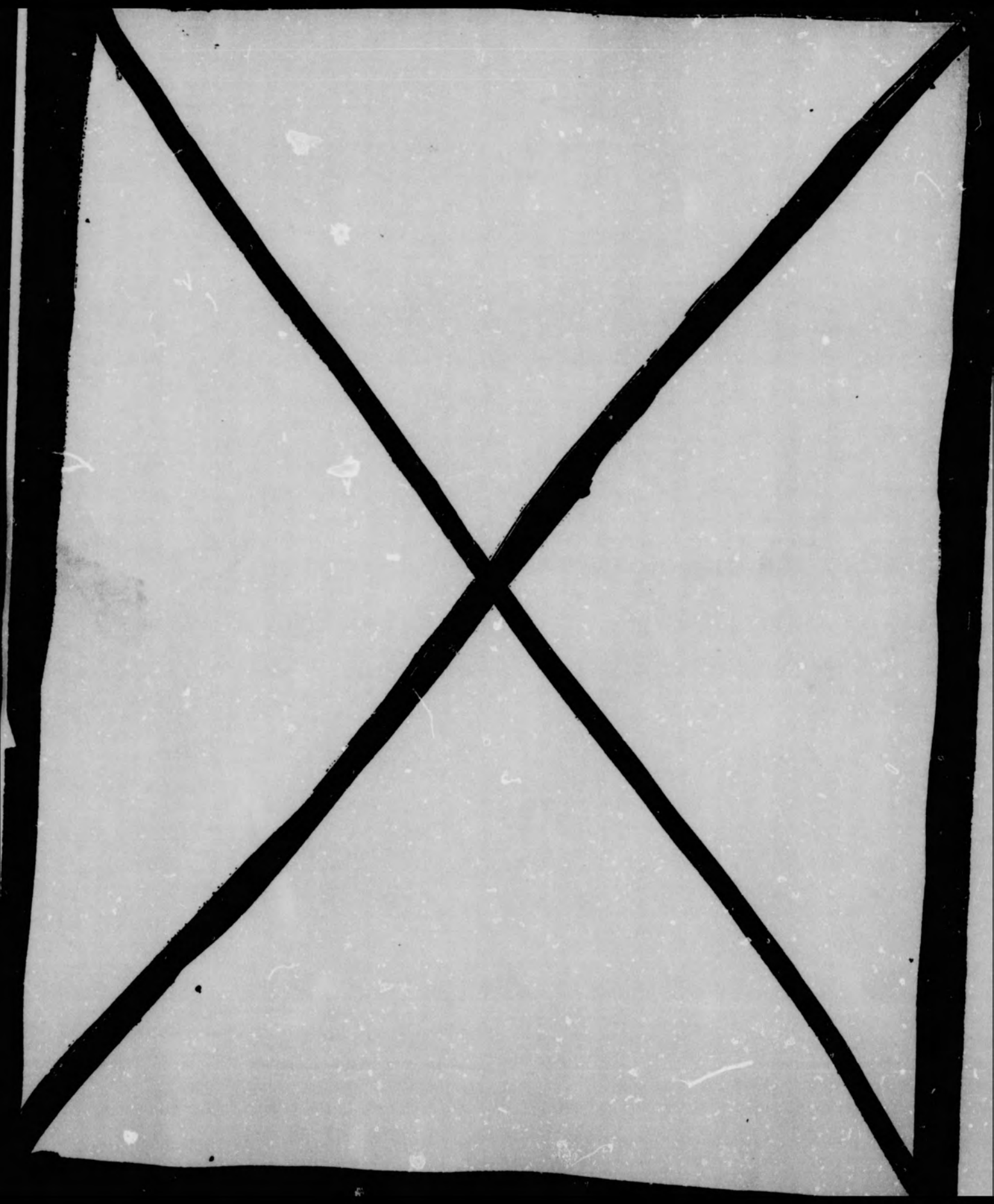
OF

3

CERTIFICATE OF SERVICE

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


Karl Morell



STB

FD-

33388

5-29-97

D

179963

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1206

(202) 942-5000
FACSIMILE (202) 942-5999

DENNIS G. LYONS
(202) 942-5858

NEW YORK
DENVER
LOS ANGELES
LONDON

May 29, 1997

BY HAND

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



Re: ***CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388***

179923

Dear Secretary Williams:

We hereby submit, on behalf of CSX Corporation and, at the request of Norfolk Southern Corporation's counsel, Richard A. Allen, Esq., on its behalf, and on behalf of their jointly owned subsidiary CRR Holdings LLC and its subsidiary Green Acquisition Corp., the "Amended and Restated Voting Trust Agreement," dated as of April 8, 1997, among the entities just mentioned and Deposit Guaranty National Bank, as Trustee.

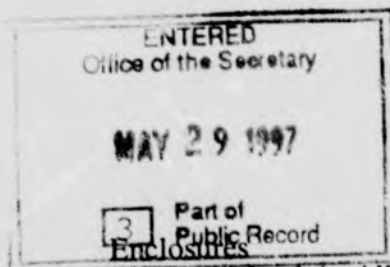
This filing is made pursuant to 49 C.F.R. § 1013.3(b). Twenty-five copies of the Amended and Restated Voting Trust Agreement are enclosed.

