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ENTERED
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March 13, 2012

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

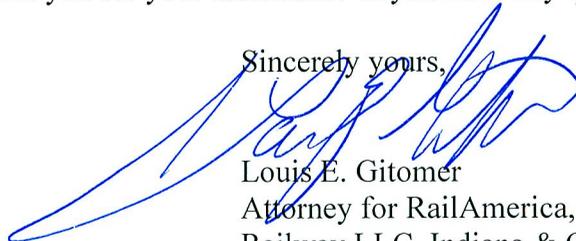
RE: **Finance Docket No. 35517, *CF Industries, Inc. v. Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc.***

Dear Ms. Brown:

Enclosed for e-filing is the Rebuttal Statement of RailAmerica, Inc., Alabama Gulf Coast Railway LLC, Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc.

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

Sincerely yours,



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

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
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STB Finance Docket No. 35517

CF INDUSTRIES, INC.

v.

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

REBUTTAL OF RAILAMERICA, INC., ALABAMA & GULF COAST RAILWAY LLC,
INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

REBUTTAL

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NORTHERN RAILWAY COMPANY,
AND MICHIGAN SHORE RAILROAD,
INC.

Dated: March 13, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35517

CF INDUSTRIES, INC.
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INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND NORTHERN
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REBUTTAL OF RAILAMERICA, INC., ALABAMA & GULF COAST RAILWAY LLC,
INDIANA & OHIO RAILWAY COMPANY, POINT COMFORT AND NORTHERN
RAILWAY COMPANY, AND MICHIGAN SHORE RAILROAD, INC.

Respondents¹ file this rebuttal in accordance with the Surface Transportation Board's (the "Board") decision served on September 30, 2011. In response to the replies filed on February 27, 2012 by CF Industries, Inc. ("CFI") (the "CFI Reply") and American Chemistry Council ("ACC"), Arkema, Inc. ("Arkema"), The Chlorine Institute, Inc. ("CII"), The Fertilizer Institute ("FI"), and PPG Industries, Inc. ("PPG") (ACC, Arkema, CII, FI, and PPG are collectively referred to as "Complainants") (the "Complainants Reply"), Respondent Railroads maintain that they have complied with the requirements of 49 C.F.R. §174.20(b); that the various versions of SOP² are not practices implemented by Respondent Railroads, when transporting goods by rail; and that CFI and Complainants characterization that priority train service is an unreasonable

¹ Respondents are RailAmerica, Inc. ("RailAmerica"), Alabama & Gulf Coast Railway LLC ("AGR"), Indiana & Ohio Railway Company ("IORY"), Point Comfort and Northern Railway Company ("PCN"), and Mid-Michigan Railroad, Inc. ("MMRR"). The Michigan Shore Railroad ("MSR") is an unincorporated division of the MMRR. AGR, IORY, PCN, and MSR are referred to collectively as the "Respondent Railroads."

² SOP refers to numerous versions of a PowerPoint presentation prepared by RailAmerica for internal review and comment prior to sharing a draft of the SOP with some of the Complainants for discussion purposes.

practice because its purpose is to make a profit rather than providing for additional safety, is incorrect.³

Respondent Railroads have complied with 49 C.F.R. §174.20(b).

Respondent Railroads have complied with 49 C.F.R. §174.20(b). On March 8, 2012, AGR, IORY and PCN sent the Tariffs⁴ to the Bureau of Explosives for publication or any other action that the Bureau of Explosives deems appropriate.

The SOP is not a practice.

Under 49 U.S.C. §10702, the Board has jurisdiction over “rates” and “rules and practices.” The SOP, however, is not a rate, rule or a practice. The purpose of the SOP was to create a document containing recommendations on how to best handle TIH/PIH⁵ movements. The SOP does not implement any practice. The draft document only suggested practices to enhance safety due to the various conditions unique to short line railroads. Once the SOP was developed, it was provided to senior management of RailAmerica for their input. The SOP was also reviewed with the general managers of RailAmerica’s subsidiary railroads that handled TIH/PIH to discuss the practicalities of implementation, including those recommendations of the SOP that would not or could not be implemented. A draft of the SOP was also provided to shippers to open a dialogue with them about safe practices and solicit input for refining the recommendations in the SOP. The SOPs in their various forms were brainstorming and marketing tools used to express various recommendations of the committee assigned to address

³ It must be noted that Dow Chemical Company (“Dow”) did not file a Reply. Previously, Dow argued that Respondent Railroads needed a scientific study prior to implementing the Tariffs. Respondent Railroads provided the scientific study of Mr. Wolf on reply demonstrating that the Tariffs enhance safety. Therefore, unless Dow has an ulterior motive in requesting a scientific study, Respondent Railroads contend that they have satisfied Dow’s condition precedent to accepting the Tariffs and expect Dow to honor its position that the Tariffs do not constitute an unreasonable practice since the safety basis is supported by a scientific study.

⁴ Tariffs refer to AGR 0900-1, IORY 0900-1, and PCN 0900-1, the tariffs at issue in this proceeding. It should be noted that MSR 0900 expired and has not been replaced since MSR is a handling carrier for all TIH/PIH shipments.

⁵ TIH/PIH is used as the abbreviation for Toxic Inhalation Hazards and Poison Inhalation Hazards, ultra hazardous chemicals that are highly dangerous to humans and the environment.

TIH/PIH movements. The process of their development was intended to foster a more collaborative relationship with shippers of TIH/PIH products for the purpose of enhancing safety.⁶

If the Board were to find that these tools were unreasonable practices, it would likely stymie the innovative processes that railroads across the country use to create safer, more efficient movements, because of fear that an idea - whether implemented or not - could be considered a practice of the railroad.

In short, although not required by any law or tariff, Respondent Railroads used the SOPs to try to engage its customers to discuss its ideas and intentions. Respondent Railroads are not playing a “shell game,” as asserted by Complainants, and the Respondent Railroads are not trying to hide their practices in the SOP. Complainants attempt to ignore the fact that not all railroad operations are codified in railroad tariffs. Nor are they required to be. If that were the case, the tariffs would be hundreds of pages long and would need to be updated anytime there was a change of work shifts or sudden change in the weather.⁷ At the same time, not all suggestions by the thousands of railroad managers throughout the industry on how to handle movements become actual practices. The SOP was simply a tool to explain options for how to handle TIH/PIH, not a mandatory implementation of operating rules. Nevertheless, Complainants ask the Board to determine that the SOPs (including its various draft versions), are an unreasonable practice.

⁶ Respondent Railroads were encouraged by the Board’s language in its Decision in the *Establishment of the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee*, Docket No. EP-698 (STB served August 3, 2010), in which the Board recognized a need to “balance the common carrier obligation to transport [TIH/PIH] with the risk of catastrophic liability in setting appropriate rail transportation liability terms for TIH cargo.” *Id.* at 4. With the termination of the TIHCCTAC last year and no changes in the liability terms for TIH cargo, Respondent Railroads’ efforts to reduce their risks should be determined as reasonable, especially in light of the Board’s reminder that the common carrier obligation “is not absolute.” *Id.* at 2 [citations omitted].

⁷ One can only imagine the challenges brought by significant weather events necessitating track outages, which then necessitate train changes that require operational modifications that would then be suspended while the tariff is modified and published with the 20-day notice process requirement. 49 C.F.R. §1300.4(a).

