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December 8, 2005

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423



215376
Re: Docket No. 33476 – C&NC, LLC – Acquisition Exemption – Indiana Hi-Rail Corporation and Docket No. 33475 – C&NC Railroad Corporation – Lease and Operation Exemption – Lines of Norfolk and Western Railway Company and Indiana Hi-Rail Corporation
215377

Dear Sir:

Enclosed for filing please find the original and ten copies of the Reply of C&NC Railroad Company the Whitewater Valley Railroad Motion to Strike. Copies of this Reply have been filed on all parties of record.

Please date stamp and return in the enclosed self addressed, stamped envelope provided for that purpose a cover sheet indicating receipt of this filing by the Board.

Respectfully submitted,

RICHARD R. WILSON, P.C.

A handwritten signature in cursive script that reads "Richard R. Wilson".

Richard R. Wilson, Esq.
Attorney for Petitioners

RRW/bab
Enclosures
xc: C&NC Railroad Corporation
RMW Ventures, LLC

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Office of Proceedings
DEC 19 2005
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO: 33476 - 215376

C&NC, L.L.C.- ACQUISITION EXEMPTION - INDIANA HIGH-RAIL CORPORATION

DOCKET NO: 33475 - 215377

C&NC RAILROAD CORPORATION - LEASE AND OPERATION EXEMPTION - LINES
OF NORFOLK AND WESTERN RAILWAY COMPANY AND INDIANA HI RAIL
CORPORATION

**PETITION OF RMW VENTURES LLC AND C&NC RAILROAD CORPORATION
FOR EXPEDITED CONFIRMATION AND CORRECTION REGARDING RAIL
COMMON CARRIER SERVICE RIGHTS TO INTEGRITY METALS, INC.**

**REPLY OF C&NC RAILROAD COMPANY TO WHITEWATER VALLEY RAILROAD
MOTION TO STRIKE**

ENTERED
Office of Proceedings

DEC 19 2005

Part of
Public Record

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Dated: December 8, 2005

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO: 33476

C&NC, L.L.C.- ACQUISITION EXEMPTION – INDIANA HIGH-RAIL CORPORATION

DOCKET NO: 33475

C&NC RAILROAD CORPORATION – LEASE AND OPERATION EXEMPTION – LINES OF
NORFOLK AND WESTERN RAILWAY COMPANY AND INDIANA HI RAIL CORPORATION

**PETITION OF RMW VENTURES LLC AND C&NC RAILROAD CORPORATION
FOR EXPEDITED CONFIRMATION AND CORRECTION REGARDING RAIL COMMON
CARRIER SERVICE RIGHTS TO INTEGRITY METALS, INC.**

**REPLY OF C&NC RAILROAD COMPANY TO WHITEWATER VALLEY RAILROAD
MOTION TO STRIKE**

In response to the December 7, 2005 Motion to Strike filed by Whitewater Valley Railroad Company in the above captioned proceeding, C&NC Railroad Company (“C&NC”) files this Reply.

Pursuant to 49 C.F.R. §1112.2, the Board routinely affords a Petitioner in a proceeding such as this the opportunity to file a rebuttal statement, particularly when a respondent raises issues in its reply statement which could not have been addressed in the petitioning party’s opening statement.

Furthermore, the Board is well aware of the common practice of using motions to strike as replies to rebuttal statements which pursuant to 49 C.F.R. §1112.2 are not permitted. Accordingly, on that basis, Whitewater Valley’s Motion to Strike should be denied.

As noted by C&NC in its prior filings with the Board in this proceeding, shipments to Cohen Bros./Integrity Metals moved in interstate commerce as part of IHRC and C&NC line haul operations over the Connersville segment which is a direct continuation of C&NC’s main line track as indicated on Exhibit 12 of Whitewater’s November 21, 2005 Reply and is clearly depicted on the 1998 aerial photograph attached hereto as Exhibit A. Whitewater’s Exhibit 12 indicates there is a separate

industrial side track from the Connersville segment into the Integrity Metals plant. The use made by a railroad of a particular track, the type of traffic historically transported over that track, and the physical characteristics of that track are determinative of whether or not a track is exempt from STB jurisdiction under 49 U.S.C. §10906. Chelsea Property Owners – Abandonment, 8 ICC 2d 773 (1992). The Connersville segment was used by both IHRC and C&NC as part of its main line track to reach the Cohen Bros. siding. Accordingly, Whitewater's reliance on the §10906(g)(1) exemption is misplaced and has no application to the Connersville segment.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

Richard R. Wilson, Esq.
Attorney for C&NC Railroad Corporation

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Dated: December 8, 2005

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USGS Connersville, Indiana, United States 27 Mar 1998



0 200M

0 200yd

Image courtesy of the U.S. Geological Survey

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Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of December, 2005 served a copy of the Petition of RMW Ventures, LLC and C&NC Railroad Corporation for Expedited Confirmation and Correction Regarding Rail Common Carrier Service Rights to Integrity Metals, Inc. Reply of C&NC Railroad Company to Whitewater Valley Railroad Motion to Strike upon the following by first class United States Mail, postage prepaid:

Karyn A. Booth, Esq.
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