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

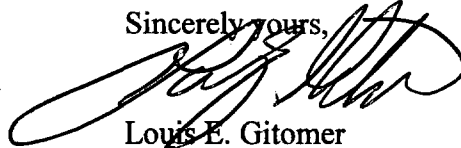
RE: Finance Docket No. 34839, Norfolk Southern Railway Company—Control and Consolidation—
Algers, Winslow and Western Railway Company

Dear Secretary Williams:

Enclosed for efilng is the Response of the Indiana Southern Railroad, Inc. to the reply filed by Norfolk Southern Corporation and Norfolk Southern Railway Company on April 11, 2006.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



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

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34839

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

RESPONSE OF INDIANA SOUTHERN RAILROAD, INC.

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Dated: May 1, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34839

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

RESPONSE OF INDIANA SOUTHERN RAILROAD, INC.

Indiana Southern Railroad, Inc. (“ISRR”) responds to the Reply filed on April 11, 2006 by Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR”), collectively referred to as “NS.” ISRR adopts all of the arguments that it has previously made to the Surface Transportation Board (the “Board”) in this proceeding. In responding to the third substantive filing made by NS in this proceeding, ISRR will address three issues. First, this is not a typical end-to-end merger. Second, it is neither economic nor efficient to use transload facilities that are closer to the destination than to the origin of a transportation move. Finally, the precedent cited by NS was created in proceedings where applications were filed under 49 U.S.C. § 11323 and pro-competitive conditions were imposed on those proceedings.

ARGUMENT

I. NS HAS NOT PROPOSED A TYPICAL END-TO-END MERGER.

NS proposes to merge the 19-mile independent Alger, Winslow and Western Railway Company (“AWW”) into NS. AWW is not controlled by NS today and is different than a long haul Class I railroad.

NS claims that because it has been substantially involved in the ownership of AWW since 1974 that the AWW decisions will not change once AWW is merged into NS. As the Board well knows, control of a railroad or the power to control a railroad can be accomplished by means other than ownership of more than 50 percent of the common stock. If NS has controlled AWW for over 30 years without appropriate Board or Interstate Commerce Commission (“ICC”) then NS has been acting in violation of 49 U.S.C. 11323. Directing the marketing of rail service without more would seem to indicate the control or power to control a railroad.

However, NS never quite goes so far in its arguments. Instead, NS states that it has been substantially

involved in AWW since 1974. If NS has only been substantially involved with AWW since 1974, then the statement made by NS that AWW marketing will remain the same is based on mere conjecture. It should be noted that NS is proposing to purchase the remaining 50 percent of AWW with the intent of making AWW profitable. However, NS is proposing to purchase AWW after a bankruptcy proceeding. It is inconsistent to argue that a railroad will do the same thing, and be profitable when it is being purchased at the end of a bankruptcy proceeding and the two major coal mines on the rail line have been closed for several years.

Next, NS contends that its acquisition of AWW is a typical end-to-end merger. NS relies the mergers of Class I railroads for its analogy. NS is wrong.

AWW is a 19-mile railroad. It has historically been used to connect the shippers on its line to the national railroad system. AWW is not a Class I railroad with hundreds or thousands of origins, destinations, and points of interchange. AWW's operation much more similar to that of a spur track connecting an industry to a rail line. Where a spur track connects to two railroads and those railroads merge, the Board and ICC have always found that to be a two-to-one reduction in competition requiring the imposition of conditions to protect competition. ISRR contends that AWW's connection with NSR, ISRR, and CSXT (according to NS) at Oakland City Junction, IN is the equivalent of the connection of a spur track to a connection with three railroads. But instead of retaining access to three railroads, the shippers on AWW will be limited to access to one railroad, NSR. ISRR contends that the shippers (especially for mines that are reopening and emerging from a bankruptcy proceeding) on the AWW are entitled to retain the competitive options that exist today, and that the best method to maintain those competitive options is to grant the limited trackage rights sought by ISRR.

II. TRANSLOAD FACILITIES SHOULD BE CLOSER TO ORIGIN THAN DESTINATION.

NS argues that there are many transload facilities located throughout Indiana and that competitive options can be retained by using transload facilities that are closer to the destination than the origin. NS apparently makes this argument to reduce the need for competition at the Pike #1 and Pike #2 transload facilities that NSR plans to solely serve.

The NS argument ignores the economics and efficiencies of railroading. Were the NS argument to have any validity, NS would abandon the AWW line and truck as much coal as possible to the transload facilities

closet to the utility plants that burned the coal. This new model is contrary to basic railroad economics.

As NS contends in this proceeding, it is most profitable and efficient for railroads to handle traffic for the long haul. NS intends to load its trains at the Pike #1 and Pike #2 transload facilities. Nowhere does NS indicate that it intends to load its trains for the short haul to its utility customers after the coal has been trucked for the long haul. Even if NS subscribes to this new model for railroading, ISRR does not.