Respondent Railroads have not attempted to deny that some portions of the SOP were adopted in the Tariffs and have become practices of the Respondent Railroads. However, many of the recommendations suggested in the SOP were not adopted by the Respondent Railroads and have not become operating practices of the Respondent Railroads. Further, some operating practices were adopted by some railroads, but not all of the railroads owned by RailAmerica.⁸ Those aspects of the SOPs that were not adopted in the Tariffs are not operating practices that the Respondent Railroads seek to implement. Respondent Railroads' practices include priority train service⁹ for TIH/PIH movements but actual implementation of this practice differs greatly from the suggestions for implementation in the SOP. For example, unlike the SOP recommendation of a 10 mph speed limit, the actual practice of the Respondent Railroads requires trains to move at the "appropriate speed for safe operations based on the conditions of the rail line, time of year, weather, and any other relevant factors deemed relevant by [Respondent Railroad]." *See* Respondents' Reply at 9, 15-16 for a discussion of various train speeds.

Nevertheless, CFI continues to rely on draft language in early versions of the SOP and canceled tariffs to make the inflammatory argument to the Board that Respondent Railroads are

⁸ Complainants refer to unidentified operating practices adopted by Respondent Railroads, but Complainants do not specify them. Complainants Reply at 3-4. The three operating practices listed by Respondent Railroads in their Reply are all that have been identified and, thus, any reference by Complainants to any other operating practices should be disregarded by the Board.

⁹ Complainants, in their Reply at page 2, illogically argue that the Respondent Railroads' priority train service "is *per se* unlawful in that it is being enforced without being published in any tariff or contract document." Complainants are wrong. In the Tariffs, the priority train is referred to by name three times in the purpose section and then again specifically in Item 1000 E and Item 1000 F. The Tariffs have been published. The Respondent Railroads have not entered contracts with the Complainants, because the Complainants refuse to enter contracts with the Respondent Railroads that contains a priority train service provision.

trying to force them off of the national rail system.¹⁰ No matter how many times CFI says it; it does not make it true.

CFI also argues that providing advance notice is difficult because it cannot dictate when its TIH/PIH shipment will arrive at Respondent Railroads' facilities. Respondent Railroads' practices do not require that the shipper know or state when a shipment will arrive at Respondent Railroads' facilities. Respondent Railroads' practice requires that the shipper only notify the Respondent Railroad when the shipper tenders the TIH/PIH shipment to the initiating carrier, which is information that all shippers have before the issuance of a bill of lading for the first movement of a rail car. There is not a requirement that the shipper track the car or provide a date when the car will arrive at Respondent Railroads' facilities. CFI's argument is simply not based on the facts in the record.

Complainants also argue that notice is not required in a tariff because it is required by regulation. Complainants inexplicably confuse Respondent Railroads' request for notification that a car has been tendered to a carrier for interchange with a Respondent Railroad with the requirement that under 49 C.F.R. §174.24 that specific documents describing the hazardous material being shipped must be tendered before a railroad can accept a TIH/PIH shipment. This is not the purpose of the requirement in the Tariffs. The purpose of the notification that the Respondent Railroads require is to allow the railroad to track the car across the country so that Respondent Railroads, which are short line railroads with limited resources, can be prepared to inspect, receive, and move the car when it reaches a Respondent Railroads' interchange track. The notification is not as in depth as that required by 49 C.F.R. §174.24. If a shipper chooses to forward the notification required by the regulations at the time it tenders the shipment to a

¹⁰ Respondent Railroads note that CFI has voluntarily stopped using IORY to transport TIH/PIH and has diverted this traffic to other modes. Respondent Railroads remain ready, willing, and able to transport TIH/PIH for CFI.

connecting carrier, that is the shipper's prerogative, but not required by the Respondent Railroads in the Tariffs.

CFI next argues that reduced speeds will keep “shippers from meeting customer needs” and that “shipper costs would increase due to the need for more crews to manage longer trips.”¹¹ This is simply not true. Again, Respondent Railroads' operating practices require that the train travel at a reasonable speed for the conditions on the line. This practice is an evolution from the original SOP recommendation that trains travel at 10 mph. As discussed on reply, train speed varies across Respondent Railroads due to their very nature as short, low density rail lines. Priority trains often travel at speeds similar to mixed or manifest trains on such lines. In fact, because the priority trains do not need to stop for switching and loading and unloading, they can reach the destination faster and more safely than if they were in mixed local trains. As discussed in the Verified Statement of Gary Wolf (Reply Exhibit A), priority trains are safer than using typical mixed local trains on the lines that have implemented priority trains. Mr. Bjornstad's Verified Statement in Exhibit A to this Rebuttal demonstrates that a priority train will reach its destination faster than a mixed manifest train on the AGR, one of the Respondent Railroads. CFI has offered no facts in this record that are different.

CFI also continues to argue that “protocols” (which it does not specifically define) are being implemented on a nationwide basis across all of RailAmerica's Railroads.¹² As discussed in Respondents' Reply, this is not based on the actual facts. RailAmerica does not apply priority trains on a system-wide basis. As discussed on Reply at 17, when managers at a railroad owned

¹¹ These arguments are part of CFI's attempt to make Respondent Railroads appear as Class I railroads with long hauls. That is simply not the case and such arguments should not be considered by the Board as relevant based on the record developed in [this proceeding](#).

¹² RailAmerica controls 43 Class III railroads in local geographic areas throughout the United States and Canada. However, CFI is overstating the reach of RailAmerica when it states that its various short line railroads are part of a nationwide system. This is an attempt by CFI to suggest to the Board that Respondent Railroads are like Class I rail carriers. Indeed, even the Class I railroads are not nationwide in their physical presence.

by RailAmerica thought priority trains would increase safety concerns because of that railroad's specific operating characteristics, priority trains were not implemented on its lines. In fact, of RailAmerica's 43 railroads, only 7 have priority trains as part of their tariffs. The Respondent Railroads are all short line railroads and have varying local conditions. None of the Respondent Railroads have scheduled service and all are low density lines with limited employees and short hauls.¹³ CFI's and Complainant's arguments ignore these facts. Why? Because Complainants and CFI are concerned that Class I railroads will adopt similar operating practices. This ignores everything that distinguishes a short line from a Class I railroad and, further, ignores the record in this proceeding. The Board is being asked whether the Tariffs on the Respondent Railroads are unreasonable practices based on the facts in this proceeding.

In Complainants Reply, they desperately mischaracterize AGR's track as "decayed" simply because it is FRA Class I track. AGR provides necessary maintenance on the track and it meets FRA track standards. There are many reasons to classify a track as FRA Class I and none of them is because the track is "decayed", whatever that term means in the context of track infrastructure. But, that said, FRA Class I track standards are not as good as FRA Class II or higher standards and, consequently, Respondent Railroads must consider the condition of the track when moving ultra hazardous chemicals over it. Again, each railroad owned by RailAmerica has different operating practices.

The Burden of Proof is on the Complainants and CFI, not Respondents.

Complainants and CFI continue to assert that Respondent Railroads have the burden of proving under *Consolidated Rail Corp. v. ICC*, 646 F.2d 642, 648 (D.C. Cir. 1981) ("*Conrail*") that the additional safety measures are necessary. CFI claims that the "facts and law in *Conrail*

¹³ See Respondents Reply at 15-16.

are similar to this proceeding.”¹⁴ As in the case of *Conrail*, the TIH/PIH traffic at issue is highly dangerous, but that is where the similarity between the two proceedings ends. *Conrail* was decided in a different context and under a different statutory scheme.

Prior to the Staggers Act, in an investigation, the burden of proof was on the railroad. *Bituminous Coal, Hiawatha, Utah, to Moapa, Nevada*, 361 I.C.C. 923, 928 (1979). The Staggers Act shifted the burden of proof to suspend (or enjoin) a proposed rule or practice to the protestant (here CFI and Complainants). 49 U.S.C. §10707(c) (2) repealed.

