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March 16, 2006

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

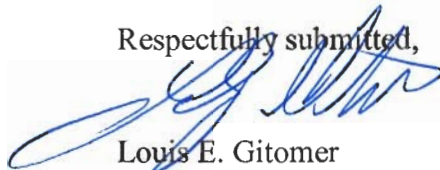
Re: Finance Docket No. 34839, *Norfolk Southern Railway Company--Control and Consolidation Exemption--Algers, Winslow and Western Railway Company*

Dear Secretary Williams:

Enclosed is the Reply and Request for Conditions of the Indiana Southern Railroad, Inc. to the Petition for Exemption filed on February 14, 2006, by the Norfolk Southern Railway Company.

These comments are being efiled. Thank you for your assistance. If you have any questions, please contact me.

Respectfully submitted,



Louis E. Gitomer
Counsel for the Indiana Southern Railroad, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34839

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

INDIANA SOUTHERN RAILROAD, INC. REPLY AND REQUEST FOR CONDITIONS

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Dated: March 16, 2006

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SURFACE TRANSPORTATION BOARD

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

INDIANA SOUTHERN RAILROAD, INC. REPLY AND REQUEST FOR CONDITIONS

The Indiana Southern Railroad, Inc. (“ISRR”) submits this reply and request for conditions in response to the Petition for Exemption from 49 U.S.C. § 11323 (the “Petition”) filed by the Norfolk Southern Railway Company (“NSR”) to acquire the 50% of the outstanding stock of the Algiers, Winslow and Western Railway Company (“AWW”) that is not owned by NSR and to merge AWW into NSR (the “Merger”).

SUMMARY

The Merger of AWW into NSR will reduce the competitive options available to the loading facilities at two coal mines¹ on the AWW and to four utility companies that serve Indiana and use Indiana originated coal. In order to preserve the competitive options for these mines and utility companies, ISRR is requesting that the Merger be conditioned on a grant of limited trackage rights for ISRR to serve the mines and load out facilities. A map setting forth the locations of the relevant utility plants, coal mines and rail lines is attached as Exhibit A.

¹ At each of the mines there is a load out facility that is used to load trains with coal directly from the mine and to transload coal from trucks to trains. The discussion in this Reply of rail service to the mines includes coal originated in one of the mines or coal that is transloaded.

Because of the anti-competitive effect of the Merger, regulation of the Merger is required under the Rail Transportation Policy at 49 U.S.C. § 10101. The application of the provisions of 49 U.S.C. § 11323 are required to protect shippers from the abuse of market power that will result from the Merger. Finally, the Merger is **not** of limited scope because of the broad competitive impacts it will have in the coal market in Indiana. Therefore, exemption of the Merger from the provisions of 49 U.S.C. § 11323 should be denied.

Even under the statutory criteria governing a merger between a Class I railroad and a Class III railroad, 49 U.S.C. § 11324(d), the Board must deny a merger that will result in a substantial lessening of competition or restraint of trade in freight transportation in any region of the United States, unless outweighed by public benefits. The Merger will result in a substantial lessening of competition or restraint of trade by reducing the options available to the coal mines and electric utilities. No public benefits are set forth in the Petition.

ISRR contends that the competitive consequences of the Merger can be ameliorated by imposing a limited condition that will permit ISRR to provide rail service over AWW through trackage rights to the mines in order to maintain the competitive option available to the mines and electric utilities that would exist in the absence of the Merger. An alternate, but not as effective an option, is to require the establishment of negotiated switch charges covering rail transportation of coal from the two mine load outs served by AWW to the interchange location between AWW and ISRR at Oakland City Junction, IN, that will maintain the competitive option for the shippers.

Based upon NSR's commitment to honor existing interchange arrangements, ISRR does not seek a condition to protect the reciprocal switch rate that moves traffic from Railworks Wood

Products over the AWW to ISRR. However, if NSR's commitment to "preserve this interchange" (Petition at 5) does not preserve the reciprocal switch rate to move traffic from Railworks Wood Products over the AWW to ISRR, then ISRR requests the Board to impose a condition requiring NSR to abide by its representations, including preserving the reciprocal switch rate.

BACKGROUND

ISRR, a Class III railroad subsidiary of RailAmerica, Inc., owns and operates a 176-mile rail line in the State of Indiana located between milepost 6.0, south of Indianapolis, and milepost 163.9, at Evansville, IN. ISRR has trackage rights over a Canadian Pacific Railway Company ("CP") line between milepost 224.1, at Elnora, and milepost 218.3, at Bee Hunter. ISRR interchanges with CSX Transportation, Inc. ("CSXT") at Indianapolis and Evansville, with NSR and AWW at Oakland City Junction, with the Indiana Rail Road Company ("INRD") at Switz City, and with CP at Bee Hunter. NSR interchanges coal traffic with ISRR at Indianapolis for movements to Indianapolis Power & Light's ("IPL") Stout Plant (now Harding Street). ISRR has limited rights to operate over NSR to serve the utility at Newburgh, IN.

ISRR serves a number of coal burning utility plants in single or joint line service, including: (1) three owned by Indianapolis Power & Light Company ("IPL") consisting of the (i) Petersburg Station located in the vicinity of Petersburg, Pike County, IN, served by ISRR; (ii) Eagle Valley Station located in the vicinity of Martinsville, Morgan County, IN, served by ISRR; and (iii) Harding Street Station located in the vicinity of Indianapolis, IN, served by the INRD; (2) two owned by PSI Energy, Inc. ("PSI") consisting of the (i) Cayuga Station in Cayuga, Vermillion County, IN, served by CSXT; and (ii) the Wabash River Station in Terre Haute, Vigo

County, IN, served by CP; (3) one owned by Hoosier Energy (“Hoosier”) the Merom Station located in the vicinity of Merom, Sullivan County, IN, served by INRD; and (4) one owned by Alcoa, Inc. (“Alcoa”), the Warrick Station located in the vicinity of Newburgh, IN, Warrick County, IN, served by NSR and ISRR. All of these utilities prefer to burn coal that originates in Indiana. IPL, PSI and Hoosier have filed statements in this proceeding.

There are two coal mines located on the AWW. The Pike #1 Mine (formerly known as the Kindill 1 Mine) is owned by James River Coal (“James River”) and is located on the Enos subdivision of AWW at about milepost E6 in the vicinity of Enos, Warrick County, IN, on the Southern Branch of the AWW. The Pike #2 Mine (formerly known as the Kindill 2 Mine) is owned by Solar Sources Coal (“Solar”) and is located on the Cato subdivision of AWW at about milepost C12 in the vicinity of Cato, Pike County, IN, on the Northern Branch of AWW. As previously noted, at each mine a load out facility loads coal into trains either directly from the mine or through a transload from truck, which enhances the options for obtaining coal off of the AWW and blending coal at the mines. ISRR expects Solar to file a statement in support of ISRR on or about March 22, 2006.

A color map of southwestern Indiana is enclosed in Exhibit A clearly showing the locations of the rail lines, coal mines and electric utility stations described above. Exhibit B contains ISRR’s trackage rights application.² Exhibit C contains the Verified Statement of Mr. Leitze of Hoosier.

ISRR currently transports over three million tons of coal annually to IPL’s Petersburg Station, approximately seven hundred thousand tons of coal annually to Eagle Valley Station,

² ISRR is including the application in an abundance of caution.

and ISRR originates smaller volumes of coal destined to Harding Street Station. Hoosier's Merom Station receives about 1.5 million tons of coal in joint-line service from ISRR origins annually. ISRR provides between 1.0 million and 1.5 million tons annually in joint service to PSI's Wabash River and Gibson Stations, and approximately 1.0 million tons annually to Alcoa's Warrick Station.

As noted in the Petition, the load outs at Pike #1 and Pike #2 coal mines were not been in service after their parent company entered bankruptcy. Now that the bankruptcy has terminated and the AWW is being sold to NSR, production has begun at the Pike #1 Mine and the Pike #2 Mine, providing the electric utility generating stations additional options for obtaining coal nearby.

