

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34839

NORFOLK SOUTHERN RAILWAY COMPANY—CONTROL AND CONSOLIDATION
EXEMPTION—ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY**SOLAR'S REPLY TO NORFOLK SOUTHERN'S REBUTTAL**

The new matter in NSR's rebuttal is a real stretch – even risking misstatement: first, by claiming without discussion that the AWW acquisition is "end to end" or "one lump", not a "2 to 1"; second, by claiming that Pike #1 and #2 are simply not important to coal supplies for the electric utilities because there are 60 other coal mines at or about the area, and because coal truck transportation is a viable alternative to unit-train rail transportation of coal; and third, by asserting that a single line haul of the coal to three Duke plants is more economic without any foundation that the Duke plants can burn the coal (*i.e.*, without the Duke boiler specifications and the Pike 1 and #2 coal quality specifications). NSR's new assertions on rebuttal are not true or are without factual support.

In regard to whether this case (*i.e.*, the NSR's acquisition of the coal company's 50% interest in the AWW) is closer to the "2 to 1" or the "end to end" acquisition cases, none of the "end to end" or "one lump" cases is remotely similar to the AWW facts. It is undisputed that the 19 mile AWW (owned 50% by the coal company) has been the coal mine shippers' neutral gateway to at least two competing carriers, NSR and ISRR. The NSR acquisition of the 50% destroys the neutral gateway and reduces, not just theoretically, but in real terms, 2 competing carriers to 1. The condition being requested would maintain the competitive status quo.¹ Again,

¹ See *Western Coal Traffic League, et al. v. Surface Transportation Board*, 169 F.3d 755 (D.C. Cir. 1999) affirming _____ STB _____, 1995 WL 528184 (ICC) (where this Board "while approving a merger, **imposed** a

the reality of the coal company's 50% interest in AWW, the neutral gateway to at least two competing carriers, being acquired by NSR is that this case presents a "2-to-1" situation and the condition to maintain the competitive situation should be granted by the Board.

NSR's arguing competitive alternatives (NSR Rebuttal, p. 2) based on there being (assertedly) 60 coal mines within 100 miles of the utilities' plants and based on some plants receiving some truck shipped coal – merely demonstrates how fast and loose NSR is willing to play (which in turn demonstrates the necessity for maintaining a competitor to NSR). That there may be an abundance of coal mines does not mean the coal quality is such that a generating unit can burn the coal or that Pike #1 and 2's 100 million tons is not important to the markets (Solar Reply Aff. to NSR's Rebuttal). That truck shipped coal is far more expensive than unit-train shipped coal – is beyond dispute. (Solar Reply Aff. to Rebuttal re 400 trucks versus 1 unit train.) That there may be truck shipped coal to the utilities merely establishes that there are mines which do not have the availability of unit-train service. Indeed, the use of transshipped coal (trucking coal to a unit-train loadout) demonstrates just how much less costly a unit-train transportation of coal is – in other words, even with a double handling of coal onto trucks and off trucks into rail cars, the unit-train transportation remains less costly for the same tonnage (even aside from the public safety factor of 1 unit-train versus 400 trucks). *See* Solar's Reply Aff. to NSR's Rebuttal.

Finally, NSR has now had two chances, but still fails, to carry its burden – by failing to prove its assertion that the transaction "will substantially improve rail service for many coal shippers at destinations served directly by NSR and that such will "substantially increase the attractiveness of the coal origins now being served by AWW. . . ." (NSR Rebuttal, p. 3) NSR

number of **conditions** on the merger, **in order to reduce potential anticompetitive effects** . . . thus, the Board provided that any shippers that would go from having a two directly serving railroads before the merger to one after the merger (2-to-1) could be served [by two carriers] after the merger" and required long term trackage rights for a non-merging carrier), 169 F.3d at 48, emphasis added.

has made no showing whatsoever (no foundation, to be more precise) that the coals from the reserves at Pike #1 or Pike #2 are suitable to be burned at "three plants of Duke Energy." (NSR Rebuttal, p. 3) (Illinois Basin coal varies as to quality and may or may not be suitable for use at a given boiler, Solar Reply Aff. to Rebuttal.) With respect to Cinergy/PSI's Gibson Plant served by NSR, PSI has clearly set forth in its filings here that in order to purchase the coal, it needs the transportation flexibility to have such coal used not only at Gibson, but at Wabash River, Cayuga and elsewhere in Indiana and most of these plants are served by ISRR, not NSR and that the single line service is therefore of no benefit to it.

For this reason alone (the failure to prove any benefit for any single line shipper), NSR's Petition should be denied.

But if not, then the Petition for Exemption should be granted only with a condition to maintain the present competitive situation – granting ISRR long term trackage rights over the AWW.

s/ G. Daniel Kelley, Jr.