There are significant distinctions between the facts addressed in *Conrail* and here. First, the tariffs in *Conrail* were subject to regulation by FRA and the NRC. The Tariffs here are not subject to regulation by the NRC. The Board itself has acknowledged that *Conrail* was premised “on a statutory scheme predating the Staggers Act.”¹⁵ Specifically, a pre-Staggers Act provision expressly placed the burden of proof on the carrier that proposed a rate or practice change that was suspended or investigated before it became effective. See 49 U.S.C. §10707(e) (1980). Unlike this petition for declaratory order or a complaint proceeding, *Conrail* involved tariffs filed in response to an Interstate Commerce Commission investigation, thus the statutory scheme demanded that the railroad carry the burden of proof.¹⁶

Unlike in *Conrail*, Respondent Railroads are not asking the Board to impose additional safety measures beyond what the Federal Railroad Administration (“FRA”) allows. The federal regulations governing the transportation of TIH/PIH cars at 49 C.F.R. Part 174 (the “Rules”) are a minimum requirement. FRA and Pipeline and Hazardous Materials Safety Administration (“PHMSA”) have stated “...parties are encouraged to go beyond the minimum regulatory

¹⁴ CFI Reply at 3.

¹⁵ *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*”).

¹⁶ See *Trainload Rates on Radioactive Materials, Eastern R.R.*, 362 I.C.C. 756, 757 (1980).

requirements in establishing and implementing plans, rules, and procedures for safe transportation operations.” *Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials*, 74 FR 1793 (January 13, 2009). The Rules are not all inclusive or self-implementing. The Rules establish specific requirements for the railroads to meet when handling TIH/PIH. However, the railroads have to determine how to operate the trains in order to comply with the requirements of the Rules. The Respondent Railroads adopted the Tariffs to comply with the requirements of the Rules.

Complainants’¹⁷ and CFI’s¹⁸ arguments that Respondent Railroads have not demonstrated their practices to be reasonable is an attempt to impermissibly shift the burden to the Respondents. Respondents do not have the burden of proof to show that their practices are reasonable. *See City of Lincoln v. STB*, 414 F.3d 858 (8th Cir. 2005).

The Purpose of the Practices implemented by Respondent Railroads is to more safely move TIH/PIH cars.

Respondent Railroads have a common carrier obligation to move TIH/PIH cars. They also serve local constituencies. Transportation is a competitive business, and the Respondent Railroads recognize that the goodwill of its customers and the local communities that they serve is necessary to a railroad’s success, especially in a short line environment. While complying with numerous federal and state regulations, Respondent Railroads must take into account their obligation to their employees, to the local communities that the railroads pass through on their way to deliver TIH/PIH, of the cargo of other shippers, of the TIH/PIH shippers themselves, and for the investors in short line railroads. Because of the dangerous nature of TIH/PIH, Respondent Railroads believe that their obligation requires them to be legally compliant and to establish safety measures in order to reduce risks associated with their respective movements of

¹⁷ Complainants Reply at 10.

¹⁸ CFI Reply at 3-4.

TIH/PIH. Support for the Tariffs has been expressed in letters from local communities in Exhibit C.

It is disingenuous that Complainants and CFI oppose Respondent Railroads' efforts to meet the foregoing obligations. It is also disappointing that, since the initial filing of the petitions by Complainants and CFI last year, they have not made any suggestions to improve the safe handling of their products. Instead, Complainants argue that the latest tank car design permits fast train speed.¹⁹ Are Complainants really arguing that Respondent Railroads should base its operating practices on the latest car design? What about the tens of thousands of aging tank cars being used every day to transport hazardous and ultra hazardous commodities? Are Complainants willing to guarantee that Respondent Railroads receive TIH/PIH in only tank cars of the latest design? Respondent Railroads believe that if they had required such practice in the Tariffs, then Complainants would have certainly opposed such practice. Complainants cannot have it both ways.

But, the facts in this proceeding are that the purpose of the priority trains is "to provide more expeditious service and safer transit to the receiver than handling the car or cars in the normal course of business that would require moving through yards, switching onto a regular train, and starting and stopping at different shippers along the route to the receiver." *See* Tariffs Purpose Section and Respondents' Reply at 10. Respondent Railroads' Tariffs add safety measures to reduce the likelihood of a derailment of TIH/PIH,²⁰ while at the same time allowing Railroad Respondents to implement practices that allow them to move TIH/PIH in compliance with FRA rules. By requiring notice that a TIH/PIH car has been tendered to a carrier for interchange to a Respondent Railroad, the Respondent Railroad can be prepared to meet the

¹⁹ Complainants Reply at 5.

²⁰ See Respondents' Reply, Verified Statement of Mr. Wolf.

inspection requirement of 49 C.F.R. §174.9.²¹ It also allows the Respondent Railroads to have a crew ready to move the TIH/PIH cars more quickly from the yard to their final destination. Moving TIH/PIH cars in a priority train eliminates the need for starting, stopping and switching which creates more risk than just running straight through from the Respondent Railroad's yard to the receiver. The Respondent Railroads do not operate scheduled railroads, so in most instances, the use of a priority train will result in the delivery of TIH/PIH sooner than if it were moved on an unscheduled local train. It is also more expeditious than normal manifest "local" train service.²²

Complainants introduced an **unverified** (and unsigned) document under the name of Dipen Shah (the "Shah Paper"). Mr. Gary Wolf, who submitted a **Verified Statement** on behalf of Respondents on reply, has reviewed the Shah Paper.²³ See Exhibit B. Mr. Wolf points out that the Shah Paper was at best a survey of regulations (although some cited in the Shah Paper do not exist or are irrelevant for the purpose cited) and not a scientific study. Moreover, Mr. Wolf demonstrates that the Shah Paper is based on a faulty premise and relies on a study that has not been demonstrated to be reliable, and is indeed internally inconsistent. Mr. Wolf concludes that the Shah Paper "is a survey of rules and studies. It did not study or model the specific conditions described in the tariff AGR-0900-2. The conclusions, are general and not supported and do not demonstrate that the requirements of tariff AGR-0900-2 do not enhance safety." Mr. Wolf goes on to state "I stand by prior conclusion that the operations adopted by AGR in tariff 0900-2 are

²¹ Respondent Railroads do not have a large employee base. The ability to track where a car is on the national rail network allows the Respondent Railroads to arrange for personnel to promptly meet the requirements of 49 C.F.R. Part 174. The continued level of employment on short line railroads is one of the benefits of the requirement. The notice provision is intended to allow Respondent Railroads to continue this efficiency.

²² Respondents' Opening at 22.

²³ The Board gives very little, if any, weight to assertions based "upon unsubstantiated speculation, which, in the face of sworn evidence to the contrary, is insufficient to warrant further scrutiny." *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Corporate Family Transaction Exemption—Sacramento Valley Railroad, LLC and Piedmont & Northern Railway, LLC*, STB Docket No. FD 35449, slip op. at 4 (STB served March 6, 2012).

safer than continuing to handle TIH/PIH traffic in local freight trains, and as such is a reasonable practice.” Nevertheless, Complainants rely on this “non-study” to assert that operating at speeds of 25 mph “would preclude the likelihood of a catastrophic breach.”²⁴ Complainants then jump to the conclusion that – despite the basic logic that “slower is safer” – Respondent Railroads’ operating practices do “not enhance safety, [but] may in fact decrease it.”²⁵ Such illogic is not supported by Dr. Shah or any other evidence in this proceeding. In fact, the opposite is true (see Gary Wolf’s Verified Statement attached to Respondents’ Reply and Exhibit B to this Rebuttal).

