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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873 (Sub-No. 54)

WHEELING & LAKE ERIE RAILWAY COMPANY, LLC - TRACKAGE RIGHTS BETWEEN OAK HARBOR AND PARKERTOWN, OH AND CHICAGO, IL - NORFOLK SOUTHERN RAILWAY COMPANY

Finance Docket No. 36873 (Sub-No. 55)

WHEELING & LAKE ERIE RAILWAY COMPANY, LLC - TRACKAGE RIGHTS BETWEEN HAGERSTOWN, MD AND PHILADELPHIA, PA - NORFOLK SOUTHERN RAILWAY COMPANY

Finance Docket No. 36873 (Sub-No. 56)

WHEELING & LAKE ERIE RAILWAY COMPANY, LLC - TRACKAGE RIGHTS BETWEEN OAK HARBOR, OH AND ECORSE AND RIVER ROUGE, MI - NORFOLK SOUTHERN RAILWAY COMPANY

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The Wheeling & Lake Erie Railway Company, LLC ("WLE") hereby submits this Responsive Application pursuant to 49 USC § 11324(c), 49 CFR § 1180.4(d), and the procedural schedule issued by the Surface Transportation Board ("Board" or "STB") on August 18, 2026, in the above-captioned proceeding. As described herein, the Board should condition any approval of the proposed acquisition of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") by Union Pacific Corporation and Union Pacific Railroad Company (collectively, "UP") upon the granting of trackage rights to WLE.

Executive Summary.

UP and NS have proposed an unprecedented transaction[1] that would fundamentally remake the U.S. national rail system with approximately 50% of Class I rail freight traffic under a single railroad by some measures.[2] The proposal could severely curtail rail shippers' routing options, eliminate competition, and lead to further consolidation among the remaining Class I railroads. Just four years ago, there were seven Class I railroads in the United States. There would only be five if the UP-NS proposal goes forward. The entire rail industry finds itself on the precipice of the potential "end game" about which the Board was concerned in 2000-2001, when it issued a temporary moratorium and promulgated new merger rules to apply in exactly the scenario presented by UP and NS now.[3] This proceeding is the first to be conducted under

[1] See, e.g., UP-NS Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-11325, STB FD No. 36873, page 2 (filed July 30, 2025).
[2] See, e.g., BNSF Comments, BNSF-24, page 2 (filed May 8, 2026) ("the merged entity would have 50% market share of the domestic U.S. rail freight (loaded revenue units originated by Class Is) market and 53% of the Class I Merchandise Gross Ton Miles market"). See also CSXT's Motion for Summary Denial, CSXT-19, page 35 (filed Aug. 6, 2026); and V.S. of Elizabeth M. Bailey, Volume 2, page 18, attached to Amended Railroad Control Application (hereinafter, "Application") (filed April 30, 2026) (showing a combined UP-NS would control 45% of Class I gross freight revenue, based on 2024 data).
[3] Major Rail Consolidation Procedures, 5 STB 539, 560 (2001).

these new 2001 merger rules, which prioritize enhancing competition as a means to address the profound and difficult-to-remedy impacts of a transcontinental rail merger.

If the proposed acquisition goes forward, rail shippers and connecting shortline railroads would be faced with a permanently altered rail marketplace, as the combined entity would consolidate and assert overall market power. UP-NS could control pricing, routing options (or lack thereof), terms and conditions of service, and general industry procedures over a large number of shippers and communities. The market power of the combined entity could exacerbate the existing difficulties that shippers and smaller railroads face when negotiating with the largest railroads. Imbalance in the freight rail network could result from the outsize scale of a combined UP-NS, and could create adverse consequences that are difficult to remedy and that reverberate for decades into the future. The conditions sought herein would help counteract these adverse impacts and facilitate the future of a strong and healthy regional railroad network to maintain meaningful competitive balance in the marketplace.

The circumstances facing the Board warrant a concerted effort to implement the protections described in 2001. Consequently, the Board should condition any approval of the proposed UP-NS combination on the following:

1. The granting of overhead trackage rights to WLE on current NS[4] track from WLE's service area in northern Ohio to a connection to The Belt Railway Company of Chicago ("BRC") in Chicago, Illinois. There are two routes for these trackage rights, namely:

[4] In this context, WLE is using the name "NS" to refer to the post-acquisition portions of the combined UP-NS that are part of the current-day NS system.

- from Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS[5]) to the connection to BRC in Chicago.
- from Parkertown, Ohio (to which WLE already operates via preexisting trackage rights on NS[6]) to the same connection to BRC in Chicago.

The granting of both routings will maximize operational flexibility benefitting both WLE and UP-NS.

2. The granting of overhead trackage rights to WLE on current NS track from Hagerstown, Maryland (to which WLE has authority to operate via preexisting trackage rights on CSX Transportation, Inc. ("CSXT")[7]) to a connection to the Conrail Shared Assets Operations ("CSAO") of South Jersey/Philadelphia at Frankford Junction in Philadelphia, Pennsylvania.[8]

3. The granting of overhead trackage rights to WLE on current NS track from Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS[9]) to a connection to the CSAO of Detroit at River Rouge Yard in Ecorse, Michigan and River Rouge, Michigan.

I. The Condition Sought By WLE Is A "Minor Transaction."

The trackage rights sought in this Responsive Application qualify as a "minor" transaction within the regulatory framework.[10] Given that the trackage rights do not involve the

[5] See Verified Statement of Jonathan Carnes, the Chief Executive Officer of WLE, at p. 2 and 3 (hereinafter, "Carnes V.S.").
[6] Carnes V.S. at p. 2 and 3-4.
[7] Carnes V.S. at p. 2 and 4.
[8] In its Description of Anticipated Responsive Application filed on September 9, 2026, WLE described the overhead trackage rights to the CSAO of South Jersey/Philadelphia as continuing to Pavonia Yard in Camden, New Jersey. Upon further investigation, WLE has determined that a connection to the CSAO is possible at Frankford Junction in Philadelphia. This determination is based on the information available to WLE at this time. As described elsewhere in this Responsive Application, the purpose of the trackage rights is to enable a viable route for WLE to reach and interchange with the CSAO of South Jersey/Philadelphia.
[9] Carnes V.S. at p. 2 and 4.
[10] See, e.g., 49 CFR §§ 1180.2(a) - (c).

control or merger of two or more Class I railroads, categorization as "major" is not possible.[11] The trackage rights also do not rise of the level of a "significant" transaction. As the rules make clear, a transaction not involving the control or merger of two or more Class I railroads is not significant if either the transaction "clearly will not have any anticompetitive effects" or any anticompetitive effects of the trackage rights "will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs."[12]

The trackage rights sought by WLE are minor because they qualify under both optional characteristics. First, they will clearly not have any anticompetitive effects because they would expand options for shippers compared to a scenario where the UP-NS transaction is authorized absent the trackage rights. Second, there will be no anticompetitive effects of the trackage rights, so the second criterion is easily met. Again, the trackage rights sought by WLE would expand options for shippers compared to a scenario where the UP-NS transaction is authorized absent the trackage rights, meaning anticompetitive effects will not occur. In fact, these trackage rights are pro-competitive due to the routing and carrier options they would enable for shippers. Trackage rights of the type sought by WLE would normally be exempt if the transaction occurred outside the merger context.[13] This Responsive Application is not "inconsistent" because it is not contrary to the primary Application filed by UP-NS.[14]

[11] 49 CFR § 1180.2(a).
[12] 49 CFR § 1180.2(b).
[13] 49 CFR § 1180.2(d)(7).
[14] See, e.g., Canadian Pacific Railway Ltd. et al - Control - Kansas City Southern et al, FD No. 36500, p. 2 (n. 4) (served Aug. 2, 2021) (It would be inconsistent for a party to "seek[] to displace the proposed acquiring railroad of the primary application as the consolidation partner.").

II. Information Required Pursuant To 49 CFR § 1180.6.

49 CFR § 1180.6(a)(1)(i).

A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

UP and NS have proposed an unprecedented transaction that, if consummated, would control a vast proportion of the rail freight market in the United States, far in excess of any other railroad. The dramatic impacts of such a combination warrant action by the Board should the transaction be authorized. To compensate for the reduction in rail competition and rail shipping options, the Board should condition any approval of the proposed acquisition of NS by UP upon the granting of overhead trackage rights to WLE on current NS track:

1. From WLE's service area in northern Ohio to a connection to BRC in Chicago, Illinois. There are two routes for these trackage rights, namely:

- from Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the connection to BRC in Chicago.
- from Parkertown, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the same connection to BRC in Chicago.

The granting of both routings will maximize operational flexibility benefitting both WLE and UP-NS. These options will allow the combined UP-NS to decide which route is more efficient for its network. For example, if the NS local train has the mainline occupied on the Oak Harbor route, WLE could route through Parkertown. WLE trains approaching the combined UP-NS

interchange at Bellevue would be qualified to proceed via either route. The two routes are not significantly different in route miles.[15]

2. From Hagerstown, Maryland (to which WLE has authority to operate via preexisting trackage rights on CSXT) to a connection to the CSAO of South Jersey/Philadelphia at Frankford Junction in Philadelphia, Pennsylvania.

3. From Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to a connection to the CSAO of Detroit at River Rouge Yard in Ecorse, Michigan and River Rouge, Michigan.

The Applicant is WLE, a Class II railroad that operates approximately 982 route miles in four states (Ohio, West Virginia, Pennsylvania, and Maryland), consisting of approximately 428 miles of owned track, 119 miles of leased track, and 435 miles of trackage rights. The WLE system has a rich heritage, stretching back to the mid-19th Century. The modern-day WLE was established in 1990,[16] and has grown into the largest regional railroad in the country. WLE handles almost 160,000 carloads per year and has approximately 400 employees. It interchanges with three Class I railroads (NS, CSXT, and Canadian National Railway) and directly connects to thirteen shortline railroads and indirectly to another seven regional and shortline railroads.[17] In its service area, WLE has long provided an alternative to large Class I railroads through routing options and an emphasis on customer service from its experienced personnel and

[15] Carnes V.S. at p. 3-4.

[16] See, e.g., Wheeling Acquisition Corporation - Acquisition and Operation Exemption - Lines of Norfolk & Western Railway Company, ICC Finance Docket No. 31591 (served Feb. 6, 1990).

[17] Exhibit 1(F) attached hereto shows the current WLE system and all twenty shortline and regional railroads to which direct or indirect access is available. Exhibit 1(F) also shows the proposed trackage rights sought in this Responsive Application. As stated by Mr. Carnes, two of the shortline railroads directly connected to WLE are corporate affiliates of WLE (the Akron Barberton Cluster Railway, LLC, and Union Railroad Company, LLC). See Carnes V.S. at p. 3.

management. WLE's focus is serving customers through its rail operations, which consist of broad-based rail manifest traffic that touches all types of shippers and communities.[18]

WLE is uniquely positioned as the carrier that reaches farthest from east to west in the eastern half of the United States. As the largest Class II carrier in the United States, WLE is the only carrier capable of balancing the tradeoffs implicit in the UP-NS combination by providing high levels of service and access for customers and connecting railroads needing passage and service in the Midwest industrial belt. WLE has grown traffic from a few thousand carloads in the early 1990s to 160,000 carloads estimated in 2026. Implementation of the trackage rights described herein would benefit from the fact that WLE operates today on certain NS track daily via trackage rights, and WLE is already fully qualified on NS operating and safety rules. WLE also is qualified for Positive Train Control ("PTC") operations and owns PTC locomotives.[19]

The trackage rights sought herein would enable alternatives should the combination of NS-UP have negative impacts on price or service. Thousands of customers on WLE and all connecting lines would gain access through WLE's network to competitively priced common shipping destinations at major gateways through neutral carriers at the BRC and Conrail. Trackage rights would not be a new way of doing business, as WLE currently operates via numerous trackage rights agreements with NS and CSXT.[20]

WLE's contact information is as follows:

> Wheeling & Lake Erie Railway Company, LLC
> Jonathan Carnes, Chief Executive Officer
> 100 1st St. SE
> Brewster, OH 44613
> (412) 235-1710

[18] Carnes V.S. at p. 2-3.
[19] Carnes V.S. at p. 3-4 and 6.
[20] Carnes V.S. at p. 4-6.