G. Daniel Kelley, Jr.

Attorney for Solar Sources Underground,
LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May, 2006, caused copies of the foregoing Reply of Solar Sources Underground, LLC to be served by United States mail upon counsel for all parties of record in Finance Docket No. 34839, as follows:

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

SOLAR'S AFFIDAVIT IN SUPPORT OF REPLY TO REBUTTAL

1. I am Felson Bowman and I am the Manager of Solar Sources Underground, LLC ("Solar"). Solar is party to a contract to purchase property, commonly referred to in these proceedings as Pike #2, from Indiana Land and Mineral LLC ("ILM") including train loading facilities with a rail loop connecting only to the AWW Railroad. A condition of completing the purchase is reaching a satisfactory agreement or understanding concerning Solar's ability to ship to customers who require interlining trains to the Indiana Southern Railroad ("ISRR").

2. Norfolk Southern Railway Company ("NSR") has represented to me and has indicated in its filings that AWW has agreements in place to interchange trains with ISRR, and that it will honor those agreements through their terms. However, these are but short term agreements – one for 60 days, and the other for less than two years.

3. The loading and unloading costs of truck-shipped coal, as opposed to unit train shipped coal, are such that assuming a rail connection for a mine such as Pike #2, truck coal is not a competitive alternative to rail shipped coal, assuming reasonable rail rates.

4. For instance, the rail loading facility at Pike #2 is a semi-automatic loading system with coal coming from a stacking tube onto a conveyor and into moving train cars, loading at the rate of 4,000 tons per hour. So, a 100 car unit train at approximately 100 tons per car can be loaded in less than 4 hours, while non-automatic loading systems will generally take 12 hours or more to load a similar train. Coal trucks generally have a capacity of 25 tons per truck so that on a comparable

basis, 400 trucks would be necessary. The loading of one truck requires around five minutes. Hence, depending upon the availability of the next 399 trucks, the costs would vary dramatically. The costs of loading and unloading 10,000 tons of coal by truck are far, far more than an unit train at Pike #2, such that the transportation by truck over a life of a mine, as Pike #2, is not economical.

5. Moreover, first loading coal into a truck for transloading to a train, is obviously not competitive with a single handling loadout into a train. Even so, the Ashby yard of ISRR near Petersburg, IN has no capacity for Solar and can only load 10 rail cars or less at a time. Other sidings on the ISRR, such as Maysville, IN are at capacity. Finally, the double handling of truck transportation to the Ashby yards and the cost and time of such would make the move financially impossible.

6. Apparently to infer that the Pike #2 coal is not necessary, the NS response raises the spectrum of more than 60 coal mines being in the area of Hoosier Energy's Merom Station, IPL's Petersburg Station and various PSI stations. The attempted inference must be based on the assumption that all the coal from these mines can be used at each generating unit. This is wrong. Not all of the Illinois Basin coal is suitable for each generating station due to varying qualities, as ash fusion temperature, grind, Btu, sulfur and others. Because of this, it is a practice of many utilities to test burn significant quantities of coal from a particular mine in the Basin before it determines whether the coal is compatible with a particular coal fired-steam generating unit – that was the purpose of Solar's shipping a train of test coal via ISRR to Hoosier Energy's Merom Station earlier on April 14, 2006. Moreover, the attempted inference ignores other variables, as whether any of these mines would have sufficient unfilled capacity, distances and others.

7. Without an ISRR having long term interchange rights over AWW, Solar would be financially prohibited from shipping coal to Hoosier Energy Merom, PSI Wabash and Northern Indiana Public Service, as well as other utilities served by ISRR and railroad interchanges with ISRR.

These companies are currently negotiating to purchase coal from Solar at Pike #2. While Solar is negotiating with PSI for shipments to Gibson Station, which is served by NSR, PSI requires the flexibility to ship to Wabash and other plants served by interlining with ISRR.

7. I believe that if NSR intends to support and participate in interline movement, then it should so state – now, and make an agreement to do so – now.

I AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.



Felson Bowman

President, Solar Sources Underground, LLC

CERTIFICATE OF SERVICE

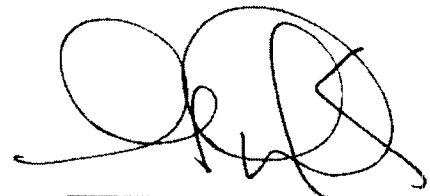
I hereby certify that I have, this 1st day of May, 2006, caused copies of the foregoing Solar's Affidavit in Support of Rebuttal to be served by United States mail upon counsel for all parties of record in Finance Docket No. 34839, as follows:

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A handwritten signature in black ink, appearing to read 'G. Daniel Kelley, Jr.', written over a horizontal line.

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