This Amended and Restated Voting Trust Agreement was the subject of a request for an informal, nonbinding opinion under 49 C.F.R. § 1013.3(a) made to you by Mr. Allen in his letter of April 24, 1997, to which you responded on May 8, 1997. The attached, as executed, is in the same form as that submitted to you, subject only to minor typographical changes and the insertion of conforming information.

A computer diskette in WordPerfect version 5.1 format with the text of the Amended and Restated Voting Trust Agreement is enclosed.

Respectfully yours,

Dennis G. Lyons
Counsel for CSX Corporation



cc: Richard A. Allen, Esq.
Service List

AMENDED AND RESTATED VOTING TRUST AGREEMENT



THIS AMENDED AND RESTATED VOTING TRUST

AGREEMENT, dated as of April 8, 1997, by and among CSX Corporation, a Virginia corporation ("Parent"), Norfolk Southern Corporation, a Virginia corporation ("NSC"), CRR Holdings LLC, a limited liability company organized under the laws of Delaware ("LLC"), and Green Acquisition Corp., a Pennsylvania corporation ("Acquiror"), and Deposit Guaranty National Bank, a national banking association (the "Trustee"),

WITNESSETH:

WHEREAS, Parent, Acquiror and Conrail Inc., a Pennsylvania corporation (the "Company"), have entered into an Agreement and Plan of Merger, dated as of October 14, 1996 (as it has been and may be amended from time to time, the "Merger Agreement"; capitalized terms used but not defined herein shall have the meanings set forth therein), pursuant to which (i) Acquiror was to commence and did commence the Offer, the Second Offer and the White/NSC Offer (all as defined in the Merger Agreement and referred to herein as the "Tender Offer") for shares of Common Stock of the Company (all such shares accepted for payment pursuant to the Tender Offer or otherwise received, acquired or purchased by or on behalf of Parent or Acquiror, including pursuant to the Green Option Agreement, the "Acquired Shares"), and (ii) a subsidiary of Acquiror will merge into the Company pursuant to the Merger.

WHEREAS, Parent, Acquiror and the Trustee have entered into a Voting Trust Agreement, dated as of October 15, 1996 (the "Original Voting Trust Agreement");

WHEREAS, Parent, Acquiror and the Company have entered into a First Amendment to the Merger Agreement dated November 5, 1996, a Second Amendment thereto dated December 18, 1996, a Third Amendment thereto dated March 7, 1997, and a Fourth Amendment thereto dated April 8, 1997;

WHEREAS, 17,775,124 shares of Common Stock of the Company, which were acquired pursuant to the Offer, are being held in the Original Voting Trust, and trust certificates with respect to such shares have been issued to Acquiror;

WHEREAS, as authorized by the Third Amendment and the Fourth Amendment to the Merger Agreement referred to above, Parent and NSC have entered into a letter agreement dated as of April 8, 1997 (together with any further agreements between CSX and NSC made pursuant to its terms, and as it or such other agreement may be amended from time to time, the "CSX/NS Agreement"), under which, among other things, NSC and Parent have jointly formed LLC, in which each will have an ownership interest and each will have equal voting rights, and under which each of them will make contributions to LLC, including the contribution of all of the stock of Acquiror by Parent to LLC;

WHEREAS, under the CSX/NS Agreement, NSC proposes, effective upon the consummation of the White/NSC Offer, to cause its subsidiary, Atlantic Acquisition Corporation, a Pennsylvania corporation ("Atlantic") to cause 8,200,000 shares of Common Stock to be transferred from a voting trust currently governed by an "Amended and Restated Voting Trust Agreement" dated as of February 10, 1997, as Amended and Restated as of February 18, 1997, to

which NSC, Atlantic and First American National Bank are parties, to the Trustee hereunder, to be held as Trust Stock (as hereinafter defined) hereunder.

WHEREAS, Parent and Acquiror wish (and are obligated pursuant to the Merger Agreement), simultaneously with the acceptance for payment of Acquired Shares pursuant to the Tender Offer (including the White/NSC Offer), the Merger, or otherwise to deposit such Acquired Shares in an independent, irrevocable voting trust, pursuant to the rules of the Surface Transportation Board (the "STB"), in order to avoid any allegation or assertion in the Fourth Amendment that the Parent or the Acquiror is controlling or has the power to control the Company prior to the receipt of any required STB approval or exemption;

WHEREAS, Parent, Acquiror and the Trustee wish to amend the Original Voting Trust Agreement to reflect the CSX/NS Agreement (and the Company has consented to such amendment in the Fourth Amendment) and to add as parties to the Original Voting Trust Agreement NSC and LLC, and Parent, Acquiror, NSC, LLC and the Trustee wish to further restate the Voting Trust Agreement as so amended;

WHEREAS, the parties intend that, prior to the authorization and approval of the STB, neither Parent, NSC, LLC nor Acquiror nor any of their affiliates shall control the Company and the Company shall not have as a director any officer, director, nominee or representative of the Parent, the Acquiror or any of their affiliates;

WHEREAS, the holder of all outstanding Trust Certificates has assented to such amendment of the Original Voting Trust Agreement, and all requirements for the amendment of the Original Voting Trust Agreement contained therein have been satisfied;