Correspondence related to this Responsive Application should be directed to WLE's outside counsel, whose contact information is:

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1999 K St. NW, Suite 600
Washington, DC 20006
(202) 331-8800

49 CFR § 1180.6(a)(1)(ii).

The proposed time schedule for consummation of the proposed transaction.

WLE is prepared to enter into the relevant Trackage Rights Agreements immediately and begin rail operations as soon as the parties are able to agree upon necessary operating protocols as is customary in the rail industry when trackage rights exist.[21]

49 CFR § 1180.6(a)(1)(iii).

The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

UP and NS have proposed a self-described "unprecedented"[22] transaction that would fundamentally reshape the U.S. freight rail marketplace. With the trackage rights described in this Responsive Application, WLE seeks to provide competitive options to benefit rail customers, communities, shortline railroads, and other stakeholders as a condition to any Board

[21] Carnes V.S. at p. 7-8.
[22] See, e.g., UP-NS Notice of Intent to File Application for Approval of Transaction Subject to 49 U.S.C. §§ 11323-11325, STB FD No. 36873, page 2 (filed July 30, 2025).

authorization of the UP-NS proposal. These trackage rights would counteract the scale of market power and leverage held by the combined UP-NS in the aftermath of consummation.

A combination of UP and NS would reduce the Chicago interchange options for traffic transiting that important rail hub.[23] The trackage rights in Sub-No. 54 would help replace these lost options with new WLE access to Chicago for interchange traffic. As the Board recognized over twenty-five years ago, further mergers of Class I railroads "would likely create some anticompetitive effects that would be difficult to mitigate."[24] Therefore, the Board decided to prioritize enhancement of competition in future mergers,[25] such as the proposed acquisition of NS by UP. In particular, the Board also recognized a need to "enhance competition in ways that strengthen and sustain the rail network as a whole (including that portion of the network operated by Class II and III carriers)."[26] This regulatory goal is particularly critical in the context of the UP-NS proposal, which UP and NS anticipate will take "hundreds of thousands of carloads" from other railroads.[27] This proposed shift of a large volume of traffic will not only limit shippers' options, but hurt regional railroads like WLE and shortlines. The trackage rights described herein to Chicago, the South Jersey/Philadelphia Shared Assets Area ("SAA"), and the Detroit SAA would function to counteract the reduction in competitive options so that any traffic shift is due to shippers' actual choice rather than a mega-railroad's control of the marketplace. These trackage rights would benefit both shippers and smaller railroads (regional and shortline) in accord with the regulatory goals established by the Board in 2001.

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[23] See, e.g., UP-NS Application, Vol. I, p. 19 (filed April 30, 2026) ("This new service offering will transform tens of thousands of interline lanes into seamless single-line service.").
[24] 49 CFR § 1180.1(d).
[25] Major Rail Consolidation Procedures, 5 STB 559, 554 (2001).
[26] 49 CFR § 1180.1(d).
[27] See, e.g., UP-NS Response Regarding Their Prima Facie Case, STB FD No. 36873, page 5 (filed Aug. 26, 2026).

Service options for shippers are especially meaningful during those times when individual railroads have operational difficulties. For example, just eight years ago, the STB wrote to UP, stating in part that "[w]e are well aware of UP's service challenges during this year, and believe it is essential that all carriers strive to provide efficient and reliable rail service to their customers."[28] In fact, rail service crises have occurred regularly over the past several decades, causing the STB to commence dedicated proceedings in 2014, 2017, and 2022.[29] Similarly, the Board has also commenced proceedings as part of its concern about capacity limitations in the national rail network.[30] The rail service options enabled by the trackage rights described herein would provide valuable flexibility to shippers in such situations, which is particularly critical given that the UP-NS proposal would consolidate a large proportion of the nation's rail traffic on a single railroad. Such flexibility benefits the communities in which shippers operate and the broader U.S. economy, creating more resilient supply chains that keep America moving.

49 CFR § 1180.6(a)(1)(iv).

The nature and amount of any new securities or other financial arrangements.

WLE will not issue any new securities or undertake any financial arrangements to commence rail operations via the trackage rights sought herein.[31]

[28] See, e.g., correspondence from STB Chairman Ann Begeman and Vice-Chair Deb Miller to Lance Fritz (Chairman, President, and CEO of Union Pacific) on Sept. 20, 2018.
[29] STB EP No. 724, United States Rail Service Issues (served April 1, 2014); STB EP No. 742, Public Listening Session Regarding CSX Transportation, Inc.'s Rail Service Issues (served Aug. 24, 2017); and STB EP No. 770, Urgent Issues in Freight Rail Service (served April 7, 2022).
[30] See, e.g., STB EP No. 671, Rail Capacity and Infrastructure Requirements (served March 6, 2007); and STB EP No. 677, Common Carrier Obligation of Railroads (served Feb. 22, 2008).
[31] Carnes V.S. at p. 8.

49 CFR § 1180.6(a)(2).

A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria.

The trackage rights sought herein will act as a counterweight to the increasing imbalance and consolidation seen in the national rail industry, which has featured one completed combination of two Class I railroads (Canadian Pacific and Kansas City Southern) and one proposed combination of two Class I railroads (UP and NS) in just the last three years. If the UP-NS transaction is authorized, this would mean the U.S. rail industry has gone from seven Class I railroads to only five in an extremely short time period. A quarter century ago, the Board expressed concern about a "final round of mergers," a sentiment that is appearing increasingly prescient.[32]

Broad public benefits would result from granting the trackage rights sought in this Responsive Application. The trackage rights would provide valuable competitive options to shippers between the western U.S. and the eastern U.S. through the crucial Chicago gateway, the most important rail interchange location in the nation. Chicago acts as a key location where shipper routing options are made real. When a shipment reaches Chicago via rail for interchange and circumstances are such that several different interchange partners would be equally viable, shippers have real options. However, if a western railroad merges with one of the potential eastern routing options, then the merged railroad would presumably engage in all possible

[32] Major Rail Consolidation Procedures, 5 STB 539, 554 (2001).

measures to ensure that the shipment stays on the combined entity for as long as possible. Shipper options for rail service would decline. Competition would suffer.

UP and NS have established dramatic and far-reaching goals for their proposal, and significant concerns have been expressed among shippers regarding the measures that a combined UP-NS may take to reach these goals, and the consequences of these measures.[33] Granting trackage rights to WLE from WLE's system in northern Ohio to a BRC connection in Chicago would help address these concerns and replace any options and competition lost. UP-NS assert that shippers consistently choose single-line service when available;[34] granting trackage rights to WLE would help ensure that shippers actually retain a choice.

At the most fundamental level, a combination of UP and NS would result in one fewer interchange option in Chicago. Conditioning the acquisition of NS on the requested trackage rights for WLE would go a long way toward addressing this dramatic shift in the rail marketplace and the loss of routing options. WLE is uniquely positioned to fill the interchange void that would occur in Chicago. WLE is the largest regional railroad by system miles in the United States. WLE operates in the heart of the heavily-populated industrial Midwest, directly reaching thirteen shortline railroads and indirectly reaching another seven regional and shortline railroads, thereby providing crucial options on routes to and from the East Coast. "Granting of trackage rights to [WLE] provides [western railroads] an alternative outlet to the east."[35]

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[33] See, e.g., Joint Shipper Associations' Motion for Summary Denial, p. 3 and p. 27-38 (filed Aug. 6, 2026); correspondence from the United Sugar Producers & Refiners Cooperative, p. 1 (filed Aug. 26, 2026).
[34] See, e.g., UP-NS Application, Vol. I, p. 12 (filed April 30, 2026).
[35] St. Louis Southwestern Railway Company - Trackage Rights Over Missouri Pacific Railroad Company - Kansas City to St. Louis, 1 ICC2d 776, 779 (1984).

Trackage rights for WLE to reach the SAAs in South Jersey/Philadelphia and Detroit would enhance the BRC connection in Chicago and also benefit shippers and be pro-competitive. Shippers' rail routing options would increase with trackage rights to these two SAAs, helping to address continuing consolidation in the rail industry and ensure the viability of regional railroad operations in the industrial Midwest and Mid-Atlantic areas. As the Board recognized in 2001, the continuing reduction in the number of major independent railroads means it is "increasingly difficult" to impose conditions specifically addressing the loss of competitive constraints.[36] Were trackage rights granted to WLE to operate not just to Chicago but also to the South Jersey/Philadelphia SAA and the Detroit SAA, WLE could be a critical link between Chicago, the industrial Midwest, and the Mid-Atlantic area. The trackage rights would not only replace options and competition lost due to the UP-NS combination, but also serve to enhance competition in accord with the goals of the applicable regulations.[37] The Board "cannot evaluate the merits" of the UP-NS combination "in isolation."[38] Instead, the Board "must also consider the cumulative impacts and crossover effects likely to occur" as the remaining Class I railroads "react to the proposed combination."[39]

WLE's status as the largest regional railroad and its geographical location in the industrial Midwest means that it has a unique ability to link the Eastern Seaboard through the industrial Midwest to the Chicago interchange with the trackage rights described herein - all without further consolidation of market power among the few remaining Class I railroads. Providing trackage rights to WLE would ensure that the rail marketplace, at least in this one area

[36] Major Rail Consolidation Procedures, 5 STB 539, 554 (2001).
[37] See, e.g., 49 CFR § 1180.1(c).
[38] 49 CFR § 1180.1(i).
[39] 49 CFR § 1180.1(i).

of the country, is not dominated solely by the remaining Class I railroads. Given the rapidly declining number of Class I railroads in the U.S. (and the prospect of further consolidations if the UP-NS combination is authorized), granting more access to a Class II regional railroad is vastly preferable to concentrating even more power with the Class I carriers.

If consummated, the UP-NS transaction would enable the combined entity to "acquire and exploit increased market power"[40] as well as "reduce competition....indirectly."[41] An increase in market power and a reduction in competition could be addressed with trackage rights for WLE to Chicago, the South Jersey/Philadelphia SAA, and the Detroit SAA. Such trackage rights would not affect or diminish in any way the single-line service possibilities that UP-NS have touted as reasons to authorize their combination.[42] Nor would the trackage rights affect the combined railroad's "cost savings expected to flow from operating efficiencies" and the creation of a "more efficient railroad."[43] In fact, UP and NS are so confident in the benefits they expect to flow from their combination that they believe such benefits "are unlikely to be undermined by any subsequent mergers."[44] Taking UP and NS at their word, then, the effect of comparatively minor trackage rights for a regional railroad should similarly have no impact.

Instead of adverse impacts on UP-NS, the trackage rights sought herein would provide competitive options to shippers and communities, counteract a consolidation in market power,

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[40] 49 CFR § 1180.1(c)(2)(i).
[41] 49 CFR § 1180.1(c)(2).
[42] See, e.g., UP-NS Application, Vol. I, p. 13 (filed April 30, 2026) ("The merger will transform thousands of interline lanes in those watershed markets into single-line routes, strengthening rail's ability to reach markets that are not well served today.") and Vol. I., p. 38 ("The proposed transaction creates single-line service opportunities for more than 88,000 county-to-county lanes nationwide, including 45,000 lanes in the watershed, where the challenges of providing attractive interline rail service are magnified.") (citation omitted).
[43] UP-NS Application, Vol. I, p. 18 and 34 (filed April 30, 2026). See also Application at Vol. I, p. 35.
[44] UP-NS Application, Vol. I, p. 27 (filed April 30, 2026).

increase rail system resiliency, and generally facilitate a more viable service alternative for the Chicago interchange, the industrial Midwest, and the Mid-Atlantic region.

These trackage rights are relevant even to those who may be captive to UP or NS, because "shippers who are served by a single rail carrier may benefit from having another carrier nearby."[45] This fact is also true for traffic that will be transloaded from (or to) truck at the relevant origin (or destination) if the shipper can utilize two or more transload facilities, assuming the multiple transloads are served by different railroads. As the regulations recognize, "[c]ompetition in product and geographic markets can also be eliminated or reduced by mergers, including end-to-end mergers."[46] Moreover, all shippers - captive or not - benefit from an increase in rail system resiliency for those times when the freight rail network, or an individual railroad, is under stress. That is, when rail service problems arise on a particular railroad or rail line, shippers with choice can utilize other rail alternatives, thus enabling the affected railroad to dedicate more resources to the captive traffic.