Respondent Railroads’ compliance with regulations is not an unreasonable practice.

Complainants incongruously argue that the Respondent Railroads’ practices are consistent with FRA rules on the one hand, but are unreasonable on the other.²⁶ How can a practice that is required by the FRA rules be unreasonable? Complainants argue that the Railroad Respondents’ practices are unreasonable because they apply to TIH/PIH movements and not all hazardous materials movements. Railroad Respondents believe, and the content of the Rules confirms, that TIH/PIH movements are the most inherently dangerous subset of hazardous materials. Railroad Respondents have put practices into place to address this particular subset of hazardous materials because, as discussed on Opening at 5-6 and in Norfolk Southern Railway Company’s Reply, there are catastrophic consequences associated with a TIH/PIH release.

Respondents do not apply an unreasonable “surcharge.”

It appears that CFI and Complainants are now arguing that because Respondent Railroads’ rates for priority train service are higher than the rates for transporting TIH/PIH cars in a mixed train, that priority train service is unreasonable because the purpose of the priority

²⁴ Complainants Reply at 5.

²⁵ *Id.*

²⁶ Complainants Reply at 9.

train service is to gain additional revenue.²⁷ The purpose of the priority train service is to more safely move TIH/PIH shipments, as discussed above and in Respondent's Opening at 22 and Reply, Verified Statement of Mr. Wolf. See also Exhibit B to this Rebuttal, Verified Statement of Gary Wolf.

In the Preliminary Statement of Complainants Reply, there is also a discussion about the income and assets of RailAmerica. Complainants Reply at 2.²⁸ This discussion is in no way relevant to this declaratory order proceeding. First, RailAmerica is not a rail carrier subject to the jurisdiction of the Board.²⁹ Second, RailAmerica is not the alter ego of its rail carrier subsidiaries. The entities providing rail carrier service are owned by RailAmerica but each has separate certificates of authority to act as individual common rail carriers. Every one of the RailAmerica subsidiary railroads is a Class III rail carrier, generating annual revenue of less than \$30,300,000. See 49 C.F.R. §1201 1-1.

On the other hand, 2010 annual reports indicate that the shipper parties to this proceeding dwarf the finances of RailAmerica, not to mention the railroads actually performing the service.

²⁷ CFI Reply at 6-7 and Complainants Reply at 6-8.

²⁸ As written, Complaints' seem to be stating that RailAmerica is earning billions of dollars. As an example, the typical reading of \$462,253 million is \$462,253,000,000 since the reference to million adds six zeroes to the number. The revenue Complainants attribute to RailAmerica would make it larger than all of the Class I railroads combined and about ten times larger than Dow Chemical Company. Although RailAmerica would like to generate over \$462 billion in revenue, the actual freight revenue generated by RailAmerica's railroad subsidiaries in 2010 was about \$389,000,000. Further, as every party to this proceeding knows, revenue and actual profit are very different and "revenue" does not determine a rail carrier's ability to withstand claims brought against it in the event of a release of ultra hazardous poisonous gas with the capability to impact entire communities.

²⁹ The Board has acknowledged that RailAmerica is a non-carrier in decisions where RailAmerica sought authority to acquire, through a subsidiary rail carrier, an existing railroad. See *RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., Central Railroad Company of Indianapolis, Chicago Ft. Wayne and Eastern Railroad Division, Fortress Investment Group, LLC and RR Acquisition Holding, LLC—Control Exemption—Delphos Terminal Company, Inc.*, STB Finance Docket No. 35379 (STB served August 26, 2010). And where RailAmerica sought to continue in control of existing non-carrier subsidiaries when they became railroads *RailAmerica, Inc., Palm Beach Holdings, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC—Continuance in Control Exemption—Conecuh Valley Railway, LLC, Three Notch Railway, LLC, and Wiregrass Central Railway, LLC*, STB Finance Docket No. 35489 (STB served April 22, 2011).

The table below provides the 2010 revenue, net revenue and assets of the shippers (rounded).

	2010 Revenue	2010 Net Revenue	2010 Assets
Dow Chemical	\$53,000,000,000	\$1,970,000,000	\$69,600,000,000
CF Industries	\$ 3,970,000,000	\$ 440,000,000	\$ 8,800,000,000
PPG	\$13,400,000,000	\$ 769,000,000	\$14,975,000,000
Arkema (in Euros)	€ 5,900,000,000	€ 347,000,000	€ 4,800,000,000

RailAmerica did not even generate 12% of the gross revenues of CFI, the “smallest” shipper in 2010. None of the railroads actually serving Complainants generated more than one percent of the revenues of CFI.

Nonetheless, again, based on their financial analysis of RailAmerica, Complainants argue that the use of priority train service is an “income generating scheme” by RailAmerica.³⁰ Complainants focus their arguments on the rates they pay for the safer handling of their products, even though this proceeding is about whether Respondent Railroads’ Tariffs constitute unreasonable practices. Complainants are wrong. As demonstrated by the in depth study made by Mr. Wolf in Respondents Reply, “it is clear that it is safer to use priority train service to handle TIH/PIH cars instead of continuing to use local freight trains to haul TIH/PIH.”

Safety is the real issue and not the red herring offered by Complainants. The decision of a short line railroad to implement use of a priority train to expedite the delivery of ultra hazardous products to its destination goes to the very core issue, which is whether a railroad’s management should make the effort every day to think of better and safer ways to operate its trains. Do the citizens in the communities adjacent to the rail lines want the railroads to do so? Do the families living near the tracks want the railroad to come up with new ideas every day to operate safer and implement policies designed to reduce the possibility that mistakes could be made by railroad employees? It is incredulous that the Complainants and CFI - and even Dow - can argue that the Board should declare that railroads cannot and should not make any effort to

³⁰ Complainants Reply at 2.

operate more safely. It is clear that these shippers are in denial about the extreme hazards posed by their products.³¹ Instead, they prefer the status quo, where they transfer TIH/PIH rail cars to the railroads as quickly as possible - with no advance notice - and thereby transfer all liability for the TIH/PIH shipment to the railroad. Such a position is not reasonable for these ultra hazardous chemicals.

But, changing operations to enhance the safety of transporting TIH/PIH products, such as using a priority train to move TIH/PIH cars, is reasonable and, hence, not an unreasonable practice. Whether the actual cost of this service is unreasonable is a question for a rate reasonableness complaint. With regard to the Administrative and Inspections components or “Handling Surcharge” as Complainants refer to it, Complainants argue that Respondents have not explained what the Administrative costs are that are not already covered by the URCS costs for the cars. As the Board well knows, there are administrative costs of a Class III carrier that are not captured by URCS. Complainants argue that Respondents are double-dipping the inspection costs because the inspection costs are required by FRA for when any hazardous material is placed in a train. Complainants assume that this inspection cost is included in the rates for the movement of any hazardous material and that Respondent Railroads would absorb this cost. Whether the inspection cost was included in the previous rates or not does not make its inclusion now unreasonable. Railroads are not only allowed to recover their costs³², but to price based on differential pricing and to establish reasonable rates.³³

³¹ See CFI Reply at 4.

³² No one is sure how to cover the liability costs in the transportation of TIH/PIH but it is not an unreasonable practice for the Respondent Railroads’ to take insurance into account when setting a rate. See *Establishment of the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee*, STB Ex Parte 698 (STB served Aug. 3, 2010 and April 15, 2011).

