

STB FD 33388 (Sub 77) 10-21-97 A 182894

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BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL



October 21, 1997

HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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OCT 21 1997

**SURFACE
TRANSPORTATION BOARD**

RE: STB Finance Docket No. 33388, 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

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Responsive Application on behalf of Indiana & Ohio Railway Company. Also enclosed is check in the amount of \$4,700 to cover the applicable filing fee and a 3.5 inch diskette containing the filing in WordPerfect 5.2.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully,

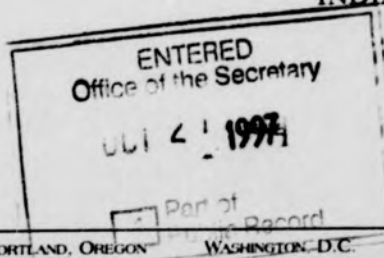
Karl Morell

Karl Morell
Attorney for:
INDIANA & OHIO RAILWAY CO.

FILED

OCT 21 1997

**SURFACE
TRANSPORTATION BOARD**



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BEFORE THE

SURFACE TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388



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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 77)

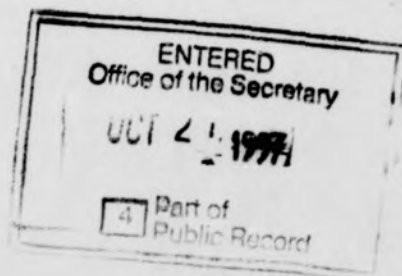
INDIANA & OHIO RAILWAY COMPANY
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY

RESPONSIVE APPLICATION OF
INDIANA & OHIO RAILWAY COMPANY

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SURFACE
TRANSPORTATION BOARD



Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
INDIANA & OHIO
RAILWAY COMPANY

Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 77)

INDIANA & OHIO RAILWAY COMPANY
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY

RESPONSIVE APPLICATION OF
INDIANA & OHIO RAILWAY COMPANY

Indiana & Ohio Railway Company ("IORY") hereby submits its Responsive Application pursuant to Decision No. 12 in this proceeding, 49 U.S.C. §§ 11321-25, and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures, 49 C.F.R. Part 1180. In this Responsive Application, IORY seeks the grant of conditions upon the transaction proposed by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail Inc.

("CRR"), and Consolidated Rail Corporation ("CRC")¹ (collectively referred to as the "Primary Applicants").² The conditions IORY seeks are intended to ameliorate certain of the anticompetitive consequences of, and operational problems caused or exacerbated by, the Primary Transaction and to preserve safe, efficient and economical rail transportation in the general area served by IORY. In Decision No. 30, the Board found that IORY's Responsive Application will be a "minor transaction."

In support of this Responsive Application, IORY submits the following information as required by 49 C.F.R. § 1180.6:

SECTION 1180.6 (a)(1)(i)
DESCRIPTION OF THE PROPOSED TRANSACTION

IORY requests that the Board condition the approval of Primary Applicants' proposed transaction by granting IORY trackage rights as follows:

1. Cincinnati-Washington Court House

Overhead trackage rights between East Norwood, Ohio and Washington Court House, Ohio over the rail line owned by CSXT.³

2. Monroe-Middletown

Local trackage rights between Monroe, Ohio and Middletown, Ohio over the rail line currently owned by CRC and to be acquired and operated by NSR.⁴

¹ CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

² In their Railroad Control Application filed on June 23, 1997, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

³ IORY seeks overhead trackage rights between Washington Court House and Cincinnati with the right to connect at Midland City with IORY's Greenfield branch.

⁴ At Middletown, IORY seeks to connect with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati.

3. Sidney-Quincy

Local trackage rights between Sidney, Ohio and Quincy, Ohio over the rail line currently owned by CRC and to be acquired and operated by CSXT.

4. Sharronville-Columbus

Local trackage rights between Sharronville, Ohio and Columbus, Ohio over the rail line currently owned by CRC and to be acquired and operated by NSR.

5. Quincy-Marion

Local trackage rights between Quincy, Ohio and Marion, Ohio over the rail line currently owned by CRC and to be acquired and operated by CSXT.

6. Lima-Fort Wayne

Local trackage rights between Lima, Ohio and Fort Wayne, Indiana over the rail line currently owned by CRC and to be acquired and operated by CSXT.

7. Lima

Local trackage rights over CRC's Erie track in Lima, Ohio.

8. Quincy-Marysville

Local trackage rights between Quincy, Ohio and Marysville, Ohio over the rail line currently owned by CRC and to be acquired and operated by CSXT.⁵

The term "local" trackage rights, as used above, includes: (1) the right to operate trains over the lines described; (2) the right to interchange with all carriers (including shortlines) at all

⁵ The Quincy to Ridgeway portion of this line is included in the Quincy to Marion trackage rights request. Consequently, if IORY is granted the Quincy-Marion request, IORY would only need trackage rights between Ridgeway and Marysville.

junctions on the lines described; and (3) the right to serve all shippers, sidings and team tracks located on the lines described.

The Board should retain jurisdiction to establish the level of compensation and other terms in the event the parties are unable voluntarily to resolve these matters through negotiation.

APPLICANT

The name, address and telephone number of the Responsive Applicant are:

Indiana & Ohio Railway Company
Post Office Box 12576
Cincinnati, Ohio 45212
(513) 531-4800

The name, address and telephone number of counsel to whom questions should be addressed are:

Karl Morell
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

SECTION 1180.6(a)(1)(ii) PROPOSED TIME SCHEDULE

IORY is prepared to commence operations pursuant to the proposed trackage rights immediately after the effective date of the Board's approval of IORY's Responsive Application. IORY's fleet of equipment and its existing labor force are sufficient to commence operations over all of the proposed new routes. The Cincinnati-Washington Court House route would merely serve as an alternate route to CRC's highly congested Cincinnati-Springfield line over which IORY operates today pursuant to trackage rights. The other routes would largely be

served as side trips for existing local train operations. For example, existing assignments in Cincinnati and Mason can readily handle the operations over the 5-mile line between Monroe and Middletown. Also, IORY's local train between Springfield and Lima would make the 10-mile side trip to Sidney.

