

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

lgitomer@dc.bjllp.com

April 21, 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*

EXPEDITED HANDLING REQUESTED

Dear Secretary Williams:

The Indiana Southern Railroad, Inc. (“ISRR”) respectfully requests the Surface Transportation Board (the “Board”), pursuant to 49 C.F.R. 1121.4(c)(1)(ii), to publish a notice in the Federal Register providing for discovery and further comments in the above-entitled proceeding.

On April 11, 2006, Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR”) filed with the Board a reply as permitted by the Board’s decision served on April 3, 2006 (the “Reply”).¹ The Reply supplements the Petition for Exemption from 49 U.S.C. § 11323 (the “Petition”), which was filed by NSR on February 14, 2006. In the Petition, as amended on March 27, 2006, NSC and NSR are seeking an exemption to acquire the 50% of the outstanding stock of the Algers, Winslow and Western Railway Company (“AWW”) that is not owned by NSR, obtain control of AWW, and merge AWW into NSR.

ISRR, PSI Energy, Inc., Indianapolis Power and Light Company, and Solar Sources Underground, LLC replied in opposition to the Petition and sought the imposition of trackage rights or a switch charge to offset the competitive harm arising from the proposed transaction. ISRR also contended that NSR had failed to comply with the Board’s regulations at 49 C.F.R. § 1121.3(a) by failing to submit a case-in-chief.

¹ NSC and NSR are jointly referred to as “NS”.

Honorable Vernon A. Williams
April 21, 2006
Page 2

The Reply contains information and argument that were readily available to NSR at the time the Petition was filed and should have been included as part of NSR's case-in-chief.² Among other arguments in the Reply, NS argues in essence that railroads should short haul themselves in transporting coal by making use of truck transloading facilities closer to utility facilities. NS also appears to be inconsistent as to the level of control that it has exerted over AWW depending on the issue being argued, despite lacking authorized control of AWW. Had the information and arguments in the Reply been included in the Petition, ISRR and the other parties would have been entitled to reply under 49 C.F.R. § 1104.13(a).

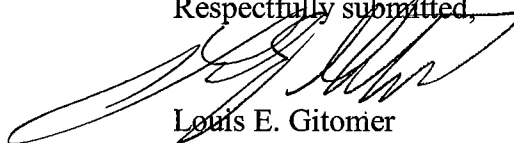
NS is the party that failed to file a case-in-chief in the Petition. ISRR and the other parties should not be denied the opportunity to respond to NS's recently made arguments because of the manner in which NS has decided to litigate this proceeding. NS continues to urge the Board to expeditiously grant its Petition. However, NS has not provided the Board with any rationale for expedited handling, especially since the mines on the AWW have been closed, AWW is capable of providing service, and there is substantial concern about the competitive impacts of the proposed transaction.

In order to provide due process to the parties to this proceeding, ISRR respectfully requests the Board to publish a notice in the Federal Register providing for discovery and comments. ISRR proposes the following schedule:

Day	Action
1	Federal Register publication
8	Discovery requests served
17	Discovery responses
29	Reply to Petition, as supplemented.

ISRR requests the Board to grant the relief sought in this letter. This letter is being efiled with the Board. 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.

cc: Parties of Record

² ISRR does not concede that NS has filed a case-in-chief as contemplated by the Board's rules, even considering the additional information contained in the Reply.