ARGUMENT

I. GOVERNING LEGAL STANDARD.

A. The Exemption.

Under 49 U.S.C. § 10502, the Board considers whether:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect customers from the abuse of market power.

In abandonment exemption proceedings the Board has concluded:

The exemption process is designed to minimize regulatory burdens. However, it is used only when the information provided is

sufficient for us to reach an informed decision. Typically, the types of abandonment transactions that are exempted are those where the shippers do not contest the abandonment or, if they do contest it, where revenue from their traffic is clearly marginal compared to the cost of operating the lines. Where there is an inadequate record on which to grant an abandonment petition for exemption, the petition will be denied outright. *See Boston and Maine Corporation—Abandonment Exemption—In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 75X) et al., slip op. at 5 (STB served Dec. 31, 1996). In this case there is insufficient information for us to make an informed decision on the merits of the abandonment petition for exemption, given the opposition here. *See San Joaquin Valley Railroad Company—Abandonment Exemption—In Kings and Fresno Counties, CA*, STB Docket No. AB-398 (Sub-No. 4X), slip op. at 3 (STB served Mar. 5, 1999).³

ISRR urges the Board to apply this analysis to exemptions from 49 U.S.C. § 11323. Where there is insufficient information presented for the Board to make an informed decision and where the shippers contest the competitive affects of the transaction, the petition for exemption should be denied. ISRR urges the Board to deny the Petition for failure to present sufficient information on which to base a decision, as well as the opposition of the shippers who will be harmed by an unconditioned Merger.

B. The requirements of 49 U.S.C. § 11324(d) must be considered in denying the exemption.

NSR has sought an exemption from the requirement that the Merger it is seeking to undertake must be approved under 49 U.S.C. § 11323. In considering an exemption, the Board considers the criteria of the underlying statute.⁴

In assessing transactions subject to § 11324(d), our primary

³ *CSX Transportation, Inc. —Abandonment Exemption—(Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X) (STB served December 12, 2001) slip op. at 4-5.

⁴ *Minnesota Comm. Ry. Inc. — Trackage Exempt. — BN RR. Co.*, 8 I.C.C.2d 31, 35-36 (1991).

focus is on the anticipated competitive effects. We must grant the application unless there will be adverse competitive impacts that are both “likely” and “substantial.” And, even if there will be likely and substantial anticompetitive impacts, we may not disapprove the transaction unless the anticompetitive impacts outweigh the benefits and cannot be mitigated through conditions. *See Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.*, STB Finance Docket No. 34000, Dec. No. 10, slip op. at 10 (STB served Sept. 7, 2001); *Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company – Control – Gateway Western Railway Company and Gateway Eastern Railway Company*, STB Finance Docket No. 33311, slip op. at 4 (STB served May 1, 1997); *CSX Corporation and CSX Transportation, Inc. – Control – The Indiana Rail Road Company*, STB Finance Docket No. 32892, slip op. at 3-4 (STB served Nov. 7, 1996).⁵

The Board is required to assess the effects of the Merger on competition. The Staggers Act increased the need for more careful scrutiny of anticompetitive effects of merger transactions. As the Board’s predecessor noted:

The new (Rail Transportation Policy) favoring increased reliance on competition to regulate activities will govern the environment in which the new system will operate. The ability of the railroads to take various actions free of regulatory restraints will make it easier to exert or abuse market power gained as a result of consolidation. For these reasons we must take even greater care to identify harmful competitive effects and to mitigate those effects where possible.⁶

The Board is concerned not only with the possible “elimination” of competition by

⁵ *Paducah & Louisville Railway, Inc.–Acquisition–CSX Transportation, Inc.*, STB Finance Docket No. 34738 (STB served November 18, 2005).

⁶ *Union Pacific - Control - Missouri Pacific; Western Pacific*, 366 I.C.C. 459, 502 (1982) (“UP/MP/WP”).

consolidations, but also with any significant “lessening” or “reduction” in competition.⁷

“Competitive harm results from a merger to the extent the merging parties gain sufficient market power to profit from raising rates or reducing service (or both).”⁸ Whenever possible, the Board attempts to ameliorate competitive harms with conditions.⁹

In determining whether a proposed transaction will result in competitive harm, the Board looks to the affected market. The affected market has two dimensions: product and geographic.¹⁰ The product sold by railroads is the transportation of freight.¹¹ The Board generally considers alternative rail service and, where relevant, intermodal options.¹² In past merger cases, the Board and its predecessor have not applied a fixed definition of the relevant market. Instead, they have examined the specific circumstances in each case to determine if the relevant market should be confined to rail transportation or enlarged to include other transportation modes.¹³

The area in which providers of a particular product operate is the relevant geographic market. The area may be as small as a city or as large as the entire country.¹⁴ The Board's predecessor noted that “the distinctions between product and geographic markets are not as clear in transportation as they are in other industries, for carriers, in particular railroads, effectively sell

⁷ *Railroad Consolidation Procedures*, 363 I.C.C. 784, 786-87 (1981).

⁸ *Canadian National, et al.—Control—Illinois Central, et al.*, 4 S.T.B. 122, 140 (1999).

⁹ *Id.*

¹⁰ *Rio Grand Industries, et al.—Control—SPT Co., et al.*, 4 I. C. C. 2d 834, 885 (1988) (“*RGI/SPT*”).

¹¹ *Id.* at 886; *Rio Grande Ind., Inc. —Pur. & Track. —Soo Line R. Co.*, 6 I. C. C. 2d 854, 878 (1990) (“*RGI/SOO*”).

¹² *RGI/SOO* at 886-87; *Union Pacific Corp. et al. —Cont. —MO-KS-TX CO. et al.*, 4 I. C. C. 2d 409, 433-35 (1988) (“*UP/MKT*”).

¹³ See *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, ICC Finance Docket No. 32133, Decision No. 25 (slip op. 57, served March 7, 1995); *UP/MKT* at 433-34.

their geography."¹⁵ Accordingly, the determinations of the relevant product market and the relevant geographic market in a particular case will necessarily be interrelated. The Board's predecessor analyzed traffic flows between city pairs, as well as traffic flows in rail corridors, and at specific points in the area in which the merging rail carriers operate.¹⁶

The Board has broad authority to impose conditions on its approval of a consolidation transaction in order to ensure that the public interest standard is met.¹⁷ In determining whether conditions are warranted, the Board's "overriding concern is the public interest."¹⁸ The Board can impose conditions to remedy new problems created by the transaction.

Public interest conditions will be imposed to ameliorate anticompetitive consequences of a proposed transaction if the conditions: (i) are operationally feasible; (ii) ameliorate or eliminate the harm threatened by the transaction; and (iii) are of greater benefit to the public than they are detrimental to the transaction.¹⁹

II. RAIL COMPETITION FOR SHIPPERS ON THE AWW AND WHO RELY ON THE GOODS ORIGINATED ON THE AWW WILL BE SIGNIFICANTLY REDUCED AS A RESULT OF THE MERGER.

Once AWW is merged into NSR, NSR will have no incentive to participate in rates for moves over the former AWW line that will be interchanged to ISRR. ISRR contends that the Merger will result in a classic two-to-one competitive situation. Today, AWW is an independent railroad. Shippers located on AWW ship traffic on the AWW to Oakland City Junction where the traffic is interchanged to NSR or ISRR. AWW is neutral as to the whether the traffic is

¹⁴ *RGI/SPT* at 887.

¹⁵ *UP/MP/WP* at 505, n 28.

¹⁶ *UP/MKT* at 437.

¹⁷ *UP/MP/WP* at 562.

¹⁸ *Id.*

interchanged to NSR or ISRR. Today, the shippers on AWW have equal access to ISRR or NSR. However, once AWW is merged into NSR, there will be no neutral railroad serving the shippers. Instead, there will be one railroad serving the shippers with incentive to route traffic over its single-line service. Indeed, NSR claims it will “interchange traffic as necessary” (Petition at 12) and “when the mines reopen... honor any transportation contract that might still be in effect at that time for its duration.” *Id.* ISRR and the supporting shippers are concerned that once NSR has reduced the options of the shippers on the former AWW to use of NSR, that NSR will take commercial actions to close the interchange and foreclose anything but single-line routing off of the AWW. In similar two-to-one situations, the Board has imposed trackage rights to protect competition. Based on Board precedent, ISRR respectfully requests the Board to impose limited trackage rights in this proceeding.

