

SURFACE TRANSPORTATION BOARD DENIES "INDIANAPOLIS POWER & LIGHT" REQUEST FOR IMPOSITION OF MORE CONDITIONS ON THE "CONRAIL" MERGER

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision denying a request by the Indianapolis Power and Light Company (IP&L) for the Board to impose additional conditions in the "CSX-NS-Conrail" merger.

In July 1998, the Board issued a decision approving the acquisition of control of Conrail and the division of its assets by the CSX Transportation (CSX) and Norfolk Southern (NS) railroads. In that decision, the Board established general oversight for a period of five years so that it could assess the effectiveness of the various conditions that it had imposed and the competitiveness of service provided by CSX and NS as a result of the merger. Among the Board-imposed conditions were several sought by IP&L.

IP&L is an electric utility company operating two coal-fired plants, the Stout plant and the Perry K plant, in the Indianapolis, Indiana area. In its 1998 decision, the Board declined to impose specific conditions concerning the Perry K plant because it was solely served by Conrail before, and would be solely served by CSX after, the transaction. While the Stout plant would continue to be directly served only by The Indiana Rail Road (INRD), a CSX subsidiary, the Board imposed a condition to preserve IP&L's ability to build out a rail line from its Stout plant to former Conrail lines nearby by giving IP&L the right to service via trackage rights (use of tracks) by a second railroad, such as NS or the Indiana Southern Railroad (ISRR), should a build-out or that railroad's build-in occur. Moreover, as suggested by the U.S. Department of Justice, the Board gave IP&L additional protection in the form of NS trackage rights over certain CSX lines, including INRD's line to the Stout plant, and an NS interchange with ISRR at milepost 6.

In comments filed in the Board's Conrail oversight proceeding, IP&L raised concerns about the effectiveness of the conditions imposed by the Board. In particular, IP&L claimed that NS has not negotiated aggressively for IP&L's traffic and that NS's trackage rights and switching fees to Stout are too high. IP&L also repeated claims that NS cannot compete for its traffic because NS has an insufficient presence in the Indianapolis area.

In today's decision, the Board reaffirmed that by giving IP&L two alternative means to preserve rail competition at Stout, the Board-imposed conditions have preserved IP&L's transportation options and that no further action by the Board is necessary now. In particular, the Board found that nothing has changed with respect to the competitive factors affecting coal movements to Stout, noting that IP&L continues to receive all of its coal at Stout under its pre-Conrail merger contract with INRD, and that INRD has agreed to maintain the same switching charge for NS that it had for Conrail. The decision also found that IP&L's criticisms of both the trackage rights fee and the switching charge that NS would pay were not substantiated. As to whether NS provides a realistic competitive alternative at Stout, the Board noted that, while there was some dispute about the exact state of negotiations between NS and IP&L, IP&L now has been informed by NS of the information needed from IP&L to conclude negotiations regarding alternative service by NS.

The Board's decision was issued today in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation [General Oversight]*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 3.

A printed copy of today's decision is available for a fee by contacting: **D~To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530.** Today's decision is also available for viewing and

downloading via the Board's website at <http://www.stb.dot.gov>

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