³³ 49 U.S.C. §10702(1). Although CFI and Complainants consistently question the rates being charged, a complaint about the reasonableness of rates has not been filed with the Board.

Respondent Railroads' practices are not unreasonable.

Based on several railroad accidents over the years, RailAmerica realized that there was substantial risk to its subsidiary railroads that carried TIH/PIH, the employees of the railroads that worked on those trains, the communities that were served by those railroads, and the freight on the trains. RailAmerica decided to look into seeing what it could do to improve the safety of handling TIH/PIH. After review, an internal team made recommendations to management, which were evaluated and revised. On behalf of its railroads, RailAmerica then took the proposal to customers for their input. It was disappointing that no input was received. The AGR then published tariff AGR-0900 and the instant litigation ensued.

Immediately after the litigation began, AGR considered the language in the Complaint, saw some misunderstanding on the part of its customer, and subsequently canceled tariff AGR-0900 and issued tariff AGR-0900-1 which changed a permit requirement to a notice requirement, retained the priority train requirement, but replaced a mandated 10 mile per hour speed with a speed limit based on conditions on the line. AGR and RailAmerica thought it had resolved the major issues raised by the complaining parties, but the litigation has continued based upon the original tariff and the various versions of the SOP, which had been produced as marketing and discussion tools.

In discovery, the complaining shippers have admitted that it only takes 10 minutes to comply with the notice requirements in the Tariffs, certainly not a burden, much less an unreasonable practice when compared to the risk of carrying TIH/PIH. It appears to the Respondent Railroads that the issue in this proceeding is whether it is a reasonable practice for the Respondent Railroads to operate priority train service at speeds dictated by the physical condition of the railroad line that a train carrying TIH/PIH must operate over. Even though they

do not bear the burden of proof, Respondent Railroads have produced the only scientific study in this proceeding, in which Mr. Wolf concluded that priority train service is safer than regular local train service. Mr. Bjornstad has also testified that not only do priority trains deliver TIH/PIH faster than regular local train service, regardless of speed limits, but that there is much less handling (starting, stopping, switching and standing still on tracks) of TIH/PIH cars in priority trains so as to reduce the risk of a release.

Respondent Railroads have demonstrated that the burden on shippers of complying with the Tariffs is minimal and that the operation of priority trains carrying TIH/PIH is safer than local trains carrying TIH/PIH.

Respondent Railroads' Tariffs provide a reasonable framework to allow each short line railroad to comply with FRA regulations and, at the same time, reduce some of the risks associated with transporting TIH/PIH commodities. The Tariffs do not impose safety measures that conflict with the Rules. Indeed, the Tariffs' requirements are complementary to the Rules and assist the Respondent Railroads in complying with the Rules.

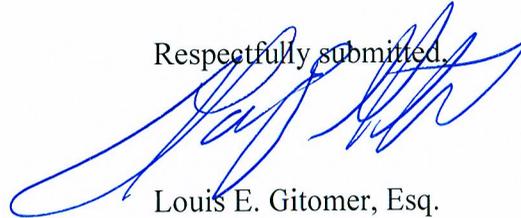
“Whether a particular practice is unreasonable depends upon the facts and circumstances of the case. The Board gauges the reasonableness of a practice by analyzing what it views as the most appropriate factors.” *Arkansas Electric Cooperative Corporation—Petition for Declaratory Order* (STB Finance Docket No. 35305) (STB served Mar. 3, 2011) (“*Coal Dust*”) at 5. The Tariffs constitute a reasonable practice because they comply with the federal requirements for handling TIH/PIH movements; enable the Respondent Railroads to comply with the Rules despite the limited size and resources of the short line railroads; take account of local conditions that may affect the safety or efficiency of operations involving TIH/PIH; and are

tailored to the highly dangerous nature of the TIH/PIH commodities being shipped under the tariff.

CONCLUSION

Based on the evidence submitted, CFI and Complainants have failed to show that the SOP is included in the Tariffs and that the actual requirements in the Tariffs are an unreasonable practice. Respondents respectfully request the Board to deny the relief sought by CFI, Dow, and Complainants in this proceeding and declare that the practices established by the Tariffs are not unreasonable.

Respectfully submitted,



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AND MICHIGAN SHORE RAILROAD,
INC.

Dated: March 13, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served

electronically on:

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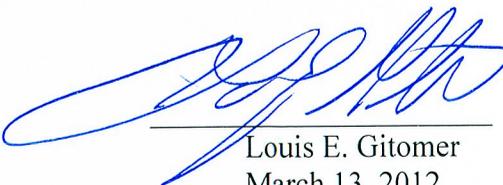
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Louis E. Gitomer
March 13, 2012

EXHIBIT A-VERIFIED STATEMENT OF TODD BJORNSTAD

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

VERIFIED STATEMENT OF TODD BJORNSTAD

I am Todd Bjornstad, the Vice President Customer Experience with RailAmerica, Inc. I was the General Manager of the Alabama Gulf Coast Railroad LLC (“AGR”) both before and after the adoption of the AGR-0900 series tariffs. I have experience with the operations of AGR both before and after the implementation of priority train service on the AGR. I believe that providing priority train service is safer than typical local train service. As I will show in this verified statement, priority train service results in substantially less handling of TIH/PIH cars and in faster delivery of those cars.

Before the AGR-0900 Tariffs.

AGR receives inbound TIH/PIH cars for delivery to Arkema at Saraland, AL from the Illinois Central Railway Company a subsidiary of the Canadian National (“CN”) at the CN Yard in Mobile, AL. CN sets out a cut of cars for AGR at the CN Yard and at 3:00 pm usually notifies AGR that the cars are ready to be picked up.

The AGR second shift, which comes on duty at 4:00 pm has a crew that takes cars for delivery to CN to the CN Yard in order to pick up the cut of cars from CN. AGR is not permitted to switch cars in the CN Yard. The AGR crew conducts the necessary inspections, hooks onto the cut of cars from CN, performs an air test and then brings the cars back to the AGR Yard. This usually takes about two hours.

The AGR Yard is a flat yard so that switching cars to build trains for delivery requires many moves throughout the yard to set off cars on individual tracks. There are four customers on the line between Mobile and Saraland. It takes four to eight hours to build the trains in the AGR Yard. To sort and switch TIH/PIH cars out of the cut delivered from CN requires 10 to 20 moves within the AGR Yard, depending on where the TIH/PIH cars are located within the cut of cars. You can have TIH/PIH cars starting, stopping, and moving forward and backward up to 20 times in the AGR Yard. It takes four to eight hours to build a train.

On the days when AGR provides service, about 12 hours after the cut of cars is picked up from the CN Yard, the AGR crew comes on duty and conducts the required inspections of the train before leaving to deliver and pick up cars. This takes about two hours.

The AGR train is ready to begin traversing the line between Mobile and Saraland. This is an FRA Class I line with a 10 mile per hour speed limit. The first obstacle the train faces is getting Yardmaster clearance to cross the Terminal Railway, Alabama State Docks. This takes between 30 minutes and two hours, and normally takes between one and two hours.

The AGR train then proceeds to Chickasaw, AL where deliveries to and pick-ups from Baldwin Transfer and Meador Warehouse are made. The train pulls north of a switch, stops, resets the switch, backs into the side track, couples to cars waiting to be picked up, and pulls back onto the main line making sure that the end of the train clears the switch. The switch is then reset and the cars that were just picked up are set out on the AGR track. The train pulls past the switch again, stops, resets the switch, backs in and drops of the cars for Baldwin Transfer and Meador Warehouse. The train then pulls back onto the main line, stops, resets the switch and then moves ahead, leaving the cars that were picked up from the shippers to be picked up on the return trip. This stop has taken at least two hours.