Further details about the reduction in competition that will result from the unconditioned merger of AWW into NSR are provided in the verified statements filed by IPL, Hoosier, and PSI. ISRR adopts those concerns.

III. WITHOUT THE REQUESTED LIMITED CONDITION THE ANTICOMPETITIVE AFFECTS OF THE MERGER REQUIRE ITS DENIAL.

A. The proposed Merger does not meet the exemption criteria.

1. The application of 49 U.S.C. § 11323 is necessary to carry out the rail transportation policy.

Detailed scrutiny of this transaction is necessary to carry out the rail transportation policy.

The merger of AWW into NSR will not allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail as

¹⁹ UP/MP/WP at 564.

required by 49 U.S.C. 10101(1). Instead, as a result of the Merger, NSR will obtain market power over the rail shippers located on the AWW and those shippers relying on goods shipped off of the AWW line to prevent competition and demand to establish reasonable rates.

NSR's merger with AWW will not ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public as required by section 10101(4). NSR will obtain market power over the rail shippers located on the AWW and those shippers relying on goods shipped off of the AWW line by eliminating AWW's neutrality to the interchange with either ISRR or NSR at Oakland City Junction in light of NSR's preference for single-line service for coal originating on the AWW line.

The Merger will not "ensure effective competition and coordination between rail carriers and other modes." 49 U.S.C. § 10101(5). NSR will replace the competition between NSR and ISRR at the interchange with AWW at Oakland City Junction that has been enjoyed by the shippers on the AWW with a preference for a single-line long-haul NSR routing. As seen in the verified statements of the shippers seeking to obtain coal from the Pike #1 and Pike #2 mines, based on their past dealings with NSR, they are convinced that the merger will not ensure effective competition.

The Merger as proposed by NSR will create an undue concentration of market power and the strong potential for unlawful discrimination contrary to 49 U.S.C. § 10101(12). The shippers on the AWW and the shippers who would acquire coal originating on the AWW are concerned that eliminating the neutrality of AWW will give NSR enough market power so that NSR will be able to dictate the destination of coal originating on the AWW line through the use

of its ratemaking power. The unconditioned Merger will create a bottleneck where one does not exist today and will give NSR the power to discriminate in its pricing to the Oakland City Junction Interchange so as to force traffic onto NSR's long haul, or at a minimum discourage interchange with ISRR for short haul delivery within Indiana.

This exemption from the provisions of 49 U.S.C. § 11323 is contrary to the rail transportation policy.

2. The Merger is not of limited scope.

The Merger has far reaching effects on the coal market in Indiana. Implementation of NSR's long-haul single-line service strategy will reduce the competitive options available to the electric utility companies of Indiana. The volumes of coal affected by the Merger are not of limited scope. The Merger may effect the movement of several millions tons of coal per year as stated by the shippers supporting ISRR's request for limited trackage rights.

3. The Merger will result in an abuse of market power.

Coal traffic on the AWW has always had a neutral and competitive alternative at the point of interchange at Oakland City Junction. After the Merger, NSR will not be neutral in its dealings with ISRR. Instead, NSR intends to concentrate on moving the traffic off of the AWW line into long-haul single-line service, thereby foreclosing the Indiana utility companies from access to Indiana coal. As all of the utilities have testified, their purchase of coal depends on the delivered price consisting of the cost of coal and transportation. It will not require drastic pricing action by NSR to foreclose these utilities from acquiring coal off of the AWW line and limit their competitive options in the coal market. NSR will have the ability to abuse its market power, and in order to carry out its planned long-haul single-line service strategy, will have the inducement

to price so as to abuse its newly gained market power. NSR will have the opportunity, motive and means for foreclosing the competitive options available today to shippers on the AWW and who would rely on coal originated on the AWW.

4. Summation.

In filing the Petition, NSR was required to concurrently file its case-in-chief with all supporting evidence. 49 C.F.R. § 1121.3(a). NSR did not file any evidence to support its contentions that the Merger should be exempted because (i) regulation was not required by the rail transportation policy, (ii) it is of limited scope, and (iii) it will not result in the abuse of market power. In support of ISRR's reasonable request for limited conditions, the shippers originating coal on the AWW and those shippers acquiring coal from the mines on the AWW have presented sworn testimony contradicting NSR's unsupported statements. The evidence all supports a conclusion that NSR has not shown that the unconditioned Merger should be exempted from the provisions of section 11323.

B. The proposed Merger does not satisfy the criteria of 49 U.S.C. § 11323(d).

As noted above, NSR has not presented any evidence in the Petition, much less evidence demonstrating that the Merger will not have both "likely" and "substantial" adverse competitive impacts. NSR has not presented evidence of the product (rail freight transportation) and geographic markets (coal users within 200 miles of the AWW not located on NSR) affected by the proposed Merger. NS has not provided any evidence of the public benefits of the Merger for the Board to consider as ameliorating the competitive harm.

Unlike NSR, evidence has been provided by the shippers on the AWW and those electric utilities that will purchase coal from the mines and load outs on the AWW that there will be

adverse competitive effects from the loss of AWW as a neutral interchange partner with ISRR at Oakland City Junction. IPL, PSI and Hoosier contend that the Merger will foreclose competitive options for them to obtain coal within Indiana because of NSR's goal of providing long-haul single-line service off of the AWW line. They have also attempted to negotiate economic competitive terms for the movement of coal off of the AWW to interchange with ISRR and have not been successful, perhaps because of the market power that NSR anticipates acquiring along with the AWW.

Likely and substantial adverse competitive impacts resulting from the Merger have been proven. No public benefits have been offered to offset the competitive harm. ISRR urges the Board that NSR's failure to meet the criteria of 49 U.S.C. § 11324(d) is also ground for denial of the unconditioned Merger.

IV. THE TRACKAGE RIGHTS REQUESTED BY ISRR SHOULD BE GRANTED.

Approval of the Merger, without appropriate conditions, will significantly reduce competition for rail shippers located on the AWW and relying on goods shipped off of the AWW line. The condition requested by ISRR is uniquely designed to ameliorate competitive harm.

ISRR requests that the Board condition the exemption of the Merger by granting ISRR "local" trackage rights over AWW as follows: between the junction of ISRR and AWW at Oakland City Junction, IN (milepost 2.2 on the ISRR) and (1) Pike #1 Mine (formerly known as the Kindill 1 Mine) owned by James River Coal ("James River") located on the Enos subdivision of AWW at about milepost E6 in the vicinity of Enos, Warrick County, IN, on the Southern Branch of the AWW, a distance of about 3.5 miles; and (2) Pike #2 Mine (formerly known as the Kindill 2 Mine) owned or to be acquired by Solar Sources Coal ("Solar") located on the Cato

subdivision of AWW at about milepost C12 in the vicinity of Cato, Pike County, IN, on the Northern Branch of AWW, a distance of about 11.0 miles. Pike #1, Pike #2, and the truck to rail load outs at each mine are referred to as the “Mines.”

The term “local” trackage rights, as used above, includes: (1) the right to operate trains over the lines described; (2) the right to serve the Mines for coal destined to facilities in Indiana that are not located on lines of the NSR in existence on the date that the Petition was filed with the Board; and (3) the right to use all sidings and team tracks located on the lines described.

The Board should retain jurisdiction to establish the level of compensation and other terms in the event the parties are unable voluntarily to resolve these matters through negotiation.

A complete application describing the trackage rights is contained in Exhibit B.

If the condition is granted, ISRR will be able to preserve competitive rail service for rail shippers located on the AWW and relying on goods shipped off of the AWW line. As demonstrated below, the trackage rights ISRR seeks fully meet the Board's criteria for imposing conditions.

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

The trackage rights ISRR seeks are designed to ameliorate the anticompetitive consequences of the Merger for the rail shippers located on the AWW and relying on goods shipped off of the AWW line. If granted, the trackage rights would enable ISRR to preserve rail competition at the Mines.