49 CFR § 1180.6(a)(2)(i).

The effect of the transaction on inter and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

There would be no lessening of intermodal or intramodal competition from the proposed trackage rights. As described above, these trackage rights would actually increase rail-to-rail

[45] Major Rail Consolidation Procedures, 5 STB 539, 554 (2001).
[46] 49 CFR § 1180.1(c)(2)(i).

(i.e., intramodal) competition, thereby fulfilling the national rail policy.[47] In contrast, rail routing options would decrease if the UP-NS combination were authorized without the requested trackage rights. Granting the requested trackage rights would help ameliorate this loss of competitive options. Shippers and communities would benefit from the increased competition enabled by the trackage rights. The trackage rights sought herein are pro-competitive because they would allow WLE and potential connecting railroads in Chicago, South Jersey/Philadelphia, and Detroit to "compete more vigorously with other carriers, some of whom can provide single-line service."[48]

The trackage rights would also increase intermodal competition, as the expansion of WLE operations to the Chicago interchange, the South Jersey/Philadelphia SAA, and the Detroit SAA would increase intermodal transportation options for shippers.

49 CFR § 1180.6(a)(2)(ii).

The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

WLE anticipates entering into trackage rights agreements with the landlord railroad UP-NS, and that such agreements will include reasonable trackage rights fees as compensation to UP-NS. WLE is willing to negotiate with UP-NS in order to establish the relevant fees and other terms and conditions for the trackage rights. WLE would also adhere to any Board-established

[47] See, e.g., 49 USC §§ 10101(1), (4), and (5).
[48] Canadian National Railway Company, et al - control - Illinois Central Corporation, et al, 4 STB 122, 152 (1999).

fees, terms, and conditions if the parties are unable to come to a mutually-acceptable agreement. The fees should be set at a level which is typical for the rail industry and consistent with Board precedent for trackage rights.[49]

Without the trackage rights, a combination of UP and NS would likely result in a loss of traffic for WLE. The trackage rights described herein may result in additional traffic operating on the WLE system compared to that carried today. Further information about possible traffic impacts is provided in the attached Verified Statement of Jonathan Carnes, the Chief Executive Officer of WLE.[50]

These trackage rights are intended to provide competitive options for rail shippers and/or replace options lost if the combination of UP and NS moves forward, meaning that any future traffic will depend upon the choices of individual rail shippers, a variety of economic and market circumstances, and the competitive positions taken by other railroads and other transportation providers.

The WLE rail network can handle any expected increase in rail traffic that may result from the granting of the measures sought in this Responsive Application. Revenue and earnings from any increase in traffic will depend upon future economic factors, and any such earnings will be utilized in the same manner as those from other WLE operations.[51]

[49] Carnes V.S. at p. 7-8.
[50] Carnes V.S. at p. 6-7.
[51] Carnes V.S. at p. 7.

49 CFR § 1180.6(a)(2)(iii).

The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

There will be no impact. WLE has no plans to increase debt or incur fixed charges in connection with the trackage rights sought in this Responsive Application.[52]

49 CFR § 1180.6(a)(2)(iv).

The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

The trackage rights sought herein would greatly increase the adequacy of transportation service to the public. These trackage rights would provide shippers with competitive options for traffic interchanged at Chicago as well as traffic inbound to, or outbound from, the Detroit SAA and the South Jersey/Philadelphia SAA. Without these trackage rights, options available to shippers in these areas would be reduced as the single-line service promoted by UP and NS becomes a reality. Congress and the Board have long recognized the benefits of competition in engendering reasonable rates and adequate service for the public.[53]

According to UP and NS, one of the main purposes of the proposed acquisition is to avoid interchanging at gateways such as Chicago by expanding the use of single-line service.[54] Consequently, the combination of UP and NS will likely increase the use of the Bellevue (Ohio) Yard to receive new single-line service traffic that has routed around Chicago, including some

[52] Carnes V.S. at p. 8.
[53] See, e.g., 49 USC §§ 10101(1), (4), and (12).
[54] See, e.g., UP-NS Application, Vol. I, p. 15 and 19 (filed April 30, 2026).

traffic that may be interchanged between the combined UP-NS and WLE at Bellevue.[55] UP and NS project an increase of approximately 12% in traffic at Bellevue, with no capital investment planned.[56] Yet, Bellevue is already straining under the existing traffic load in WLE's experience, and this is without any additional impact from the proposed combination of UP and NS. In particular, WLE's train crews have experienced delays as they attempt to interchange cars with NS and provide rail service to customers at or near Bellevue. Delays have cascaded such that customers may choose to move their traffic via truck or reduce production if there is no viable transportation alternative. The trackage rights sought by WLE to Chicago and Detroit would provide a release valve for Bellevue Yard, which is already overburdened and presumably would become more so with a combined UP-NS.[57]

Trackage rights to the Shared Assets Area of South Jersey and Philadelphia would also have a beneficial impact on rail service. Eastbound trackage rights traffic from Hagerstown to the Philadelphia area will circumvent the busy Norfolk Southern Pittsburgh Division between Pittsburgh and Harrisburg. The alternative WLE trackage rights route would also avoid the Horseshoe curve near Altoona and bottlenecks arising from the extended single line service that UP-NS will provide, not to mention the substantial new traffic UP and NS expect to move.[58]

More broadly, the trackage rights sought herein will also facilitate operational resiliency and a "sound rail transportation system."[59] Rail service crises affect Class I railroads on a semi-

[55] Carnes V.S. at p. 5.
[56] John Turner V.S., attached to UP-NS Application, Vol. 2, page 883, 886, 915-927, and 931 (filed April 30, 2026).
[57] Carnes V.S. at p. 5.
[58] Carnes V.S. at p. 5. See also UP-NS Response Regarding Their Prima Facie Case, STB FD No. 36873, page 5 (filed Aug. 26, 2026); and UP-NS Application, Vol. I, p. 15 (filed April 30, 2026).
[59] 49 USC § 10101(4).

regular or at least intermittent basis as described in the response to 49 CFR § 1180.6(a)(1)(iii). Given the unprecedented size and scale of a combined UP-NS, the effect of a crisis upon a single carrier could be extremely pronounced and widespread. The rail service competition provided by the trackage rights sought by WLE will provide options to shippers during any future crises. The trackage rights would enable WLE to continue playing a key role in providing transportation services to the industrial heartland.

49 CFR § 1180.6(a)(2)(v).

The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

The proposed trackage rights will have no adverse impacts on the employees of WLE. These trackage rights would merely enable WLE to compete for traffic with the newly-combined UP-NS, with no guarantee of any particular result. WLE has not entered and is not seeking to enter any employee protection agreements related to the trackage rights. Similarly, WLE has no plans to reduce or increase its workforce if the trackage rights are granted. WLE anticipates the possibility of increased traffic from the trackage rights, but would only alter staffing levels during the next three years if there were significant and long-lasting changes to traffic patterns.[60]

[60] Carnes V.S. at p. 7.

49 CFR § 1180.6(a)(2)(vi).

The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

This provision is inapplicable because WLE's proposed trackage rights do not involve the "merger or control of at least two Class I railroads."[61]

49 CFR § 1180.6(a)(3).

Any other supporting or descriptive statements applicants deem material.

In addition to the information and support already described above, WLE is submitting a Verified Statement from its Chief Executive Officer, Jonathan Carnes. WLE is also submitting support letters at Exhibit 6 attached hereto.

49 CFR § 1180.6(a)(4).

An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

At Exhibit 3 attached hereto, WLE provides an opinion of counsel that the trackage rights sought herein meet legal requirements and will be legally authorized and valid if approved by the Board.

[61] 49 USC § 11324(b)(2). See also 49 USC § 11324(d).

49 CFR § 1180.6(a)(5).

A list of the State(s) in which any part of the property of each applicant carrier is situated.

WLE operates in the following states: Ohio, Pennsylvania, West Virginia, and Maryland. The trackage rights sought in this Responsive Application would be located in Ohio, Indiana, Illinois, Maryland, Pennsylvania, and Michigan.

49 CFR § 1180.6(a)(6).

Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

Several maps are attached hereto. Exhibit 1(A) is a general map of the entire WLE system, showing shortline connections, other rail lines in the territory, and principal geographic points in the region. Exhibit 1(B) is a map depicting the trackage rights sought in Sub-No. 54. Exhibit 1(C) is a map depicting the trackage rights sought in Sub-No. 55. Exhibit 1(D) is a map depicting the trackage rights sought in Sub-No. 56. Exhibit 1(E) is a map depicting the current WLE system along with all trackage rights sought in this Responsive Application. Exhibit 1(F) is a map depicting the current WLE system, all twenty shortline and regional railroads to which direct or indirect access is available, and the proposed trackage rights sought herein.

49 CFR § 1180.6(a)(7)(i).

Explanation of the transaction: Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

As described above in narrative for 49 CFR § 1180.6(a)(1), the transaction entails overhead trackage rights for WLE on current NS track:

1. From WLE's service area in northern Ohio to a connection to BRC in Chicago, Illinois. There are two routes for these trackage rights, namely:

- from Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the connection to BRC in Chicago.
- from Parkertown, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the same connection to BRC in Chicago.

2. From Hagerstown, Maryland (to which WLE has authority to operate via preexisting trackage rights on CSXT) to a connection to the CSAO of South Jersey/Philadelphia at Frankford Junction in Philadelphia, Pennsylvania.

3. From Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to a connection to the CSAO of Detroit at River Rouge Yard in Ecorse, Michigan and River Rouge, Michigan.

The significant terms and conditions will be set forth in trackage rights agreements, as stated in the narrative responses for 49 CFR §§ 1180.6(a)(2)(ii) and 1180.6(a)(7)(ii). Additionally, the consideration to be paid is addressed above in the narrative response for 49 CFR § 1180.6(a)(2)(ii).

49 CFR § 1180.6(a)(7)(ii).

Explanation of the transaction: Agreement (Exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

Exhibit 2 contains the proposed trackage rights agreements for the rights contained in this Responsive Application, namely:

- Exhibit 2(A) is the proposed Trackage Rights Agreement governing the overhead rights for WLE on current NS track from Oak Harbor, OH and Parkertown, OH to connection with BRC in Chicago.
- Exhibit 2(B) is the proposed Trackage Rights Agreement governing the overhead rights for WLE on current NS track from Hagerstown, MD to a connection to the CSAO of South Jersey/Philadelphia at Frankford Junction in Philadelphia, Pennsylvania.
- Exhibit 2(C) is the proposed Trackage Rights Agreement governing the overhead rights for WLE on current NS track from Oak Harbor, OH to a connection to the CSAO of Detroit at River Rouge Yard in Ecorse, MI and River Rouge, MI.

49 CFR § 1180.6(a)(7)(iii).

If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of

amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

This provision is inapplicable, as there is no consolidation or merger proposed in the Responsive Application.

49 CFR § 1180.6(a)(7)(iv).

Court order. If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

This provision is inapplicable because there is no Court order, trustee, receiver, assignee, or personal representative involved in the Responsive Application. WLE is the applicant.

49 CFR § 1180.6(a)(7)(v).

State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

The trackage rights described in the Responsive Application do not include all the property of WLE. As explained in the narrative response for 49 CFR § 1180.6(a)(1)(i), WLE is seeking overhead trackage rights on the current NS track in three corridors. Real property interests of WLE are not directly involved in these trackage rights, other than the trackage rights would connect to rail lines to which WLE already has trackage rights.

49 CFR § 1180.6(a)(7)(vi).

Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

WLE operates via approximately 982 miles of track in Ohio, Pennsylvania, West Virginia, and Maryland, consisting of approximately 428 miles of owned track, 119 miles of leased track, and 435 miles of trackage rights. WLE interchanges with three Class I railroads (NS, CSXT, and Canadian National) and directly connects to thirteen shortline railroads and indirectly to another seven regional and shortline railroads. The entire WLE system, showing shortline connections, other rail lines in the territory, and principal geographic points, is shown in Exhibit 1(A) attached hereto.

