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March 16, 2006

VIA E-FILING

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

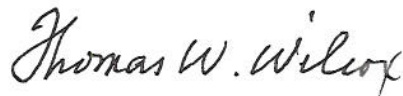
RE: STB Finance Docket No. 34839, *Norfolk Southern Railway Company – Control and Consolidation – Algers, Winslow and Western Railway Company – Petition for Exemption from 49 U.S.C. § 11323*

Dear Secretary Williams:

Attached for e-filing in the above referenced proceeding is the Reply of Indianapolis Power and Light Company ("IPL") to the referenced petition for exemption filed by Norfolk Southern Railway Company.

If you have any questions, please contact either Mr. Barry J. Bentley of IPL at (317) 261-8600, or the undersigned.

Sincerely,



Thomas W. Wilcox
Counsel for Indianapolis Power and Light Co.

TWW:kjm

cc (w/enc.): Counsel for all Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34839

NORFOLK SOUTHERN RAILWAY COMPANY – CONTROL AND CONSOLIDATION –
ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY

PETITION FOR EXEMPTION FROM 49 U.S.C § 11323

REPLY OF INDIANAPOLIS POWER AND LIGHT COMPANY

Pursuant to the Decision served in this proceeding on March 3, 2006, Indianapolis Power and Light Company (“IPL”) hereby replies to the Petition for Exemption from 49 U.S.C § 11323 (“Petition”) filed by Norfolk Southern Railway Company (“NSR”) on February 14, 2006. In this Petition, NSR has asked the Board to exempt from the requirements of § 11323 its proposal to acquire control of the Algiers, Winslow and Western Railway Company (“AWW”), and to consolidate the AWW into the NSR following the acquisition. For the reasons discussed herein, IPL opposes the transaction contemplated by NSR unless the Board conditions its approval of the transaction with a grant of trackage rights to the Indiana Southern Railroad, Inc. (“ISRR”) as IPL understands ISRR will propose to the STB in a Reply to the Petition. IPL also supports ISRR’s alternative request that the Board order NSR to establish a switch charge rate for movement to and from the mine origins served by the AWW and the interchange with NSR and ISRR at Oakland Junction, Indiana. However, IPL believes that a trackage rights condition is the more appropriate condition for ameliorating the anti-competitive effects of this consolidation.

Background and Interest of IPL

As discussed in the attached Verified Statement of Barry J. Bentley, IPL's Vice President Fuel and Energy Supply ("Bentley V.S."), IPL owns and operates three electric generating stations that burn coal that is or can be transported by the ISRR for all or part of the overall movement from coal mines served by the AWW. IPL's Petersburg Station is located in the vicinity of Petersburg, IN., in Pike County, and is served by ISRR. Eagle Valley Station is located in the vicinity of Martinsville, IN., in Morgan County, and is also served by ISRR. Harding Street Station is located in the vicinity of Indianapolis, IN., in Marion County, and is served at destination by the Indiana Railroad Company. Bentley V.S. at 1. ISRR currently transports over three million tons of coal annually to Petersburg Station, approximately seven hundred thousand tons of coal annually to Eagle Valley Station, and ISRR originates smaller volumes of coal destined to Harding Street Station. Id.

The existence of competitive options for coal supply and rail transportation is extremely important to IPL, as it enables IPL to obtain the lowest overall total cost of delivering coal to its generating stations, which in turn enhances IPL's opportunities to maintain low electric rates for its retail customers. Id. at 2. IPL also prefers to utilize local coals for its generating stations, since the relatively short distance from the mines to the plants generally translates into low total delivered cost. Id. At the present time, one of the competitive options available to IPL is the ability to ship coal in a joint line movement with the ISRR and the AWW via the carriers' interchange in Oakland City Junction, IN. Id. The AWW can deliver the coal to the interchange point over its line running between Oakland City Junction and the Pike #1 (formerly Kindill #1) and Pike #2 (formerly Kindill #2) Mines, as well as the loadouts that have been constructed at

each mine. IPL believes that coal from Pike #1 and #2 could be an economical supply of up to 1,000,000 tons of coal to IPL. Id. at 3. IPL is also considering using the loadout at Pike #1 to transfer up to an additional 1,000,000 tons of coal originating at the nearby Augusta Mine from truck to rail for delivery to the Petersburg Station. Coal from the Augusta Mine is presently being delivered to Petersburg Station by truck. Id. High sulfur coal from the Pike #1 and Pike #2 Mines, the Augusta Mine, and other nearby mines is a good source of fuel for the Petersburg Station, since all units at that station have sulfur dioxide (“SO₂”) scrubbers. Id. This coal is also used in smaller quantities at IPL’s Eagle Valley station, and will be capable of being burned in larger quantities at Harding Station when a planned SO₂ scrubber is installed there in 2007. Id.