As previously noted, the Board has broad authority to impose conditions on its approval of transactions. The Board has an affirmative duty to impose such conditions as are necessary to

ensure that a transaction before it is in the public interest.²⁰ The Board "is not intended to be a passive arbiter but the 'guardian of the general public interest,' with a duty to see that this interest is at all times effectively protected."²¹

ISRR's requested trackage rights satisfy each of the criteria for imposing a pro-competitive condition. ISRR has demonstrated that the Merger will have anticompetitive consequences and threatens harm to the public interest of the rail shippers located on the AWW and those shippers relying on goods shipped off of the AWW line. Consequently, the imposition of a pro-competitive interest condition is warranted.

ISRR demonstrated that the requested trackage rights are operationally feasible in the accompanying operating plan in Exhibit B.

ISRR's requested trackage rights are specifically designed to eliminate the competitive harm threatened by the Merger to the rail shippers located on the AWW and those shippers relying on goods shipped off of the AWW line. By gaining direct access to the Mines, ISRR will be able to preserve the two rail carrier competition the Mines enjoyed when they were active.

Finally, ISRR's requested trackage rights are in the public interest and would not be detrimental to the Merger. ISRR's trackage rights will not interfere with NSR's single line service. ISRR's trackage rights will provide geographic competition to NSR. NSR has demonstrated few, if any, public benefits of the proposed transaction. Not only are there no public benefits to speak of, the Merger, if unconditionally approved, would result in substantial public detriments to the rail shippers located on the AWW and those shippers relying on goods

²⁰ See *Atlantic Coast Line R. Co. v. United States*, 48 F.2d 239, 244 (W.D.S.C. 4th Cir. 1931), *aff'd*, 284 U.S. 288 (1932).

²¹ *Lamoille Valley R.R. v. ICC*, 711 F.2d 295, 322 n. 55 (D.C. Cir. 1983).

shipped off of the AWW line in the form of increased transportation costs and less efficient routings. On the other hand, the rail shippers located on the AWW and relying on goods shipped off of the AWW line would derive significant benefits from the trackage rights conditions ISRR seeks through improved service and the preservation of rail competition in the area. At the same time, the conditions would not detract in any material respect from the public benefits NSR expects to achieve from the Merger.

VI. CONTROL.

NSR has filed the Petition to acquire control of AWW. However, NSR's parent company the Norfolk Southern Corporation ("NSC") has not sought control of AWW through its control of NSR. There is no evidence of record that NSC controls AWW. Indeed, the transaction that created NSC does not show AWW as a controlled subsidiary of NSC.²²

Since NSC will be acquiring control of AWW, it must obtain authority from the Board under 49 U.S.C. 11323(a)(5). NSC has not sought control authority. When a necessary party has not requested the proper authority for control, the application has been rejected for lack of a necessary party. The absence of NSC as a party seeking control of AWW supports denial of the Petition.

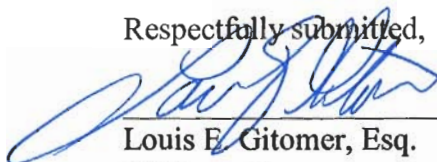
²² See *Norfolk Southern Corporation—Control—Norfolk & Ry. Co.*, 366 I.C.C. 171, 255-257 (1982).

CONCLUSION

For the foregoing reasons, ISRR respectfully urges the Board in the alternative to either: (1) condition the Merger by imposing the trackage rights sought by ISRR; (2) condition the Merger by imposing the switching condition sought by ISRR; or (3) deny the Merger.

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Attorneys for:

INDIANA SOUTHERN RAILROAD, INC.

Dated: March 16, 2006

EXHIBIT A-MAP

The following map shows the railroad lines and coal mines and electric utility stations that are involved in the instant proceeding.



EXHIBIT B—TRACKAGE RIGHTS APPLICATION

Indiana Southern Railroad, Inc. (“ISRR”), hereby submits its Responsive Application pursuant to 49 U.S.C. §§ 11321-25 and the Surface Transportation Board’s (the “Board”) Railroad Consolidation Procedures, 49 C.F.R. Part 1180. In this Responsive Application, ISRR seeks the grant of conditions upon the transaction proposed by Norfolk Southern Railway Company (“NSR”) to acquire the 50% of the outstanding stock of the Algiers, Winslow and Western Railway Company (“AWW”) that is not owned by NSR and to apparently merge AWW into NSR (the “Merger”).

The condition ISRR seeks is intended to ameliorate the anticompetitive effects of the Merger on the transportation of coal from two coal mines located on the AWW. ISRR requests that the Board condition the exemption of the Merger by granting ISRR “local” trackage rights over AWW as follows: between the junction of ISRR and AWW at Oakland City Junction, IN (milepost 2.2 on the ISRR) and (1) Pike #1 Mine (formerly known as the Kindill 1 Mine) owned by James River Coal (“James River”) located on the Enos subdivision of AWW at about milepost E6 in the vicinity of Enos, Warrick County, IN, on the Southern Branch of the AWW, a distance of about 3.5 miles; and (2) Pike #2 Mine (formerly known as the Kindill 2 Mine) owned or to be acquired by Solar Sources Coal (“Solar”) located on the Cato subdivision of AWW at about milepost C12 in the vicinity of Cato, Pike County, IN, on the Northern Branch of AWW, a distance of about 11.0 miles. Pike #1, Pike #2, and the truck to rail load outs at each mine are referred to as the “Mines.”

The term “local” trackage rights, as used above, includes: (1) the right to operate trains over the lines described; (2) the right to serve the Mines for coal destined to facilities in Indiana

that are not located on lines of the NSR in existence on the date that the Petition was filed with the Board; and (3) the right to use all sidings and team tracks located on the lines described.

These limited trackage rights will be a “minor transaction.”

In support of this Responsive Application, ISRR submits the following information as required by 49 C.F.R. § 1180.6:

Section 1180.6 (a)(1)(i). Description of the Proposed Transaction.

ISRR requests that the Board condition the exemption of the Merger by granting ISRR “local” trackage rights over AWW as follows: between the junction of ISRR and AWW at Oakland City Junction, IN (milepost 2.2 on the ISRR) and (1) Pike #1 Mine (formerly known as the Kindill 1 Mine) owned by James River Coal (“James River”) located on the Enos subdivision of AWW at about milepost E6 in the vicinity of Enos, Warrick County, IN, on the Southern Branch of the AWW, a distance of about 3.5 miles; and (2) Pike #2 Mine (formerly known as the Kindill 2 Mine) owned or to be acquired by Solar Sources Coal (“Solar”) located on the Cato subdivision of AWW at about milepost C12 in the vicinity of Cato, Pike County, IN, on the Northern Branch of AWW, a distance of about 11.0 miles. Pike #1, Pike #2, and the truck to rail load outs at each mine are referred to as the “Mines.”

The term “local” trackage rights, as used above, includes: (1) the right to operate trains over the lines described; (2) the right to serve the Mines for coal destined to facilities in Indiana that are not located on lines of the NSR in existence on the date that the Petition was filed with the Board; and (3) the right to use all sidings and team tracks located on the lines described.

The Board should retain jurisdiction to establish the level of compensation and other terms in the event the parties are unable voluntarily to resolve these matters through negotiation.

Applicant.

The name, address and telephone number of the Responsive Applicant are:

Indiana Southern Railroad, Inc.
Post Office Box 158
Petersburg, IN 47567
(812) 354-8080

The name, address and telephone number of counsel to whom questions should be addressed are:

Gary A. Laakso, Esq.
Vice President – Regulatory Counsel
INDIANA SOUTHERN RAILROAD, INC.
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Second Floor
Boca Raton, FL 33487
(561) 994-6015

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Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Section 1180.6(a)(1)(ii). Proposed Time Schedule.

ISRR is prepared to commence operations pursuant to the proposed trackage rights immediately after the effective date of the Board's approval of ISRR's Responsive Application.

Section 1180.6(a)(1)(iii). Purpose.