ISRR contends that it is most economic and efficient for coal to be loaded on trains as close to the mines as possible and for the railroad to carry the coal to destination. In addition, use of trucks to move coal longer distances today will substantially increase the delivered cost of coal. Trucks are not as energy efficient as trains. More fuel will be used. Not only is the cost of fuel a critical issue today, but so is the added pollution and wear and tear on highways that would be caused by additional truck mileage under the NS theory of maximizing the use of transload facilities closer to destination.

Taking the NS argument to its logical conclusion would lead to the closure of transload facilities at the point of origin in favor of using transload facilities closest to the destination. In such a circumstance there would be no need for the AWW rail line to serve the transload facilities at Pike #1 and Pike #2, and NS would logically abandon the AWW, depriving all of the shippers on the AWW of rail service and not providing the single-line service that is the only potential benefit of the proposed transaction that NS has suggested.

III. THE PRECEDENT CITED BY NS DOES NOT APPLY HERE.

NS argues that the ICC and Board have consistently held that an end-to-end merger will have no anti-competitive consequences. There are two problems with the NS argument. First, the ICC and Board reached those conclusions in proceedings where an application was filed, which contained substantially more facts than NS has provided to the Board. Second, in every proceeding cited by NS, either the parties agreed to pro-competitive conditions or the ICC or Board imposed pro-competitive conditions.

ISRR contends that the Board should reject the NS argument that transload facilities closer to the ultimate destination should be considered competitive alternatives.

1. NS should be required to file an application.

As ISRR has been arguing throughout this proceeding, NS has failed to file its case-in-chief as required

by the Board's rules at 49 C.F.R. 1121.3(a). NS has not provided the information that would be required in an application. Nor, to date, have the parties to this proceeding been provided the rights to discovery and a procedural schedule that they would have under an application. Certainly, the Board has not been provided with the same level of factual detail that it has used to resolve the competitive issues arising in the precedent cited by NS. Nor has NS verified the information it has provided, as would be required in an application.

NS contends that there are no issues requiring an application. However, it is readily apparent that the number of protests and level of opposition to the proposed unconditioned merger of AWW into NS are based on legitimate issues requiring a full factual basis and record for the Board to fully analyze the situation and reach a reasoned decision.

2. The facts of this proceeding do not support the precedent relied upon by NS.

NS cites numerous precedents for the proposition that there can be no competitive harm arising from an end-to-end merger. NS ignores the facts underlying those decisions. In every one of those proceedings, either the parties agreed to pro-competitive conditions or the Board or ICC imposed such conditions. Indeed, the precedent most recent and most frequently cited by NS supports more strongly the position of ISRR and the other parties to this proceeding, rather than NS.

In *Kansas City Southern-Control-The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company*, STB Finance Docket No. 34342 (STB served November 29, 2004) ("*KCS Control*"), the Board approved an application to control certain railroads, subject to pro-competitive conditions.

In *KCS Control*, the Board noted that the new railroad depends on two competing Class I railroads for "the continued flow of traffic." *Id.* at 12. NSR does not rely on ISRR. The Board also noted that KCS committed under oath to "keep the Laredo gateway open on commercially reasonable terms" and that "[a]ll carriers would be treated fairly at the Laredo Bridge." *Id.* at 13. The Board imposed these commitments as conditions to approval. *Id.* at 24. NS has not made similar commitments, nor has it agreed to the impositions of such commitments as conditions to the merger.

In addition to the sentence in *KCS Control* cited by NS, the Board went on to say that "although an end-

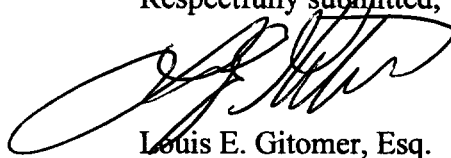
to-end consolidation may generate concerns of its own, those concerns can be resolved here by holding KCS to its pledge ... to keep the Laredo gateway open.” Id. at 17. NS has not made any commitments in this proceeding.

ISRR contends that the “one-lump” theory does not apply in these factual circumstances. First, AWW is a 19-mile Class III rail line more like a spur line than a Class I railroad. Second, NS does have an incentive to raise the AWW rates on traffic that would be interchanged to ISRR in order to divert that traffic to the NS long haul. Coal shippers and receivers would see the competitive options for coal reduced because of the NS pricing.

CONCLUSION

ISRR respectfully requests that the Board, in the alternative, (1) grant the petition subject to the trackage rights sought by ISRR to provide competitive rail service to coal shippers and receivers, or (2) deny the petition and require NS to file an application under the rules at 49 C.F.R 1180.4.

Respectfully submitted,



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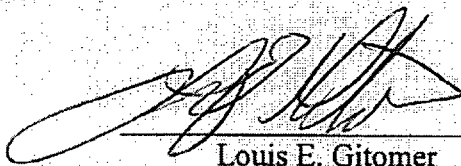
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Attorneys for: INDIANA SOUTHERN RAILROAD, INC.

Dated: May 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by electronic service on all parties of record.

A handwritten signature in black ink, appearing to read 'Louis E. Gitomer', is written over a horizontal line.

Louis E. Gitomer
May 1, 2006