Argument

The Petition, if granted without appropriate conditions, will eliminate the competitive option currently embodied by the AWW’s role as an independent short line/switch carrier operating between the Pike mines and loadouts and Oakland City Junction. Because it operates only between the mines and loadouts and the interchange with ISRR and NSR at Oakland City Junction, the AWW is indifferent as to which carrier it interchanges with. This is obviously a benefit to IPL and other purchasers of this coal who can transport it to their generating stations via the ISRR. Once NSR assumes 100% control of the AWW and consolidates it into the NSR system, however, the combined railroad will have no incentive to remain neutral in terms of whether to interchange with the ISRR or NSR. Rather, the combination would introduce strong incentives for NSR to maximize the transportation of coal from this location to NSR-served customers via longer, single line movements. This fundamental change in the competitive *status quo* is evident from the Petition. In it, NSR emphasizes the fact that the transaction will result in single-line service to some rail customers. Petition at 4, 5, and 11. On the other hand, NSR

provides no assurances that it will continue to interchange traffic with the ISRR on the same terms as the AWW. Specifically, while NSR states it will honor any existing contracts, the Petition is silent as to whether NSR would enter into new contracts that involved joint line service with ISRR via Oakland City Junction. Moreover, NSR states only that it will interchange traffic “as necessary” with ISRR at Oakland Junction. Id. at 12. IPL is concerned that the incentive to maximize the use of NSR’s single line movements could lead to the foreclosure by NSR of IPL’s competitive option of obtaining coal by rail from Pike #1 and Pike #2 and nearby coal mines through pricing and service terms for the portion of the movement on the AWW that effectively preclude any interchange with ISRR. Bentley V.S. at 4. This would eliminate a key source of coal for IPL and other coal shippers in Indiana whose facilities are not served by NSR.

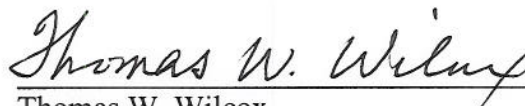
IPL is aware that ISRR is asserting or will assert that the NSR’s assumption of control of 100% of the AWW must be conditioned by granting ISRR trackage rights to operate over the current AWW line between Oakland City Junction and the Pike # 1 and Pike #2 Mines and their associated loadout facilities. IPL concurs that the transaction will result in significant competitive harm at this location if it is not adequately conditioned to ameliorate the harm. IPL fully supports the grant of trackage rights to ISRR, as this would preserve an important competitive option available to IPL for coal needed by its generating stations. Id. IPL is also aware that ISRR has proposed or will propose as an alternative to trackage rights a requirement that NSR establish a switch charge rate for service between the mine origins now served by AWW and ISRR at Oakland City Junction, subject to an inflation adjustment. IPL supports this alternative as well, but IPL believes the trackage rights condition is the much more preferable alternative, since NSR might not provide the crews and equipment needed to provide the switching service if NSR determines that there is insufficient NSR single line service moving

over the line. Id. Of equal or greater importance than operating considerations, IPL considers the flexibility inherent in trackage rights a far superior means of maintaining its competitive options as coal supply and transportation are constantly influenced by acquisitions in the coal and transportation sectors, changing environmental regulations, and other external impacts. Id. at 5.

Conclusion

In conclusion, the control by NSR of 100% of the AWW and the consolidation of the AWW into NSR will, if not appropriately conditioned by the Board, result in the elimination of a significant competitive option available to IPL for its coal supply and rail transportation. Accordingly, the proposed transaction cannot be approved by the Board without conditions that preserve the competitive *status quo* at this location. IPL supports the request by ISRR that the Board's approval of the transaction be conditioned upon the grant of trackage rights to ISRR over the AWW line sufficient to serve the Pike #1 and Pike #2 Mines and their respective loadout facilities. Subject to the reservations expressed hereinabove, IPL also supports the alternative condition proposed by ISRR of requiring NSR to establish a switch charge rate for service between the mine origins served by AWW and the ISRR at Oakland City Junction.