SECTION 1180.6(a)(1)(iii)
PURPOSE

The purpose of the requested conditions is to remedy certain anticompetitive effects of the Primary Transaction in the area served by IORY and to rectify the operating inefficiencies and congestion that will be caused or exacerbated by the Primary Transaction.

IORY operates over the CRC rail line between Cincinnati and Springfield along with CRC and NSR. Currently, CRC operates 12 trains per day, IORY operates 6 trains per day, and NSR operates 4 trains per day over this line. IORY is already experiencing inordinate delays on this line which would be magnified by the Primary Transaction to the substantial detriment of IORY and its shippers. In September 1997, IORY operated 81 southbound trains between Springfield and Cincinnati over the CRC line. While operating over this 6.5-mile line, IORY's trains were delayed an average of 4 hours and 24 minutes, with the longest delay being 13 hours and 45 minutes. Once IORY's trains reach Cincinnati, they experience additional delays of up to 24 hours accessing CSXT's Queensgate Yard in Cincinnati. IORY has been informed that NSR plans to run 7.2 additional trains a day on this rail line if the Primary Transaction is approved. With these added trains, IORY will undoubtedly experience significant additional delays, jeopardizing its ability to retain its time-sensitive traffic.

The Cincinnati-Washington Court House line over which IORY seeks trackage rights is part of CSXT's Cincinnati to Columbus rail line. The line is in good physical condition and has very low volumes of traffic. In 1995, CSXT handled an average of 2.8 trains a day on this line, which CSXT expects to increase by only .1 train a day if the Primary Transaction is approved. *See CSX/NS-20 at 435.* A grant of these trackage rights would enable IORY to circumvent the intolerable congestion that would undoubtedly occur on the Cincinnati-Springfield line if the Primary Transaction is approved.

IORY owns and operates a branch line between Mason, Ohio and Monroe, Ohio. Most of the traffic destined to that branch originates at CSXT origins. The traffic moving to the branch is currently routed to Cincinnati, then in local service to Ivorydale Yard, and on to Hamilton, Ohio. From Hamilton the cars are moved in local service to Middletown. From Middletown the traffic is delivered to IORY at Monroe via CRC's Reed Yard. This roundabout local handling of the traffic between Cincinnati and Monroe, a distance of 35 miles, adds between 5 to 6 days to the transit times. The requested trackage rights over the 5-mile line between Monroe and Middletown would enable IORY to reduce by 4 or 5 days the transit times for traffic moving to this branch.

Sidney, Ohio is a 2-to-1 location. The proposed solution -- granting NSR trackage or haulage rights from Lima -- fails to resolve the anticompetitive effects of the Primary Transaction in Sidney. The requested trackage rights over the 10-mile Sidney to Quincy rail line would enable IORY to offer the shippers at Sidney a competitive alternative to CSXT.

In addition, CRC today serves as a competitive gateway carrier for shippers located on the Sharronville to Columbus, Quincy to Marion, Lima to Fort Wayne, and Quincy to Marysville

rail lines for traffic moving to nearby CSXT and NSR junctions. IORY proposes to remedy the loss of competition that will occur if the Primary Application is approved by stepping into CRC's shoes on these rail segments and offering the shippers on these lines a competitive switch operation to a nearby NSR or CSXT junction.

SECTION 1180.6(a)(1)(iv)
NATURE AND AMOUNT OF NEW SECURITIES OR
OTHER FINANCIAL ARRANGEMENTS

No new securities or other financial arrangements will be required for IORY to consummate the proposed transaction and commence operations under the requested trackage rights. IORY does not anticipate the need to acquire any additional equipment or facilities to commence operations pursuant to the requested trackage rights. If any additional equipment is needed, it will either be leased or acquired and funded through cash or existing credit facilities.

SECTION 1180.6(a)(2)
PUBLIC INTEREST JUSTIFICATIONS

The requested trackage rights would ameliorate certain of the anticompetitive effects of the Primary Transaction at Sidney and in other areas served by IORY.

According to Primary Applicants, there are six 2-to-1 shippers located at Sidney who currently receive service from CRC and CSXT. See CSX/NS-19 at 149. The proposed trackage rights or haulage arrangement for NSR between Lima and Sidney would not enable NSR to provide effective competition with CSXT in this market. NSR currently accesses Lima over a branch line. From Lima, NSR would have to operate over a 33-mile CSXT line to reach the shippers at Sidney. In order to serve these shippers directly, NSR would have to operate over a highly circuitous route. IORY, on the other hand, could provide effective competition from its

nearby line traversing Quincy, which is only 10 miles from Sidney. Moreover, unlike NSR, IORY already operates in the heart of the Ohio grain region and would simply make service to Sidney an adjunct to its current operations.

The shippers located on the Sharronville-Columbus, Quincy-Marion, Lima-Fort Wayne, and Ridgeway-Marysville rail segments would also experience a reduction in competition as a result of the Primary Transaction. CRC today offers these shippers a neutral and indifferent gateway service to the nearby CSXT and NSR junctions. For example, shippers on the CRC line between Sharronville and Columbus load out cars on CRC for delivery at Cincinnati to either CSXT or NSR. Today, these shippers are able to bargain with CSXT and NSR for better rate and service options for the off-CRC portion of their movements. If the Primary Transaction is approved without appropriate conditions, NSR would have a strong economic incentive to favor its own route beyond Cincinnati, and through rate and service actions render CSXT's service noncompetitive. The same situation would occur for shippers on the other three rail segments, the only difference being that CSXT would take actions to disadvantage competing NSR routings. IORY proposes to step in the shoes of CRC and offer these shippers the NSR or CSXT joint-line options available to them today from CRC.