The purpose of the requested conditions is to remedy the anticompetitive effects of the Merger on shippers relying on the coal mines located on the AWW for competitive options for energy sources. Today, AWW is neutral in quoting rates for traffic moving off of the AWW. After the AWW is merged into the NSR, NSR intends to concentrate on single-line service,

disadvantaging those coal mines and electric utilities that want to use coal mined along the AWW who are not located on the NSR.

ISRR proposes to remedy this loss of competition by providing service to the Mines via limited trackage rights over the AWW.

Section 1180.6(a)(1)(iv). Nature and Amount of New Securities or Other Financial Arrangements.

No new securities or other financial arrangements will be required for ISRR to consummate the proposed transaction and commence operations under the requested trackage rights.

Section 1180.6(a)(2). Public Interest Justifications.

The requested trackage rights are in the public interest because they would ameliorate the anticompetitive effects of the Merger on the Mines and to the electric utilities that want to preserve their competitive options of using the coal that is mined on the AWW. ISRR would be able to preserve rail competition by offering a direct, efficient and competitive alternative to NSR.

The conditions sought by ISRR would not impose any unreasonable operating problems on the AWW. The conditions would also not detract in any material respect from the public benefits of the Merger.

Section 1180.6(a)(2)(i). Effect on Competition.

The requested conditions would preserve intramodal competition for coal originating on the AWW.

As previously explained, if the Merger is exempted without appropriate conditions, the Mines will become captive to NSR, and the Mines and the electric utilities will lose the neutrality

of AWW, which will be replaced by NSR and its stated desire to route all traffic off of the AWW in single-line service.

Section 1180.6(a)(2)(ii). Financial Considerations.

ISRR estimates that the conditions requested would enable ISRR to continue competing for that traffic and possibly generate revenues associated with the traffic that would not be handled by NSR in single-line service. The requested conditions would also enable ISRR to generate additional revenues from service to shippers losing competitive rail service on the AWW.

Section 1180.6(a)(2)(iii). Effect on Fixed Charges.

ISRR does not expect any increase in fixed charges resulting from the operations proposed in this Responsive Application.

Section 1180.6(a)(2)(iv). Effect On Adequacy Of Transportation.

Granting the condition sought by ISRR would have a positive effect on the adequacy of transportation for the Mines and the utilities that would use the coal from the Mines. The requested trackage rights are necessary competitive alternatives to many of ISRR's customers that are dependent on rail service to meet their transportation needs which cannot economically be met by other modes of transportation.

Accordingly, if the conditions requested by ISRR are not granted, shippers dependent on ISRR will lose existing competitive rail options.

Section 1180.6(a)(2)(v). Effect on Employees.

Granting the conditions sought by ISRR should have little, if any, impact on the employees of NSR. The conditions proposed by ISRR would not divert any traffic from NSR.

The conditions might enable ISRR to increase the level of its work force.

Section 1180.6(a)(2)(vi). Effect of Inclusion of Other Railroads.

Not applicable to this Responsive Application.

Section 1180.6(a)(3). Other Supporting Statements.

ISRR anticipates that this Responsive Application will be supported by shippers in separate filings with the Board.

Section 1180.6(a)(4). Opinion of Counsel.

The opinion of ISRR's counsel that the conditions requested in this Responsive Application satisfy the requirements of law and will be legally authorized and valid if approved by the Board appears at the end of the narrative of the Responsive Application.

Section 1180.6(a)(5). List of States.

ISRR currently operates only in the State of Indiana and the rail lines over which ISRR seeks trackage rights are located in the State of Indiana.

Section 1180.6(a)(6). Map.

A map showing the rail line operated by ISRR and the lines over which ISRR seeks trackage rights is attached as Exhibit 1.

Section 1180.6(a)(7)(i). Nature of Transaction.

The conditions ISRR seeks to have imposed on the Merger is the grant of trackage rights as described above under Section 1180.6(a)(1)(i).

Section 1180.6(a)(7)(ii). Agreements.

A draft agreement setting forth the significant terms proposed is attached as Exhibit 2.

Section 1180.6(a)(7)(iii). Consolidated Company Information.

Not applicable to this Responsive Application.

Section 1180.6(a)(7)(iv). Court Order.

Not applicable to this Responsive Application.

Section 1180.6(a)(7)(v). Property Included in the Proposed Transaction.

The trackage rights requested by ISRR are over AWW. *See* “Description of Proposed Transaction” under Section 1180.6(a)(1) and the map attached as Exhibit 1.

Section 1180.6(a)(7)(vi). Principal Routes.

ISRR owns and operates a 176-mile rail line in the State of Indiana located between milepost 6.0, south of Indianapolis, and milepost 163.9, at Evansville, IN. ISRR has trackage rights over a Canadian Pacific Railway Company (“CP”) line between milepost 224.1, at Elnora, and milepost 218.3, at Bee Hunter. ISRR interchanges with CSX Transportation, Inc. (“CSXT”) at Indianapolis and Evansville, with NSR and AWW at Oakland, with the Indiana Rail Road Company (“INRD”) at Switz City, and with CP at Bee Hunter. NSR was granted the right to interchange coal traffic with ISRR at Indianapolis for movements to Indianapolis Power & Light’s (“IPL”) Stout Plant (now Harding Street).

The trackage rights ISRR seeks are between the junction of ISRR and AWW at Oakland City Junction, IN (milepost 2.2 on the ISRR) and (1) Pike #1 Mine (formerly known as the Kindill 1 Mine) owned by James River Coal (“James River”) located on the Enos subdivision of AWW at about milepost E6 in the vicinity of Enos, Warrick County, IN, on the Southern Branch of the AWW, a distance of about 3.5 miles; and (2) Pike #2 Mine (formerly known as the Kindill 2 Mine) owned by Solar Sources Coal (“Solar”) located on the Cato subdivision of AWW at about milepost C12 in the vicinity of Cato, Pike County, IN, on the Northern Branch of AWW, a

distance of about 11.0 miles.

Section 1180.6(a)(7)(vii). Governmental Financial Assistance.

No governmental assistance will be sought.

Section 1180.6(a)(8). Environmental Data.

ISRR hereby states that no environmental documentation is required for ISRR's Responsive Application pursuant to the provisions of 49 C.F.R. § 1105.6(c)(2).

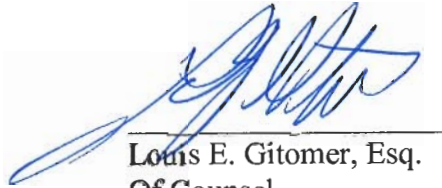
Section 1180.8(b). Operating Plan-Minor.

A copy of ISRR's operating plan is attached as Exhibit 15.

CONCLUSION

For the foregoing reasons, ISRR respectfully urges the Board to grant, as conditions to approving the Merger, the trackage rights requested in this Responsive Application.

Respectfully submitted,



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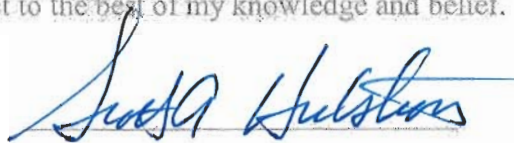
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Attorneys for:
INDIANA SOUTHERN RAILROAD, INC.

Dated: March 16, 2006

SECTION 1180.4(c)(2)(i)
SIGNATURES, OATHS, AND CERTIFICATIONS
OF APPLICANT'S EXECUTIVE OFFICERS

I, Scott Hulstrom, declare under penalty of perjury that I am President of Indiana Southern Railroad, Inc., that I am one of the executive officers duly authorized to sign, to verify and to file this Application on behalf of Indiana Southern Railroad, Inc., that I have knowledge of the matters contained in this Responsive Application, and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.



Executed on March 15, 2006

I, Gary Laakso, hereby certify that I am Secretary of Indiana Southern Railroad, Inc., applicant herein, and that Scott Hulstrom, President of Indiana Southern Railroad, Inc., is duly authorized to sign, to verify, and to file this Responsive Application on behalf of Indiana Southern Railroad, Inc.


Corporate Secretary

Dated this 15th day of March 2006 at Boca Raton, Florida.