WHEREAS, this Amended and Restated Voting Trust Agreement (hereinafter, this "Trust Agreement") shall be binding on the parties from and after its execution, but shall become effective only as set forth in Paragraph 24 hereof;

WHEREAS, neither the Trustee nor any of its affiliates has any officers or board members in common or any direct or indirect business arrangements or dealings (as described in Paragraph 9 hereof) with the Parent, the Acquiror, NSC or LLC or any of their affiliates; and

WHEREAS, the Trustee is willing to continue to act as voting trustee pursuant to the terms of this Trust Agreement and the rules of the STB,

NOW THEREFORE, the parties hereto agree as follows:

1. **Creation of Trust** -- The Parent, the Acquiror, NSC and LLC hereby appoint Deposit Guaranty National Bank as Trustee hereunder, and Deposit Guaranty National Bank hereby accepts said appointment and agrees to act as Trustee under this Trust Agreement as provided herein.
2. **Trust Is Irrevocable** -- This Trust Agreement and the nomination of the Trustee during the term of the trust shall be irrevocable by the Parent, the Acquiror, NSC and LLC and their affiliates and shall terminate only in accordance with, and to the extent of, the provisions of Paragraphs 8 and 14 hereof.
3. **Deposit of Trust Stock** -- The Parent, the Acquiror, NSC and LLC agree that, simultaneously with acceptance of Acquired Shares purchased pursuant to the White/NSC Offer, the Acquiror will direct the depository for the White/NSC Offer to transfer to the Trustee any such Acquired Shares purchased pursuant to the White/NSC Offer. The Parent, the Acquiror, NSC and LLC also

agree that simultaneously with receipt, acquisition or purchase of any additional shares of Common Stock by either of them, directly or indirectly, or by any of their affiliates, they will transfer to the Trustee the certificate or certificates for such shares. NSC agrees that upon the consummation of the White/NSC Offer it will cause Atlantic to transfer, or to cause to be transferred, certificates for the 8,200,000 shares of Common Stock currently held by First American National Bank as voting trustee to the Trustee. All 17,775,124 shares of Common Stock which have been deposited with the Trustee and are being held under the Original Voting Trust Agreement shall continue to be held under this Voting Trust Agreement. The Parent, the Acquiror, NSC and LLC also agree that simultaneously with the receipt by them or by any of their affiliates of any shares of common stock or other voting stock of the Company upon the effectiveness of the Merger, they will transfer to the Trustee the certificate or certificates for such shares. All such certificates shall be duly endorsed or accompanied by proper instruments duly executed for transfer thereof to the Trustee or otherwise validly and properly transferred, and shall be exchanged for one or more Voting Trust Certificates substantially in the form attached hereto as Exhibit A (the "Trust Certificates"), with the blanks therein appropriately filled in and with such Trust Certificates to be issued in the name of the Acquiror. Voting Trust Certificates executed in the form attached to the Original Voting Trust Agreement as Exhibit A shall continue to be valid and obligatory and shall, from and after the effectiveness of this instrument, be deemed in every respect to be Trust Certificates executed and delivered under this instrument. All shares of Common Stock and all other shares of common stock or other voting securities at any time delivered to the Trustee hereunder are called the "Trust Stock." The Trustee shall present to the Company all certificates representing Trust Stock for

surrender and cancellation and for the issuance and delivery to the Trustee of new certificates registered in the name of the Trustee or its nominee.

4. **Powers of Trustee** -- The Trustee shall be present, in person or represented by proxy, at all annual and special meetings of shareholders of the Company so that all Trust Stock may be counted for the purposes of determining the presence of a quorum at such meetings. Parent and Acquiror agree, and the Trustee acknowledges, that the Trustee shall not participate in or interfere with the management of the Company and shall take no other actions with respect to the Company except in accordance with the terms hereof. The Trustee shall exercise all voting rights in respect of the Trust Stock to approve and effect the Merger, and in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of, the Parent, Acquiror's, NSC's and LLC's acquisition of the Company, pursuant to the Merger Agreement and the CSX/NS Agreement, and without limiting the generality of the foregoing, if there shall be with respect to the Board of Directors of the Company an "Election Contest" as defined in the Proxy Rules of the Securities and Exchange Commission ("SEC"), in which one slate of nominees shall support the effectuation of the Merger and the transactions contemplated by the CSX/NS Agreement and another slate oppose it, then the Trustee shall vote in favor of the slate supporting the effectuation of the Merger and the transactions contemplated by the CSX/NS Agreement. In addition, for so long as the Merger Agreement is in effect, the Trustee shall exercise all voting rights in respect of the Trust Stock, to cause any other proposed merger, business combination or similar transaction (including, without limitation, any consolidation, sale or purchase of assets, reorganization, recapitalization, liquidation or winding up of or by the Company) involving the Company, but not involving both the Parent or one of its subsidiaries or affiliates