Respectfully submitted,



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34839

NORFOLK SOUTHERN RAILWAY COMPANY—CONTROL AND CONSOLIDATION
EXEMPTION—ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY

PETITION FOR EXEMPTION FROM 49 U.S.C. § 11323

VERIFIED STATEMENT OF BARRY J. BENTLEY

I am Barry J. Bentley, Vice President Fuel and Energy Supply for Indianapolis Power and Light Company ("IPL"). I have been employed by IPL for nearly 18 years and in the electric utility industry for 22 years. I am responsible for the purchase of fuel and transportation services necessary for the operation of IPL's coal-fired electric generating stations, which includes the purchase of all coal and transportation for IPL's Petersburg, Eagle Valley, and Harding Street electric generating stations (the "Stations"). Petersburg Station is located in the vicinity of Petersburg, IN., in Pike County, and is served by Indiana Southern Railroad ("ISRR"). Eagle Valley Station is located in the vicinity of Martinsville, IN., in Morgan County, and is also served by ISRR. Harding Street Station is located in the vicinity of Indianapolis, IN., in Marion County, and is served by the Indiana Railroad Company ("INRD"). ISRR currently transports over three million tons of coal annually to Petersburg Station, approximately seven hundred thousand tons of coal annually to Eagle Valley Station, and ISRR originates smaller volumes of coal destined to Harding Street Station. IPL owns and maintains its own fleet of open top hopper railcars which are used for the transportation of coal to its generating stations.

I have reviewed the Petition for Exemption filed by the Norfolk Southern Railway Company ("NSR") to acquire the remaining 50% interest in and control of the Algers, Winslow and Western Railway Company ("AWW") and then to consolidate AWW into NSR. I am also aware that ISRR has or will assert in this proceeding that the transaction must be subject to conditions that maintain the AWW's present ability to independently interchange coal with the ISRR at Oakland City Junction, IN.

When acquiring coal for its Stations, IPL considers the total delivered cost of the coal, which includes the price of the coal from the mine and the cost of transportation from the mine to the station. To obtain the lowest total cost of coal, IPL solicits proposals from mines and transportation companies, negotiates cost and service terms, and enters into agreements. The existence of competitive coal supply and transportation options provides enhanced opportunities for IPL to maintain low electric rates for its retail customers. To date, AWW has been an independent short line serving, among other shippers, the Pike #1 Mine and the Pike #2 Mine. The present ability of the AWW to interchange coal from these mines with the ISRR at Oakland City Junction is a competitive option available to IPL. NSR's assumption of control over the AWW line, unless appropriately conditioned by the Board, would eliminate this competitive option.

IPL prefers to use local coals for its Stations due to the short distance between the mines and its Stations, which generally has meant low total delivered coal costs. The distance from Pike #1 (formerly the Kindill #1 Mine) to Petersburg Station is approximately 21 miles, to Eagle Valley Station approximately 115 miles, and to Harding Street Station approximately 140 miles. The distance by rail from Pike #2 (formerly the Kindill #2 Mine) to Petersburg Station is approximately 29 miles, to Eagle Valley Station approximately 123 miles, and to Harding Street

Station approximately 148 miles. IPL believes coal from the Pike #1 and #2 Mines could be an economical supply of up to 1,000,000 tons of coal to IPL. Moreover, IPL is considering using the loadout at Pike #1 to transfer up to an additional 1,000,000 tons of coal originating at the nearby Augusta Mine from truck to rail for delivery to Petersburg Station. Coal from the Augusta Mine is presently being delivered to Petersburg Station by truck. IPL is interested in shipping this coal by rail via the combination of AWW and ISRR.