EXHIBIT 1–MAP



EXHIBIT 2-TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT made this ____ of ____ 2006, by and between INDIANA SOUTHERN RAILROAD, INC. ("ISRR"), and ALGIERS, WINSLOW AND WESTERN RAILWAY COMPANY ("AWW");

WITNESSETH:

WHEREAS, AWW operates a line of railroad east of Oakland City, Indiana area, and ISRR, hereinafter referred to as "User," wishes to use certain of said AWW's line of railroad, hereinafter referred to as "Subject Trackage"; and

WHEREAS, AWW is willing to grant ISRR trackage rights over the Subject Trackage to enable User to serve all local coal facilities and load outs now or in the future located on the Subject Trackage; and

WHEREAS, AWW is willing to allow User the right to use the Subject Trackage on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions of this agreement (Agreement), AWW hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews, hereinafter referred to as "Trackage Rights" over the Subject Trackage from User's connection with AWW at Oakland City, Mile Post 2.2 to Cato at Mile Post C12 and to Enosville at Mile Post E6, and grants to User, in common with AWW and any other users of the Subject Trackage, the right to perform local freight service to all local coal facilities and load outs now or in the future located on the Subject Trackage.

Section 2. USE OF SUBJECT TRACKAGE

User's use of Subject Trackage shall be in common with AWW and AWW's right to use the Subject Trackage shall not be diminished by this Agreement.

- (A) Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of AWW, preclude the emergency use by User of such auxiliary trackage as may be designated by AWW for such purposes.

- (B) AWW shall have exclusive control of the management and operation of the subject Trackage. AWW may, at its discretion, admit other users to the Subject Trackage. User shall not have any claim against AWW for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- (C) User shall have the right to operate in either direction over the Subject Trackage.
- (D) AWW shall have the exclusive right to grant trackage rights of any nature to use the Subject Trackage to other persons.

Section 3. RESTRICTION ON USE

The Trackage Rights herein are granted for the sole purpose(s) of User using the Subject Trackage as previously described for local movements to connect its trackage with that of User, to interchange with AWW and/or to operate its trains to provide local freight service, in common with AWW, to all industrial tracks.

Section 4 MISCELLANEOUS SPECIAL PROVISIONS

When operating over the Subject Trackage, User's locomotives and crews must be equipped to communicate with AWW on radio frequencies normally used by AWW in directing train movements on the Subject Trackage. Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage of the Subject Trackage will be subject to the approval of AWW's representative or his designee.

Section 5. COMPENSATION

- (A) The Current Charge to be paid by User for the Subject Trackage Rights covered by this Agreement shall be thirty-five cents per car mile. The Current Charge shall be subject to change to reflect any increase or decrease subsequent to the Effective Date of this Agreement in labor, material and other costs, as more fully set forth below.
- (B) AWW shall bill User monthly on the anniversary date of this Agreement.
- (C) The Current Charge set forth in section 5 (A) hereof shall be revised upward or downward each year, beginning with the annual bill rendered for the year of 2007, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Chargeout Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements

thereto, issued by the association of American Railroads ("AAR"). In making such a determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East district shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

- (D) In the event the base for the Annual Indexes of Chargeout Prices and Wage Rates issued by the AAR or any successor organization discontinues publication of the Annual Indexes of Chargeout Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Section 17 of this Agreement.

Section 6. PAYMENT OF BILLS

- (A) All payments called for under this Agreement shall be made within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of the billing.
- (B) Bills rendered pursuant to the provisions of this Agreement, other than those provided for in Section 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by AWW at the time any work is performed by AWW for User or shall include actual costs and expenses, upon mutual agreement of the parties.

Section 7. MAINTENANCE OF SUBJECT TRACKAGE

AWW shall maintain, repair and renew the Subject Trackage with its own supervision and labor. AWW shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but AWW does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. AWW shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Existing connections or facilities, which are jointly used by the parties hereto under existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements. If User shall desire a new or upgraded connection or other facility, AWW will approve such improvement if it does not adversely affect AWW's operations and shall furnish the labor and materials for the construction on AWW's property as available, at User's sole cost and expense. User shall furnish labor and materials, at its cost, for construction on User's or a third party's property. User shall pay AWW for all maintenance expense for new or upgraded connections or facilities.

Section 9. ADDITIONS RETIREMENTS AND ALTERATIONS

AWW, from time to time and at its sole cost and expense, may make changes in, additions and betterment to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

Section 10. MANAGEMENT AND OPERATIONS

- (A) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless AWW and its parent corporation, subsidiaries, affiliates and partners and all of their respective directors, officers, agents, employees and partners from and against all claims, demands, costs, expenses, obligations, fines, penalties and liabilities (including reasonable attorney fees and expenses and court and litigation costs) imposed upon AWW or its parent corporation, subsidiaries, affiliates or partners or their respective directors, officers, agents, employees and partners under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.
- (B) User in its use of the Subject Trackage shall comply in all respects with the safety

rules, operating rules, timetables, notices, bulletins, orders, and other regulations and procedures of AWW, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of AWW. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by AWW's operating rules and regulations without the prior consent of AWW.

- (C) User shall make such arrangements with AWW as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to AWW, upon receipt of bills therefor, any cost incurred by AWW in connection with the qualification of such employees of User, as well as the cost of pilots furnished by AWW, until such time as such employees of User are deemed by the appropriate examining officer of AWW to be properly qualified for operation as herein contemplated.
- (D) In the event of any investigation or hearing concerning the violation of any safety or operating rule or AWW timetable, notice, bulletin, order, regulation, procedure or practice by User's employees while on the Subject Trackage, User shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by User, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to User's employee or employees required to attend such hearings.
- (E) AWW shall have the right to exclude from the Subject Trackage any employee of User determined by an investigation or hearing, to be in violation of AWW's rules, regulations, orders, practices, procedures, timetables, bulletins or instructions whether contained in AWW's Timetable operating rules, safety rules, or otherwise. User shall release, indemnify, defend, and save harmless AWW and its parent corporation, subsidiaries, affiliates, and partners and all of their respective directors, officers, agents, employees and partners from and against any and all claims and expenses resulting from such exclusion of an employee.
- (F) The trains, locomotives, cars and equipment of User, AWW, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.
- (G) In the event that a train of User shall be forced to stop on the Subject Trackage,

due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by AWW on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, AWW shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse AWW for the full cost of rendering any such assistance, or of any agents or contractors who are engaged to render such assistance.

- (H) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by AWW or its agents or contractors, and User shall reimburse AWW for the cost thereof.
- (I) In the event AWW and User agree that AWW should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by AWW and which would not have been incurred had the retained or additional employees not been provided.

Section 11. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly.

Section 12. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, AWW or its agent or contractor shall perform or provide such service, including the repair and restoration of roadbed, trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be

promptly delivered to it.

Section 13. LIABILITY

- (A) This Section 13 is intended to allocate, between the parties, the responsibility for death, personal injury, or property damage arising from the operations contemplated by this Agreement. Nothing in this Section 13 shall be construed to create or confer any right or cause of action on any person not a party to this Agreement.
- (B) Liability for (a) personal injury to or death of any person, (b) damage to the real or personal property of any person (including, but not limited to, that of the parties), (c) punitive or exemplary damages, and (d) clean-up and remedial expenses, shall be determined as follows:
 - (i) Each party shall be responsible, without regard to fault, for damage to its own equipment, its own property, for lading in its possession, and for the death of or injury to its own employees. For the purposes of this Section 13, pilots furnished by AWW to User pursuant to this Agreement shall be considered employees of User while such pilots are on or about the equipment or premises covered by this Agreement. For purposes of this Section 13, the trains, cars, operations and employees of any other present or future tenant of the Subject Trackage shall be considered the trains, cars, operations and employees of AWW.
 - (ii) Except as provided in Section 13(B)(i), each party shall be separately responsible, without regard to fault of either party, for all liability for death, personal injury, or damage to property sustained or incurred by any person who is not a party to this Agreement, when such death, personal injury, or property damage results solely from the trains, operations, or employees of that party without the involvement of the trains, operations, or employees of the other party.
 - (iii) Except as provided in Section 13(B)(i), liability for death, personal injury, or damage to property sustained or incurred by any person who is not a party to this Agreement, resulting from the trains, operations, or employees of both parties shall be divided equally between the parties hereto, without regard to the fault of either party.
 - (iv) The terms “liability”, “damage”, “damages”, or “injury” as used in this Section 13 shall include related court costs, expenses, and attorney’s fees. Liability shall not include fines and penalties, which shall always be paid by the party against whom they were assessed.