and NSC or one of its subsidiaries or affiliates (otherwise than in connection with a disposition pursuant to Paragraph 8), not to be effected. In addition, the Trustee shall exercise all voting rights in respect of the Trust Stock in favor of any proposal or action necessary or desirable to dispose of Trust Stock in accordance with Paragraph 8 hereof. Except as provided in the three immediately preceding sentences, the Trustee shall vote all shares of Trust Stock with respect to all matters, including without limitation the election or removal of directors, voted on by the shareholders of the Company (whether at a regular or special meeting or pursuant to a unanimous written consent) in the same proportion as all shares of Common Stock (other than Trust Stock) are voted with respect to such matters; provided that, except as provided in the three immediately preceding sentences, from and after the effectiveness of the Merger, the Trustee shall vote all shares of Trust Stock in accordance with the instructions of a majority of the persons who are currently the directors of the Company and their nominees as successors and who shall then be directors of the Company, except that the Trustee shall not vote the Trust Stock in favor of taking or doing any act which violates the Merger Agreement or would violate the CSX/NS Agreement or impede its performance or which if taken or done prior to the consummation of the Merger would have been a violation of the Merger Agreement; and except further that if there shall be no such persons qualified to give such instructions hereunder, or if a majority of such persons refuse or fail to give such instructions, then the Trustee shall vote the Trust Stock in its sole discretion, having due regard for the interests of the holders of Trust Certificates as investors in the stock of the Company, determined without reference to such holders' interests in railroads other than the subsidiaries of the Company. In exercising its voting rights in accordance with this Paragraph 4, the Trustee shall

take such actions at all annual, special or other meetings of stockholders of the Company or in connection with any and all consents of shareholders in lieu of a meeting.

5. **Further Provisions Concerning Voting of Trust Stock** -- The Trustee shall be entitled and it shall be its duty to exercise any and all voting rights in respect of the Trust Stock either in person or by proxy, as herein provided (including without limitation Paragraphs 4 and 8(b) hereof), unless otherwise directed by the STB or a court of competent jurisdiction. Subject to Paragraph 4, the Trustee shall not exercise the voting powers of the Trust Stock in any way so as to create any dependence or intercorporate relationship between (i) any or all of the Parent, Acquiror, NSC, LLC and their affiliates, on the one hand, and (ii) the Company or its affiliates, on the other hand. The term "affiliate" or "affiliate:" wherever used in this Trust Agreement shall have the meaning specified in Section 11323(c) of Title 49 of the United States Code, as amended. The Trustee shall not, without the prior approval of the STB of such action, vote the Trust Stock to elect any officer, director, nominee or representative of the Parent, the Acquiror, NSC or LLC or their affiliates as an officer or director of the Company or of any affiliate of the Company. The Trustee shall be kept informed respecting the business operations of the Company by means of the financial statements and other public disclosure documents periodically filed by the Company and affiliates of the Company with the SEC and the STB, and by means of information respecting the Company contained in such statements and other documents filed by the Parent with the SEC and the STB, copies of which shall be promptly furnished to the Trustee by the Company or the Parent, as the case may be, and the Trustee shall be fully protected in relying upon such information. Notwithstanding the foregoing provisions of this

Paragraph 5 or any other provision of this Agreement, however, the registered holder of any Trust Certificate may at any time with the prior written approval of the Company -- but only with the prior written approval of the STB -- instruct the Trustee in writing to vote the Trust Stock represented by such Trust Certificate in any manner, in which case the Trustee shall vote such shares in accordance with such instructions.

6. Transfer of Trust Certificates -- The Trust Certificates shall be transferable on the books of the Trustee by the registered holder upon the surrender thereof properly assigned, in accordance with rules from time to time established for that purpose by the Trustee. Until so transferred, the Trustee may treat the registered holder as owner for all purposes. Each transferee of a Trust Certificate issued hereunder shall, by his acceptance thereof, assent to and become a party to this Trust Agreement, and shall assume all attendant rights and obligations. Any such transfer in violation of this Paragraph 6 shall be null and void. When this instrument becomes effective, out of the Trust Certificates theretofore issued to Acquiror, a Trust Certificate for 100 shares of Common Stock shall be transferred to Parent.

7. Dividends and Distributions -- Pending the termination of this Trust as hereinafter provided, the Trustee shall, immediately following the receipt of each cash dividend or cash distribution as may be declared and paid upon the Trust Stock, pay the same over to the Acquiror or to or as directed by the holders of the Trust Certificates hereunder as then appearing on the books of the Trustee (to the extent of their respective interests if the Acquiror is not such holder). The Trustee shall receive and hold dividends and distributions other than cash upon the same terms and conditions as the Trust Stock and shall issue Trust Certificates representing any new or additional securities that may be paid as dividends or

otherwise distributed upon the Trust Stock to the registered holders of Trust Certificates in proportion to their respective interests.