As described above in the narrative response for § 1180.6(a)(1)(i), WLE is seeking overhead trackage rights on current NS track in three corridors. These trackage rights would be on main-line NS track. The approximate distances involved in these trackage rights are given below.

1. Two routes from northern Ohio to a connection to BRC in Chicago:
    - Approximately 244 miles. From Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the connection to BRC in Chicago.
    - Approximately 275 miles. From Parkertown, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the same connection to BRC in Chicago.
2. Approximately 189 miles. From Hagerstown, Maryland (to which WLE has authority to operate via preexisting trackage rights on CSXT) to a connection to the CSAO of South Jersey/Philadelphia at Frankford Junction in Philadelphia, Pennsylvania.

3. Approximately 74 miles. From Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to a connection to the CSAO of Detroit at River Rouge Yard in Ecorse, Michigan and River Rouge, Michigan.[62]

49 CFR § 1180.6(a)(7)(vii).

State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

This provision is not applicable. WLE is not seeking governmental assistance for the proposed trackage rights.[63]

49 CFR § 1180.6(a)(8).

Environmental data. Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report

This provision is inapplicable pursuant to 49 CFR §§ 1105.6(c)(3) and 1105.8(b)(3).

[62] Carnes V.S. at p. 3-4.
[63] Carnes V.S. at p. 8.

49 CFR § 1180.4(c)(2)(i).

Signatures of WLE Chief Executive Officer and Secretary.

Attached hereto as Exhibits 4 and 5 are signed verifications from the Chief Executive Officer and Secretary of WLE.

III. Conclusion.

For all the reasons described herein, WLE respectfully requests that the Board grant this Responsive Application in its entirety and impose the trackage rights set forth above as a condition of any authorization of the proposed acquisition of NS by UP.

Respectfully submitted,

/s/ Karyn A. Booth
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Washington, DC 20006
202.331.8800
202.331.8330 (fax)

Attorneys for the Wheeling & Lake Erie Railway Company, LLC

November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2026, a copy of the foregoing Responsive Application was served by electronic mail or first class mail on the service list for Finance Docket No. 36873.

/s/ Karyn A. Booth
Karyn A. Booth

Verified Statement of
Jonathan Carnes

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873 (Sub-No. 54)

WHEELING & LAKE ERIE RAILWAY COMPANY, LLC - TRACKAGE RIGHTS BETWEEN OAK HARBOR AND PARKERTOWN, OH AND CHICAGO, IL - NORFOLK SOUTHERN RAILWAY COMPANY

Finance Docket No. 36873 (Sub-No. 55)

WHEELING & LAKE ERIE RAILWAY COMPANY, LLC - TRACKAGE RIGHTS BETWEEN HAGERSTOWN, MD AND PHILADELPHIA, PA - NORFOLK SOUTHERN RAILWAY COMPANY

Finance Docket No. 36873 (Sub-No. 56)

WHEELING & LAKE ERIE RAILWAY COMPANY, LLC - TRACKAGE RIGHTS BETWEEN OAK HARBOR, OH AND ECORSE AND RIVER ROUGE, MI - NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF JONATHAN CARNES

I. Introduction and Background.

My name is Jonathan Carnes, and I am the Chief Executive Officer ("CEO") of Wheeling & Lake Erie Railway Company, LLC ("WLE"). WLE is a Class II regional railroad that operates a rail system in Ohio, Pennsylvania, West Virginia, and Maryland.

In my role as the CEO, I am responsible for broad commercial strategy and decision-making, as well as oversight and management of day-to-day operations. I have worked in my current position at WLE for slightly under one year.

Prior to assuming my current role with WLE, I was, and remain, the President and CEO of Transtar, LLC (now known as The Wheeling Holding Company, LLC ("Wheeling Holding Company")), which owns and directly controls six common carrier railroads. I have been Wheeling Holding Company's President since approximately 2017, and then also became CEO in 2022. Wheeling Holding Company and WLE came under common ownership in 2025, and Wheeling Holding Company acquired WLE in 2026.

Before becoming President of Wheeling Holding Company, I was General Manager in charge of operations of Wheeling Holding Company's railroads, a position I had held since I started at Wheeling Holding Company in 2012. My career before 2012 included several other positions in the rail industry, including as President of the Terminal Railroad Association of St. Louis from 2009 to 2011.

I have degrees in business, logistics, and management from the University of North Florida. I also have a Masters in Business Administration from the University of Pittsburgh.

II. Purpose of Verified Statement and Overview of WLE.

I am submitting this Verified Statement ("V.S.") in support of the Responsive Application being submitted by WLE to the Surface Transportation Board ("Board" or "STB") in the above-captioned docket. The purpose of this V.S. is to describe the broad public benefits that would result from granting the trackage rights sought by WLE if the acquisition of Norfolk Southern Railway Company ("NS") by Union Pacific Railroad Company ("UP") is authorized by the Board.

WLE operates approximately 982 railroad route miles, comprised of approximately 428 miles of owned track, 119 miles of leased track, and 435 miles of trackage rights. WLE is the

largest regional railroad in the United States by route miles. We operate in Ohio, Pennsylvania, West Virginia, and Maryland.

WLE interchanges with three Class I carriers, NS, CSX Transportation, Inc. ("CSXT"), and Canadian National Railway ("CN"). We also directly connect to thirteen shortline railroads and indirectly to seven other shortline and regional railroads. Two of the directly-connected shortline railroads are corporate affiliates of WLE: Akron Barberton Cluster Railway, LLC, and Union Railroad Company, LLC. WLE has approximately 400 employees.

In 2026, we estimate that WLE will transport approximately 160,000 carloads. This is a dramatic increase from the few thousand carloads handled in 1990 when the modern WLE was established. The traffic mix is diverse, including but not limited to raw materials, manufactured products, food, lumber, petroleum products, chemicals, and minerals. It is a broad base of manifest traffic that reaches nearly all types of shippers and communities.

WLE main line track is rated for 286,000 pounds gross weight. WLE is qualified for Positive Train Control ("PTC") operations and owns PTC locomotives.

III. Description and Purpose of the Proposed Trackage Rights.

WLE is requesting overhead trackage rights on NS from the WLE system in northern Ohio to the Chicago interchange in order to provide an alternative to the combined UP-NS system. To facilitate operational flexibility, WLE is proposing two routes for these trackage rights.

Specifically, WLE is seeking overhead traffic rights on NS from Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to a connection to The Belt Railway Company of Chicago ("BRC") in Chicago. WLE is also seeking overhead trackage

rights on NS from Parkertown, Ohio (to which WLE already operates via preexisting trackage rights on NS) to the same connection to BRC in Chicago.

The route from Oak Harbor would be approximately 244 miles and the route from Parkertown would be approximately 275 miles. The granting of both routings will maximize operational flexibility benefitting both WLE and UP-NS. That is, these options will allow the combined UP-NS to decide which route is more efficient for its network. If a NS local train has the mainline occupied on the Oak Harbor route, WLE could route through Parkertown. WLE trains approaching the combined UP-NS interchange at Bellevue would be qualified to proceed via either route.

WLE is also proposing overhead trackage rights on NS for a distance of approximately 189 miles from Hagerstown, Maryland (to which WLE has authority to operate via preexisting trackage rights on CSXT) to a connection to the CSAO of South Jersey/Philadelphia at Frankford Junction in Philadelphia, Pennsylvania.

Finally, WLE is proposing overhead trackage rights on NS for a distance of approximately 74 miles from Oak Harbor, Ohio (to which WLE already operates via preexisting trackage rights on NS) to a connection to the CSAO of Detroit at River Rouge Yard in Ecorse, Michigan and River Rouge, Michigan.

WLE's purpose in seeking the trackage rights is to replace some of the options and alternatives shippers will lose with a combination of UP and NS. WLE's east-west reach, with connections to over a dozen shortlines, means that WLE is uniquely positioned to provide a competitive alternative to a combined UP-NS for traffic to, from, and across the industrial heartland of the country. If UP and NS join networks, then routing options across the critical Chicago interchange would be reduced. UP and NS would inevitably no longer interchange all

traffic at Chicago; instead, a sizeable portion would remain within the combined UP-NS network as single-line service.

UP and NS have stated that a major benefit of the proposed acquisition is circumvention of Chicago for interline traffic and the switching that would occur there.[1] As a result of combining UP and NS, the Bellevue (Ohio) Yard is likely to receive new single-line service traffic that has routed around Chicago, including some traffic that may be interchanged between the combined UP-NS and WLE. In WLE's experience, Bellevue has already been operating at capacity in recent weeks and months, and this is without any additional impact from the proposed combination of UP and NS. Consequences are resulting from the capacity crunch at Bellevue: WLE has been experiencing wait times for its train crews as they attempt to interchange cars with NS and service customers at or near Bellevue. Delays have cascaded such that WLE's rail customers may potentially resort to trucking traffic or even reducing production in the event of no viable transportation alternative. The trackage rights sought by WLE to Chicago and Detroit would provide a release valve for Bellevue Yard, which is already overburdened and presumably would become more so with a combined UP-NS.

Trackage rights to the Shared Assets Area of South Jersey and Philadelphia would also have a beneficial impact on rail service. Eastbound trackage rights traffic from Hagerstown to the Philadelphia area would circumvent the busy Norfolk Southern Pittsburgh Division between Pittsburgh and Harrisburg. The alternative WLE route would also avoid the Horseshoe curve near Altoona and bottlenecks arising from the extended single line service that UP-NS expect, not to mention the substantial new traffic UP and NS expect to move.[2]

[1] See, e.g., UP-NS Application, Vol. I, p. 15 and 19 (filed April 30, 2026).
[2] See, e.g., UP-NS Response Regarding Their Prima Facie Case, STB FD No. 36873, page 5 (filed Aug. 26, 2026). See also UP-NS Application, Vol. I, p. 15 (filed April 30, 2026).

In addition to the specific rail service concerns mentioned above, broader service problems also occur occasionally. Sometimes they affect only one railroad, sometimes they affect a specific rail line or region, and they may even affect a large portion of the country. If the combination of UP and NS has negative impacts on rail service or price, the trackage rights described herein would provide alternatives to shippers. With the trackage rights, thousands of customers on WLE and all connecting lines would gain access through WLE's network to competitively priced common shipping destinations at major gateways through neutral carriers at the BRC and Conrail.

Trackage rights would not be a new way of doing business, as WLE currently operates via numerous trackage rights agreements with NS and CSXT. WLE is already fully qualified on NS operating and safety rules.

IV. Impacts on WLE.

Without the trackage rights described herein, a combination of UP and NS would likely result in a loss of traffic for WLE. The combined UP-NS could reduce the existing reach of WLE by pricing traffic to interchanges that maximizes the UP-NS linehaul, deteriorating the financial efficacy of the existing interchanges and shifting traffic in a way that would disadvantage the WLE. For example, traffic could be forced through raw pricing power to interchanges where WLE does not have necessary infrastructure, and WLE would need to substantially increase handling and cost to provide a viable alternative.

If the combination of UP and NS proceeds and the trackage rights described herein are granted, there may be additional traffic operating on the WLE system compared to that carried today. Competition would be substantially enhanced for all WLE customers, connecting railroads and their customers, creating optionality that would exceed what is offered today.

There would be the security of another option to reach Chicago and the Conrail locations in Detroit and South Jersey/Philadelphia. Connectivity would be created for hundreds of customers in the Midwest to reach BNSF, CPKC, Conrail, and numerous other carriers at critical, neutral interchange locations. Connectivity in Detroit would be further enhanced in the event the Board authorizes the trackage rights modification set forth in the Description of Anticipated Responsive Application filed by CPKC on September 9, 2026.[3]

WLE can handle any expected increase in rail traffic that may result from the granting of the measures sought in this Responsive Application. If there is an increase in rail traffic, any revenue and earnings from the increase will depend upon future economic factors, and any such earnings will be utilized in the same manner as those from other WLE operations.