Coal moving by rail to IPL would be routed via AWW to Oakland City Junction, thence via ISRR to one or more of the Stations. Pike #1 is located approximately 3.5 miles from the interchange between AWW and ISRR and Pike #2 is located approximately 11 miles from the interchange between AWW and ISRR. As stated above, the rail loadout at Pike #1 can be used to transload coal trucked from other nearby mines into railcars, thereby providing additional coal transportation alternatives for IPL. High sulfur coal mined at Pike #1 and Pike #2, and other nearby mines, is most attractive as a fuel for Petersburg Station, since all Petersburg units have sulfur dioxide ("SO₂") scrubbers, and in smaller quantities as a blend fuel at Eagle Valley and Harding Street Stations, neither of which have SO₂ scrubbers today. When IPL installs a SO₂ scrubber at Harding Street Station in 2007, the high sulfur coal originated by AWW could be an attractive source for Harding Street.

Based on the Petition, discussions with ISRR, and IPL's general experience in shipping its coal via rail, IPL believes that AWW's consolidation into NSR will result in the loss of AWW's independence and its neutrality regarding shipments to Oakland City Junction for interchange with ISRR or for NSR. Instead of focusing on maximizing the traffic volume between the mine loadouts and Oakland City Junction, NSR will now have the incentive to maximize its traffic volume beyond Oakland City Junction in longer, single line service to NSR-

served customers. IPL is concerned that this incentive to maximize the number and length of single line movements from these mines could lead to the foreclosure by NSR of IPL's competitive option of obtaining coal by rail from Pike #1 and Pike #2 and nearby coal mines through the establishment of pricing and service terms for the portion of the movement on the AWW that effectively preclude interchange with ISRR. Stated another way, once AWW is consolidated into NSR, it is highly unlikely that AWW will continue to act like an independent short line or switching carrier operating between the mines and the point of interchange at Oakland City Junction with two railroads. Thus, AWW will no longer be neutral in determining whether to interchange traffic to NSR or ISRR.

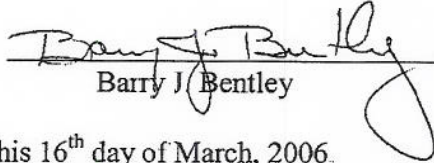
I am aware that ISRR has or will assert that in order to preserve the competitive *status quo* at this location the Board must condition the acquisition of the AWW by requiring NSR to grant ISRR trackage rights over the AWW line from Oakland City Junction to the Pike #1 Mine, the Pike #2 Mine, and their respective loadouts. ISRR's trackage rights proposal will preserve the competitive options that are available today for IPL. IPL fully supports ISRR's trackage rights proposal, which would not infringe on NSR's ability to provide single line service to any shipper on the NSR system. In the alternative, ISRR has proposed or will propose that the Board condition this consolidation on the requirement that NSR establish a switch charge rate for the movement by NSR of coal from Pike #1 and Pike #2 and their respective loadouts to Oakland City Junction. IPL supports this alternative as well, but IPL believes the trackage rights condition is the much more preferable alternative. Based on IPL's experience, NSR might not provide the crews and equipment to provide the switching service if NSR determines that there is insufficient NSR single line service moving over the line. Of equal or greater importance than operating considerations, IPL considers the flexibility inherent in trackage rights a far superior

means of maintaining its competitive options as coal supply and transportation are constantly influenced by acquisitions in the coal and transportation sectors, changing environmental regulations, and other external impacts. Therefore, IPL urges the Surface Transportation Board to impose the trackage rights sought by ISRR as a condition of this consolidation in order to preserve the competitive situation that exists today over the AWW.

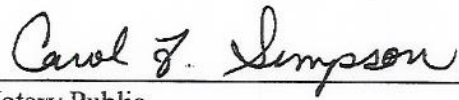
VERIFICATION

I, Barry J. Bentley, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed March 16th, 2006.


Barry J. Bentley

Subscribed and sworn to before me this 16th day of March, 2006.


Notary Public

My Commission Expires:
CAROL J. SIMPSON
NOTARY PUBLIC STATE OF INDIANA
JOHNSON COUNTY
MY COMMISSION EXP. JULY 19, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of March, 2006, caused copies of the foregoing Reply of Indianapolis Power and Light Company to be served by hand or United States Mail upon counsel for all parties of record in Finance Docket No. 34839, as follows:

By Hand:

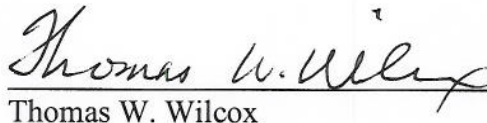
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