8. **Disposition of Trust Stock; Termination of Trust** -- (a) This Trust is accepted by the Trustee subject to the right hereby reserved by the holders of Trust Certificates at any time to direct the sale or other disposition of the whole or any part of the Trust Stock represented by such certificates, but only as permitted by subparagraph (e) below, whether or not an event described in subparagraph (b) below has occurred. The Trustee shall take all actions reasonably requested by the holders of Trust Certificates (including, without limitation, exercising all voting rights in respect of Trust Stock) in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of or with respect to any proposed sale or other disposition of the whole or any part of the Trust Stock by the holders of Trust Certificates that is otherwise permitted pursuant to this Paragraph 8, including, without limitation, in connection with the exercise of any of its registration rights under any agreement with the Company. The Trustee shall be entitled solely on a certification from any holder of Trust Certificates, signed by its President or one of its Vice Presidents (or equivalent officer, if not a corporation) (and under its corporate seal if a corporation), that a disposition of the whole or any part of the Trust Stock represented by such certificates is being made in accordance with the requirements of subparagraph (e) below. In the event of a permitted sale of Trust Stock by the Acquiror, the Trustee shall, to the extent the consideration therefor is payable to or controllable by the Trustee, promptly pay, or cause to be paid, upon the order of the Acquiror the net proceeds of such sale to the registered holders of the Trust Certificates in proportion to their respective interests. It is

the intention of this Paragraph that no violation of 49 U.S.C. § 11323 will result from a termination of this Trust.

(b) In the event the STB Approval shall have been granted, then immediately upon the direction of the holders of a majority in interest of the Trust Certificates, and the delivery of a certified copy of such order of the STB or other governmental authority with respect thereof, or, in the event that Subtitle IV of Title 49 of the United States Code, or other controlling law, is amended to allow the Acquiror, Parent and NSC or their affiliates to acquire control of the Company without obtaining STB or other governmental approval, upon delivery of an opinion of independent counsel selected by the Trustee that no order of the STB or other governmental authority is required, the Trustee shall either (x) transfer to or upon the order of the holder or holders of Trust Certificates hereunder as then appearing on the records of the Trustee, its right, title and interest in and to all of the Trust Stock then held by it (or such portion as is represented by the Trust Certificates in the case of such an order by less than all of such holders) in accordance with the terms, conditions and agreements of this Trust Agreement and not theretofore transferred by it as provided in subparagraph (a) hereof, or (y) if shareholder approval has not previously been obtained for the Merger, vote the Trust Stock in favor of the Merger, and upon any such transfer of all of the Trust Stock, or any such merger following such STB approval or law amendment permitting control without governmental approval, this Trust shall cease and come to an end.

(c) In the event that there shall have been an STB Denial, Parent, NSC, Acquiror and LLC shall use their best efforts to sell the Trust Stock during a period of two years after such date or STB Denial, or such extension of that period as the STB shall approve. Any such disposition shall be subject to the

requirements of subparagraph (e) below, and to any jurisdiction of the STB to oversee the divestiture of the Trust Stock. At all times, the Trustee shall continue to perform its duties under this Trust Agreement and, should Parent, NSC, Acquiror and LLC be unsuccessful in their efforts to sell or distribute the Trust Stock during the period referred to, the Trustee shall then as soon as practicable, and subject to the requirements of subparagraph (e) below, sell the Trust Stock for cash to eligible purchasers in such manner and for such price as the Trustee in its discretion shall deem reasonable after consultation with Parent, NSC, Acquiror and LLC. (An "eligible purchaser" hereunder shall be a person or entity that is not affiliated with Parent, NSC, Acquiror and LLC and which has all necessary regulatory authority, if any, to purchase the Trust Stock.) Parent, NSC, Acquiror and LLC agree to cooperate with the Trustee in effecting such disposition and the Trustee agrees to act in accordance with any direction made by LLC as to any specific terms or method of disposition, to the extent not inconsistent with any of the terms of this Trust Agreement, including subparagraph (e) below, and with the requirements of the terms of any STB or court order. The proceeds of the sale shall be distributed to or upon the order of the holder or holders of the Trust Certificates hereunder as then known to the Trustee. The Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates hereunder before paying to the holder its share of the proceeds. Upon disposition of all the Trust Stock pursuant to this paragraph 8(c), this Trust shall cease and come to an end.

(d) Unless sooner terminated pursuant to any other provision herein contained, this Trust Agreement shall terminate on December 31, 2016, and may be extended by the parties hereto, so long as no violation of 49 U.S.C. § 11323 will result from such termination or extension. All Trust Stock and any other

property held by the Trustee hereunder upon such termination shall be distributed to or upon the order of the holders of Trust Certificates. The Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates hereunder before the release or transfer of the stock interests evidenced thereby.

(e) Any disposition of Trust Stock under this paragraph 8 or otherwise hereunder shall be made subject to any order of the STB pursuant to any of its jurisdiction, and the Trustee shall be entitled to rely on a certificate of Parent and NSC that any person or entity to whom the Trust Stock is disposed is not an affiliate of the Parent or of NSC and has all necessary regulatory authority, if any is necessary, to purchase such Trust Stock. The Trustee shall promptly inform the STB of any transfer or disposition of Trust Stock pursuant to this Paragraph 8. Upon the transfer of all of the Trust Stock pursuant to this Paragraph 8, this Trust shall cease and come to an end.

(f) Except as expressly provided in this Paragraph 8, the Trustee shall not dispose of, or in any way encumber, the Trust Stock, and any transfer, sale or encumbrance in violation of the foregoing shall be null and void.