The proposed trackage rights would have no adverse impacts on the employees of WLE. These trackage rights would merely enable WLE to compete for traffic with the newly-combined UP-NS, with no guarantee of any particular result. WLE has not entered and is not seeking to enter any employee protection agreements related to the trackage rights. Similarly, WLE has no plans to reduce or increase its workforce if the trackage rights are granted. As described above, there may be increased traffic on WLE from the trackage rights, but WLE would only alter staffing levels during the next three years if there were significant and long-lasting changes to traffic patterns.

V. Implementation of the Proposed Trackage Rights.

WLE is prepared to enter the relevant Trackage Rights Agreements with UP-NS immediately and begin rail operations as soon as the parties are able to agree upon necessary

[3] See CPKC's Description of Anticipated Responsive Applications, CPKC-46, at pages 17-20 (filed Sept. 9, 2026).

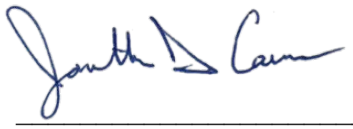
operating protocols customary in the rail industry for trackage rights. WLE anticipates that the agreements will include reasonable trackage rights fees as compensation to UP-NS. WLE is willing to negotiate with UP-NS in order to establish the relevant fees and other terms and conditions for the trackage rights. WLE would also adhere to any Board-established fees, terms, and conditions if the parties are unable to come to a mutually-acceptable agreement. The fees should be set at a level which is typical for the rail industry and consistent with Board precedent for trackage rights.

VI. Other Details.

WLE will not issue any new securities or undertake any financial arrangements to commence rail operations via the trackage rights sought herein. WLE has no plans to increase debt or incur fixed charges in connection with the trackage rights sought in this Responsive Application. WLE is not seeking governmental assistance for the proposed trackage rights.

VERIFICATION

I, Jonathan Carnes, verify under penalty of perjury that I have read the foregoing Verified Statement, that I know the contents thereof, and that the same are true and correct to the best of my knowledge. Further I certify that I am qualified and authorized to file this Verified Statement.



Jonathan Carnes

Exhibit 1(A)



LEGEND

- State Borders
- County Borders
- Rivers
- Wheeling & Lake Erie Railway
- Trackage Rights
- Interchange Location (CSXT, NS, CN, Shortline)
- CSXT
- Norfolk Southern (NS)
- Canadian National (CN)
- Other Railroads
- Federal Highways (77)
- State Highways (30)
- State Routes (7)

FACILITIES

DOCK LOCATIONS
Bellaire, OH
Conneaut, OH
Monessen, PA
Rayland, OH (Warrenton)

TRANSLOAD FACILITIES
Akron, OH
Barberton, OH
Bellaire, OH
Brewster, OH
Canton, OH
Massillon, OH
Navarre, OH (Stark)
Mount Pleasant, PA (Westmoreland)
Monessen, PA
Pittsburgh, PA
Rayland, OH (Warrenton)

INTERCHANGE LOCATIONS

Class I:

Canadian National Railway (CN)
Lang, OH (Toledo) (LANG)
Mifflin Jct., PA (MFLJC) (Via URR)

CSXT
Akron, OH (AKRON)
Benwood, WV (BENWD)
Connellsville, PA (CNLVL)
Greenwich, OH (Willard) (GRNWH)
Wellington, OH (WLGTN)

Norfolk Southern (NS)
Bellevue, OH (BELVU)
Canton, OH (CANTN)
Clairton, PA (CLAIR)
Hagerstown, MD (HAGTN)
Orrville Jct., OH (ORVLL)
Mingo Jct., OH (MINGJ)

Regional and Shortline:

Akron Barberton Cluster Railway (AB)
Akron, OH (AKRON)

Allegheny Valley Railway (AVR)
Brucetton, PA (BRUTN)

Ann Arbor Railroad (AA)
Toledo, OH (TOLED)
Facilitating access to:
- Great Lakes Central Railroad (GLC)
- Huron and Eastern Railroad (HESR)
- Indiana and Ohio Railway (IORY)
- Lake State Railway Company (LSRC)
- Mid-Michigan Railroad (MMRR)

Ashland Railway (ASRY)
Plymouth, OH (PLYMO)

Buffalo and Pittsburgh Railroad (BPRR)
Pittsburgh, PA (PITTS) (via AVR)

Cleveland Commercial Railroad Co. (CCRL)
Glenwillow, OH (GLNWI)

Cleveland Works Railroad (CWRO)
Cleveland, OH (CLEVE)

Columbus and Ohio River Railroad (OHCR/CUOH)
Harmon, OH (HARMO)

Indiana and Ohio Railway (IORY)
Lima, OH (LIMA)
Facilitating access to:
- Chicago, Fort Wayne and Eastern Railroad (CFE)

Newburgh & South Shore Railroad (NSR)
Cleveland, OH (CLEVE) (via CWRO)

Nimishillen and Tuscarawas Railway (NTRY)
Canton, OH (CANTN)

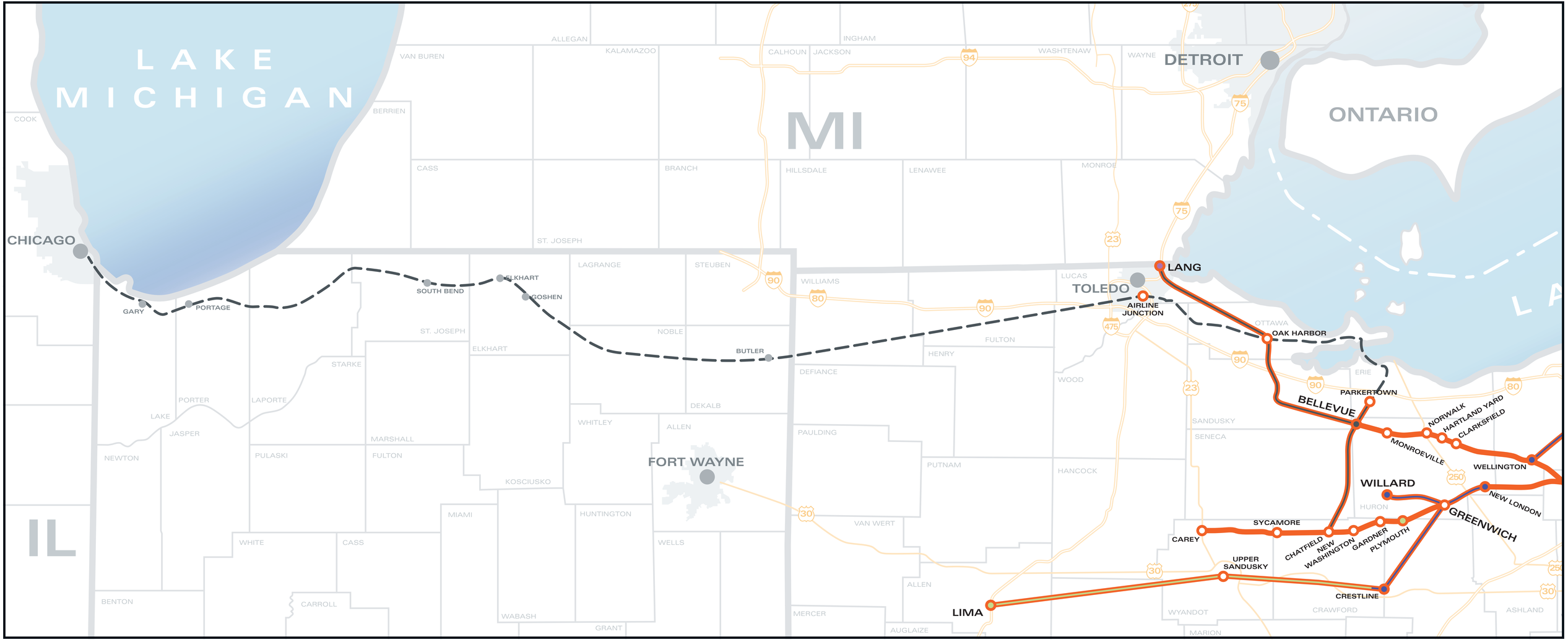
Ohi-Rail Corporation (OHIC)
Minerva, OH (MINER)

RJ Corman Railroad – Cleveland Line (RJCL)
Brewster, OH (BREWS)

Southwest Pennsylvania Railroad (SWP)
Everson, PA (EVRSN)

Union Railroad (URR)
Clairton, PA (CLAIR)
Mifflin Jct., PA (MFLJC)

Exhibit 1(B)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TOLEDO
AIRLINE JUNCTION
LANG
OAK HARBOR
PARKERTOWN
BELLEVUE
NORWALK
HARTLAND YARD
CLARKSFIELD
MONROEVILLE
WELLINGTON
WILLARD
NEW LONDON
GREENWICH
SYCAMORE
CAREY
CHATFIELD
NEW WASHINGTON
GARDNER
PLYMOUTH
UPPER SANDUSKY
CRESTLINE
LIMA
ALLEGAN
VAN BUREN
KALAMAZOO
CALHOUN
JACKSON
INGHAM
WASHTENAW
WAYNE
COOK
BERRIEN
CASS
BRANCH
HILLSDALE
LENAWEE
MONROE
ST. JOSEPH
LAGRANGE
STEUBEN
NOBLE
ELKHART
STARKE
PORTER
LAPORTE
LAKE
JASPER
NEWTON
PULASKI
FULTON
MARSHALL
KOSCIUSKO
MIAMI
WHITE
CASS
BENTON
CARROLL
WABASH
GRANT
HUNTINGTON
WELLS
WHITLEY
ALLEN
DEKALB
DEFIANCE
PAULDING
PUTNAM
VAN WERT
MERCER
AUGLAIZE
WILLIAMS
FULTON
HENRY
LUCAS
WOOD
OTTAWA
SANDUSKY
SENECA
HANCOCK
HURON
ERIE
ALLEN
WYANDOT
MARION
CRAWFORD
ASHLAND
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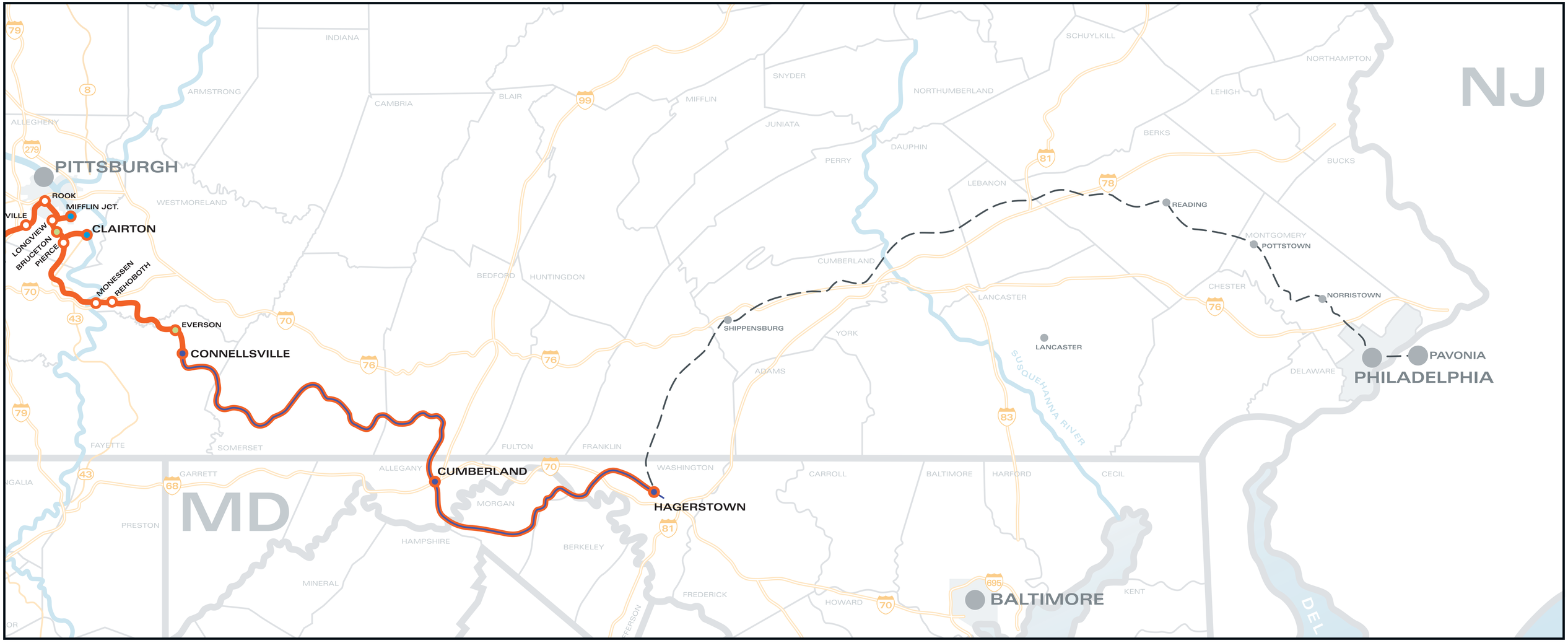
Exhibit 1(C)