The requested trackage rights would also improve operating economies and efficiencies and remedy congestion that would only be exacerbated by the Primary Transaction. As previously explained, the requested trackage rights between Cincinnati and Washington Court House are intended to relieve the congestion on the Cincinnati to Springfield line being acquired by NSR. Because of the delays IORY is experiencing today, IORY is forced to use up to three crews on a particular train when only one crew is necessary, thereby significantly increasing

IORY's costs. The congestion and added costs will only grow worse with the additional trains NSR would move over this line. The requested trackage rights between Monroe and Middletown would also significantly improve rail operating efficiencies and reduce IORY's costs. The efficiency gains IORY would be able to achieve from these two conditions would ultimately redound to the benefit of the shipping public through reduced rates and improved service.

These conditions would also make IORY more competitive with trucks. For example, the traffic moving to the Mason branch is truck competitive and IORY stands to lose that traffic because of the slow transit times between Cincinnati and Monroe. As Primary Applicants correctly point out, there are significant public benefits to be gained by diverting traffic from truck to rail.

The conditions sought by IORY would not impose any unreasonable operating problems on the rail line over which IORY seeks trackage rights or in the region generally. Indeed, the trackage rights requested between Cincinnati and Washington Court House are intended to resolve the congestion and operating problems that would be caused by the Primary Transaction between Springfield and Cincinnati. The conditions would also not detract in any material respect from the public benefits the Primary Applicants expect to achieve from the Primary Transaction. Primary Applicants claim public benefits of nearly \$1 billion per year. *See* CSX/NS-18 at 2.

SECTION 1180.6(a)(2)(i)
EFFECT ON COMPETITION

The requested conditions would preserve intramodal and enhance intermodal competition in the areas served today by IORY.

As previously explained, if the Primary Transaction is approved without conditions, the shippers at Sidney will lose competitive rail service. IORY's requested trackage rights between Sidney and Quincy would enable IORY to preserve intramodal competition at Sidney. The proposed trackage rights over the Sharronville to Columbus, Quincy to Marion, Quincy to Marysville and Lima to Fort Wayne rail segments would also enable IORY to preserve intramodal competition with IORY serving as a neutral gateway carrier to nearby junctions with NSR or CSXT, much like CRC does today.

Much of the traffic IORY handles over its current Cincinnati to Springfield route is competitive with NSR, which will take over that route if the Primary Transaction is approved. NSR will have every incentive to disadvantage IORY's operations over that line through even longer delays. Consequently, the requested trackage rights between Cincinnati and Washington Court House would enhance intramodal competition between IORY and NSR.

By extending its network and gaining access to more efficient routes, IORY would be better able to compete with trucks and thus enhance intermodal competition.

SECTION 1180.6(a)(2)(ii)
FINANCIAL CONSIDERATIONS

The proposed trackage rights would enable IORY to reduce costs. IORY is currently incurring additional crew and fuel costs because of the delays on its route to Cincinnati. These costs would increase significantly with the added congestion and delays resulting from the

Primary Transaction. The requested trackage rights would also enable IORY to generate additional revenues from service to shippers losing competitive rail service in areas served by IORY.

SECTION 1180.6(a)(2)(iii)
EFFECT ON FIXED CHARGES

IOY does not expect any increase in fixed charges resulting from the operations proposed in this Responsive Application.

SECTION 1180.6(a)(2)(iv)
EFFECT ON ADEQUACY OF TRANSPORTATION

Granting the conditions sought by IOY would have a positive effect on the adequacy of transportation in the region served by IOY. IOY would remain an effective competitor for the rail service it provides to and from Cincinnati and the Mason branch. IOY would also be able to offer efficient and economical service to the many shippers served by CRC today.

SECTION 1180.6(a)(2)(v)
EFFECT ON EMPLOYEES

Granting the conditions sought by IOY should have little, if any, impact on the employees of Primary Applicants. The requested conditions would have no impact on IOY employees in the short term, although there may be a positive effect in the long term as IOY adds to its labor force.

SECTION 1180.6(a)(2)(vi)
EFFECT OF INCLUSION OF OTHER RAILROADS

Not applicable to this Responsive Application.

SECTION 1180.6(a)(3)
OTHER SUPPORTING STATEMENTS

IORY anticipates that its Responsive Application will be supported by shippers and other entities in separate filings with the Board.

SECTION 1180.6(a)(4)
OPINION OF COUNSEL

The opinion of IORY's counsel that the condition requested in this Responsive Application satisfies the requirements of law and will be legally authorized and valid if approved by the Board appears at the end of the narrative of the Responsive Application.

SECTION 1180.6(a)(5)
LIST OF STATES

IORY operates in the States of Ohio, Michigan and Indiana and the rail lines over which IORY seeks trackage rights are located in the States of Ohio and Indiana.

SECTION 1180.6(a)(6)
MAP

A map showing the rail lines of IORY and the rail lines over which IORY seeks trackage rights is attached as Exhibit 1.

SECTION 1180.6(a)(7)(i)
NATURE OF TRANSACTION

The conditions IORY seeks to have imposed on the Primary Application are a grant of trackage rights as described above under Section 1180.6(a)(1)(i).

SECTION 1180.6(a)(7)(ii)
AGREEMENTS

A draft agreement setting forth the significant terms proposed is attached as Exhibit 2.

SECTION 1180.6(a)(7)(iii)
CONSOLIDATED COMPANY INFORMATION

Not applicable to this Responsive Application.

SECTION 1180.6(a)(7)(iv)
COURT ORDER

Not applicable to this Responsive Application.

SECTION 1180.6(a)(7)(v)
PROPERTY INCLUDED IN THE PROPOSED TRANSACTION

The trackage rights requested by IORY are over a very limited portion of the rail lines sought to be acquired by CSXT and NSR in the Primary Transaction. *See* "Description of Proposed Transaction" under Section 1180.6(a)(1) and the map attached as Exhibit 1.