(g) As used in this Paragraph 8 and elsewhere in this Agreement, the terms "STB Approval" and "STB Denial" shall not have the meanings given to them in the Merger Agreement but shall have the following meanings:

"STB Approval" means the issuance by the STB of a decision, which decision shall become effective and which decision shall not have been stayed or enjoined, that (A) constitutes a final agency action approving, exempting or otherwise authorizing the acquisition of control over the Company's railroad operations by Parent and NSC and the other transactions contemplated by the CSX/NS Agreement and (B) does not (1) change or disapprove of the consideration to be given in the Merger or other material provisions of Article II

of the Merger Agreement or (2) unless Parent and NSC choose to assume control despite such conditions, impose on Parent, NSC, the Company or any of their respective subsidiaries any other terms or conditions (including, without limitation, labor protective provisions but excluding conditions heretofore imposed by the Interstate Commerce Commission in *New York Dock Railway--Control--Brooklyn Eastern District*, 360 I.C.C. 60 (1979)), other than those proposed by the applicants, that materially and adversely affect the long-term benefits expected to be received by Parent and NSC from the transactions contemplated by the Merger Agreement and the CSX/NS Agreement.

"STB Denial" means (i) STB Approval shall not have been obtained by December 31, 1998 or (ii) the STB shall have, by an order which shall have become final and no longer subject to review by the courts, either (x) refused to approve the control and other transactions which are referred to in clause (A) of the definition of STB Approval or (y) approved such acquisition of control and other transactions subject to conditions that cause such approval not to constitute STB Approval.

9. Independence of the Trustee -- Neither the Trustee nor any affiliate of the Trustee may have now, or at any time during the duration of this Trust Agreement (i) any officers, or members of their respective boards of directors, in common with the Acquiror, the Parent, NSC, LLC or any affiliate of any of them, or (ii) any direct or indirect business arrangements or dealings, financial or otherwise, with the Acquiror, the Parent, NSC, LLC or any affiliate of any of them, other than dealings pertaining to the establishment and carrying out of this voting trust. Mere investment in the stock or securities of NSC or the Parent or the Acquiror or any affiliate of any of them by the Trustee, short of obtaining a controlling interest, will not be considered a proscribed business arrangement or

dealing, but in no event shall any such investment by the Trustee in voting securities of the Acquiror, the Parent, NSC, LLC or their affiliates exceed five percent of their outstanding voting securities and in no event shall the Trustee hold a proportion of such voting securities so substantial as to permit the Trustee in any way to control or direct the affairs of the Acquiror, the Parent, NSC, LLC or their affiliates. Neither the Acquiror, the Parent, NSC, LLC, nor their affiliates shall purchase the stock or securities of the Trustee or any affiliate of the Trustee.

10. Compensation of the Trustee -- The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by it as Trustee under the terms hereof and said compensation to the Trustee, together with all counsel fees, taxes, or other expenses reasonably incurred hereunder, shall be promptly paid by the Acquiror or the Parent.

11. Trustee May Act Through Agents -- The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee.

12. Concerning the Responsibilities and Indemnification of the Trustee -- The Trustee shall not be liable for any mistakes of fact or law or any error of judgment, or for any act or omission, except as a result of the Trustee's willful misconduct or gross negligence. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney has been selected with reasonable care. The duties and responsibilities of the Trustee shall be limited to those expressly set forth in this Trust Agreement. The Trustee shall not be responsible for the sufficiency or the accuracy of the form, execution, validity or genuineness of the Trust Stock, or of any documents relating thereto, or for any lack of endorsement thereon, or for any description therein, nor shall the Trustee be responsible or

liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or document or endorsement or this Trust Agreement, except for the execution and delivery of this Trust Agreement by this Trustee. The Acquiror, the Parent, NSC and LLC agree that they will at all times protect, indemnify and save harmless the Trustee, its directors, officers, employees and agents from any loss, cost or expense of any kind or character whatsoever in connection with this Trust except those, if any, growing out of the gross negligence or willful misconduct of the Trustee, and will at all times themselves undertake, assume full responsibility for, and pay all costs and expense of any suit or litigation of any character, including any proceedings before the STB, with respect to the Trust Stock or this Trust Agreement, and if the Trustee shall be made a party thereto, the Acquiror, the Parent, NSC or LLC will pay all costs and expenses, including reasonable counsel fees, to which the Trustee may be subject by reason thereof; provided, however, that the Acquiror, the Parent, NSC and LLC shall not be responsible for the cost and expense of any suit that the Trustee shall settle without first obtaining their written consent. The Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion.

13. Trustee to Give Account to Holders -- To the extent requested to do so by the Acquiror or any registered holder of a Trust Certificate, the Trustee shall furnish to the party making such request full information with respect to (i) all property theretofore delivered to it as Trustee, (ii) all property then held by it as Trustee, and (iii) all actions theretofore taken by it as Trustee.