The next shipper is Reed Minerals, about 10 miles and one hour up the line. The train pulls north of a switch, stops, resets the switch, backs into the side track, couples to cars waiting to be picked up, and pulls back onto the main line making sure that the end of the train clears the switch. The switch is then reset and the cars that were just picked up are set out on the AGR track. The train pulls past the switch again, stops, resets the switch, backs in and drops of the cars for Reed Minerals. The train then pulls back onto the main line, stops, resets the switch and then moves ahead, leaving the cars that were picked up from Reed Mineral to be picked up on the return trip. This stop has taken at least one hour.

The next destination is Arkema, the receiver of the TIH/PIH cars at the end of AGR's line. From Reed Minerals to Arkema is about 10 miles and also takes about one hour. At Arkema, the AGR train runs past the north entrance to Arkema, stops, resets the switch and shoves the cars into Arkema's facility. Once clear of the switch, the train stops and resets the switch. Then the train continues shoving the cars to the point designated by Arkema, stops, and uncouples from the cars being delivered, including TIH/PIH cars. AGR then uses another Arkema track to run the locomotive around the cars that were just dropped off, stops and picks up cars from Arkema, conducts an air brake test on those cars, runs to the switch at the southern entrance to Arkema, resets the switch, pulls onto the main track, clears the switch, and stops. The switch is then reset. This has taken about one and a half hours.

Then the AGR train begins its move back to the AGR Yard in Mobile, picking up the Reed Minerals, Baldwin Transfer, and Meador Warehouse cars that were left on the line.

Summary. From the time the crew has come on duty in the morning, it has taken about 10 hours to deliver the TIH/PIH cars to Arkema. The train has stopped and started at least nine times and reversed direction at each stop and added cars (twice) and removed cars (three times).

This is in addition to the 10-20 moves of the TIH/PIH cars that occur in the AGR Yard in building the necessary trains and includes a number of crossings of public streets during the switching operation.

Priority train service.

Priority train service is intended to substantially reduce the amount of handling of TIH/PIH cars and to expeditiously deliver the cars to the receiver, thus reducing the amount of time that they are on the AGR.

The notification process from the CN is the same as it was before the use of priority trains began.

The AGR second shift, which comes on duty at 4:00 pm has a crew that takes cars for delivery to CN to the CN Yard in order to pick up the cut of cars from CN. AGR is not permitted to switch cars in the CN Yard. The AGR crew conducts the necessary inspections, hooks onto the cut of cars from CN, performs an air test and then brings the cars back to the AGR Yard. This usually takes about two hours.

The AGR Yard is a flat yard so that switching cars to build trains for delivery requires many moves throughout the yard to set off cars on individual tracks. However, the TIH/PIH cars are given priority and are usually set out on track 7 in the AGR Mobile Yard. This usually takes up to five moves of the cut of cars received from CN.

The next morning the crew of the priority train comes on duty at 7:00 am, inspections of the priority train are conducted, and then the priority train departs the AGR Yard at about 9:00 am. Prior to the priority train operating over the line to Arkema, an inspection of the line is conducted. The priority train also must get clearance from the Yardmaster to cross the Terminal Railway, Alabama State Docks. This takes between 30 minutes and two hours, and normally

takes between one and two hours. Then it is 20 miles and two hours to Arkema. Delivery at Arkema is the same process described for the regular train.

It has taken the priority train only about 6.5 hours to complete the delivery to Arkema. Moreover, instead of 10-20 move in the AGR Yard, sorting the TIH/PIH cars for delivery to Arkema has only taken up to five moves, while there is no starting, stopping, or coupling or uncoupling of cars to the train with the TIH/PIH cars.

Conclusion. I consider the fewer moves of the TIH/PIH cars and the faster to delivery to Arkema of the TIH/PIH cars to result in the safer handling of TIH/PIH cars than occurs on the regular train.

VERIFICATION

I, Todd Bjornstad, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 12, 2012.


Todd Bjornstad

EXHIBIT B-VERIFIED STATEMENT OF GARY WOLF

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

VERIFIED STATEMENT OF GARY WOLF

I am Gary Wolf. I am the President of *TÜV* Rheinland Rail Sciences, Inc. (“RSI”). I previously submitted a verified statement in this proceeding. In this statement, I am responding to the unverified “study of the relevant engineering rationale in the transport of TIH/PIH tank cars in limiting train speeds to prevent accident and derailment conditions” prepared by Dipen Shah, Ph. D. (the “Shah Paper”).

For my prior verified statement, I developed a model, using generally accepted engineering standards, to determine the risks of moving TIH/PIH in a priority train of 3 cars and at a speed of 10 MPH. The study concluded that moving TIH/PIH in a priority train of 3 cars and at a speed of 10 MPH will virtually eliminate the risk of derailment and the release of TIH/PIH product should a derailment occur. Conversely, moving these TIH/PIH cars in mixed freight trains at speeds of 25 MPH will increase potential risk for derailment and possible release due to tank puncture. Lower speed operation at 10 MPH reduces the severity of a derailment, reduces stopping distances required to prevent possible collision, reduces the in-train drawbar and slack action forces, and virtually eliminates the risk of puncture and product release.

I concluded that: (1) operation of a priority train under Tariff AGR-0900-2 complies with FRA rules; (2) there is a reduction in the release by avoiding the typical handling of rail cars in a local freight trains, and instead placing TIH/PIH cars in a priority train; and (3) it is safer to use

priority train service to handle TIH/PIH instead of continuing to use local freight trains to haul TIH/PIH.

I have carefully read the Shah Paper. The Shah Paper does not contain any study of the movement of TIH/PIH cars as I did. Instead, the Shah Paper is merely a survey of several regulations and generalized papers on the movement of rail cars handling hazardous material. I conducted a study based on detailed modeling of criteria directed related to the TIH/PIH train movements of a short line railroad, the Alabama Gulf Coast Railway LLC (“AGR”) pursuant to a specific tariff. The Shah Paper draws conclusions that have not been documented, but rely on a review of the work of others. As a result, my conclusions are specific to the issues in this proceeding, while the Shah paper is not.

Based on my long and detailed experience in the railroad industry, I take great exception to the premises underlying the conclusions of the Shah Paper. I have been involved in railroad operations continuously since 1973. I have attended dozens of post-graduate courses involving railroad safety from an engineering point of view and have published or presented well over 100 papers on the subject. See my Resume in the Respondents Reply.

The last sentence in section 1.2 paragraph 6 of the Shah Paper draws a conclusion that since both the ADAMS model used by Volpe (referred to as the “VOLPE Study”), and the purpose built FORTRAN model “produce nearly identical results” that this then suggests “the dynamics are being calculated correctly in both models”. This premise (that since two calculation methodologies produce similar results means that the method of calculation is correct) is scientifically flawed. In reality, the fact that any two methods of calculating a result produce identical results does NOT mean that the method of calculation bears any resemblance to the real world. If both methods start with flawed assumptions as to the mechanical system

being calculated, then obviously both models will produce a wrong answer (even though the “wrong” answers are identical).¹ The Shah Paper has produced no independent calculation to prove that either of these methods of calculating derailment severity is correct. Therefore, the Shah Paper’s reliance on the VOLPE Study, without any independent validation as to the accuracy of the model, renders its conclusions merely speculative in nature. Further, the Shah Paper places almost a universal reliance on the VOLPE Study throughout in order to support the numerous conclusions.