- (v) Under no circumstances will either of the parties to this Agreement assert a claim for punitive or exemplary damages against the other party.
- (C) Process
 - (i) Whenever any liability is imposed upon a party under the provisions of this Section 13, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement from and against that liability.
 - (ii) If any suit or action is brought against either AWW or User for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, the other party shall be given prompt written notice by the party sued, and the party so notified must either assume responsibility for the defense of the suit or participate in its defense, as may be appropriate.
- (D) Notwithstanding any other provisions of this Agreement, each party shall be responsible for liability for any death, personal injury, or damage to property to the extent such death, personal injury, or damage to property was caused by acts or omissions of any of that party's employees while under the influence of drugs or alcohol. A FRA positive test for drugs or a FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol," for the purposes of this Section 13.

Section 14. CLAIMS

- (A) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant Association of American Railroads (AAR) rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the parties.
- (B) Each party shall indemnify and hold harmless the other parties against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be

imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 15 INSURANCE

- (A) User shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 13 hereof. Such insurance shall provide minimum limits of Five Million Dollars (\$5,000,000) per occurrence but may be subject to an annual aggregate limit of Five Million Dollars (\$5,000,000) and a per occurrence deductible not in excess of Twenty-Five Thousand Dollars (\$25,000).
- (B) If the insurance provided under this Section 15 takes the form of a Claims Made Policy, User agrees to purchase whatever supplemental coverage may be necessary to provide continuous supplemental coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement.
- (C) On or before any fourth-year anniversary date of this Agreement measured from the Commencement Date, AWW may require an increase in the amount of insurance coverage required by this Section 15, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this Agreement has been in effect.
- (D) Every policy of insurance obtained by User pursuant to the requirements of this Section 15 shall contain provisions requiring that the insurance carriers give AWW at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by User to satisfy the requirements of this Section 15 will be subject to the reasonable approval of AWW.
- (e) Within thirty (30) days of execution of this Agreement, and within thirty (30) days of any subsequent renewals of, or material changes to (whether or not during the term of the policy or when it is renewed), the applicable insurance, User will furnish the Director — Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, with certificates of insurance evidencing the required insurance coverage. Compliance with this requirement will not relieve User of any other obligation under this Agreement and will in no way limit or modify User's obligation to provide the specific insurance coverage required by this Agreement.

Section 16. TERM DEFAULT AND TERMINATION

- (A) This Agreement shall become effective (“Commencement Date”) as of the first date signed by both AWW and User, and if required, following receipt of any regulatory approvals and following the expiration of any time periods required by the issuance of labor notices by AWW, if any, and shall remain in full force and effect for a period of twenty (20) years with subsequent renewal term(s) of twenty (20) years. User shall have the option of extending this Agreement for an additional term by notice in writing prior to the end of the current term.
- (B) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.
- (C) In the event of any substantial failure on the part of User to perform its obligations provided under the terms of this Subject Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from AWW, AWW shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by AWW of any prior breach thereof, to terminate the Agreement. The exercise of such right by AWW shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.
- (D) The rights, benefits, duties and obligations running from or to User, except to a controlled subsidiary under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.

Section 17. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, and then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal laws or antitrust laws. Pending the award of the

arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator. All proceedings, testimony, submissions of the parties and award of the arbitrator shall be private and confidential between the parties and shall not be disclosed to another party, except in connection with a judicial action to enforce, vacate or modify the arbitration award or as required by law, but under the strictest confidentiality agreements or protective order the party can obtain.

Section 18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto including any person, firm or corporation succeeding to the ownership of substantially all of the assets or business of User or into which User is merged or consolidated; provided, however, that User shall not in any manner transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of AWW.

Section 19. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to User: Indiana Southern Railroad, Inc.
 Ashby Yard, Illinois Street
 PO Box 158
 Petersburg, IN 47567

If to AWW: _____

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

Section 20. GENERAL PROVISIONS

- (A) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.
- (B) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (C) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (D) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words terms and phrases in the railroad industry.
- (E) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (F) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of another party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (C) This Agreement is the result of mutual negotiations of the parties hereto; none of whom shall be considered the drafter for purposes of contract construction.
- (D) No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required bylaw, regulation or ruling, and subject to the strictest confidentiality agreements and protective orders the party can obtain.

Section 21. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall

also extend to and indemnify the parent corporation, subsidiaries, affiliates and partnerships of such other parties, and all of their respective directors, officers, agents, employees and partners.

Section 22. ABANDONMENT OF SUBJECT TRACKAGE

- (A) User shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Subject Trackage or any portion thereof. AWW shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, AWW shall give User ninety (90) days advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof. User shall file for discontinuance of its use of the Subject Trackage simultaneously with AWW's filing for abandonment if it does not desire to purchase the Subject Trackage under the procedures set forth below.
- (B) If User desires to purchase the Subject Trackage (or portion thereof), it shall submit an Offer of Financial Assistance under 49 U.S.C. Section 10904. In the event that the offer meets the requirements of Section 23(A) and AWW receives more than one offer, AWW, if User is the only tenant utilizing the Subject Trackage (or portion thereof), will exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Subject Trackage (or portion thereof) shall be governed by applicable provisions of the law.
- (C) In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Subject Trackage (or portion thereof) and that it desires to discontinue its use thereof:
 - (i) User fails to submit an Offer of Financial Assistance to purchase the Subject Trackage (or portion thereof) within the time prescribed by statute and applicable regulations, or
 - (ii) User, having made an Offer of Financial Assistance to purchase the Subject Trackage (or portion thereof), but being unable to reach agreement with AWW as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
 - (iii) User, having requested the proper regulatory authority to establish the terms and conditions of the sale, withdraws its Offer of Financial Assistance, or

- (iv) User, having requested the proper regulatory authority to establish the terms and conditions of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event, User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage.

- (D) In the event any application filed by AWW is granted but an application filed by User under this Section 22 is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage (or a portion thereof) to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- (E) in the event AWW abandons the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- (F) In the event AWW's application for authority to abandon is denied, User will withdraw any application it has filed under this Section 22.
- (G) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Section 22 result in an obligation imposed by any competent authority on any party hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

INDIANA SOUTHERN RAILROAD, INC.

**ALGIERS, WINSLOW AND WESTERN
RAILWAY COMPANY**

By: _____
Title

By: _____
Title

EXHIBIT 15—OPERATING PLAN - MINOR

If the condition requested by ISRR is granted by the Board, ISRR anticipates no significant operational change with respect to the services currently provided to its on-line customers.

ISRR's operations over AWW would be coordinated with NSR to avoid interference with either railroad and governed by the standard Trackage Rights Agreement in Exhibit 2. The AWW lines would be dispatched by NSR. ISRR's access and movement over the AWW lines would be under the control of NSR dispatching.

ISRR estimates that traffic density could be 2.0 million tons annually by the first of 2007, comprised of 1.0 million tons each destined from the Pike mines to IPL at Petersburg Station, and to Hoosier Energy at Merom Station. ISRR expects the high sulfur coal from Pike #1 and Pike #2 to move to PSI's Cayuga Station following installation of SO₂ scrubbers and smaller volumes might move to PSI's Wabash River Station for use as blend coal whenever the mines commence production, for another 500,000 tons per year. This equates to 250 unit trains in the loaded direction and the same number in the empty direction per year, or about one train per day.

ISRR would provide the horsepower equivalent of five GP 30 locomotives to shuttle trains to and from the Pike #1 and Pike #2 load outs. Power would be serviced at ISRR's Ashby Yard at Petersburg, IN.

ISRR train crews would originate from Ashby Yard, and be taxied to and from coal trains.