14. Resignation, Succession, Disqualification of Trustee -- The Trustee, or any trustee hereafter appointed, may at any time resign by giving forty-five days' written notice of resignation to the Parent, NSC and the STB. The Parent and NSC shall at least fifteen days prior to the effective date of such notice appoint a successor trustee which shall (i) satisfy the requirements of Paragraph 9 hereof and (ii) be a corporation organized and doing business under the laws of the United States or of any State thereof and authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If no successor trustee shall have been appointed and shall have accepted appointment at least fifteen days prior to the effective date of such notice of resignation, the resigning Trustee may petition any competent authority or court of competent jurisdiction for the appointment of a successor trustee. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, a copy of the instrument of assumption shall be delivered by the Trustee to the Parent, Acquiror, NSC and LLC and the STB and all registered holders of Trust Certificates shall be notified of its assumption, whereupon the Trustee shall be discharged of the powers and duties of the Trustee hereunder and the successor trustee shall become vested with such powers and duties. In the event of any material violation by the Trustee of the terms and conditions of this Trust Agreement, the Trustee shall become disqualified from acting as trustee hereunder as soon as a successor trustee shall have been selected in the manner provided by this paragraph.

15. Amendment -- This Trust Agreement may from time to time be modified or amended by agreement executed by the Trustee, the Acquiror, the Parent, NSC and LLC and all registered holders of the Trust Certificates

(i) pursuant to an order of the STB, (ii) with the prior approval of the STB, (iii) in order to comply with any order of the STB or (iv) upon receipt of an opinion of counsel satisfactory to the Trustee and the holders of Trust Certificates that an order of the STB approving such modification or amendment is not required and that the amendment is consistent with the STB's regulations regarding voting trusts.

16. Governing Law; Powers of the STB -- The provisions of this Trust Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of New York, except that to the extent any provision hereof may be found inconsistent with subtitle IV, title 49, United States Code or regulations promulgated thereunder, such statute and regulations shall control and such provision hereof shall be given effect only to the extent permitted by such statute and regulations. In the event that the STB shall, at any time hereafter by final order, find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall act in accordance with such final order instead of the provisions of this Trust Agreement.

17. Counterparts -- This Trust Agreement is executed in six counterparts, each of which shall constitute an original, and one of which shall be held by each of the Parent, the Acquiror, NSC and LLC, and the other two shall be held by the Trustee, one of which shall be subject to inspection by holders of Trust Certificates on reasonable notice during business hours.

18. Filing With the STB -- A copy of this Agreement and any amendments or modifications thereto shall be filed with the STB by the Acquiror.

19. Successors and Assigns -- This Trust Agreement shall be binding upon the successors and assigns to the parties hereto, including without limitation

successors to the Acquiror, the Parent, NSC or LLC by merger, consolidation or otherwise.

20. Succession of Functions -- The term "STB" includes any successor agency or governmental department that is authorized to carry out the responsibilities now carried out by the STB with respect to the consideration of the consistency with the public interest of rail mergers and combinations, the regulation of voting trusts in respect of the acquisition of securities of rail carriers or companies controlling them, and the exemption of approved rail mergers and combinations from the antitrust laws.

21. Notices -- Any notice which any party hereto may give to the other hereunder shall be in writing and shall be given by hand delivery, or by first class registered mail, or by overnight courier service, or by facsimile transmission confirmed by one of the aforesaid methods, sent,

If to Parent:

CSX Corporation
One James Center
901 East Cary Street
Richmond, Virginia 23219

Attention: General Counsel

With a required copy to:

Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

If to NSC:

Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Attention: General Counsel

With a required copy to:

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
388 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

If to LLC or to Acquiror, by sending such notice to each of Parent and NSC at their addresses given in this paragraph 21 and with copies as there provided.

If to the Trustee, to:

Deposit Guaranty National Bank
One Deposit Guaranty Plaza,
8th Floor
Jackson, Mississippi 39201

Attention: Corporate Trust Department

With a required copy to:

Deposit Guaranty National Bank
c/o Commercial National Bank In Shreveport
333 Texas Street
Shreveport, LA 71101

Attention: Corporate Trust Department

And if to the holders of Trust Certificates, to them at their addresses as shown on the records maintained by the Trustee.

22. **Remedies** -- Each of the parties hereto acknowledges and agrees that in the event of any breach of this Agreement, each non-breaching party would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that the parties hereto (a) will waive, in any action for specific performance, the defense of adequacy of a remedy at law and (b) shall be entitled, in addition to any other remedy to which they may be entitled at law or in equity, to an order compelling specific performance of this Agreement in any action instituted in any state or federal court sitting in New

York, New York. Each party hereto consents to personal jurisdiction in any such action brought in any state or federal court sitting in New York, New York.

23. Concerning the Holders of Trust Certificates -- Each reference to the rights or powers of holders of the Trust Certificates as such to give directions with respect to the disposition of the Trust Shares, or the earnings or income thereon, or with respect to any other matter with respect to the Trust Shares, if such rights or powers are exercised by fewer than all of such holders or relate to fewer than all of them, shall be deemed to relate only, as the case may be, to such rights or powers only to the extent of the number of Trust Shares represented by the Trust Certificates of the holders giving such instruction or direction.

24. Effectiveness -- This Agreement shall be binding on the parties hereto from and after its execution and delivery, but except as specified in this Paragraph 24 none of the provisions hereof shall come into effect until the time of consummation of the White/NSC Offer and the shares of Common Stock acquired in the White/NSC Offer shall be deposited in the Voting Trust as so governed by this Amended and Restated Voting Trust Agreement upon its effectiveness; but notwithstanding the foregoing provisions as to effectiveness, no amendment may be made to the Voting Trust Agreement from and after the execution and delivery of this Agreement which would cause this instrument not to come into effect as provided in this Paragraph 24, or would in any manner impede its coming into effect as contemplated by this Paragraph 24, as a complete amendment and restatement of the Voting Trust Agreement.