From a scientific standpoint, the VOLPE Study lacks any rigorous validation as to the baseline accuracy of its calculation methodology. The VOLPE authors cite one comparison to a Queens University study which looked at one derailment occurring in Canada in 1979. Any calculation methodology should be rigorously validated against a significant body of real world data before it can be claimed as reliable, not just the one incident relied on in the VOLPE Study. The Shah Paper relies on an unsubstantiated and fundamentally flawed VOLPE Study, which in turn relied on a singular derailment study in 1979 by Queens University. This is not a scientifically valid approach. Instead, it is equivalent to building a house on a foundation of sand. As a final note, there is no indication that any of the calculation models or methodologies that the Shah Paper relies on has been used commercially in the field of derailment analysis.

By contrast, RSI used its Derailment Predictor Model (“DPM”) to study the derailment mechanics specifically related to the question at hand concerning the proposed tariff. The DPM has been validated extensively with real world derailment data. In addition, RSI uses the DPM model commercially and such results have been accepted by the railroad industry. Finally, and more specifically, RSI takes specific exception to some of the underlying assumptions found in Table 1 of the VOLPE Study. The VOLPE Study used a ground friction value of 0.50 which

¹ A simple example is concluding that the analysis is correct when the result of $1 + 1 = 3$ and $0 + 2 = 3$.

RSI has found to be significantly lower than the value of 1.0 that RSI typically uses for derailment mechanics. Thus, the VOLPE Study value is incorrect by a factor of two. The VOLPE Study further notes that the ground friction value has “the most significant effect on derailment severity”. Therefore, the most important variable in the VOLPE Study modeling is likely incorrect by a factor of two. Thus, all the other graphs relied upon by the Shah Paper are based on a flawed and unsubstantiated assumption of ground friction.

Further, in Table 1 of the VOLPE Study, it is shown that they used a train friction value of 0.15. RSI has been studying and calculating train stop distances and deceleration rates for 25 years and has determined that the actual value of freight train friction should be closer to 0.03 to 0.05. Thus, the train friction valued used by the VOLPE Study may be incorrect by a factor of at least three. This is another significant assumption used by the VOLPE Study that is pertinent to all the other charts and conclusions found in their report. These are the same charts and conclusions adopted by the Shah Paper.

Finally, the VOLPE Study is based on one derailment simulation at an initial speed of 37 MPH which is significantly outside the limits of the current study and tariff conditions. The VOLPE Study offers no information as to how its conclusions might change with a much lower initial speed.

Thus, in summary, The Shah Paper has adopted an inherently flawed and un-validated calculation methodology from the VOLPE Study to provide a predicate to its own conclusions. In fact, the entire substance of the Shah Paper is a regurgitation of data from the VOLPE Study, none of which could be or has been corroborated in the Shah Paper. The Shah Paper’s specific conclusions pertaining to the safety of operating speeds and the placement of TIH cars in a train are all based on the aforementioned flawed modeling in the VOLPE Study.

The Shah Paper has also excerpted certain information from the VOLPE Study and used it out of context. For instance the Shah Paper discusses the concept of closing speeds and produced a graph shown in Figure 5. The Shah Paper fails to identify that this chart is premised solely on the derailed cars translational velocity. When factoring in the cars actual rotational velocity (which is more realistic for the typical derailment), the shape and characteristic of The Shah Paper's Figure 5 dramatically changes (See figure 15 of the VOLPE Study). In addition, the Shah Paper fails to mention that the VOLPE Study concluded that "the lack of correlation between closing speeds and impact forces demonstrates the chaotic nature of post-derailment car-to-car impacts." Thus, the Shah Paper's reliance on the VOLPE Study's closing speed analysis fails to take into account the full impact of the VOLPE Study conclusions, and fails to include the chaotic nature of derailments wherein cars can jump over initially derailed cars with great velocity and ability to create puncture. These secondary impacts can result in closing speeds between 9 and 51 MPH. The Shah Paper's conclusion that closing speeds are approximately $\frac{1}{2}$ the initial velocity is limited to a theoretical analysis and does not take into account actual impact velocities that can easily exceed the initial speed of the derailment when both secondary impacts and rotational speeds are considered.

RSI has performed its own puncture analysis that closely correlates with the VOLPE Study analysis when similar initial conditions are used (e.g., car weight, size, type steel, shell thickness). The RSI analysis showed that puncture would occur at 25 MPH and not at 10 MPH. The VOLPE Study analysis concludes that puncture velocity is approximately 20 MPH. The Shah Paper further concludes that since closing speeds are approximately $\frac{1}{2}$ the initial derailment speed, then a train speed of 36 MPH or higher should be safe. Again, this conclusion ignores the fact that closing speeds can be much higher when angular velocity and secondary impacts are

factored into the analysis. Thus, at a train speed of 25 MPH, a rear car in the train could leapfrog the derailment pile up and impact a derailling car at close to the initial train speed. This would surely result in puncture and release as shown by both the VOLPE Study analysis and the RSI puncture analysis. Inaccurately and to the contrary, the Shah Paper concludes that at train speed of 25 MPH would “preclude the likelihood of a catastrophic breach”. This simple conclusion is not based on any rigorous statistical analysis, does not take into account the reality and chaotic nature of derailments, and in fact is contradicted by the VOLPE Study that the Shah Paper relies upon.

In addition, in some instances, the Shah Paper relies for justification to Federal Railroad Administration (“FRA”) rules that do not exist (49 C.F.R. 179.105-5, Shah Paper at 6) or are irrelevant to the issues (49 C.F.R. 179.14, Shah Paper at 6).

My specific comments on the Shah Paper follow.

In paragraph 14 of the Shah Paper, the underlying “collision dynamics modeling” is not provided. There is no scientific comparison of the “likelihood of puncture” between placing TIH/PIH cars in the middle of a merchandise train or placing the same cars in a priority train. Finally, there is no explanation as to why placing TIH/PIH cars in the middle of a merchandise train “appears to be reflected in 49 CFR 174.85.” According to the Shah Paper, it just appears.

Paragraph 15 of the Shah Paper addresses the SOP (a talking points document) instead of the relevant tariffs. The conclusion that “[t]he risk associated with more than 3 cars in a consist is not any different than a maximum of 3 cars” is not supported, while my study showed that a train with three TIH/PIH cars was safer than a train with more cars. Paragraph 15 concludes with the indecipherable conclusion that leaving a car at interchange creates an undue risk under 49 C.F.R. §179.14, which governs the coupler vertical restraint system.

Paragraph 16 of the Shah Paper treats a TIH/PIH release with undue disregard. The conclusion describes “a catastrophic breach” without defining the term. I have been told that AGR considers any breach and release from a TIH/PIH car to be catastrophic and I concur. The Shah Paper also concludes that using a specific type of car (DOT 105A500W) is safe from head puncture at up to 36 miles per hour. The Shah Paper does not describe the maximum safe speed for side punctures, nor for derailments. Moreover, the Shah Paper relies on a specific type of car. My study using the TC128B tank car specification found front and side punctures of tank cars occurring at 25 miles per hour, but not at 10 miles per hour.

Paragraph 17 seems to concur that a track classified as FRA Class I with a 10 mile per hour speed limit is not governed by the maximum speed limits of 49 C.F.R. §174.86. As the AGR tariff indicates, train speed is governed by various factors, including the classification of the track.

Finally, Paragraph 18 states that a 10 mile per hour speed limit is not a safety factor from a tank puncture perspective. My study shows no punctures occurring at 10 miles per hour, and so I conclude that it is safe to operate at 10 miles per hour.