Relative to operation of an IPL train moving coal from Pike #1 to Petersburg Station, a train crew would originate Ashby Yard, pick up the empty train at Petersburg station, move it to Pike #1 for loading, deliver the loaded train to Petersburg station, and then taxi back to Ashby.

Relative to operation of a Hoosier Energy train moving coal originating from Pike # 2 and destined to Merom Station, a train crew would taxi from Ashby Yard to receive the empty train interchanged from INRD at Switz City, IN, deliver the train to Pike #1, and assist in loading until its hours of service were up and then be taxied back to Ashby Yard. Another train crew would be taxied from Ashby Yard to complete loading of the train, deliver the loaded train to interchange at Switz City with INRD, and taxi back to Ashby Yard.

Similar service would be provided for PSI and any other shippers trains.

Exhibit C—Verified Statement of Mr. Leitze of Hoosier

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34839

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

VERIFIED STATEMENT OF HAROLD LEITZE

I am Harold Leitze, Department Manager, Fuels for Hoosier Energy Rural Electric Cooperative, Inc. (“Hoosier”). Hoosier will be harmed by the reduction in competition that will be caused by the Norfolk Southern Railway Company’s (“NSR”) control and consolidation with the Algiers, Winslow and Western Railway Company (“AWW”) (the “Transaction”), unless the proposed transaction is made subject to pro-competitive conditions.

I have been employed by Hoosier for 21 years and have been employed in this industry for 31 years. I am responsible for the procurement of fossil fuels for Hoosier, among other responsibilities. When procuring fuel, I am responsible for contracting for the coal and the transportation of the coal. The Hoosier facility affected by the Transaction is the Merom Generating Station in the vicinity of Merom, Sullivan County, IN. Merom Station is served by the Indiana Rail Road Company (“INRD”). Indiana Southern Railroad, Inc. (“ISRR”) and INRD will transport approximately 1.5 million tons of coal from ISRR origins to Merom Station in 2006. The Merom Station also receives about 2 million tons per year from other non-ISRR origins.

In acquiring coal for the Merom Station, Hoosier considers the total delivered cost of the coal, which includes the cost of the coal from the mine and the cost of transportation from the

mine to the plant. To obtain the total cost of each particular coal, Hoosier solicits proposals from coal suppliers and transportation companies, negotiates cost and service terms, and enters into agreements. Hoosier relies upon competitive options for coal supply and transportation to ensure it has a sufficient volume of coal at the lowest available cost to support the ongoing operation of Merom Station. Merom Station generates the majority of electricity the rural electric cooperatives that constitute Hoosier's membership depend upon to supply rural Indiana.

Hoosier buys all of its coal for Merom Station in Indiana because of the price and quality of the coal, and the short distance between the mines and Merom Station, which close proximity results in lower transportation costs than might otherwise be available in connection with more distant sources of coal. The two coal mines served by AWW will likely reopen in the future, the Pike #1 Mine (formerly the Kindill #1 Mine) and the Pike #2 Mine (formerly the Kindill #2 Mine). The one-way distance from the interchange between AWW and ISRR at Oakland City Jct., to Merom Station is about 90 miles. Hoosier generally prefers using rail service to deliver coal to Merom Station. Rail service is usually more efficient, should be less costly, and is more available than truck transportation alternatives, and delivery by rail expedites the unloading process at Merom. Hoosier provides its own fleet of railcars which the carriers use to transport coal to Merom Station. In the Indiana coal market, short-haul multi-carrier transportation is the norm and has developed into efficient operations moving significant volumes of coal. Prior to the bankruptcy of Horizon Natural Resources, the 50% partner in AWW at that time, Hoosier had a term contract covering transportation by rail of one million tons of coal annually from Pike #2 to Merom Station. The coal was routed over the lines of AWW, ISRR, and INRD. Hoosier is currently attempting to negotiate a coal supply contract with Solar Sources, the likely next owner

of Pike #2, for about 500,000 tons of coal per year from Pike #2 in 2007, 2008, and 2009 and increasing to about 1 million tons of coal per year starting in 2010. Hoosier would need to negotiate a coinciding rail transportation contract with the combination of AWW, ISRR, and INRD to effect transportation of the coal.

Before entering a supply contract with Solar Sources, Hoosier must conduct a test burn of one to two trainloads of coal from the Pike #2 Mine. Although negotiations with Solar are not completed, Hoosier does not want this coal to become noncompetitive due to transportation rates. Hoosier has just completed the negotiation of a transportation rate for moving the test burn coal and has a concern that NS attempted to raise the rail transportation rate even further than the increased rate the carriers wanted for the small volume movement.

I have reviewed the Petition for Exemption filed by NSR to acquire control of the AWW and then consolidate AWW into NSR.

AWW prior to the Horizon Resources bankruptcy had been an independent short line serving, among other shippers, the Pike #1 and Pike #2 Mines, both located on AWW. Pike #1 is located 3.5 miles from the interchange between AWW and ISRR and Pike #2 is located 11 miles from the interchange between AWW and ISRR. The loadouts at Pike #1 and Pike #2 will accommodate transloading of coal from truck to rail, which could provide additional transportation alternatives for Hoosier if it desires to procure coal supply from other mines located in the vicinity of the Pike Mines that do not have rail capability.

Coal moving from the Pike # 1 and Pike #2 rail loadouts to Merom Station will be routed via AWW to Oakland City Jct., thence via ISRR to Switz City, IN, thence via INRD to destination.

Based on the Petition and discussions with the rail carriers, Hoosier concludes that AWW's consolidation into NSR will result in the loss of AWW's independence. Instead of AWW being interested in merely maximizing its traffic volume to Oakland City Jct., NSR will be concerned with maximizing the traffic volume on the NSR beyond Oakland city Jct., and AWW will no longer act neutrally. Hoosier expects NSR to foreclose Hoosier's competitive option of obtaining coal from Pike #1 and Pike #2, especially in light of NSR's desire to concentrate on single line service as constantly expressed in the Petition. Once AWW is absorbed by NSR, AWW will no longer act like an independent spur track from the mines to the point of interchange at Oakland City Jct. with two railroads – ISRR and NSR. Instead, the mines on the AWW will become captive to NSR, which in its desire to move the coal from Pike #1 and Pike #2 in single-line service will price the portion of the move on the AWW to preclude interchange with ISRR. AWW will no longer be neutral in determining whether to interchange traffic to NSR or ISRR. Without NSR's cooperation, which has not been forthcoming, Hoosier may not be able to obtain the large volumes of coal it desires from Pike #1, Pike #2 or other mines in the same vicinity.

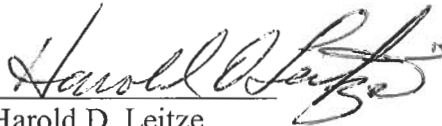
ISRR has proposed obtaining trackage rights from NSR to serve the Pike #1 Mine and loadout, and the Pike #2 Mine and loadout as a condition to NSR acquiring control of AWW and consolidating AWW into NSR. ISRR's trackage rights proposal will retain the competitive options that are available today for Hoosier, which will seek to obtain coal from Pike #1 and Pike #2 and potentially to use the transloading capability available at the loadouts. Hoosier fully supports ISRR's trackage rights proposal. In addition, Hoosier understands ISRR has proposed the alternative of the Surface Transportation Board imposing a switching charge for the

movement of coal from Pike #1 and Pike #2 to Oakland city Jct. Hoosier supports this alternative, but only as a secondary alternative to trackage rights. Hoosier urges the Surface Transportation Board to impose the trackage rights sought by ISRR to preserve the competitive situation that exists today over the AWW.

VERIFICATION

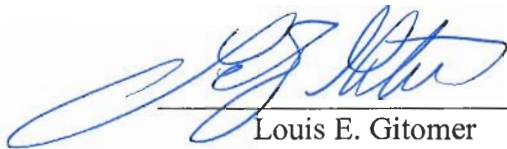
I, Harold Leitze, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed March 13, 2006.


Harold D. Leitze

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2006, I caused a copy of the Reply and Request for Conditions, to be served on counsel for all Parties of Record by first class mail, postage prepaid.



Louis E. Gitomer