PITTSBURGH
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MIFFLIN JCT.
CLAIRTON
LONGVIEW
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CONNELLSVILLE
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HAGERSTOWN
SHIPPENSBURG
READING
POTTSTOWN
NORRISTOWN
PAVONIA
PHILADELPHIA
LANCASTER
BALTIMORE
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INDIANA
ARMSTRONG
CAMBRIA
BLAIR
SNYDER
MIFFLIN
JUNIATA
NORTHUMBERLAND
SCHUYLKILL
NORTHAMPTON
LEHIGH
BERKS
BUCKS
DAUPHIN
PERRY
LEBANON
CUMBERLAND
YORK
ADAMS
LANCASTER
CHESTER
MONTGOMERY
DELAWARE
ALLEGHENY
WESTMORELAND
BEDFORD
HUNTINGDON
FAYETTE
SOMERSET
FULTON
FRANKLIN
ALLEGANY
WASHINGTON
GARRETT
PRESTON
MORGAN
HAMPSHIRE
BERKELEY
MINERAL
FREDERICK
HOWARD
CARROLL
BALTIMORE
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Exhibit 1(D)


MI
ONTARIO
LAKE ERIE
DETROIT
TOLEDO
LANG
AIRLINE JUNCTION
OAK HARBOR
CLEVELAND
CAMPBELL RD. YARD
BEREA
SOLON
FALLS JCT.
STREETSBORO
KENT
AKRON
MOGADORE
HARTVILLE
NORTH CANTON
MIDDLEBRANCH
EAST END YARD
CANTON
MINERVA
EAST SPARTA
SANDYVILLE
BREWSTER
NAVARRE
HARMON
BOLIVAR
ORRVILLE
SMITHVILLE
CRESTON
LODI
SPENCER
MEDINA
COPLEY
WELLINGTON
NORWALK
HARTLAND YARD
CLARKSFIELD
MONROEVILLE
PARKERTOWN
BELLEVUE
WILLARD
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GREENWICH
SYCAMORE
CAREY
CHATFIELD
NEW WASHINGTON
GARDNER
PLYMOUTH
UPPER SANDUSKY
CRESTLINE
LIMA
FORT WAYNE
BUTLER
INGHAM
CALHOUN
JACKSON
WASHTENAW
WAYNE
BRANCH
HILLSDALE
LENAWEE
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LUCAS
OTTAWA
NOBLE
FULTON
HENRY
DEFIANCE
WOOD
ERIE
SANDUSKY
SENECA
DEKALB
ALLEN
PAULDING
PUTNAM
HANCOCK
HURON
VAN WERT
WELLS
MERCER
AUGLAIZE
ADAMS
WYANDOT
CRAWFORD
MARION
ASHLAND
WAYNE
HOLMES
LORAIN
MEDINA
SUMMIT
PORTAGE
CUYAHOGA
LAKE
GEAUGA
ASHTABULA
TRUMBULL
ERIE
LAWRENCE
MERCER
MAHONING
STARK
COLUMBIANA
BEAVER
ALLEGHENY

Exhibit 1(E)


WI
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LAKE MICHIGAN
LAKE ERIE
ONTARIO
DETROIT
CHICAGO
TOLEDO
CLEVELAND
PITTSBURGH
PHILADELPHIA
BALTIMORE
WASHINGTON D.C.
COLUMBUS
CINCINNATI
DAYTON
FORT WAYNE
LANG
ASHLAND JUNCTION
OAK HARBOR
BELLEVUE
PARKERTOWN
NORWALK
CLARK'S LAND YARD
CAMPBELLL
MONROEVILLE
WELLINGTON
WILLARD
NEW LONDON
GREENWICH
SPENCER
LODI
CRESTON
SMITHVILLE
ORRVILLE
WOOSTER
BREWSTER
HARMON
BOLIVAR
SANDYVILLE
CARROLLTON
NEW CUMBERLAND
BRIDGEPORT
STEUBENVILLE
MINGO JCT.
HICKORY
BRILLIANT
WELLSVILLE
WESTLAND
RAYLAND (WARRENTON)
YORKVILLE
MARTINS FERRY
BELLAIRE
BENWOOD
MOUNDSVILLE
NATRIUM
BRIDGEVILLE
MIFFLIN JCT.
CLAIRTON
EVERSON
CONNELLSVILLE
CUMBERLAND
HAGERSTOWN
CAMPBELL RD. YARD
BEREA
SOLON
AKRON
STREETSBORO
KENT
MEDINA
COPLEY
BOGADORE
HARTVILLE
MIDDLEBRANCH
NORTH CANTON
CANTON
EAST END YARD
EAST SPARTA
MINERVA
SYCAMORE
CAREY
UPPER SANDUSKY
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PLYMOUTH
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DEFIANCE
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VAN WERT
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WYANDOT
MARION
HARDIN
LOGAN
UNION
SHELBY
DARKE
MIAMI
CHAMPAIGN
MADISON
CLARK
GREENE
MONTGOMERY
PREBLE
BUTLER
WARREN
CLINTON
FAYETTE
HIGHLAND
BROWN
ADAMS
PIKE
SCIOTO
JACKSON
VINTON
MEIGS
GALLIA
MASON
ROANE
CALHOUN
WIRT
WOOD
PLEASANTS
TYLER
RITCHIE
DODDRIDGE
HARRISON
TAYLOR
BARBOUR
UPSHUR
RANDOLPH
TUCKER
GRANT
PRESTON
MONONGALIA
MARION
MARSHALL
WETZEL
TYLER
PENDLETON
HARDY
MINERAL
HAMPSHIRE
MORGAN
BERKELEY
JEFFERSON
FREDERICK
CARROLL
HOWARD
MONTGOMERY
PRINCE GEORGES
CHARLES
CALVERT
ANNE ARUNDEL
QUEEN ANNE'S
KENT
TALBOT
DORCHESTER
WICOMICO
SOMERSET
WORCESTER
CAROLINE
DELAWARE BAY
CHESAPEAKE
YORK
LANCASTER
READING
POTTSTOWN
NORRISTOWN
HARRISBURG
SUSQUEHANNA
WYOMING
LACKAWANNA
WAYNE
PIKE
MONROE
NORTHAMPTON
LEHIGH
BUCKS
MONTGOMERY
BERKS
SCHUYLKILL
DAUPHIN
LEBANON
PERRY
JUNIATA
MIFFLIN
HUNTINGDON
BEDFORD
FULTON
FRANKLIN
CUMBERLAND
ADAMS
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CHESTER
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LEBANON
BERKS
LEHIGH
NORTHUMBERLAND
SNYDER
UNION
CENTRE
CLEARFIELD
CAMBRIA
SOMERSET
BEDFORD
FULTON
BLAIR
HUNTINGDON
JEFFERSON
CLARION
FOREST
WARREN
MCKEAN
POTTER
TIOGA
BRADFORD
SUSQUEH

Exhibit 1(F)

Expands Connecting Shortlines' Access to Markets and Customers

Map

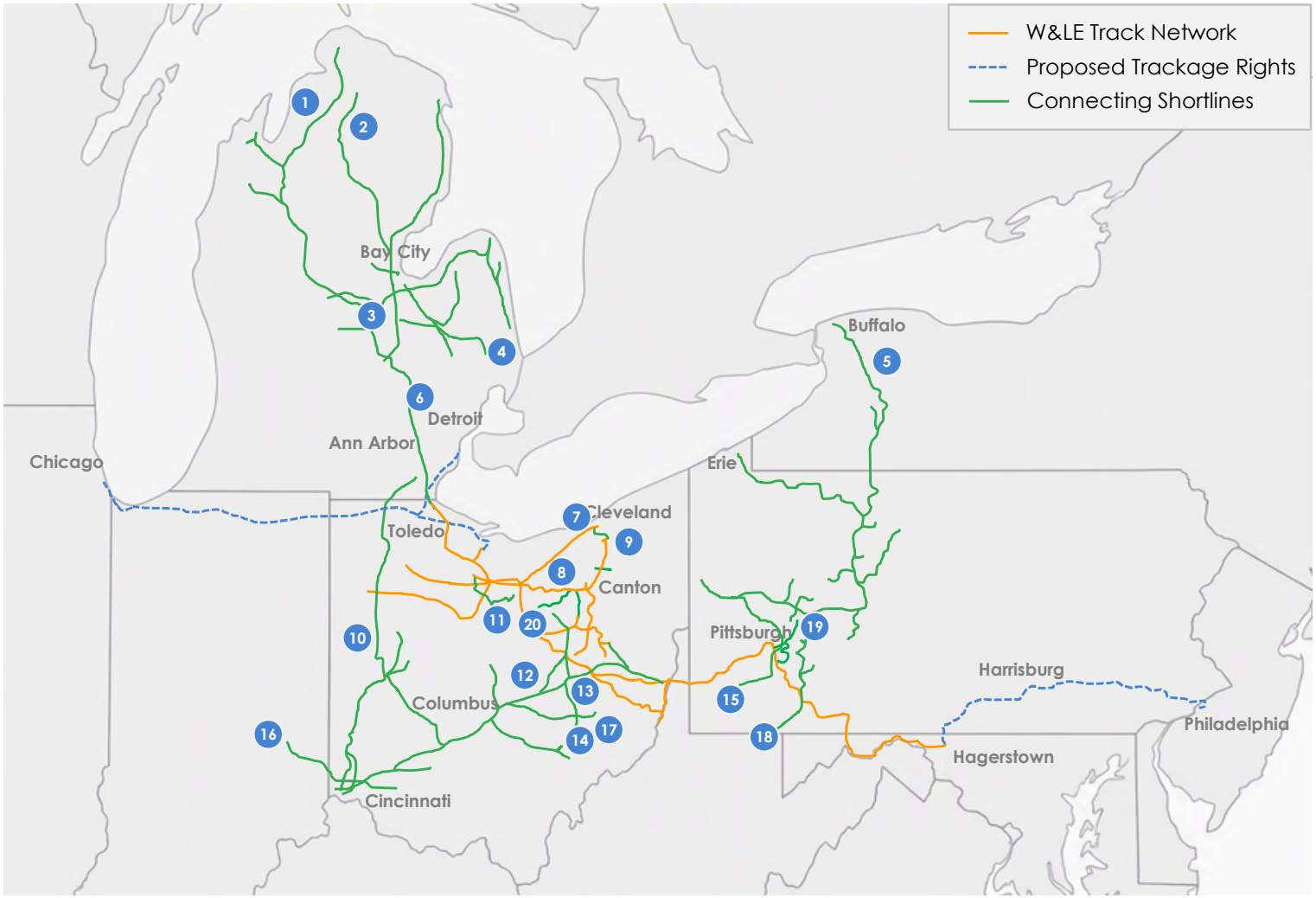


Exhibit 2(A)

TRACKAGE RIGHTS AGREEMENT
Oak Harbor, OH and Parkertown, OH to Chicago, IL

This agreement ("Agreement") is entered into as of this _____ day of _____, 202_____, by and between Wheeling & Lake Erie Railway Company, LLC, a Delaware limited liability company, hereinafter referred to as "User," and Union Pacific Railroad Company, a Delaware corporation, hereinafter referred to as "Owner." Hereinafter, User and Owner may be referred to individually as a "Party" and, collectively, as "the Parties."

