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July 17, 2002



VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
1925 K Street, N.W., Seventh Floor
Washington, DC 20423

Re: Finance Docket No. 33388 (Sub-No. 91), CSX Corporation and CSX
CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk
Southern Railway Company -- Control and Operating Leases/Agreements
-- Conrail, Inc. and Consolidated Rail Corporation (General Oversight)

Dear Secretary Williams:

These are the Comments of Indianapolis Power & Light Company ("IPL") on the Third Annual Reports of CSX Corporation and CSX Transportation (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") filed June 3, 2002, pursuant to Decision No. 6 herein.

As the Board knows, IPL was provided with two remedies in Decision No. 89 in the underlying proceeding (Finance Docket No. 33388), which were modified somewhat subsequently. IPL sought judicial review of, *inter alia*, Decision No. 125, but the United States Court of Appeals for the Second Circuit decided that IPL's challenges were premature. *Erie-Niagara Rail Steering Committee v. STB*, 247 F.3d 437 (2d Cir. 2001). Subsequently, on July 26, 2001, the D.C. Circuit, upon the urging of the Board to treat IPL's challenges to Decision No. 3 as "premature," dismissed IPL's Petition for Review of that Decision, in No. 01-1005 (not published). After IPL submitted the evidence to the Board that the Board said should be

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submitted in Decision No. 6 the Board again denied IPL further relief. As the Board knows, IPL has sought judicial review of Decision No. 6 in D.C. Circuit Case No. 02-1056. Motions for Summary Affirmance, filed by CSX and NS, which the Board supported (to IPL's surprise, in light of the above), but which IPL vigorously opposed, were denied. The Court has set a schedule for the filing of briefs, and for oral argument on March 18, 2003.

In light of Decision No. 6, and the Board's support for the Motions for Summary Affirmance in the D.C. Circuit, we respectfully submit that it would obviously be futile for IPL to submit the same concerns and evidence this year as it submitted in its Comments in 2001. Suffice to say that IPL's concerns are genuine, and continuing, but in light of the Board's view of that evidence and IPL's position, we will not belabor the matter here.

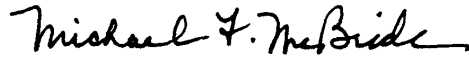
In Decision No. 7, the Board also asked for comments on whether the "Oversight" process is useful and should be continued. The Board has not frequently, if at all, modified its prior decisions in the Oversight process. It thus seems that the process is not productive, in that it encourages parties to submit comments which have not historically changed the outcome. Especially in light of the Board's recent conclusion that there are no problems of which the Board is aware with the transaction (Decision No. 7 at 1-2), it seems clear that the Board is unlikely to grant further relief of its own volition in this proceeding.

Nevertheless, the Board is always open to providing redress if the circumstances require. IPL appreciates that the Board granted it relief in the underlying proceeding, and modified the originally granted relief, also in the underlying proceeding. Thus, rather than engage in additional Oversight proceedings herein, when those are unlikely to produce change, IPL instead suggests that the Board state that relief may always be sought, at least by a party such as IPL which has obtained remedies from the Board, by seeking further relief. IPL contends that it should not have to have met the standard for reopening, in light of the new evidence and changed circumstances it presented in 2001 prior to Decision No. 6, and in light of the Board's prior statements that IPL was free to offer additional evidence if the remedies it was afforded were not providing effective competition. It also seems clear that the same standard would be applied to all other parties if it were applied to a party which was invited to return. Accordingly, if but only if the Board indicates its willingness to entertain comments from parties at any time who assert that their circumstances require relief and are the result, in whole or in part, of this transaction as modified and approved by the Board, the Board could dispense with the remaining two years of

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Oversight proceedings and provide instead that comments or petitions for relief may be filed in Finance Docket No. 33388. The Board should not require a filing fee for such a petition for relief, as that would not have been required during an Oversight proceeding, and the matter should not be different based solely on the procedural posture in which the dispute arises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael F. McBride". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael F McBride
Bruce W. Neely

Attorneys for Indianapolis Power & Light
Company