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July 11, 2011

ENTERED
Office of Proceedings
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Part of
Public Record

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

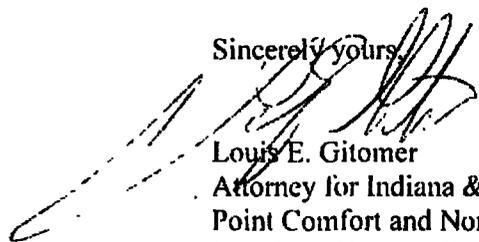
RE: **Finance Docket No. 35517, *CF Industries, Inc. v. Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc.***

Dear Ms. Brown:

Enclosed for e-filing by the Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc. is the Reply to the Reply-to-Reply filed by CFI Industries, Inc.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for Indiana & Ohio Railway Company,
Point Comfort and Northern Railway Company, and
Michigan Shore Railroad, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35517

CF INDUSTRIES, INC.

v.

INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

REPLY OF INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND
NORTHERN RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

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Attorneys for: INDIANA & OHIO
RAILWAY COMPANY, POINT
COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN
SHORE RAILROAD, INC.

Dated: July 11, 2011

BEFORE THE
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NORTHERN RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

The Indiana & Ohio Railway Company (“IORY”), the Point Comfort and Northern Railway Company (“PCN”), and the Michigan Shore Railroad, Inc. (“MSR”) (collectively “the Railroads”), pursuant to 49 C.F.R. §1104.13(a), respond to the Reply-to-Reply filed by CF Industries, Inc. (“CFI”) on June 20, 2011 (the “Reply-to-Reply”). The Railroads respectfully request the Surface Transportation Board (the “Board”) to reject the Reply-to-Reply as a pleading that “is not permitted.” 49 C.F.R. §1104.13(c).

The Railroads also contend that CFI has not provided good cause for the filing of the Reply-to-Reply. CFI claims that it is seeking to narrow the scope of the Petition for Declaratory Order filed on May 17, 2011 (the “Declaratory Order”), to a declaration by the Board that

the additional safety measures contained in the tariffs of the RailAmerica Railroads are impermissible given the presumption established in *Consolidated Rail Corp. v. ICC*, 646 F.2d 642 (D.C. Cir.); cert denied 454 U.S. 1047 (1981) (“*Conrail*”) absent RailAmerica’s meeting the burden to overcome this presumption. This is a threshold issue and, as such, is wholly separable from any rate reasonableness determination.

Reply-to-Reply at 2.

CFI now attempts to “narrow” the focus of the Declaratory Order by repeating the argument made at pages 5-7, while ignoring the references to rates made five times on page 3, twice on page 4, and the statement that the tariffs would be “excessively ... costly” at page 5. The Railroads contend that the sole purpose of the Reply-to-Reply is attempt to avoid the dismissal of the Declaratory Order as an improperly filed rate complaint by arguing that rates are not an issue despite the substantial discussion of rates in the Declaratory Order.

If CFI is now seeking a declaration that a railroad must meet the pre-Staggers Act burden of proof of demonstrating that a tariff is reasonable under *Conrail*, a declaratory order proceeding is not necessary. The Board has determined that *Conrail* is not controlling in a declaratory order proceeding. *Arkansas Electric Cooperative Corporation--Petition for Declaratory Order*, Docket No. FD 35305 (STB served March 3, 2011) (“*Arkansas Electric*”). Generally, complainants carry the burden of proof when claiming an unreasonable practice. See *North American Freight Car Association, et al v. BNSF Railway Company*, STB Docket No. 42060 (Sub-No. 1) (STB served January 26, 2007) (“*North American*”).

The Board determined that it has discretion as to whether to follow *Conrail*. See *North American*, where the Board stated:

[T]he *Conrail* decision was premised on facts not present here and on a statutory scheme predating the Staggers Act. In any event, in section 10702, Congress did not limit the Board to a single test or standard for determining whether a rule or practice is reasonable; instead, it gave the Board “broad discretion to conduct case-by-case fact-specific inquiries to give meaning to those terms, which are not self-defining, in the wide variety of factual circumstances encountered.”

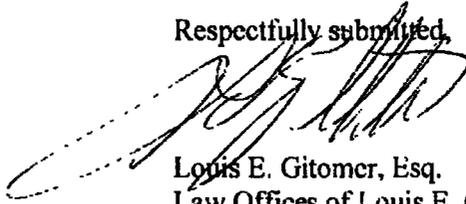
After addressing the *North American* burden of proof in proceedings involving whether a practice is reasonable, the Board reaffirmed its adherence to *North American* when it stated:

“Whether a particular practice is unreasonable depends upon the facts and circumstances of the

case. The Board gauges the reasonableness of a practice by analyzing what it views as the most appropriate factors." *Arkansas Electric* at 5.

Based upon the Narrowing of issues sought by CFI, the Railroads request the Board to adhere to the *North American* ruling and determine that a declaratory order proceeding is unnecessary. In the alternative, the Railroads respectfully request the Board to reject the Reply-to-Reply.

Respectfully submitted,



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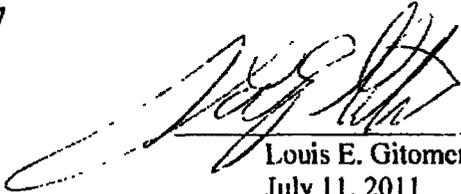
Dated: July 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served electronically and by first class mail postage pre-paid on

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July 11, 2011