WITNESSETH:

Whereas, Owner owns and operates a line of railroad between Oak Harbor, OH and Chicago, IL ("Oak Harbor route") and a line of railroad between Parkertown, OH and Chicago, IL ("Parkertown route") by which Owner conducts rail freight operations;

Whereas, User has trackage rights on Owner to reach Oak Harbor, OH, thereby connecting to the Oak Harbor route;

Whereas, User has trackage rights on Owner to reach Parkertown, OH, thereby connecting to the Parkertown route;

Whereas, User seeks trackage rights on Owner via both the Oak Harbor route and the Parkertown route; and

Whereas, Owner is willing to grant trackage rights to User on both the Oak Harbor route and the Parkertown route pursuant to the terms and conditions herein.

Now, therefore, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein, Owner hereby grants to User the non-exclusive right to operate its trains, locomotives, cars, and equipment with its own crews in overhead service (hereinafter referred to as "Trackage Rights") over trackage owned and operated by Owner on the Oak Harbor route and the Parkertown route (hereinafter collectively referred to as "Subject Line"), as described more fully in Section 1.2 below.

1.2 The Subject Line includes but is not necessarily limited to all of Owner's trackage, track connections, facilities, bridges, appurtenances, signals, and switches located between the end points of the Oak Harbor route and the Parkertown route, as such trackage, track connections, facilities, bridges, appurtenances, signals, and switches are from time to time added to, modified, or removed. The Parties understand that the Subject Line includes yard tracks along both routes to allow the Parties to effect rail operations. Attached to, incorporated in and made a part of this Agreement at **Exhibit 1** is a map which shows the Subject Line between, for the Oak Harbor route, the points designated as Oak Harbor, OH (approximate NS MP CD 267.1 at CP 267, including the connection track from the existing trackage rights on the NS Toledo District at MP T 24.6) and

Chicago, IL (approximate NS MP CD 509.9 at Rock Island Junction, where Owner's trackage meets the track of The Belt Railway Company of Chicago ("BRC")); and, for the Parkertown route, the points designated as Parkertown, OH (approximate NS MP S 102.0 on the Sandusky District) and Chicago, IL (approximate NS MP CD 509.9 at Rock Island Junction, where Owner's trackage meets the track of BRC).

1.3 It is expressly agreed that the purpose of the Trackage Rights is to enable User to operate from its rail system to connect with the BRC, forming a continuous route.

1.4 The rights granted hereby to User include the right to conduct overhead service in either direction and to engage in other operating activities (including picking up or setting out of bad order cars or locomotives) that are related to the transportation of freight on or along the Subject Line.

Section 2. RESTRICTIONS

2.1 User's use of the Subject Line shall be in common with Owner and such other railroad company or companies as Owner may hereafter at any time admit to the joint use of any and all of the Subject Line. For purposes of this Agreement, trains and equipment of such other railroad company or companies admitted by Owner to the use of the Subject Line shall be considered trains and equipment of Owner.

2.2 User may not admit any third party to the use of the Subject Line, provided, however, that User may transport rail cars moving in the account of User or any affiliate railroad of User; and provided further that User may operate locomotives of another railroad as its own pursuant to a run-through agreement with such other railroad.

2.3 It is understood and agreed that User shall not have the right to (1) serve locations or transload freight at intermediate points on the Subject Line, (2) interchange with any railroad at any intermediate point on the Subject Line, (3) provide any passenger service or operate passenger trains on the Subject Line, (4) build-in to or build-out from any point on the Subject Line, or (5) enter or exit the Subject Line at points other than the end points of the two routes. Nothing contained herein will preclude, upon prior approval of Owner, the emergency use by User of such other tracks or entry/exit points as may be designated by Owner for such purposes.

Section 3. CONNECTIONS AND FACILITIES

3.1 Existing connections or facilities which are jointly used by the Parties hereto under existing agreements 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.

Section 4. MAINTENANCE OF SUBJECT LINE

4.1 Owner, at its expense, shall maintain, repair, and renew the Subject Line with its own supervision and labor forces. Owner shall keep and maintain the Subject Line in reasonably good condition for the use herein contemplated, but Owner does not guarantee the conditions of the Subject Line or that operations thereover will not be interrupted. Owner shall take all reasonable

steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

4.2 Except as may be otherwise provided in Section 13 (Liability), User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Line, have or make any claim or demand against Owner or its parent corporation, or their respective directors, officers, agents, or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by User resulting from such failure or neglect.

4.3 In the event that, for operating convenience, necessity, or emergency, Owner permits or directs User to use adjacent tracks or track connections between or beyond the termini of the Subject Line, such trackage, track connections, and appurtenances shall be governed by all provisions of this Agreement while such use continues.

Section 5. ADDITIONS, BETTERMENTS, AND ALTERATIONS

5.1 Owner may, from time to time and in its sole cost and expense, make changes in, additions and betterments to, or retirements from the Subject Line 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 part of the Subject Line and such retirements shall be excluded from the Subject Line.

5.2 If User requests Owner to make changes in or additions and betterments to the Subject Line, including changes in the communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operations, Owner may construct the additional or altered facilities and, in such event, User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

5.3 Responsibility for the expense of capacity related betterments in and/or additions to the Subject Line other than those covered by Sections 5.1 and 5.2 above shall be shared by Owner and User on the basis that the Parties' respective car miles operated over the Subject Line bear to total car miles operated over the Subject Line for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of the Subject Line by any third party shall be attributed to Owner for purposes of computing respective car miles for purposes of this Section 5.3. Owner shall advise User in advance of any betterments and/or additions contemplated under this Section 5.3. Owner's failure to advise User of any betterments and/or additions shall not relieve User from assuming its share of expense under this Section 5.3.

Section 6. OPERATION AND MANAGEMENT OF SUBJECT LINE

6.1 The management and operation of the Subject Line shall be under the exclusive direction and control of Owner, and Owner shall have the unrestricted right to change the management and the operations on and over the Subject Line as it, in its sole judgment, may deem necessary, expedient, or proper for the operation of the Subject Line. All trains of Owner and User shall be

treated equally and operated and dispatched on a first-come, first-served basis without prejudice or partiality, except for passenger trains, to which Owner may give priority.

6.2 Before its locomotives enter onto the Subject Line, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. User shall ascertain that said Subject Line is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Line. Upon completing its operations and clearing the Subject Line, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Line.

6.3 User shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local 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 Line. Notwithstanding any other provisions herein, User shall indemnify, protect, defend, and hold harmless Owner and its subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its subsidiaries or affiliates, or their respective directors, officers, agents, and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of User to comply with its obligations in this regard.

6.4 When operating over the Subject Line, User's locomotives and crews shall be equipped to communicate with the Owner on radio frequencies normally used by Owner in directing train movements on the Subject Line. User's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by Owner's operating rules and equipped with such cab signals and other safety equipment that is required by law or Owner's operating rules for the operation over any or all of the Subject Line.

6.5 The operation of User over the Subject Line shall at all times be in accordance with the rules, instructions, and restrictions of Owner, provided, however, that such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Subject Line and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders, and authoritative directions of train dispatchers and operating officers. Other than those restrictions expressly provided for herein, Owner will not make any rule or restriction applying to User's trains that does not apply with equal force to Owner's trains.

6.6 User's trains while operating over the Subject Line shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Line 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 maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.

6.7 In the event that a train of User shall be forced to stop on the Subject Line due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, and

such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Line, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Line, 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 Line, and User shall reimburse Owner for the actual cost of rendering any such assistance.

6.8 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 Line, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

6.9 All employees of User engaged in the operation of User trains over the Subject Line shall be required to qualify for entry onto the Subject Line by passing periodic examinations regarding the operating and safety rules of Owner related to the Subject Line, and User shall make such arrangements with Owner as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Line are qualified for operation thereover. Upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers shall thereafter examine all employees of User engaged in or connected with User's operations on or along the Subject Line. Pending qualification or requalification of subject employees, Owner shall furnish a pilot or pilots, at the expense of User, to allow operation as contemplated in this Agreement.

6.10 If any employee of User neglects, refuses, or fails to abide by Owner's rules, safety rules, instructions, or restrictions governing the operation over the Subject Line, Owner shall in writing notify User, and, furthermore, Owner may require User to promptly withhold such User employee from service over the Subject Line pending the result of formal investigation of the alleged neglect, refusal, or failure. Either Party may request in writing a formal investigation to establish such neglect, refusal, or failure on the part of User's employee, and, in such case, Owner and User shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to User's employees shall be given by User's officers. The investigation shall be conducted in accordance with the terms and conditions of the agreements between User and its employees. If the result of such investigation warrants, any subject User employee so investigated shall upon written request by Owner be withdrawn by User from service on the Subject Line, and User shall release and indemnify Owner from and against any and all claims and expenses related to such withdrawal, except as otherwise provided below.

6.11 If the result of the joint investigation is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such Board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Subject Line.

6.12 Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge or appeal being made by the employee or his representative as to the discipline requested by Owner and assessed by User.

Section 7. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Line shall be assumed by User and reported and paid by User.

Section 8. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of User are bad ordered while en route on the Subject Line and it is necessary that they be set out, those cars, cabooses, or locomotives shall, after being promptly repaired, be promptly picked up by User. Owner may, upon request of User and at User's expense, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement. Billing for any such light repair work by Owner shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads. Owner shall prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under the Interchange Rules. Should the car owner refuse or otherwise fail to make payment therefor, Owner shall submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under the Interchange Rules.

Section 9. BILLING AND PAYMENT OF CHARGES

9.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of an invoice. Invoices shall contain a statement of the amount due on account of the expenses incurred, any calculation supporting the expense, and a description of any services rendered during the relevant invoice period. User shall pay to Owner at such location as Owner may specify from time to time.

9.2 For a period of three (3) years from the invoice date, the records of each Party shall be open to inspection, at reasonable times and upon reasonable advance notice, to the extent related to the invoiced amounts.

9.3 All monthly bills rendered pursuant to the provisions of this Agreement shall include invoiced expense plus direct labor and material costs, together with the customary surcharges, overhead percentages, and equipment rentals as specified at the time any work is performed.

9.4 With the exception of any claims arising out of or related to any indemnification obligation herein, no invoice shall be rendered, honored, recognized, or considered if issued more than three (3) years after the last day of the calendar month in which the expense covered thereby is incurred. No exception to any invoice shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the invoice was rendered.

9.5 Should any amount become payable by Owner to User under this Agreement, the provisions of this Section 9 shall apply with User as the billing party and Owner as the paying party.

Section 10. COMPENSATION

10.1 In addition to any other payments to be made under this Agreement, User shall remit to Owner for its use of the Subject Line, on a monthly basis, _____ cents per car mile for each loaded or empty car, locomotive, or caboose moved by User (the "Base Charge"). The Base

Charge shall be deemed to include compensation to Owner for maintenance, operating expenses, interest rental, depreciation, and taxes.

10.2 For the purpose of computing the Base Charge under this Section, the Parties hereby mutually agree that the track mileage between the termini of the Subject Line is, for the Oak Harbor route, Two Hundred and Forty-Four (244) miles, including the Oak Harbor connection track; and, for the Parkertown route, Two Hundred and Seventy-Five (275) miles (respectively, the "Mileage Factor"). In the event that for whatever reason physical changes are made to the Subject Line that result in a change in the track mileage provided in the prior sentence, then the Mileage Factor will be adjusted up or down to reflect such new mileage, and such adjusted Mileage Factor will be used to calculate the monthly Base Charge effective with the commencement of train operations over the new track.

10.3 The Base Charge shall be adjusted annually during the term of this Agreement beginning on the _____ day of _____, 20_____, to reflect 100 percent of increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977 = 100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the AAR. In making such determination, the final "Material prices, wage rates, and supplements combined (excluding fuel)" index for the East District shall be used. The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

10.4 As an example, the Base Charge for a particular year would be determined by the following formula:

New Base Charge = (Prior Base Charge)*(A/B)

where A = the Material prices, wage rates, and supplements (excluding fuel) for the most recent calendar year
and B = the Material prices, wage rates, and supplements (excluding fuel) for the calendar year prior to the most recent calendar year

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, an appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties.

Section 11. CLAIMS AND SETTLEMENTS

11.1 Except as provided in Section 11.2, 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 therefore under the provisions of this Agreement.