SECTION 1180.6(a)(7)(vi)
PRINCIPAL ROUTES

IORY is a Class III rail carrier that is operated as a single system along with its three affiliates, the Indiana and Ohio Railroad, Inc., the Indiana & Ohio Central Railroad, Inc., and the Cincinnati Terminal Railway Company. As part of this system, IORY provides rail service over approximately 475 miles of track stretching from Flat Rock, Michigan to Cincinnati, Ohio. IORY operates rail lines between Columbus and Logan, Ohio; Midland City and Thrifton, Ohio; Mason and Monroe, Ohio; Springfield and Bellefontaine, Ohio; Springfield and Mechanicsburg, Ohio; Springfield and Washington Court House, Ohio; and between Valley Jct., Ohio and

Brookville, Indiana, as well as rail lines serving the greater Cincinnati area. IORY currently connects with the Central of Indiana Railroad at Valley Jct.; CSXT at Cincinnati, Midland City, Fayne, Columbus, and Hamler, Ohio; NSR at Cincinnati and Lima, Ohio; CRC at Cincinnati, Monroe, Springfield and Lima, Ohio; Canadian National Railway Company at Flat Rock, Michigan; and the Adrian & Blissfield Railroad Company at Riga, Ohio. In addition to these direct interchanges, IORY has the right to interchange with NSR via the CSXT at Columbus, Ohio and with CSXT via CRC at Monroe, Ohio.

The trackage rights IORY seeks are over 8 segments of rail line totaling approximately 339 miles in length.⁶

SECTION 1180.6(a)(7)(vii) GOVERNMENTAL FINANCIAL ASSISTANCE

No governmental assistance will be sought to consummate the transaction sought in this Responsive Application.

SECTION 1180.6(a)(8) ENVIRONMENTAL DATA

IORY has submitted an Environmental Verified Statement (IORY-3) pursuant to Decision No. 38, stating that no environmental documentation is required for IORY's Responsive Application pursuant to the provisions of 49 C.F.R. 1105.6(c)(2). IORY hereby reconfirms that no environmental documentation is required for the grant of this Responsive

⁶ The length of the rail segment between Cincinnati and Washington Court House is approximately 65 miles, the segment between Monroe and Middletown is approximately 5 miles, the segment between Sidney and Quincy is approximately 10 miles, the segment between Sharronville and Columbus is approximately 125 miles, the segment between Quincy and Marion is approximately 52 miles, the segment between Lima and Fort Wayne is approximately 59 miles, and the Ridgeway to Marysville portion of the segment between Quincy and Marysville is approximately 23 miles.

Application. IORY understands that CSXT plans on adding 6.8 trains a day on the line segment between Sidney and Quincy over which IORY seeks trackage rights. Since IORY projects adding no more than one train a day on this line segment, the threshold of 49 C.F.R.

1105.7(e)(5)(A) will not be exceeded by the combined additional operations of IORY and CSXT.

IORY is also aware that NSR intends to add 7.2 trains a day on the line segment between Springfield and Columbus over which IORY seeks trackage rights. IORY projects that it will add no more than one train every other day. Therefore, IORY's additional traffic on this line segment will also not exceed the threshold of Section 1105(e)(5)(A).

SECTION 1180.8(b) OPERATING PLAN-MINOR

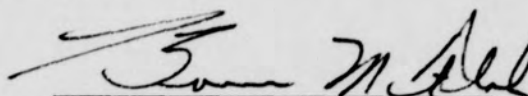
A copy of IORY's operating plan is attached as Exhibit 15.

CONCLUSION

For the foregoing reasons, IORY respectfully urges the Board to grant, as conditions to approving the Railroad Control Application, the trackage rights requested in this Responsive Application.

SECTION 1180.4(c)(2)(i)
SIGNATURES, OATHS, AND CERTIFICATIONS
OF APPLICANT'S EXECUTIVE OFFICERS

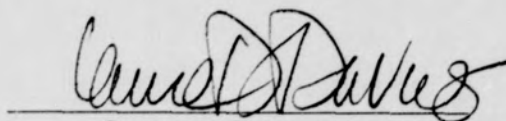
I, Bruce M. Flohr, declare under penalty of perjury that I am President and a Director of Indiana & Ohio Railway Company, responsive applicant herein, that I am one of the executive officers duly authorized to sign, to verify and to file this Responsive Application on behalf of Indiana & Ohio Railway Company, that I have knowledge of the matters contained in this Responsive Application, and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.



Bruce M. Flohr

Executed on October 17, 1997

I, Laura D. Davies, hereby certify that I am Corporate Secretary of Indiana & Ohio Railway Company, responsive applicant herein, and that Bruce M. Flohr, President and a Director of Indiana & Ohio Railway Company, is duly authorized to sign, to verify, and to file this Responsive Application on behalf of Indiana & Ohio Railway Company



Corporate Secretary

Dated this 17th day of October 1997, at San Antonio, Texas.

SECTION 1180.6(a)(4)
OPINION OF COUNSEL FOR
INDIANA & OHIO RAILWAY COMPANY

As counsel for Indiana & Ohio Railway Company ("IORY"), I am familiar with the transaction proposed in the Responsive Application of IORY. It is my opinion that the transaction proposed in IORY's Responsive Application meets all requirements of law, will be legally authorized and valid if approved by the Surface Transportation Board, is within the corporate power of IORY, and will not result in any breach, violation or default of any provision of IORY's Articles of Incorporation or Bylaws.

BALL JANIK LLP

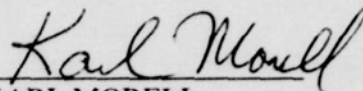
By: Karl Morell

Karl Morell
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005

Attorneys for Indiana & Ohio
Railway Company

Dated this 20th day of October, 1997.

Respectfully submitted,

A handwritten signature in cursive script, reading "Karl Morell".

KARL MORELL

Of Counsel

BALL JANIK LLP

1455 F Street, N.W.

Suite 225

Washington, D.C. 20005

(202) 638-3307

Attorney for:

INDIANA & OHIO

RAILWAY COMPANY

Dated: October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, I caused a copy of the Responsive Application of Indiana & Ohio Railway Company (IORY-4) to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.

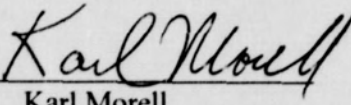

Karl Morell

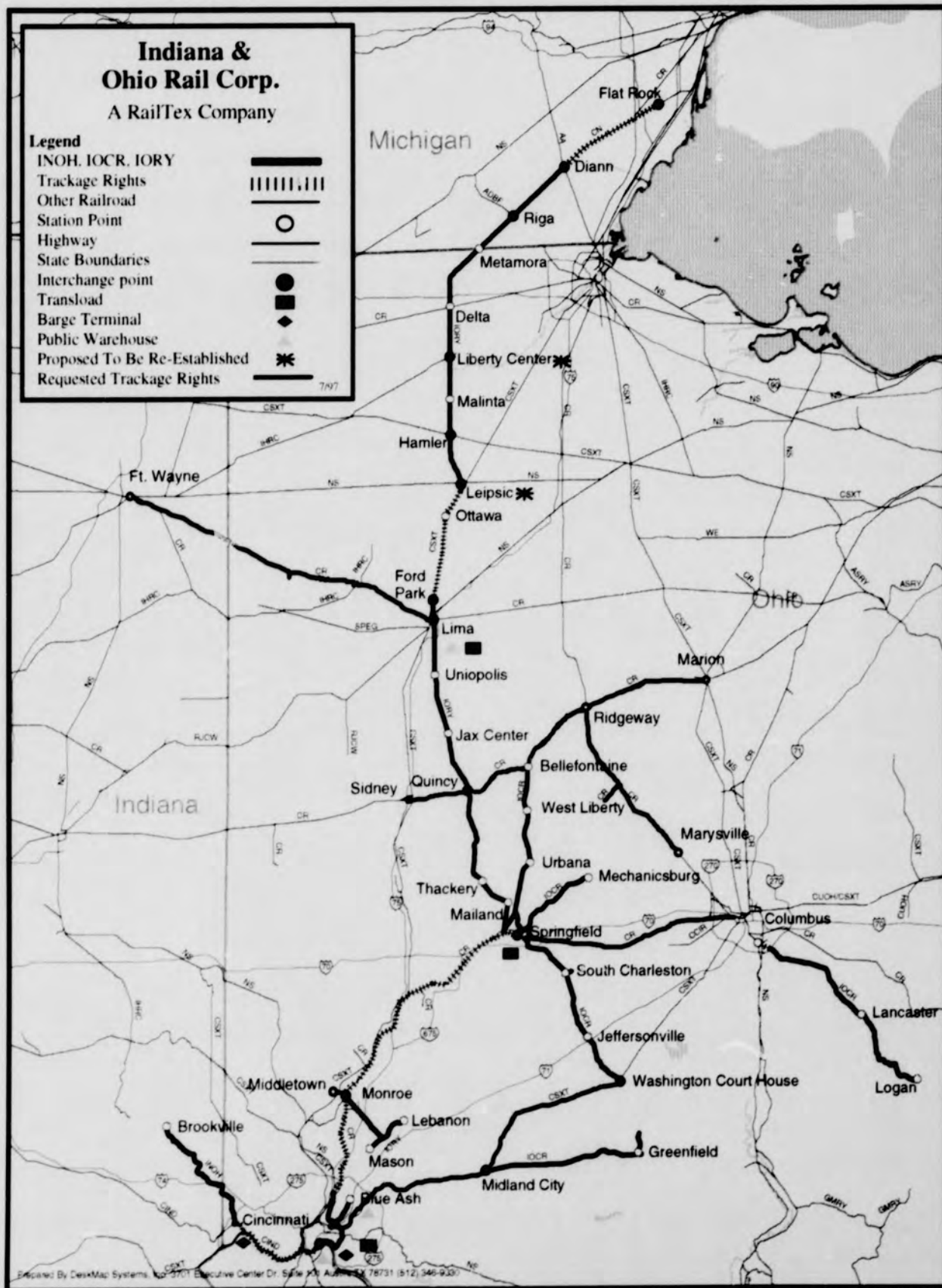
EXHIBIT 1

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

between

CSX TRANSPORTATION, INC. and NORFOLK SOUTHERN RAILWAY COMPANY

and

INDIANA & OHIO RAILWAY COMPANY

AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of ____, 199__, by and between CSX TRANSPORTATION, INC., (hereinafter "CSXT") and NORFOLK SOUTHERN RAILWAY COMPANY (hereinafter "NSR") (hereinafter collectively "OWNER") and INDIANA & OHIO RAILWAY COMPANY (hereinafter referred to as "IORY" or "USER"),

WHEREAS, the Surface Transportation Board, in its decision in Finance Docket No. 33388, 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, served _____, (1) approved the acquisition by CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation, and Norfolk Southern Railway Company of control of Conrail, Inc., and Consolidated Rail Corporation; and (2) the division of the assets of Conrail, Inc., and Consolidated Rail Corporation by and between CSX Corporation and CSX Transportation Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company; and

WHEREAS, the Surface Transportation Board conditioned the control of Conrail, Inc., and Consolidated Rail Corporation ("CRC") on, among other things, the grant of trackage rights as set forth further in the Responsive Application of IORY, dated October 21, 1997; and

WHEREAS, Owner desires to provide IORY with the rights requested in said Responsive Application; and

WHEREAS, IORY is agreeable to receiving said rights and desires to conduct operations over said rights under the terms and conditions herein and hereafter set forth,

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad (hereinafter referred to as the "Subject Trackage"):

1. Overhead trackage rights between East Norwood, Ohio, and Washington Court House, Ohio, over the rail line owned by CSXT;
2. Local trackage rights between Monroe, Ohio, and Middletown, Ohio, over the rail line formerly owned by CRC and acquired and operated by NSR;
3. Local trackage rights between Sidney, Ohio, and Quincy, Ohio, over the rail line formerly owned by CRC and acquired and operated by CSXT;

4. Local trackage rights between Sharronville, Ohio, and Columbus, Ohio, over the rail line formerly owned by CRC and acquired and operated by NSR;
5. Local trackage rights between Quincy, Ohio, and Marion, Ohio, over the rail line formerly owned by CRC and acquired and operated by CSXT;
6. Local trackage rights between Lima, Ohio, and Fort Wayne, Indiana, over the rail line formerly owned by CRC and acquired and operated by CSXT;
7. Local trackage rights over CRC's former Erie track in Lima, Ohio; and
8. Local trackage rights between Quincy, Ohio, and Marysville, Ohio, over the rail line formerly owned by CRC and acquired and operated by CSXT.

The term "local trackage rights, as used above, includes: (1) the right to operate trains over the lines described; (2) the right to interchange with all carriers (including shortlines) at all junctions on the lines described; and (3) the right to serve all shippers, sidings, and team tracks located on the lines described.

SECTION 2. USE OF SUBJECT TRACKAGE

(a) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage.

(b) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(c) User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3. COMPENSATION

(a) The compensation for operations under this Agreement shall be set at the levels as follows:

SECTION 4. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead, percentages, and equipment rentals in effect at the time any work is performed by Owner.

SECTION 5. MAINTENANCE OF SUBJECT TRACKAGE

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Section 11 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its directors, officers, agents, or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

SECTION 6. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

(b) Any additional connections to the Subject Trackage which may be required shall be constructed, maintained, repaired, and renewed as follows:

(i) User shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

SECTION 7. ADDITIONS, RETIREMENTS, AND ALTERATIONS

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body

having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communications or signal facilities, for purposes beyond that required for Owner's operation, Owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request.

SECTION 8. MANAGEMENT AND OPERATIONS

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User, in its use of the Subject Trackage, will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotive, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars, or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner, which consent will not be unreasonably withheld. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) The trains, locomotives, cars, and equipment of User, Owner, or any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(d) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment a train or locomotive of User becomes stalled or unable to proceed under

its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(e) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

(f) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including, without limitation, all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 9. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 10. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of road bed, track, and structures. The cost and expense thereof, including, without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 11. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, User being

involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of Owner or its directors, officers, agents, or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of User being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless User and its director, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including, without limitation, lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including, without limitation, the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including, without limitation, all cost and expense referred to in Section 10 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or

equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 10 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) Notwithstanding the provisions of Section 16(f) of this Agreement, for the purposes of this Section 11 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 12. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Twenty Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or supersede the provisions of Section 11 hereof.

SECTION 13. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right, at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

SECTION 14. ARBITRATION

Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, experts, and counsel. The compensation, costs, and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 15. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Section 19 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than one hundred twenty (120) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and

diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or be incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

SECTION 16. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

SECTION 17. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder to any person, firm, or corporation without obtaining the prior written consent of the Owner, which consent will not be unreasonably withheld, except that the rights granted by this Agreement shall pass to the successor of substantially all of the property of User.

SECTION 18. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

[_____]

[_____]

SECTION 19. COMMENCEMENT, TERM, AND TERMINATION

(a) This Agreement shall take effect on _____, 1998 ("Commencement Date"), and shall continue in full force and effect for a period of 99 years from said Commencement Date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written

WITNESS:

CSX TRANSPORTATION, INC.

WITNESS:

NORFOLK SOUTHERN RAILWAY CO.

WITNESS

INDIANA & OHIO RAILWAY CO.

EXHIBIT 15

OPERATING PLAN - MINOR

If the conditions requested by IORY are granted by the Board, IORY does not expect initially to need any additional locomotives. Depending on the traffic volumes on the new lines IORY seeks to serve, IORY may need to hire four additional train service personnel.

IORY currently operates an average of three trains each way between Cincinnati, Ohio and Flat Rock, Michigan. IORY proposes to use the CSXT Washington Court House to Cincinnati line as an alternate route for this traffic if the CRC route between Springfield and Cincinnati is congested. Depending on the level of congestion on the CRC route, IORY would reroute up to an average of three trains a day each way over the CSXT route. Although the CSXT route is 30 miles longer, it would be more efficient to use this route whenever the CRC line is congested.

IORY presently maintains a locomotive and crew in Mason, Ohio to perform operations over the Mason to Lebanon and Monroe branch. The crew currently operates over the branch and to CRC's Reed Yard near Monroe, Ohio. Either the crew assigned at Mason or a crew based in Cincinnati would perform the operations over the Monroe to Middletown line. IORY currently operates a local train between Cincinnati and Springfield on an as-needed basis. This crew could also be used to handle traffic to the Mason to Lebanon and Monroe branch. IORY would operate over the Monroe to Middletown line five days a week and handle an average of one train a day. In addition, this same crew would serve local customers on the Springfield to Sharronville portion of the Sharronville to Columbus line. Initially, IORY would provide service between Springfield and Sharronville on an as-needed basis.

IORY currently offers seven day a week local service between Springfield and Lima, Ohio with crews based in Lima. Depending on the level of traffic, this local service is provided with one or two locomotives. Service to Sidney over the Sidney to Quincy line would be performed by the crew stationed in Lima. Service to customers on the Quincy to Marion line, the Lima to Fort Wayne line, and the Quincy to Marysville line would initially be performed on an as-needed basis by the crew stationed in Lima. IORY would operate between Sidney and Quincy five days a week and would handle an average of one train a day. If IORY is able to attract sufficient levels of traffic on these lines, a regularly scheduled service would be instituted and additional crews would be stationed in Lima.

IORY operates an additional local out of Springfield over the three branch lines extending from Springfield, known as the Springfield Cluster. This local is used to gather traffic, predominantly grain, which is handled to Springfield for forwarding. The crew stationed in Springfield would initially provide service on an as-needed basis to customers on the Springfield to Columbus portion of the Sharronville to Columbus line. IORY does not expect to operate more than an average of one train every other day over this line.

IORY does not anticipate the need for any discontinuances or abandonments as a result of the proposed transaction in this Responsive Application. IORY is unaware of any commuter or intercity passenger operations on the lines over which IORY seeks trackage rights. If there are any such passenger operations, IORY's proposed limited operations over the lines would not interfere with any passenger operations.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 77)

INDIANA & OHIO RAILWAY COMPANY
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED STATEMENT
OF
MICHAEL BURKART**

My name is Michael Burkart. I am Senior Vice President and General Manager of Indiana & Ohio Railway Company (IORY). I am submitting this statement in support of the Responsive Application being filed by IORY in Finance Docket No. 33388, seeking the following trackage rights:

1. Overhead trackage rights between East Norwood, Ohio and Washington Court House, Ohio, with the right to connect with IORY's Greenfield Branch;
2. Local trackage rights between Monroe, Ohio and Middletown, Ohio;
3. Local trackage rights between Sidney, Ohio and Quincy, Ohio;
4. Local trackage rights between Sharronville, Ohio and Columbus, Ohio;
5. Local trackage rights between Quincy, Ohio and Marion, Ohio;
6. Local trackage rights between Lima, Ohio and Fort Wayne, Indiana;
7. Local trackage rights over Consolidated Rail Corporation's (CRC) Erie track in Lima, Ohio; and

8. Local trackage rights between Quincy, Ohio and Marysville, Ohio.

I have worked in the railroad industry since 1966. I began my career as a railroad telegrapher with the Chicago Great Western Railway. During my career in the railroad industry, I have been employed with the Chicago, Rock Island & Pacific, the Southern Pacific, the Chicago & North Western, and the Burlington Northern Railroads, serving as Manager of Train Operations, Trainmaster, Assistant Terminal Superintendent, Assistant Division Superintendent and Superintendent of Rules. Prior to joining the RailTex, Inc., organization, I was employed by the Chicago, Central & Pacific and the Illinois Central Railroad as Superintendent of Operations and as President of their sister company, the Cedar River Railroad. I joined RailTex in May 1997, and on July 1, 1997, was appointed Senior Vice President and General Manager of the Indiana & Ohio Rail System (I & O Rail System), of which IORY is a part. I was educated at Iowa State University, where I received a Bachelor of Business Administration degree in Transportation and Logistics in 1983.

IOFY is a Class III rail carrier that is operated as a single system along with its three affiliates, the Indiana and Ohio Railroad, Inc., the Indiana & Ohio Central Railroad, Inc., and the Cincinnati Terminal Railway Company. As part of this system, IOFY provides rail service over approximately 475 miles of track stretching from Flat Rock, Michigan to Cincinnati, Ohio. IOFY operates rail lines between Columbus and Logan, Ohio; Midland City and Thrifton, Ohio; Mason and Monroe, Ohio; Springfield and Bellefontaine, Ohio; Springfield and Mechanicsburg, Ohio; Springfield and Washington Court House, Ohio; and between Valley Jct., Ohio and Brookville, Indiana, as well as rail lines serving the greater Cincinnati area. IOFY currently connects with the Central of Indiana Railroad at Valley Jct.; CSX Transportation, Inc. ("CSXT")

at Cincinnati, Midland City, Fayette, Columbus, and Hamler, Ohio; Norfolk Southern Railway Company (NSR) at Cincinnati and Lima, Ohio; CRC at Cincinnati, Monroe, Springfield and Lima, Ohio; Canadian National Railway Company (CN) at Flat Rock, Michigan; and the Adrian & Blissfield Railroad Company at Riga, Ohio. In addition to these direct interchanges, IORY has the right to interchange with NSR via the CSXT at Columbus, Ohio and with CSXT via CRC at Monroe, Ohio.

The I & O Rail System began in 1979, with the purchase of approximately 25 miles of track. By June 1996, when RailTex acquired the I & O Rail System, the company's holdings had grown to include approximately 230 miles of track. In February 1997, the IORY purchased the former Detroit, Toledo & Ironton Railroad from CN. IORY operates a fleet of 40 locomotives, has a work force of 138 employees and handles approximately 88,000 carloads a year, consisting of automobiles, automobile parts, steel, chemicals, lumber, paper products and grain. IORY's locomotives are maintained in Cincinnati, Logan and Lima, Ohio. IORY operates switching yards in Cincinnati, Logan, Lima, and Springfield, Ohio, and maintains a fleet of approximately 200 railcars to serve our customers.

IORY is requesting conditions in this proceeding to remedy two problems that will be caused by the control of CRC by CSXT and NSR. IORY is experiencing operating problems and delays on two of its routes which are expected to become significantly worse if the control of CRC is approved. Also, the control of CRC will reduce rail competition for shippers in the areas served by IORY. IORY seeks to remedy certain of these anticompetitive effects by offering to become a replacement carrier for CRC.

IORY handles extremely time sensitive automobile and automobile parts traffic between Flat Rock, Michigan and Cincinnati, Ohio, that is part of the just-in-time inventory programs for two of the three big American automobile manufacturers. The CRC track between Springfield and Cincinnati, Ohio, which forms a part of this route, is single track between Springfield and Dayton, Ohio, and double track from Dayton to Cincinnati, Ohio. IORY southbound trains attempting to reach Cincinnati are experiencing inordinate delays. In September 1997, IORY operated 81 southbound trains from Springfield to Cincinnati over the CRC track. These trains experienced an average delay of 4 hours and 24 minutes, with the longest delay being 13 hours and 45 minutes. IORY estimates that the delays in September alone increased IORY's operating costs by \$15,000 in higher crew wages and increased diesel fuel usage. These additional costs do not include the extra expenses associated with the delays IORY is experiencing in the city of Cincinnati accessing CSXT's Queensgate Yard, which has taken up to 24 hours.

NSR plans to add 7.2 trains a day to the Springfield-Cincinnati corridor if the control of CRC is approved. The addition of these extra trains will undoubtedly cause added congestion on this line and lead to a further deterioration of IORY operating schedules. We estimate that the added NSR trains will cause additional delays to IORY trains of at least one to two hours, assuming there are no other operational impediments caused by the control of CRC. Moreover, IORY is concerned over the transfer of this line from CRC to NSR. The automotive traffic IORY handles in the Flat Rock to Cincinnati corridor is highly competitive with the rail service offered by NSR and CSXT. NSR and CSXT have a strong incentive to delay IORY schedules, since they will be the beneficiaries of a shift of this traffic from IORY. IORY is an important link in the just-in-time pipeline between the suppliers and manufacturers of American

automobiles. If IORY service deteriorates as a result of congestion on the rail lines of NSR and CSXT, IORY will quickly lose its time sensitive traffic, with little hope of it ever being regained.

IORY is requesting trackage rights over CSXT's rail line between Washington Court House and Cincinnati as an alternate route for IORY's time sensitive traffic. The line is part of CSXT's Columbus to Cincinnati route. IORY is the designated operator of the rail line between Springfield and Washington Court House, which connects with the CSXT line. IORY also maintains a yard in Cincinnati that is adjacent to the CSXT line. The use of the CSXT line would allow IORY to bypass the congested CRC Springfield to Cincinnati line.

The CSXT rail line over which IORY seeks trackage rights is in very good condition and handles low volumes of traffic. CSXT expects to handle only 2.9 trains a day on this line segment if the CRC control is approved. IORY would operate over the CSXT route whenever the CRC line is congested or IORY's operations are otherwise impeded. IORY operates a branch line from Midland City to Trifton, which is off the CSXT line between Washington Court House and Cincinnati. IORY requests that, as part of its rights to operate over the CSXT line, IORY be permitted to interchange with itself at Midland City.

IORY also operates a branch line from Monroe to Mason and Lebanon that is separated from the rest of the IORY system. Traffic moving to the branch consists of paper products, lumber and consumer goods that originate throughout the country, with the majority of the traffic handled by CSXT via Cincinnati. Cars destined to the branch arrive at CSXT's Queensgate Yard where they are classified for a CSXT Yard Transfer for a three mile movement to CSXT's Ivorydale Yard. From the Ivorydale Yard, the cars are handled in CSXT local service to Hamilton, Ohio, a distance of approximately 22 miles. From Hamilton another CSXT local

handles the cars approximately 10 miles to Middletown, where the cars are turned over to CRC for an interchange with IORY at CRC's Reed Yard at Monroe. This 35-mile movement from Cincinnati to Monroe takes from 5 to 6 days. Because of the poor level of service between Cincinnati and Monroe, IORY has been unable to increase the traffic base on this branch. IORY is concerned that, with the replacement of NSR for CRC, the transit times from Cincinnati will further deteriorate and IORY will lose the traffic to trucks.

NSR's plan to increase the traffic over the CRC line will further exacerbate the CSXT deliveries to Reed Yard. Since NSR is not a participant in this traffic, NSR will have no incentive in cooperating with IORY to expedite the movement of traffic to the branch. Indeed, NSR would stand to competitively benefit from further delays. Also, if the CRC control transaction is approved, there will be added emphasis by CSXT and NSR on single line, long haul movements and these carriers will allow service to the branch to further deteriorate. Any further loss of business on the branch would make it a likely candidate for abandonment. IORY is requesting local trackage rights between Monroe and Middletown so that it can connect at Middletown with itself on the CRC line and directly with CSXT and thereby control the movement of the cars from Cincinnati. If these trackage rights are granted, IORY will be able to save 4 to 5 days transit time for shipments moving to the branch.

IOY also seeks trackage rights to serve customers located in Sidney and along five rail lines located in the areas served by IORY. There are six shippers located in Sidney that will lose competitive rail service. Traffic moving to the two major shippers in Sidney consists of grain and related products. The trackage rights NSR is to receive to Sidney will be of little benefit to these shippers. The route over which NSR will operate is highly circuitous, and NSR does not

serve the nearby Ohio grain region. IORY, on the other hand, could easily access Sidney from its rail line 10 miles away. Also, IORY operates in the heart of the Ohio grain region and could provide economical rail service to Sidney from the nearby grain fields. IORY, as a low cost, shortline railroad, also offers to preserve competition for shippers located on the five rail lines that today rely on CRC as a neutral switch carrier for traffic moving to nearby CSXT and NSR gateways.

In conclusion, IORY is deeply concerned that it will lose its time sensitive traffic moving to Cincinnati and the traffic moving to the Mason branch because of the added congestion and operating delays on the Springfield-Cincinnati line that will be caused by the proposed control of CRC. The trackage rights sought by IORY will permit IORY to reroute this traffic over less congested lines which would benefit not only IORY, but CSXT and NSR as well. IORY also seeks to remedy the loss of competition to shippers in IORY's territory with the departure of CRC. IORY offers to preserve rail competition in the area by offering these shippers efficient, reliable and economical rail service.

VERIFICATION

I, Michael C. Burkart, verify under penalty of perjury that the foregoing

Verified Statement is true and correct to the best of my knowledge and belief.

Michael C. Burkart

Executed on October 17, 1997