The Shah Paper is a survey of rules and studies. It did not study or model the specific conditions described in the tariff AGR-0900-2. The conclusions, are general and not supported and do not demonstrate that the requirements of tariff AGR-0900-2 do not enhance safety.

I stand by prior conclusion that the operations adopted by AGR in tariff 0900-2 are safer than continuing to handle TIH/PIH traffic in local freight trains, and as such is a reasonable practice.

VERIFICATION

VERIFICATION

I, Gary Wolf, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 10, 2012.


Gary Wolf

EXHIBIT C-LETTERS OF SUPPORT FOR TARIFFS



March 6, 2012

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

Re: STB Finance Docket No. 35517; Docket No. 42129
CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY et. al.
and AMERICAN CHEMISTRY COUNCIL et.al. v. ALABAMA GULF COAST
RAILWAY LLC

Dear Ms. Brown:

Please accept this letter as our comment in the above referenced case. As Chair of the Rules and Government Operations Committee of the City of Cincinnati, I want to express support for the short line railroads' efforts to implement safer operating practices while transporting dangerous chemicals such as Toxic Inhalation Hazards and Poison Inhalation Hazards (TIH/PIH). It is critical that we protect our citizens. Railroads receiving advance notice of shipments containing chemicals will ensure that these cars will not be lost or unattended. Additionally, expedited delivery of these poisonous products by priority trains should be permitted.

We urge the Surface Transportation Board to permit railroads to develop and implement operational improvements that exceed and supplement safety standards established by the Federal Railroad Administration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wendell Young", is written over a faint, circular official stamp.

Councilman Wendell Young
Chair, Rules and Government Operations



HUBERT BROWN
WHITEWATER TOWNSHIP TRUSTEE

5258 Lawrenceburg Road • Harrison, Ohio 45030 • 353-3111

March 8, 2012

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

Re: STB Finance Docket No. 35517; Docket No. 42129
CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY et. al.
and AMERICAN CHEMISTRY COUNCIL et.al. v. ALABAMA GULF COAST
RAILWAY LLC

Dear Ms. Brown:

Please accept this letter as my comment in the above referenced case. As a Township Trustee of Whitewater Township in Hamilton County, I fully support the efforts of short line railroads to develop protocols for safer handling of Toxic Inhalation Hazards and Poison Inhalation Hazards (TIH/PIH). I support the requirement for advance notification of poisonous shipments to the short lines, the inspection of the shipments on acceptance of the cars and the expedited delivery of those products by priority trains.

This benefits the safety, health and quality of life for every resident of Whitewater Township.

I urge the Surface Transportation Board to allow railroads to develop protocols that exceed the safety standards established by the Federal Railroad Administration.

Sincerely,

A handwritten signature in black ink, appearing to read "Hubert E. Brown", with a long horizontal flourish extending to the right.

Hubert E. Brown

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Committees:
Economic Development
Education
Finance & Appropriations
Agriculture & Natural Resources
Subcommittee

Denise Driehaus
State Representative

March 9, 2012

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

Re: STB Finance Docket No. 35517; Docket No. 42129
CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY et. al.
and AMERICAN CHEMISTRY COUNCIL et. al. v. ALABAMA GULF COAST
RAILWAY LLC

Dear Ms. Brown:

Please accept this letter as comment in the above referenced case. The Indiana and Ohio Railway Company (I&O) is significant to the commerce of Cincinnati as well as the State of Ohio. Part of the business responsibility of the I&O is to ensure that the most responsible safety practices are in place. I fully support the efforts of the Indiana and Ohio Railroad to develop protocols for safer handling of Toxic Inhalation Hazards and Poison Inhalation Hazards (TIH/PIH), the requirements for advance notification of poisonous shipments to the railroad, the inspection of shipments on acceptance of the cars, and the expedited delivery of those products by priority trains. These are several major protocols in the responsible business practices of the I&O.

I urge the Surface Transportation Board to allow railroads to develop protocols that exceed the safety standards established by the Federal Railroad Administration.

Sincerely,

A handwritten signature in cursive script that reads "Denise Driehaus".

Denise Driehaus
State Representative



Hamilton County

Board of County Commissioners

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March 9, 2012

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

Re: STB Finance Docket No. FD 35517; Docket No. 42129
CF INDUSTRIES, INC. v. INIDANA & OHIO RAILWAY COMPANY et. al.
And AMERICAN CHEMISTRY COUNCIL et.al. v. ALABAMA GULF COAST RAILWAY LLC

Dear Ms. Brown:

This letter represents my comments in the above referenced case. As a Commissioner of Hamilton County, I applaud the efforts of short line railroads to pursue safer handling of Toxic Inhalation Hazards and Poison Inhalation Hazards (TIH/PIH). I support the requirement for advance notification of poisonous shipments to the short lines and the expedited delivery of those products by priority trains.

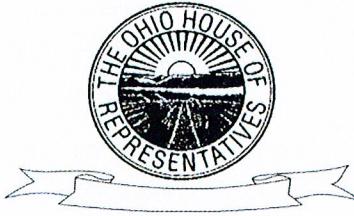
I commend the efforts of the I & O in pursuing safer handling of TIH/PIH.

I urge the Surface Transportation Board to allow railroads to develop operational improvements that exceed the safety standards established by the Federal Railroad Administration.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Portune".

Todd Portune
Commissioner, Hamilton County, Ohio
First Vice-President, Ohio Kentucky Indiana Regional Council of Governments



Representative Connie Pillich
28th House District

March 13, 2012

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

Re: STB Finance Docket No. 35517; Docket No. 42129
CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY et. al.
and AMERICAN CHEMISTRY COUNCIL et. al. v. ALABAMA GULF COAST
RAILWAY LLC

Dear Ms. Brown:

This letter serves as comment in the above referenced case. The I and O runs through my Ohio House District, past homes, schools, playgrounds and industry. It is critical that the most responsible safety practices be in place. I fully support the efforts of the Indiana and Ohio Railroad to develop protocols for safer handling of Toxic Inhalation Hazards and Poison Inhalation Hazards (TIH/PIH). I believe that the requirement for advance notification of poisonous shipments to the railroad, the inspection of the shipments on acceptance of the cars and the expedited delivery of those products by priority trains are key elements in increasing the safeguarding of our health as well as safety.

I urge the Surface Transportation Board to allow railroads to develop protocols that exceed the safety standards established by the Federal Railroad Administration.

Sincerely,

A handwritten signature in cursive script that reads "Connie Pillich".

CONNIE PILLICH

State Representative
28th House District

Committees:

Veterans Affairs, Ranking Member
Financial Institutions, Housing and
Urban Development
Criminal Justice

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State Senator
Eric H. Kearney
Minority Leader
9th District

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

Re: STB Finance Docket No. 35517; Docket No. 42129
*CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY et. al. and
AMERICAN CHEMISTRY COUNCIL et. al. v. ALABAMA GULF COAST RAILWAY
LLC.*

Dear Ms. Brown:

Please accept this letter as comment in the above referenced case. The I and O short line is an important part of the economic vitality of Greater Cincinnati and Ohio. It is critical that safety protocols be in place that protect our citizens and expedite commerce. I fully support the efforts of the Indiana and Ohio Railroad to develop protocols for safer handling of Toxic Inhalation Hazards and Poison Inhalation Hazards (TIH/PIH).

I urge the Surface Transportation Board to allow railroads to develop protocols that exceed the safety standards established by the Federal Railroad Administration.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Kearney", written over a circular stamp or mark.

Eric H. Kearney
Ohio State Senator
9th District