IN WITNESS WHEREOF, CSX Corporation, Green Acquisition Corp., Norfolk Southern Corporation and CRR Holdings LLC have caused this

Amended and Restated Trust Agreement to be executed by their authorized officers and their corporate seals to be affixed, attested by their Secretaries or Assistant Secretaries, and Deposit Guaranty National Bank has caused this Amended and Restated Trust Agreement to be executed by its authorized officer or agent and its corporate seal to be affixed, attested to by its Secretary or one of its Assistant Secretaries or other authorized agent, all as of the day and year first above written.

Attest:

CSX CORPORATION

Secretary

By _____

Attest:

GREEN ACQUISITION CORP.

Secretary

By _____

Attest:

NORFOLK SOUTHERN CORPORATION

Shirley W. Trainor
~~Secretary~~ ASSISTANT SECRETARY

By William J. Ring

ATTEST:

CRR HOLDINGS LLC

Dezora D. Martin
Assistant Secretary

By James C. Burt /
5/23/97

Amended and Restated Trust Agreement to be executed by their authorized officers and their corporate seals to be affixed, attested by their Secretaries or Assistant Secretaries, and Deposit Guaranty National Bank has caused this Amended and Restated Trust Agreement to be executed by its authorized officer or agent and its corporate seal to be affixed, attested to by its Secretary or one of its Assistant Secretaries or other authorized agent, all as of the day and year first above written.

Attest:

Abner A. Lockridge
Secretary

CSX CORPORATION

By Mark G. Q.

Attest:

Abner A. Lockridge
Secretary

GREEN ACQUISITION CORP.

By Mark G. Q.

Attest:

Secretary

NORFOLK SOUTHERN CORPORATION

By _____

ATTEST:

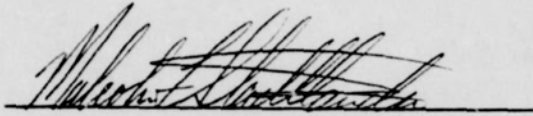
Secretary


CRR HOLDINGS LLC

By _____

Attest:

COMMERCIAL NATIONAL BANK, AGENT FOR
DEPOSIT GUARANTY NATIONAL BANK


Trust Officer

By 
Linda H. Trichel
Trust Officer

No. _____

EXHIBIT A
____ Shares

**VOTING TRUST CERTIFICATE
FOR
COMMON STOCK
of
CONRAIL INC.
INCORPORATED UNDER THE LAWS OF
THE STATE OF PENNSYLVANIA**

THIS IS TO CERTIFY that _____ will be entitled, on the surrender of this Certificate, to receive on the termination of the Voting Trust Agreement hereinafter referred to, or otherwise as provided in Paragraph 8 of said Voting Trust Agreement, a certificate or certificates for _____ shares of the Common Stock, \$1.00 par value, of Conrail Inc., a Pennsylvania corporation (the "Company"). This Certificate is issued pursuant to, and the rights of the holder hereof are subject to and limited by, the terms of an Amended and Restated Voting Trust Agreement, dated as of April 8, 1997, executed by CSX Corporation, a Virginia corporation, Norfolk Southern Corporation, a Virginia corporation, CRR Holdings LLC, a limited liability company organized under the laws of Delaware, Green Acquisition Corp., a Pennsylvania corporation, and Deposit Guaranty National Bank, as Trustee (as it may be amended from time to time, the "Voting Trust Agreement"), a copy of which Voting Trust Agreement is on file in the office of said Trustee at One Deposit Guaranty Plaza, 8th Floor, Jackson, Mississippi 39201 and open to inspection of any stockholder of the Company and the holder hereof. The Voting Trust Agreement, unless earlier terminated (or extended) pursuant to the terms thereof, will terminate on December 31, 2016, so long as no violation of 49 U.S.C. § 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of said Voting Trust Agreement, including the right to receive payment equal to the cash dividends, if any, paid by the Company with respect to the number of shares represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Trustee or any successor, to be kept by it, on surrender hereof by the registered holder in person or by attorney duly authorized in accordance with the provisions of said Voting Trust Agreement, and until so transferred, the Trustee may treat the registered holder as the owner of this Voting Trust Certificate for all purposes whatsoever, unaffected by any notice to the contrary.

By accepting this Certificate, the holder hereof assents to all the provisions of, and becomes a party to, said Voting Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by its officer duly authorized.

Dated:

DEPOSIT GUARANTY
NATIONAL BANK

By _____
Authorized Officer

[FORM OF BACK OF VOTING TRUST CERTIFICATE]

FOR VALUE RECEIVED _____ hereby sells,
assigns, and transfers unto _____ the within Voting Trust Certificate and
all rights and interests represented thereby, and does hereby irrevocably constitute
and appoint _____ Attorney to transfer said Voting Trust Certificate
on the books of the within mentioned Trustee, with full power of substitution in
the premises.

Dated:

In the Presence of:
