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KARL MORELL

January 14, 1998



HAND DELIVERY

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

Sub 77
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 Rebuttal of Indiana & Ohio Railway Company. Also enclosed is a 3.5 inch diskette containing the filing in WordPerfect 5.2.

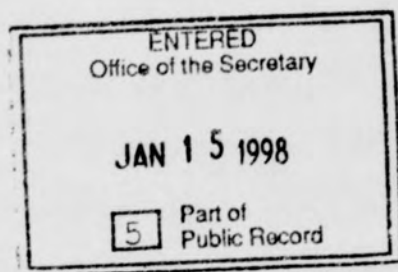
Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully,

Karl Morell

Karl Morell
Attorney for:
INDIANA & OHIO RAILWAY CO.



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ORIGINAL

IOY-8



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

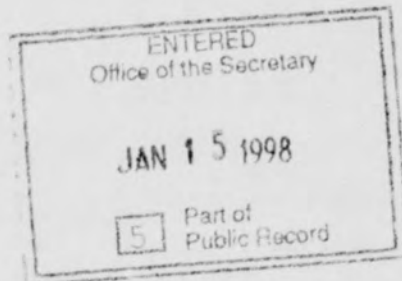
STB FINANCE DOCKET NO. 33388

**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**

**REBUTTAL OF
INDIANA & OHIO RAILWAY COMPANY**



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(202) 638-3307**

**Attorneys for:
INDIANA & OHIO
RAILWAY COMPANY**

Dated: January 14, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION INC.
NORFOLK SOUTHERN CORPORATION AND
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--CONTROL AND OPERATING LEASES/AGREEMENTS--
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STB FINANCE DOCKET NO. 33388 (SUB-NO. 77)

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

REBUTTAL OF
INDIANA & OHIO RAILWAY COMPANY

Indiana & Ohio Railway Company ("IORY"), pursuant to Decision No. 12 in this proceeding and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures at 49 C.F.R. Part 1180, hereby submits its rebuttal in support of IORY's Responsive Application.

INTRODUCTION

On June 23, 1997, 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") filed their Railroad Control Application ("Control Application").² On October 21, 1997, IORY filed its Responsive Application seeking overhead trackage rights over one section of rail line owned by CSXT and local trackage rights over eight sections of rail lines currently owned by CRC and to be acquired either by CSXT or NSR.³ Comments addressing the anticompetitive effects of the Primary Transaction in the State of Ohio were also filed by the Ohio Attorney General, the Ohio Rail Development Commission, and the Public Utilities Commission of Ohio.

On December 15, 1997, the Ohio Attorney General, the Ohio Rail Development Commission, the Public Utilities Commission of Ohio and the West Central Ohio Port Authority filed comments in support of IORY's Responsive Application.

TRACKAGE RIGHTS REQUESTED BY IORY

In its Responsive Application, IORY requested the Board to condition the approval of the Primary 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.⁴

¹CSXC 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.

²In the Control Application, 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").

³IOY's Responsive Application was accepted for consideration by the STB in Decision No. 54, served November 20, 1997.

⁴IOY seeks overhead trackage rights between Washington Court House and Cincinnati with the right to connect at Midland City with IORY's Greenfield branch.

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.⁵
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.⁶

SUMMARY OF REBUTTAL EVIDENCE

Included in this filing is the Rebuttal Verified Statement of Mr. Michael Burkart, the Senior Vice President and General Manager of IORY. Mr. Burkart, who previously testified in this proceeding, responds directly to the Rebuttal Verified Statements of Michael Mohan, John T. Moon, II, and John W. Orrison.

Mr. Burkart explains that, contrary to the Primary Applicants' assertions, the Washington Court House-Cincinnati trackage rights over the CSXT line are not sought to correct a preexisting condition or provide a windfall to IORY. These trackage rights are necessary to

⁵ At Middletown, IORY seeks to connect with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati.

⁶ 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.

alleviate the added congestion and expected increased delays to IORY in the already congested Springfield to Cincinnati corridor as a result of the 7.2 additional trains NSR expects to move in this corridor. In his statement, Mr. Burkart refutes Primary Applicants' contention that there is little risk to IORY's losing its time-sensitive traffic moving in this corridor by pointing out that CSXT and NSR are highly competitive for this traffic and have a strong incentive to delay IORY trains in order to cause the traffic to shift to Primary Applicants. Mr. Burkart explains that recent delays have already resulted in some losses and the added congestion will undoubtedly lead to further IORY traffic losses to either CSXT or NSR.

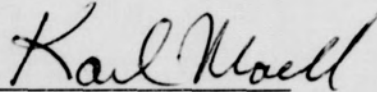
Mr. Burkart also refutes Primary Applicants' attempt to attribute the delays to IORY and an August lightening strike in CSXT's Cincinnati Queensgate Yard. He demonstrates that the delays preceded the lightening strike and only coincidentally improved after IORY's Responsive Application was filed and that IORY crew and power shortages occurred only because of the CSXT-induced delays and unauthorized use of IORY power.

In his statement, Mr. Burkart demonstrates that the alternate route via Washington Court House is not as unattractive as Mr. Orrison makes it out to be. While that route is somewhat more circuitous and contains a few speed restrictions, IORY's use of that route under current conditions would add only one and one-half hour to IORY's transit times. Moreover, with an expenditure of less than \$2 million this alternate route could be made comparable to IORY's current route over the congested CRC line.

Mr. Burkart also explains the added delays the Primary Transaction will cause to traffic moving to IORY's Mason branch and the need for the 5-mile trackage rights between Middletown and Monroe in order to keep that branch economically viable. He goes on to

demonstrate that the 2-to-1 shippers in Sidney will not receive competitive service from the limited rights being granted to NSR. Finally, Mr. Burkart refutes the contention that the requested trackage rights will interfere with CSXT operations.

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: January 14, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION INC.
NORFOLK SOUTHERN CORPORATION AND
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--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

**REBUTTAL 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 previously submitted a verified statement, dated October 17, 1997, in support of IORY's Responsive Application in this proceeding. My qualifications are set forth in that statement. I am submitting this rebuttal verified statement in response to the verified statements of Michael Mohan, John T. Moon, II, and John W. Orrison contained in Applicants' Rebuttal filed on December 15, 1997.

In my initial statement, I explained that IORY was seeking conditions in this proceeding to remedy two problems that will be caused or exacerbated by the control of Consolidated Rail Corporation (CRC) by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway

Company (NSR). I pointed out that IORY is experiencing significant operating problems and delays on two routes which are expected to become significantly worse if the control of CRC is approved. IORY handles extremely time sensitive automobile and automobile parts traffic between Flat Rock, Michigan and Cincinnati, Ohio. IORY has been experiencing inordinate delays on the CRC track between Springfield and Cincinnati, which forms a part of IORY's route and over which IORY has trackage rights. NSR is to take over this CRC line and expects to add 7.2 additional trains a day to the Springfield-Cincinnati corridor. Because of the added delays these additional trains will cause, IORY seeks trackage rights over a CSXT line between Washington Court House and Cincinnati. The requested trackage rights would provide IORY an alternate route to Cincinnati and relieve congestion on the CRC Springfield-Cincinnati line.

IOY is also experiencing significant delays in traffic moving to its branch line located between Monroe and Mason, Ohio. This branch line is isolated from the rest of the IOY system, and most of the traffic moving to the branch is handled by CSXT via Cincinnati. CSXT currently takes 5 to 6 days to handle the 35-mile move from Cincinnati to Middletown, where the cars are turned over to CRC and hauled approximately 5 miles for an interchange with IOY at the Reed Yard in Monroe. Because of the lengthy transit times, this traffic is already at risk to being lost to trucks. With NSR taking over the local CRC operation, adding significant traffic to the Springfield-Cincinnati route, and the various operational changes CSXT contemplates making in the Cincinnati area, the transit times to the Monroe branch are expected to further deteriorate, resulting in a loss of traffic that will render the branch uneconomical. To alleviate this problem, IOY seeks trackage rights over the 5-mile line segment between Monroe and

Middletown. These trackage rights would enable IORY to connect with itself and handle the traffic direct from Cincinnati, thereby saving 4 to 5 days transit time.

I also testified as to the loss of rail competition at Sidney, Ohio and along five rail lines located in the areas served by IORY. Sidney is a 2-to-1 location that will lose meaningful rail competition. The trackage or haulage rights NSR is to receive to serve Sidney are over a highly circuitous route and would not enable NSR to serve the grain receivers in Sidney from the nearby Ohio grain region. IORY also offered 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.

The vast majority of Applicants' Rebuttal filing addressing IORY's requested conditions is focused on the alternate route IORY seeks over CSXT via Washington Court House. Quite frankly, IORY is surprised at Applicants' vehement objections to IORY's modest request. The requested trackage rights via Washington Court House are intended to alleviate the expected increased congestion on the Springfield to Cincinnati line and, in IORY's view, would be of benefit to Applicants as well as IORY.

Mr. Moon misconstrues the nature and purpose of IORY's request when he contends that it "is a thinly veiled attempt [by IORY] to use this proceeding to improve its competitive position by creating a shortline network that does not exist at the present time and by gaining access to significant industrial complexes...." Moon RVS at 12. Contrary to Mr. Moon's assertions, IORY simply seeks overhead trackage rights over the CSXT line and thus would not be able to serve any new industries. Also, the requested rights, if granted, would only enable IORY to connect with one branch currently isolated from the rest of IORY's system. IORY's purpose in

seeking these rights is to relieve the additional anticipated congestion on its current route and not, as Mr. Moon suggests, to create a shortline network or to serve new industries.

Mr. Moon contends that Applicants' Transaction will have no competitive effect on IORY because NSR will simply step into the shoes of CRC on the Springfield to Cincinnati line. *Id.* This contention ignores the fact that NSR will be routing significant additional traffic over this line. Mr. Moon maintains that the additional NSR trains would equate to one train every 3.5 hours and that the Cincinnati line has sufficient sidings and/or second main track to handle the additional trains. *Id.* at 14. If, as Mr. Moon suggests, the added trains were scheduled so that the movements were evenly spaced out over a 24 hour period there will not be as much added congestion. It is common practice in the railroad industry, however, to run trains closely together in order to make schedules and not to spread them evenly over the day. In any event, if the added NSR trains arrive at the time IORY is scheduled to operate over the line, IORY trains will experience increased delays. Also, the Cincinnati line is single track between Springfield and Dayton and, therefore, not readily able to handle the large volumes of traffic projected to move over this line.

Applicants argue that IORY has overstated the risk to its time-sensitive traffic. Citing to IORY's Haulage Agreement with Canadian National Railway Company (CN) and claiming that most of this traffic is interchanged to NSR at Cincinnati, Applicants contend that there are strong incentives that should keep this traffic moving over the IORY line. CSX/NS-176 at 354; Moon RVS at 14. IORY has no contractual guarantees either from CN or the shippers of this traffic that IORY will continue to receive this traffic regardless of the transit delays on the route to Cincinnati. If the delays IORY is currently experiencing persist and are exacerbated by the

added NSR trains on the Springfield corridor, the shippers will insist on routing this traffic over other routes. CN, as the originating carrier, will have no choice other than to reroute the traffic off of the IORY system or lose the traffic altogether. The only alternative routes after Applicants' transaction is approved are NSR and CSXT routes. Thus, either of these carriers would be the direct beneficiary if IORY loses the traffic because of transit delays. Clearly both of these carriers have a strong economic incentive to disadvantage the IORY route.

Contrary to Applicants' suggestion, two-thirds of IORY's time-sensitive trains are interchanged at Cincinnati with CSXT and not NSR. Interestingly, Applicants are silent as to CSXT's incentive to delay the IORY trains and CSXT's ability to gain IORY's time-sensitive traffic. In my prior verified statement I pointed out that CSXT is highly competitive with IORY for this traffic and that CSXT has a strong incentive to delay IORY schedules because it would be the beneficiary of a shift of this traffic from IORY. After IORY filed its Responsive Application but before Applicants filed their Rebuttal, IORY lost to CSXT the equivalent of 8,000 annual revenue cars previously moving between Flat Rock and Cincinnati over the IORY route. As of December 1, 1997, this traffic is being rerouted CN-Toledo-CSXT. The primary reason IORY lost this traffic was the delays it experienced on the Springfield to Cincinnati line. IORY's concerns over losing traffic because of delays are not simply theoretical but actual, and the diversions have already begun. The added NSR trains and resultant increased congestion and delays will exacerbate the problem IORY is already experiencing and undoubtedly lead to further traffic losses to either CSXT or NSR.

Citing to IORY's Responsive Application, Mr. Moon states that NSR and CRC trains are also experiencing southbound congestion into Cincinnati. Moon RVS at 14. IORY has no

personal knowledge regarding whether NSR and CRC are experiencing the same inordinate delays as IORY. IORY also has no personal knowledge regarding whether CSXT is experiencing any southbound delays into Cincinnati. Presumably, CSXT is not experiencing any delays, or at least not the same level of delays experienced by IORY, otherwise CSXT would not have been able to divert time-sensitive traffic from IORY.

Applicants contend that IORY's September 1997 delay survey is misleading because CSXT's Queensgate Yard control system was disabled by lightning on August 17, 1997, which caused uncharacteristic delays for a period of six to eight weeks. CSX/NS-176 at 356; Orrison RVS at 44-45. In its Responsive Application, IORY used September 1997 data to demonstrate the delays it was experiencing on the Springfield to Cincinnati line because that was the most recent data readily available when the Responsive Application was prepared. In response to Applicants' discovery requests, IORY produced over 3,500 pages of daily delay reports and train schedules for operations between mid-February and the end of October 1997. Applicants have conveniently ignored the very documents they requested. According to these documents, IORY trains were delayed an average of 2 hours and 24 minutes in July and 4 hours and 4 minutes in August. Between August 1st and 17th, before the claimed lightning strike, IORY experienced average delays of 3 hours and 30 minutes. In September and October, IORY's average delays were 4 hours and 24 minutes and 7 hours and 45 minutes, respectively. The preceding time periods are merely averages. Some IORY trains have experienced delays of over 13 hours. It is apparent from these documents that IORY was experiencing delays well before the lightning strike on August 17th. To further confirm these earlier delays, I am attaching as Exhibits 1 and 2

to my rebuttal verified statement two letters I sent to CSXT complaining about the early August delays.

Mr. Orrison suggests that November 1997 data would be more representative of the delays IORY is experiencing because by then Queensgate Yard operations had returned to normal. Orrison RVS at 45. According to our daily reports, IORY experienced average delays of 2 hours and 31 minutes in November. Again, this is simply an average and some trains were delayed for several hours. While this is certainly an improvement over the prior months, it is still not acceptable for IORY's time-sensitive traffic. IORY finds it difficult to believe that it would take CSXT two and one-half months to recover from a lightening strike. IORY also finds it less than coincidental that its transit times into Cincinnati improved measurably immediately after it complained of the inordinate delays in its Responsive Application. In any event, IORY is concerned that the added NSR trains will aggravate an already intolerable situation, leading to additional delays to IORY schedules and result in further losses of time-sensitive traffic.

Mr. Orrison contends that the unusual delays in September 1997 were due in part to IORY shortages of locomotives and crews and the upgrading of IORY's line between Springfield and Lima. IORY began operations over the Flat Rock-Cincinnati corridor in mid-February 1997. Since before June 1997, IORY has been fully staffed and has had an adequate fleet of locomotives to handle its normal flow of traffic. The shortages Mr. Orrison refers to are directly attributable to the delays caused by CSXT. Because of the inordinate delays in September, IORY was forced to use three crews on a train run that under normal schedules would require only one crew. IORY's locomotive shortages were also caused by the lengthy turnarounds attributable to the CSXT delays. For example, locomotives and crews sitting idle for hours on

the southbound track to Cincinnati cannot be used for the scheduled northbound trains leaving Cincinnati. This problem is intensified by CSXT's unauthorized use of IORY's locomotives in Cincinnati. *See Exhibit 2.* CSXT has been "borrowing" IORY locomotives that were scheduled to handle its northbound trains. CSXT's unauthorized use of IORY's locomotives has delayed northbound trains for one to two days. Because these trains did not move north, the locomotives could not be used for the scheduled southbound trains on the following days. IORY cannot economically handle its time-sensitive traffic if it is forced to double or triple its labor force and its locomotive fleet in order to accommodate the delays caused by CSXT. The reported delays are only those directly attributable to CSXT, NSR or CRC. No delay caused by IORY has been included in the above cited averages.

Applicants attempt to attribute the delays to IORY integration difficulties and claim that CSXT has assisted IORY in moving empty auto racks to automotive customers. CSX/NS-176 at 357; Orrison RVS at 42. While IORY concedes that it had some initial start-up problems, they were quickly resolved. The early integration matters referred to by Applicants had no bearing on the delays IORY has experienced since well before June. IORY is also unaware of having received any assistance provided by CSXT. IORY has had more than adequate capacity to handle its traffic. Because of a strike at one of IORY's automotive customers between the end of April and mid-July, IORY trains were running at less than capacity for a brief period of time. In July, IORY trains from CSXT's Queensgate Yard averaged 39 cars, which is less than half the normal number of cars per train. Because of the lack of empties moving north, CSXT could not even build eight scheduled trains in July, even though IORY crews and locomotives were available.

Mr. Orrison contends that the requested trackage rights via Washington Court House would not resolve IORY's problem because the route is more circuitous and because of track speed restrictions on the line. He claims that this alternate route would actually add four hours to IORY's schedule unless a \$5 million upgrade of the line were made. Orrison RVS at 45-46. In the Responsive Application, IORY acknowledged that the route via Washington Court House was somewhat more circuitous and suggested that it would only use this route if the CRC line were highly congested. The rail line between Springfield and Washington Court House that IORY currently operates is already scheduled for rehabilitation next year. At only a small additional cost, that line could be upgraded to 40-miles-per-hour condition. In my opinion, the limited speed restrictions on the CSXT line could be upgraded at a cost of less than \$2 million. With these expenditures, transit times over the current CRC route and the alternate CSXT route would be comparable. Moreover, under current track conditions, the alternate route would only add about one and one-half hours to IORY's transit time to Cincinnati, and not four hours, as Mr. Orrison suggests. This would be a vast improvement for most of IORY's trains given the current delays. The route via Washington Court House would clearly be superior to the current CRC line if the added NSR trains cause the added delays IORY anticipates.

Mr. Moon claims that the source of IORY's congestion is a 3.5 mile CSXT line segment south of the southwestern end of the CRC track and north of Queensgate Yard. Mr. Moon is of the opinion that the alternate route IORY seeks would be of no assistance because IORY would still be forced to traverse that bottleneck. Moon RVS at 14-15. IORY trains are usually being held about 20 miles north of Queensgate Yard, well north of the bottleneck segment described by Mr. Moon. By using the alternate route, IORY trains would arrive at NA Tower more quickly by

circumventing all of the congestion and backups north of that location on the CRC line. If there are delays south of NA Tower entering Queensgate Yard, IORY, by operating over the alternate CSXT route, could turn over the trains to CSXT on the CSXT line east of NA Tower and relieve its crews.

Applicants further claim that the requested trackage rights via Washington Court House would result in a windfall to IORY because IORY would be able to connect with its Greenfield branch. CSXT is concerned that it would lose the revenues associated with moving traffic to and from that branch. CSX/NS-176 at 359. As Applicants point out, however, CSXT abandoned that branch in 1988, and it was subsequently acquired by the City of Greenfield. CSXT obviously considered the branch uneconomical and has already been compensated for the branch by the City. In any event, the traffic moving to and from that branch averages only about 60 cars a month. IORY's requested access to that branch can hardly be considered a windfall. IORY simply seeks to move traffic to and from that branch more efficiently and economically.

Applicants' object to the requested trackage rights over the 5-mile line between Middletown and Monroe, claiming that there will be no increased traffic on this line. CSX-NS-176 at 360. IORY's Monroe branch is located off of the highly congested CRC Springfield to Cincinnati line just north of the bottleneck line referred to by Mr. Moon. NSR's plans to add increased traffic on the CRC line will result in further delivery delays to the Reed Yard. As I previously explained, NSR's only participation in this traffic would be the extremely short move from Middletown to Reed Yard. Therefore, NSR would have no incentive to expedite this traffic and would competitively benefit from further delays.

Applicants oppose the requested trackage rights to Sidney on two grounds. First, Mr. Mohan states that NSR will provide service to Sidney via haulage or trackage rights on a regular basis. Mohan RVS at 77. Mr. Mohan acknowledges that the 2-to-1 shippers in Sidney are largely receivers of grain. He fails to explain, however, how NSR could possibly compete with CSXT for grain traffic to Sidney, since NSR, unlike CSXT, does not have access to the nearby Ohio grain region. IORY, on the other hand, could effectively compete with CSXT for the traffic from the nearby grain fields currently served by IORY. Second, Applicants erroneously contend that IORY's requested rights over the 10-mile line between Sidney and Quincy would create significant operating problems. CSX/NS-176 at 361. Given the high track speeds of this line, IORY would need to occupy the line for only about 30 minutes a day to provide a round trip to Sidney.

Applicants raise a number of brief objections to the other trackage rights requested by IORY, none of which have any merit. Mr. Moon alleges that the requested local rights between Sharronville and Columbus would place additional IORY trains on the CRC Cincinnati line. Moon RVS at 14. To the best of IORY's knowledge, this line is only congested west of Springfield. IORY already handles an IORY local over that part of the line, but currently is precluded from any pickups and deliveries. The requested local rights west of Springfield would merely allow the IORY local currently operating over the line to serve local customers and would not result in any additional trains on the line. Applicants claim that IORY has only mentioned grain shippers and excluded other major customers on the lines. CSX/NS-176 at 362. IORY only referred to grain shippers in its request for trackage rights to Sidney and not with respect to the other lines. IORY is seeking to serve customers on these lines to preserve the

competitive options CRC offers these shippers today, but it has not done so under the guise of seeking grain traffic, as Applicants allege. *Id.* at 363. Applicants also fear that IORY's proposed local service on high density lines will cause interference with CSXT's operations. *Id.*

Applicants ignore the fact that the rail customers located on these lines must be able to continue receiving local service. In any event, IORY is proposing limited operations over these lines and is confident that it can perform the requested service without interfering with CSXT line-haul operations. Finally, Applicants claim that IORY is seeking a windfall by bridging the gap between its line at Quincy and its line at Bellefontaine, OH. *Id.* at 364. There is no physical connection between IORY's line into Bellefontaine and the CRC line through Bellefontaine over which IORY seeks trackage rights, and IORY is not seeking a connection.

EXHIBIT 1

August 9, 1997

VIA FAX

Mr. R. A. Bernard, General Manager Louisville Service Lane
CSX Transportation
1701 East Market
Box 610
Jeffersonville, Indiana 47131

Dear Mr. Bernard:

I am becoming increasingly frustrated with our attempts to operate trains in and out of Queensgate Yard in Cincinnati.

I have been working with your automotive group in Jacksonville, along with their CN counterparts to improve the movement of autos and auto parts arriving on our trains 258 (your connection Q211 and Q213) and 262 (your Q511). This past week, we have been unable to get in or out of Queensgate. Here is how long these trains have been held out of the yard this week:

	258	262
8-4	2'05"	2'00"
8-5	6'55"	2'55"
8-6	3'12"	8'00"
8-7	12'00"	3'00"

Train 258 on the 7th with 77 loads of autos was recrewed three (3) times. It wasn't until we threatened to pull our third crew off, that the train was accepted. In addition to this, your dispatchers ran a NS connection train into Queensgate on the morning of the 7th which required me to take a crew off another train to deliver it to Gest Street.

The outbound side is no better. Train 263 is scheduled to depart Queensgate at 1200 hours daily. This is the time Tony Tuckek requested we be ready to depart. Here are the on duty times and departure times for this week:

	On Duty	Departure	Crew time on duty prior to departure
8-4	1430	1940	5'10"
8-5	Could not get a train made - Did not operate		
8-6	1500	2315	8'15"
8-7	1345	1930	5'45"
8-8	0001 8-9	0710	7'09"

Page 2

Between the inbound and outbound trains I am tying up an inordinate amount of crews and locomotives to operate CSX trains. Terry Thomas from your locomotive desk in Jacksonville called me yesterday looking for power to use on a short term basis to help with your backlog. I told me that until the operation at Queensgate straightened out, I needed extra power just to handle my own trains. I then come to find out the locomotives IORY 251 and 3075 have been "borrowed" by the CSX since 1135 hours on August 7 and are not available to operate my trains.

In order for these trains to operate on time, the power and crews must turn. I cannot live with the handling we are getting in your terminal. I understand that you are out of the office until Monday, however, I would appreciate a call at your earliest convenience to discuss solutions to this problem. My telephone number is 513-531-4800 Ext. 111.

Sincerely,

M. C. Burkert
General Manager

EXHIBIT 2

August 23, 1997

Mr. R. A. Bernard, General Manager Louisville Service Lane
CSX Transportation
1701 East Market
Box 610
Jeffersonville, Indiana 47131

VIA FAX

Dear Mr. Bernard:

On August 9, I corresponded with you about problems at Queensgate Yard. In a subsequent conversation I understood that you would look into the problems. The situation is not improving and in fact it appears to be getting worse.

In order for me to provide consistent service I need to be able to cycle locomotives. On a daily basis, Queensgate takes Indiana and Ohio power in puts it in yard or transfer service.

When this happens, we cannot operate our trains which in turn makes our connections from Detroit late. If Queensgate is incapable of operating a train, we WILL run the power light. Queensgate refuses to return telephone calls so that we can discuss our wants and needs. Last night locomotives 2005, 6755, 6603, and 3109 were being used in transfer service. I talked with Mike Zurka, General Manager in your Operations Center who said he would get into it. Evidently, he has no control over Queensgate as we still cannot get power out of that terminal.

There is no type of agreement in effect between our companies that allow you the use of I & O locomotives. This letter is to inform you that the use of Indiana and Ohio locomotives by CSX is strictly prohibited. I view this behavior as a willful attempt to restrain the Indiana and Ohio's ability to compete with CSX in the Detroit-Cincinnati corridor.

Please advise how we may cooperate in solving this problem so that I am not forced to file a formal complaint with the Surface Transportation Board.

Sincerely,

M. C. Burkart
General Manager

VERIFICATION

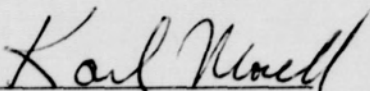
I, Michael C. Burkart, verify under penalty of perjury that the foregoing Rebuttal Verified Statement is true and correct to the best of my knowledge and belief.

Michael C. Burkart

Executed on Jan 12, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 1998, I caused a copy of the Rebuttal of Indiana & Ohio Railway Company (IORY-8) 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

STB

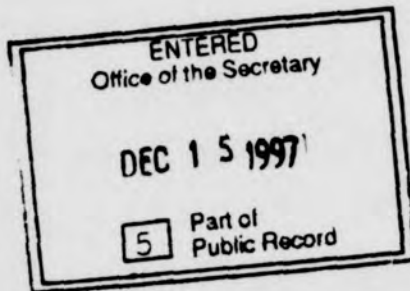
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ORIGINAL



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

R. J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE--
FINANCE DOCKET NO. 33388 (SUB-NO. 63); -184832

INDIANA & OHIO RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 77); -184833

ANN ARBOR ACQUISITION CORPORATION, D/B/A
ANN ARBOR RAILROAD
FINANCE DOCKET NO. 33388 (SUB-NO. 78); -184836

WHEELING & LAKE ERIE RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 80); -184837

OAG-8

COMMENTS OF THE OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION AND
PUBLIC UTILITIES COMMISSION OF OHIO
TO THE RESPONSIVE APPLICATIONS

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DATED: DECEMBER 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

R. J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE--
FINANCE DOCKET NO. 33388 (SUB-NO. 63);

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FINANCE DOCKET NO. 33388 (SUB-NO. 78);

WHEELING & LAKE ERIE RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 80)

OAG-8

COMMENTS OF THE OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION AND
PUBLIC UTILITIES COMMISSION OF OHIO
TO THE RESPONSIVE APPLICATIONS

In Decision No. 54 served November 20, 1997, the
Surface Transportation Board (Board) accepted for consideration
and consolidated for disposition with the primary application in
STB Docket No. 33388 (and embraced proceedings), responsive
applications filed by several parties including R.J. Corman
Railroad Company/Western Ohio Line (RJC) in STB Finance Docket

No. 33388 (Sub-No. 63); by Indiana & Ohio Railway Company (I&O) in STB Finance Docket No. 33388 (Sub-No. 77); Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad (Ann Arbor) in STB Finance Docket No. 33388 (Sub-No. 78); and by Wheeling & Lake Erie Railway Company (W&LE) in STB Docket No. 33388 (Sub-No. 80).

The Board's November 20 decision provides that interested persons may participate by submitting written comments regarding any or all of the responsive filings accepted for consideration. The decision further provides that such comments must be submitted to the Board by December 15, 1997. In keeping with the Board's procedural schedule, the Ohio Attorney General (OAG), Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO)¹ hereby submit these comments (responses) specifically regarding the responsive applications filed by RJC, I&R, Ann Arbor and W&LE.

INTERESTS OF THE OHIO AGENCY PARTIES

As previously stated, the Ohio Attorney General is charged with the duty of enforcing state and federal antitrust laws and through active participation in these proceedings, seeks to maintain and foster rail competition in Ohio and to preserve rail access for shippers and customers utilizing Ohio's rail transportation system. ORDC is participating by reason of its public interest responsibilities in the area of economic

¹ OAG, ORDC and PUCO previously entered an appearance and jointly filed opposition comments and request for protective conditions in response to the Primary Applicants' proposed Transaction. For convenience, the state agencies will hereafter be referred to as Ohio or State of Ohio.

development; branch line preservation; highway/rail safety and engineering projects; and, passenger and commuter rail line planning and development. PUCO is directly concerned because of its responsibility for ensuring that citizens of Ohio have access to safe and adequate rail service. Each of these agencies has responsibility to protect and foster the public interests of Ohio.

Through OAG, ORDC and PUCO, Ohio has previously stated its opposition to the proposed operation and control of Conrail (CR) lines by the Primary Applicants (CSX and NS) unless the Board adopts protective conditions and other measures to avoid results which would otherwise adversely impact upon Ohio shippers, its rail carriers and on its communities.² Ohio now focuses its attention on responsive applications that have been filed by Ohio rail carriers.

STATEMENT

In a proceeding involving a proposed consolidation, merger or acquisition of control of two or more Class I railroads, the Board has broad authority to impose conditions governing the transaction including requiring the granting of trackage rights and access to other facilities. 49 U.S.C. § 11324(a) and 49 C.F.R. § 1180.1(c). Such conditions may be proposed to protect the interests of a competing carrier from the impacts of a transaction or to protect the public from anti-

² Opposition Comments and Request for Protective Conditions, OAG-4 and 5 filed October 21, 1997.

competitive consequences. In both instances the key concern is whether the transaction will result in a lessening of the adequacy of transportation to the public. CSX Corp.--Control--Chessie and Seaboard CII, 303 I.C.C. 521, 577 (1980). Ohio remains convinced that the transaction proposed by the Primary Applicants will have anti-competitive ramifications and will result in serious disruption in the adequacy of transportation within the State of Ohio unless adequate remedial measures, including appropriate grants of responsive applications, are included in any grant of authority sought by the Primary Applicants.

Based on its evaluation of the ramifications of the primary application and information available at the time of its October 21 filing, Ohio stated that it will support the Wheeling & Lake Erie Company fully to the extent that the relief it requests is designed to ensure an independent and viable W&LE after consummation of the primary transaction. In regard to short line railroads serving Ohio shippers, Ohio stated that it supports appropriate remedial measures to cushion the Indiana & Ohio Railroad from diversion of traffic which would otherwise adversely impact upon its viability and its continued ability to provide responsive rail service to Ohio shippers. Ohio also declared its support for appropriate remedial measures to assure that R.J. Corman Railroad will continue to have competitive connections with Class I railroads. With acceptance of the responsive application by the Board on November 20, Ohio is now

in a position to reaffirm and refine its previously stated support for W&LE, I&O and RJC. In addition, following review of the responsive application filed by Ann Arbor, Ohio now supports its request for remedial relief.

BACKGROUND

Acting on behalf of all of its constituents, Ohio has endeavored to evaluate the full range of ramifications of the transaction proposed by the Primary Applicants, both positive and negative. In so doing, Ohio has found that it faces numerous serious regional problems that will adversely affect essential transportation services in every corner of the state as demonstrated in the Responsive Applications filed by W&LE, I&O, RJC and Ann Arbor. Thus, Ohio must maintain its opposition to the transaction proposed by the Primary Applicants as previously stated in the October 21 filings (OAG-4 and 5).

OHIO'S INTEREST

For the years 1994-1996 Ohio has led the nation in the number of business expansions and new business locations State.³ Those accomplishments have been achieved on the basis of Ohio's existing transportation system. Thus, Ohio is very much concerned with any change that could adversely effect the fabric of that transportation system and its ability to competitively respond to the needs of Ohio's economy.

Conrail operates about 1,700 of Ohio's 5,800 rail route miles and is Ohio's largest railroad. CSX operates about 1,460

³ Site Selection Magazine, Feb.-Mar. 1997, p. 76.

rail miles in Ohio and NS operates about 960 rail miles in Ohio. Based upon Ohio's economic performance over the most recent 3 year period, it is clear that the State is doing well with the existing rail system.

However, the Responsive Applications supported here by the State of Ohio show that the proposed Primary Transaction would have serious adverse effects on Ohio's economy. W&LE, with 450 route miles in Ohio, faces bankruptcy.⁴ Should that occur, major Ohio rail users including steel, stone, plastic and coal companies would be confronted with disruptive uncertainties while their rail service languishes in the bankruptcy courts.

The I&O faces serious repercussions from the proposed Primary Transaction on its newly acquired Diann (Detroit) to Cincinnati rail lines, about 210 miles of which is in Ohio. The result of an I&O failure on this line could well mean that Ohio would be faced with over 120 miles of abandonments as well as diminished rail competition in the Detroit-Cincinnati corridor. In addition, a 30 mile long RJC branch line and the Ohio customers it serves face serious ramifications from the proposed Primary Transaction and possible future abandonment due to prospective loss of its existing access to competing Class I railroads.

As outlined in the responsive applications supported herein, the proposed Transaction threatens about 700 route miles or about 12 percent of Ohio's rail system with the prospect of

⁴ OAG-4, V.S. George Stern at 17.

bankruptcy, loss of rail service or abandonments. Ohio is not seeking to harm CSX or NS by taking lucrative rail traffic away from them or by unfairly favoring the responsive applicants. Rather, Ohio views these responsive applicants as essential facilities which are necessary to maintain a network of competitive, efficient and integrated rail carriers throughout Ohio.

In order to remain a viable regional rail carrier, W&LE seeks access into Chicago so that it can effectively serve customers at its state-of-the-art Neomodal intermodal facility located at Navarre, Ohio. Since CSX and NS appear to not be interested in utilizing this Neomodal facility,⁵ we do not propose taking containers or trailers off of CSX or NS ramps in Cleveland or Columbus. Instead, an increase in traffic through this Neomodal facility could be accomplished by taking trucks off of the already congested Ohio highways and then shipping the freight to destinations, such as Chicago, who desire to obtain this rail freight. Further, access to Chicago that is access to the Wisconsin Central, Illinois Central, BNSF, and UPSP, is more likely to help W&LE develop new business not now being handled by rail rather than eliminate any significant bridge traffic which CSX or NS is now handling. Only about 10 to 15 percent of W&LE's current traffic base now originates or terminates on railroads other than Conrail, NS, or CSX.⁶

⁵ OAG-4; Voinovich letter, Ex. 4.

⁶ OAG-4; V.S. George Stern, pp. 5, 16.

Similarly, granting I&O access to Washington Court House is a means to allow I&O to preserve traffic it now carries by providing it a route less impacted by delays and congestion caused by Class I carriers, especially in the Cincinnati area. As a final example, the RJC line from Lima to Glenmore is a struggling, stub end branchline which can generate only about 1,200 to 1,500 carloads of grain and fertilizer a year.⁷ Depriving this line of the existing access it has to NS will certainly provide no appreciable gain for CSX; but it could make a marginal line an abandonment candidate.

The responsive applications filed by Ohio regional and shortline rail carriers highlight the competitive problems created by the proposed Primary Transaction and underscore the importance of granting of trackage rights to remedy the detrimental impacts on essential transportation services and consequently to Ohio's economy that will otherwise result. The continued economic viability of these carriers, not unlike that of southeastern Ohio coal regions, is of vital importance to maintaining the relative competitive position of Ohio business, including Centerior Energy, one of Ohio's largest electric utilities serving nearly one million customers in northern Ohio. The grant of trackage rights relief to these regional and short line railroads should ensure continued competitive rail access at reasonable rates for Ohio shippers and customers. So too will the Board's grant of responsive application trackage rights

⁷ OAG-4, p. 33.

maintain the current competitive situation for Centerior Energy and Ohio coals in the marketplace. Just as the Primary Applicants should not be permitted to choke off the essential service and competitive alternatives presently provided, so too should the Board refuse to allow CSX and NS to essentially eliminate Ohio Class II and Class III railroads' and Centerior's access to its historical coal suppliers for its Cleveland, Ohio, area plants in favor of longer haul, higher revenue generating coal supplies from CSX-only served mines.⁸

The continued availability of W&LE, RJC, I&O and Ann Arbor as viable regional and short line rail carriers maintains essential, competitive alternative service to Ohio bulk commodity shippers and receivers. To the extent delineated herein, and, as previously discussed in its earlier-filed comments, Ohio supports the Board's grant of trackage rights to ameliorate the adverse impact this Primary Transaction will otherwise have on a substantial number of Ohio shippers, customers and communities.

OHIO SUPPORT FOR W&LE

Ohio encourages the Board to mandate that NS and CSX provide concessions to the W&LE sufficient to keep the W&LE a viable operation. The W&LE Responsive Application demonstrates that NS and CSX have not fully comprehended or calculated the damage the proposed transaction will do to the W&LE. Similarly, the STB must recognize that the damage a W&LE bankruptcy would do to the economy of Ohio is real and significant.

⁸ OAG-4, p. 25.

Should W&LE enter bankruptcy, it is possible that another regional railroad might acquire the entire operation. However, Ohio believes that the particular circumstances and economics of the W&LE operation make it much more likely that the W&LE would be divided up in a piecemeal fashion. In that regard, it is plausible that various Class II and III rail carriers would pay a premium to serve large W&LE rail users in the Canton/Massillon area such as Timken, Republic Engineered Steel, and Ashland Petroleum but would not be at all interested in serving the W&LE's aggregate or agricultural shippers in western Ohio, or in preserving the W&LE line in Pennsylvania. A prudent bankruptcy trustee would certainly have good reason to seriously consider the piecemeal option.

A piecemeal breakup of the W&LE would mean the loss of the rail synergies which W&LE now provides. About 70 percent of the 9 million tons of materials W&LE now handles both originate and terminate on the W&LE. See, OAG-4 (Verified Statement of George L. Stern, at 5). Take the eastern part of the W&LE (i.e., the Pittsburgh & West Virginia (P&WV)) away either through a separate sale, or more likely through an abandonment and scrapping, and much of the agricultural and aggregate traffic W&LE now handles will either disappear or be handled by trucks or less cost-effective rail. Take away the Huron Docks, or any line connecting the Docks with the W&LE Ohio River lines, and Wheeling-Pittsburgh Steel loses its alternative service for iron ore. Take away the W&LE line into Cleveland through a separate

sale or through the abandonment and track salvage and Reserve Iron loses its preferred option for recyclable scrap and LTV Steel loses a competitive option for receiving coke.

The Board's decisions concerning the W&LE Responsive Application will have a tremendous impact on Ohio. Ohio urges the Board to mandate the actions needed to keep W&LE viable.

OHIO SUPPORT FOR THE INDIANA & OHIO

Ohio continues to support I&O efforts to effectively compete with both NS and CSX to retain traffic I&O currently carries, especially auto related traffic between Flat Rock, Michigan and Cincinnati.

In its responsive application, the I&O makes compelling arguments as to the adverse impacts it will experience in the Springfield to Cincinnati Corridor if the proposed acquisition of Conrail is approved. I&O currently uses trackage rights over Conrail to get from Springfield to Cincinnati. Conrail has never been a strong competitor for north-south traffic such as the Flat Rock to Cincinnati move represents. Further, the I&O trackage rights payments for the use of Conrail's Springfield to Cincinnati line for six trains per day arguably helps Conrail pay for the fixed costs of operating a mainline which Conrail itself only uses for 12 trains per day. See, I&O Resp. App. at 5. Thus, a reasonably "friendly" relationship now exists for I&O's movement over the Conrail line.

If NS takes control over the Conrail Springfield to Cincinnati line as proposed, the situation will change. NS is a

strong north-south railroad. Further, NS plans to improve clearances on the line for the movement of double-stack containers. Given recent history in double-stack growth, NS estimates to increase its usage of the Springfield to Cincinnati line from 4 trains per day to 11 trains per day may well be very conservative. (NS operates 4 trains per day on the line because it now has overhead trackage rights on the line for intermodal movements, another example that Conrail views other carriers' use of the line in a positive light.) Thus, for the approximately 70 mile Springfield to Cincinnati move, the I&O could be forced to rely upon a line a competitor will likely be using much more heavily in the future, possibly to an extent that strains capacity.

Given the proposed increase in traffic between Springfield and Cincinnati, the I&O's request to have an alternative route, i.e., Washington Court House to Cincinnati via CSX, is very reasonable and fair. It in no way negatively impacts the NS route; in fact, it would relieve congestion on it.

Neither will the I&O request to use the CSX Cincinnati to Washington Court House line adversely impact CSX. CSX will only run about 3 trains per day on the Washington Court House line. (CSX/NS - 20 at 435). Thus, there is ample room on the line for the additional I&O trains.

Further, the trains which the I&O would transfer to the Washington Court House line currently traverse a congested CSX line, the Mill Creek line in Cincinnati. The Conrail Springfield

to Cincinnati line over which the I&O has trackage rights terminates at a junction with the CSX Mill Creek line in Cincinnati. From this point, both Conrail and I&O trains must run over the CSX Mill Creek line to reach interchange points in the CSX Queensgate and NS Guest Street Yards. Thus, the I&O usage of the Washington Court House line frees up capacity on the congested Mill Creek line. See, I&O Resp. Appl. V.S. Michael Burkart at 6.

The I&O also makes compelling arguments for obtaining trackage rights between Monroe and Middletown. Any additional delay in getting rail traffic to and from the I&O Railway's Mason to Monroe line could mean the ultimate abandonment of that marginal branchline. Ohio has spent over one-half million dollars on various improvement projects throughout the last decade on the Mason to Monroe line.

Ohio also supports the I&O trackage rights request between Sidney and Quincy. In regard to the other I&O trackage rights requests, Ohio supports them as they relate to assuring adequate competition and responsive rail service in Ohio.

OHIO SUPPORT FOR R. J. CORMAN RAILROAD

Ohio continues to support RJC's efforts to obtain trackage rights over, or to acquire, the 2.3 miles of track in Lima which will be needed for the RJC Lima to Glenmore operation to connect to NS as well as CSX if the CSX/NS split up of Conrail is approved. Conrail currently owns this track but CSX is slated to acquire it. RJC currently has three viable Class I carrier

connections in Lima for the Glenmore line. RJC connects directly with Conrail and indirectly with both CSX and NS through a very inexpensive haulage agreement. Through arrangement with Conrail, RJC itself currently shuttles Glenmore line traffic to either NS or CSX for only \$60 per car fee to cross the Conrail track.⁹

If CSX takes over the 2.3 miles of track in question as proposed, it would be in its own self interest to do whatever it could to keep NS from getting any of the Glenmore line traffic. Certainly the switching charges would be much higher than \$60 per car. (Conrail lacks a significant economic interest in the Glenmore traffic as the traffic is primarily fertilizer moving in from the south or grain moving to the southeast, areas that are outside the Conrail service area. See, Id.) Thus, in effect, the Glenmore line would not have the same connectivity after the proposed split up as it has today. As a practical matter, it would go from good connection with three Class Is to a single connection (a 3 to 1 situation).

Based on the current low haulage charge, and Conrail's verbal commitment to sell to RJC the 2.3 miles of Conrail track which RJC needs to connect directly with both NS and CSX, the State of Ohio and RJC recently agreed to embark on a \$1.5 million rehabilitation project for the Glenmore line based on its access to 3 Class I railroads. See, OAG-4, at 33. State assistance is needed for this 30 mile long, publicly owned line because it is only marginally viable, generating less than 1,500 carloads a

⁹ RJC Resp. App. V.S. of M.W. Grubb, Jr., p. 3.

year. Preserving the status quo (i.e., multiple access to Class I railroads) is critical to the long term survival of the Glenmore line.

OHIO SUPPORT FOR THE ANN ARBOR RAILROAD

In our October 21, 1997, filing, Ohio did not address the Ann Arbor situation because we had understood that it would be resolved without STB intervention. Now that Ann Arbor has reluctantly filed a responsive application, the State of Ohio offers its support for Ann Arbor's requests for trackage rights to Chicago to connect with various railroads and for Ann Arbor to connect with the Canadian Pacific at Ann Arbor, MI.

Ohio finds Ann Arbor's description of its projected losses both reasonable and compelling. It is hard to imagine that no mention of Ann Arbor's potential revenue loss of over \$3 million annually was included in the NS or CSX filings.

Although Ann Arbor has only a handful of miles of track in Ohio, it is a very important Ohio railroad and it is vital that it be kept economically viable. Ohio and the City of Toledo recently committed to invest many millions of dollars in various infrastructure improvements to convince Jeep to build its new plant in Toledo right next to its current plant.¹⁰ Ann Arbor is a vital part of the entire incentives package to keep Jeep in Toledo. If it is still a viable rail operation after the split

¹⁰ Gov. Voinovich Release dated July 28, 1997 (attached as Ex. 1).

up of Conrail, Ann Arbor is slated to play a major role in providing switching services to the new plant.

Ohio urges the STB to mandate Ann Arbor's requested trackage rights with other Ohio railroads, all Ann Arbor seeks is a chance to compete with NS and CSX so that Ann Arbor can remain viable.

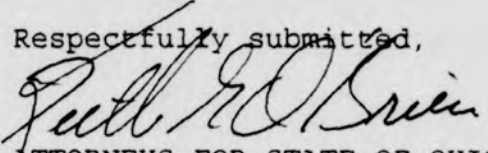
CONCLUSION

Ohio recognizes there are potential benefits for many Ohio rail users which may result from the proposed division of Conrail. However, absent appropriate protective conditions, those benefits would come at a very high cost to Ohio shippers and communities that are depending upon continued accessibility to service currently provided by the regional and short line responsive applicants.

The continued viability of the four responding railroads is essential for the preservation of service and healthy competition in Ohio's rail transportation system. As noted in our Comments filed on October 21, Ohio's largest railroad is being acquired by its second and third largest railroads. The proposed purchase threatens the very existence of the W&LE, Ohio's fourth largest railroad. If the proposed transaction is approved, Ohio's shippers will be faced with a significant decrease in their transportation options due to the loss of Conrail. Additionally, if any of Ohio's regional or short line railroads are forced to cease or to curtail their

operations as a result of this acquisition, Ohio's shippers would be severely harmed. Ohio therefore strongly urges the Board to preserve essential rail service and competition in Ohio by granting the conditions requested in the responsive applications as supported herein. These conditions are reasonable and will enable the four responding railroads to continue providing responsive service to Ohio shippers and communities and to compete effectively with the remaining Class I railroads.

Respectfully submitted,


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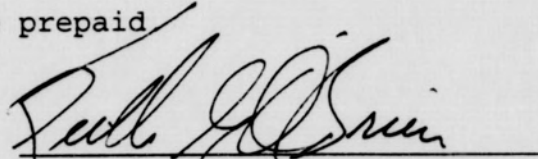
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DATED: DECEMBER 15, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December 1997, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof first class mail, properly addressed with postage prepaid


Keith G. O'Brien

**OFFICE OF THE GOVERNOR
GEORGE V. VOINOVICH
COMMUNICATIONS OFFICE**

FOR IMMEDIATE RELEASE

July 28, 1997

CHRYSLER TO BUILD NEW \$1.2 BILLION ASSEMBLY PLANT IN TOLEDO

COLUMBUS — Governor George V. Voinovich today expressed his extreme gratitude for Chrysler Corporation's decision to locate its new Jeep assembly plant in Toledo. The \$1.2 billion project is expected to retain 4,900 jobs at the company's current manufacturing facility in Toledo.

"Today's announcement not only signifies Chrysler's intent to renew its commitment to Ohio, it also validates the company's faith in Ohio's business leadership and the highly skilled workforce at its Toledo facility," Governor Voinovich said. "Chrysler's decision to build this facility in Toledo is a direct result of state and local officials rallying their efforts to maintain Chrysler's presence in Ohio, and more importantly, the city of Toledo. I want to commend Mayor Finkbeiner and Don Jakeway, Ohio Director of Development, for pulling their teams together to develop a comprehensive assistance package that met Chrysler's needs to move this project forward in Ohio."

This announcement came as a result of Chrysler's decision to replace its current antiquated facilities in Toledo which began operations at the turn of the century. Chrysler will build its new Jeep manufacturing facility at the Stickney Avenue site in the city of Toledo and will retain its 4,900 employees at both of its facilities once the new plant is completed. The company had considered several other states, including Michigan for this project.

The State of Ohio has offered Chrysler \$6 million over a three year period from the Ohio Industrial Training Program, an Investment Tax Credit valued at \$9.6 million based on Chrysler's projected investment in machinery and equipment and a Brownfield Site Clean-up Tax Credit valued at \$1.5 million. The state has also offered the City of Toledo the following to assist with this project: a \$10 million low-interest loan at an interest rate of 4% for 20 years to offset the cost of eligible infrastructure; a \$4.5 million grant from the Road Work Development Account to assist with eligible public road improvements; a \$4.5 million grant from the Business Development Account to assist with eligible on or off-site infrastructure costs associated with the project; and a \$1 million grant from the Urban and Rural Initiative Program to assist with acquiring, preparing and clean-up of the site for economic development.

In addition, the Ohio Department of Transportation will provide \$2 million and the Ohio Rail Development Commission will provide \$750,000 for the project.

-30-

For more information, contact Kathie Fleck at (614) 644-0957 or Gail Crawley at (614) 466-2609.

STB

FD

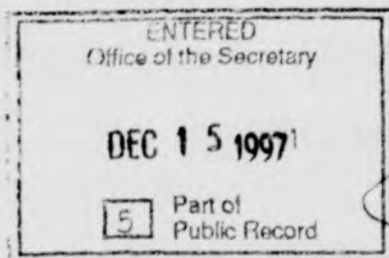
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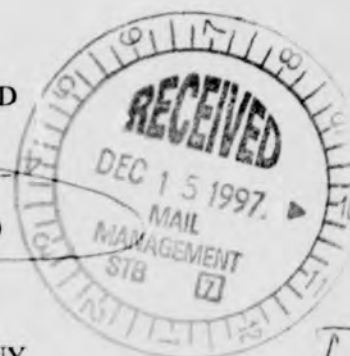


BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 77)

RESPONSIVE APPLICATION

INDIANA & OHIO RAILWAY COMPANY



VERIFIED STATEMENT OF LARRY HIMES, SECRETARY-TREASURER OF THE
WEST CENTRAL OHIO PORT AUTHORITY

My name is Larry Himes. I am Secretary-Treasurer of the West Central Ohio Port Authority (WESTCO). WESTCO is a special purpose unit of local government created under the laws of the State of Ohio. WESTCO is the owner of rail freight lines in Champaign, Clark, Fayette, Logan and Madison counties in Ohio. The rail lines are leased to the Indiana & Ohio Central Railroad (IOCR), a unit of the Indiana & Ohio Rail Corporation. The Indiana & Ohio Railway Company (IORY) is also a unit of the corporation. The IORY operates via trackage rights over a segment of a WESTCO line on its route between Flat Rock, Michigan and Cincinnati, Ohio.

WESTCO represents the public interest in seeking remedies to the adverse impacts of the acquisition of Conrail (CR) by Norfolk Southern (NS) and CSX Transportation (CSXT) will have within its jurisdiction and on its railroad lines. This statement is in support of the IORY's responsive application before the Board seeking the various trackage rights from NS and CSXT. This statement addresses the IORY's request for:

1. Overhead trackage rights over CSXT between East Norwood, OH and Washington C.H., OH with the right to connect at Midland City, OH with IORY's Greenfield branch;
2. Local trackage rights between Sidney, OH and Quincy, OH over the CR line to be acquired by CSXT;
3. Local trackage rights between Sharonville, OH and Columbus, OH over the CR line to be acquired by NS;
4. Local trackage rights between Quincy, OH and Marysville, OH over the CR line to be acquired by CSXT.

Overhead trackage rights over CSXT between East Norwood, OH and Washington C.H., OH with the right to connect at Midland City, OH with IORY's Greenfield branch;

As described in the Application and the environmental documents, NS proposes to increase traffic on CR's line between Dayton, OH and Ivorydale, OH by eight or more trains per day. It is anticipated that the eight or more trains per day will also use the CR line segment between Springfield, OH and Dayton, OH, as it is also a line segment of the NS corridor targeted for new

intermodal traffic. The forecast of eight additional trains per day is a conservative business plan estimate. If the NS strategy is successful, the frequency and length of NS trains will increase.

IORY's operation over the CR line via its trackage rights will be harmed as NS dispatchers give priority to NS trains. The NS priority will delay IORY trains and congest WESTCO's track between Maitland, OH and Cold Springs, OH as IORY trains wait for access to exercise its contractual right to use the CR line to Cincinnati. The IORY schedule of operations will also be degraded as its trains on the CR line are ordered to wait at passing tracks for NS traffic to clear. These main line dispatching decisions will adversely influence the operations of the IOCR and IORY on WESTCO's lines and give competitive advantages to NS and CSXT.

Springfield is the interchange point with CR for IOCR's traffic originating or terminating on WESTCO's lines. The anticipated additional through traffic by NS post-acquisition will increase through train congestion, interrupting local service and efficient interchange. The delays will impact customers on the WESTCO lines.

Lastly, congestion at CSXT's Queensgate yard at Cincinnati affects the IORY/IOCR operation on WESTCO's lines by causing excessive delays of crews and equipment.

All freight is time sensitive. The IORY/IOCR's ability to compete and serve its customers on WESTCO lines economically and efficiently will be harmed. It is in the public interest to remedy the degradation of the IORY/IOCR's use of WESTCO's rail lines and IORY's trackage rights between Springfield and Cincinnati, OH.

The remedy to the adverse impact on WESTCO and IOCR is for the IORY's request for trackage rights between East Norwood, OH and Washington C.H., OH to be granted by the Surface Transportation Board in its decision on this matter.

This remedy is consistent with WESTCO's Rail Development Plan. It is in the public interest in that the added overhead traffic on the WESTCO line between Springfield, OH and Washington C.H., OH will contribute to the economic well-being of the line. The capacity exists on both the WESTCO line and the CSXT line between East Norwood, OH and Washington, C.H., OH. The efficiency of the IORY/IOCR operation will also benefit the shippers on the WESTCO lines. For example, crews and equipment can move between IOCR's Midland City, OH to Greenfield, OH line and the WESTCO lines. Lastly, this alternate route will relieve congestion in Cincinnati on CSXT's Mill Creek line.

Local trackage rights between Sidney, OH and Quincy, OH over the CR line to be acquired by CSXT

These trackage rights will facilitate intra-state commerce by providing single carrier access for farm products from WESTCO lines into nearby markets. Class I rates for switching, etc. make the logical move from the rail-served country elevator to nearby rail-served processor rate prohibitive. It is in the public interest to facilitate competition, to increase efficiency and to conserve energy by granting these rights to IORY.

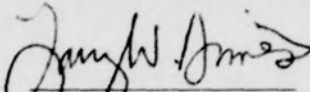
Local trackage rights between Sharonville, OH and Columbus, OH over the CR line to be acquired by NS

These trackage rights will facilitate intra-state commerce. It is in the public interest to facilitate competition, to increase efficiency and to conserve energy by granting these rights to IORY.

Local trackage rights between Quincy, OH and Marysville, OH over the CR line to be acquired by CSXT.

These trackage rights will facilitate intra-state commerce. IORY should have the right to connect with WESTCO's line at Bellefontaine, OH.

In summary, WESTCO supports the IORY's responsive application. The granting of the trackage rights requested by the IORY will promote competition, facilitate intra-state commerce, relieve congestion, expand single-line service, and provide for faster and more reliable service at a lower overall cost.

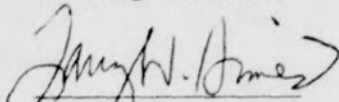


Larry W. Himes
Secretary-Treasurer

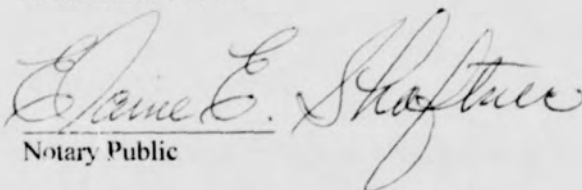
Verification

State of Ohio)
) SS
County of Clark)

I, Larry W. Himes, being duly sworn, depose and state that I have read the foregoing statement, know the contents thereof, and the statements therein are true and correct, to the best of my knowledge and belief.


Larry W. Himes

Subscribed and sworn to
before me this 12th day
of December, 1997.


Notary Public

ELAINE E. SHAFTNER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MAY 26, 2000

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 1997, I served the foregoing document on all parties of record in the Board's official service list, by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland Jr.

Thomas F. McFarland, Jr.