11.2 Each Party will investigate, adjust, and defend all cargo related liability claims filed with it in accordance with 49 USC § 11706 or 49 CFR § 1005, or in accordance with any applicable transportation contract pursuant to 49 USC § 10709.

11.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party'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.

11.4 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 herein, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party.

11.5 Excluding cargo related liability claims filed in accordance with 49 USC § 11706 or 49 CFR § 1005, or in accordance with any applicable transportation contract pursuant to 49 USC § 10709, 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).

11.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 13 (Liability).

11.7 Each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents, and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or predicated on a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of labor claims and grievances filed by its own employees arising under employee protective conditions or its collective bargaining agreements with its employees. Each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees, and litigation expenses, arising out of claims, lawsuits, and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

Section 12. CLEARING OF WRECKS

12.1 Whenever equipment of User shall become derailed, wrecked, or otherwise disabled while on the Subject Line, it shall be re-railed or cleared by Owner, *provided, however*, that User may re-rail User's derailed equipment whenever use of motorized on or off track equipment is not

required and User has obtained permission to perform such re-railing from Owner, which shall not be unreasonably denied, conditioned, or delayed.

12.2 The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and 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, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 (Liability). All locomotives, cars, equipment, and salvage that 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, unless the Parties otherwise agree.

Section 13. LIABILITY

13.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife, and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses, and attorney's fees resulting from the use of the Subject Line by the Parties or otherwise under this Agreement, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the Subject Line involving the trains, cars, and locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the other Party.

(b) If a Loss occurs on the Subject Line involving the trains, cars, and locomotives of both Parties, then (i) each Party is solely responsible for any Loss to its own employees, locomotives, and equipment and in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the Subject Line and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

(c) For purposes of assigning responsibility of a Loss under this Section, any trains, cars, and locomotives operated by or in the account of a third party user shall be considered the trains, cars, and locomotives of Owner.

(d) Whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and its parent corporation, subsidiaries, and affiliates, and all of its respective 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.

(e) In every case of death or injury suffered by an employee of a Party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability, or other law, and

one of the 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) For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such pilots are on duty as pilots for User.

(g) If a claim or suit shall be commenced against one of the Parties hereto for Loss for which the other Party hereto is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages, and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

(h) In the event of a Loss involving lading, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads as to the handling of any claims for the loss or damage to lading, except to the extent expressly provided otherwise herein.

(i) Notwithstanding any provision to the contrary herein, the obligation of a Party to indemnify the other Party under this Section shall not include any obligation to indemnify the other Party for punitive or exemplary damages to the extent arising from the conduct of the indemnified Party.

(j) Notwithstanding any provision to the contrary herein, each Party shall assume and bear all responsibility for any Loss that is directly or proximately caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.

Section 14. DEFAULT AND TERMINATION

In the event User substantially defaults in performance of any of its material obligations under this Agreement, and fails to cure 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, to terminate this Agreement.

Section 15. REGULATORY APPROVAL

Should this Agreement require the prior approval of, or exemption by, the Surface Transportation Board ("STB"), User at its own cost and expense will initiate and thereafter diligently pursue an appropriate application, petition, or notice to secure such approval.

Section 16. ABANDONMENT AND DISCONTINUANCE OF SUBJECT LINE

16.1 User shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Subject Line or any portion thereof. Owner shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Subject Line or any portion thereof, *provided*, *however*, that Owner shall give six (6) months' advance written notice to User before requesting regulatory authorization for abandonment so that User may determine whether it desires to purchase the Subject Line or any portion thereof.

16.2 If User desires to purchase the Subject Line or any portion thereof, it shall submit an Offer of Financial Assistance pursuant to 49 USC § 10904. In the event Owner receives more than one such offer, Owner will exercise its statutory right to negotiate with User rather than with the other offeror(s).

16.3 In the event Owner notifies User of a plan to request regulatory authorization for abandonment of the Subject Line (or any portion thereof) and User does not submit an Offer of Financial Assistance in response to such request or, having submitted such an offer, does not eventually purchase the Subject Line (or portion thereof), and Owner eventually secures the right to abandon the Subject Line (or any portion thereof), User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Line or relevant portion.

Section 17. TERM

17.1 This Agreement shall be effective the day and the year first written above or, in the event STB approval is required, on the effective date such is secured and shall remain in full force and effect until mutually terminated by the Parties in a signed and notarized written document, *provided*, *however*, that User shall have the right to terminate this Agreement upon giving ninety (90) days' advance written notice to Owner.

17.2 In the event this Agreement is terminated, Owner shall not oppose any discontinuance request filed by User at the STB.

17.3 Termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

Section 18. ARBITRATION

Any irreconcilable dispute arising between the Parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties hereto. Each Party to the arbitration shall pay the compensations, costs, fees, and expenses of its own witnesses, experts, and counsel.

The compensation, cost, and expense of the arbitrator, if any, shall be borne equally by the Parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

Section 19. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties under this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders, Federal Railroad Administration orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Line at locations other than the end points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

Section 20. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Neither User nor Owner may 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 other Party, which shall not be unreasonably withheld, conditioned, or delayed, *provided, however*, that either Party may assign this Agreement without the prior consent of the other Party to an affiliate, subsidiary, or in connection with a corporate merger or acquisition, asset sale, or assignment, mortgage, or lease of substantially all of such Party's railroad lines and business. In the event of any sale, lease, or transfer by Owner of all or a portion of the Subject Line, Owner shall require the purchaser, lessee, or transferee of such portion (or all) of the Subject Line to accept assignment in writing of this Agreement, and to perform all of Owner's obligations under this Agreement with respect to the Subject Line (or portion thereof).

Section 21. NOTICES

21.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the Parties, any and all notices or other communications hereunder shall be: (a) in writing; (b) deemed given (i) when delivered personally, (ii) one (1) business day after being sent by nationally recognized overnight private carrier (postage prepaid), or (iii) upon delivery via electronic mail, so long as either automated or manual receipt of such email is requested and received); and (c) addressed to the persons at the following addresses:

If to User:
Matthew J. Fearing
SVP and CLO
Wheeling & Lake Erie Railway Company, LLC
100 1st Street, SE
Brewster, OH 44613
legalnotices@wlerail.com

If to Owner:
[name]
[title]
Union Pacific Railroad Company
[street address]
[city, state, and zip code]
[email]

21.2 Either Party may provide changes to its address or addressees by furnishing a notice of such change to the other Party in the same manner as provided above for all other written notices.

Section 22. GOVERNING LAW

This Agreement and any claims, disputes, or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of _____, without giving effect to any choice or conflict of laws provision or rule (whether of the state of _____ or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of _____.

Section 23. MISCELLANEOUS

23.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Subject Line or any part thereof, *provided, however*, that the operations of such other companies shall not unduly interfere with or delay the operations of User on and along the Subject Line.

23.2 If any covenant or provision of the Agreement not material to the right of User to use the Subject Line shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the Parties will make other arrangements or execute an amendment to effect the original purpose and intent of the Agreement.

23.3 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

23.4 No provision of the Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both Parties.

23.5 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the Party.

23.6 Except as required by applicable law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over or the subject matter of this Agreement or as may be

necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either Owner or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees, and attorneys, without the prior written approval of the other Party.

23.7 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, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by the Party and includes such trains, locomotives, cars, and 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 and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars, and equipment are located.

23.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

23.9 This Agreement contains the entire understanding and agreement of the Parties regarding the subject matter hereof.

Section 24. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY	**WHEELING & LAKE ERIE RAILWAY COMPANY, LLC**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit 1 - Map

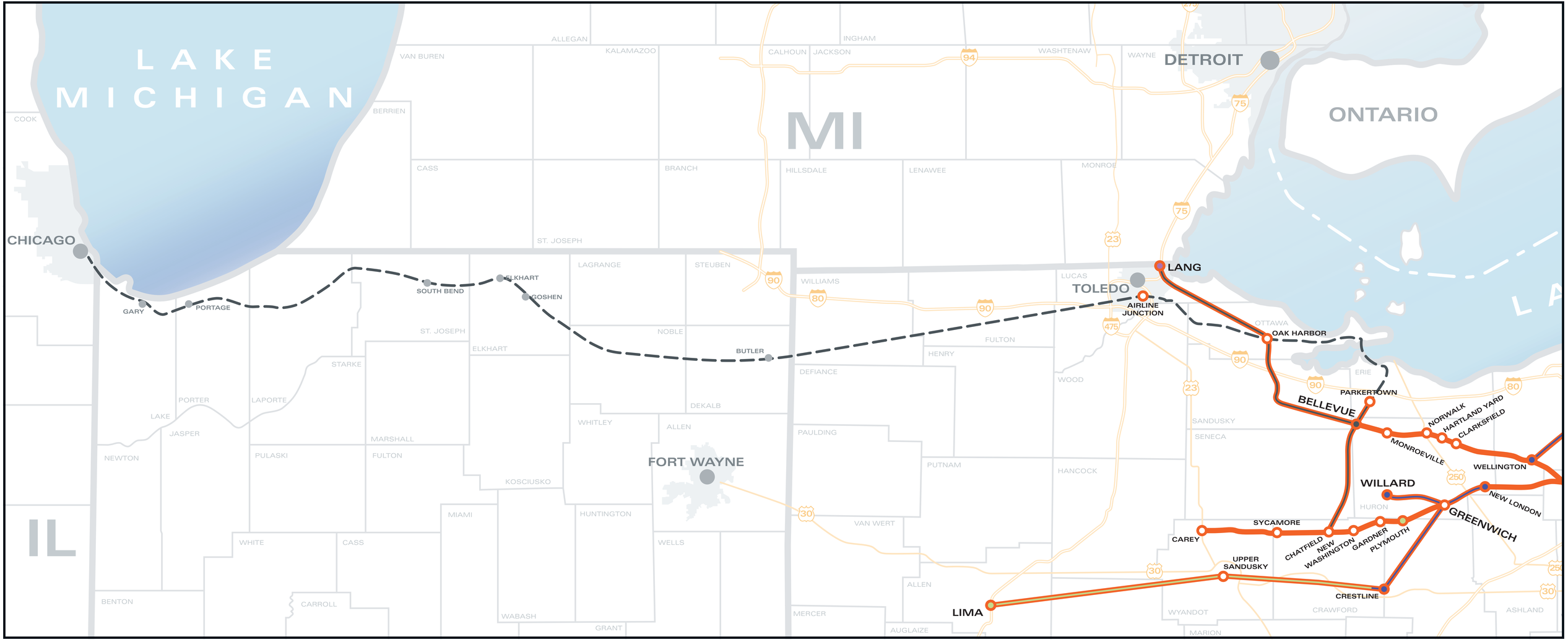

LAKE MICHIGAN
MI
IL
ONTARIO
CHICAGO
GARY
PORTAGE
SOUTH BEND
ELKHART
GOSHEN
BUTLER
FORT WAYNE
DETROIT
TOLEDO
AIRLINE JUNCTION
LANG
OAK HARBOR
PARKERTOWN
BELLEVUE
NORWALK
HARTLAND YARD
CLARKSFIELD
MONROEVILLE
WELLINGTON
WILLARD
NEW LONDON
GREENWICH
SYCAMORE
CAREY
CHATFIELD
NEW WASHINGTON
GARDNER
PLYMOUTH
UPPER SANDUSKY
CRESTLINE
LIMA
ALLEGAN
VAN BUREN
KALAMAZOO
CALHOUN
JACKSON
INGHAM
WASHTENAW
WAYNE
COOK
BERRIEN
CASS
BRANCH
HILLSDALE
LENAWEE
MONROE
ST. JOSEPH
LAGRANGE
STEUBEN
NOBLE
ELKHART
STARKE
PORTER
LAPORTE
LAKE
JASPER
NEWTON
PULASKI
FULTON
MARSHALL
KOSCIUSKO
MIAMI
WHITE
CASS
BENTON
CARROLL
WABASH
GRANT
HUNTINGTON
WELLS
WHITLEY
ALLEN
DEKALB
DEFIANCE
PAULDING
PUTNAM
VAN WERT
MERCER
AUGLAIZE
WILLIAMS
FULTON
HENRY
LUCAS
WOOD
OTTAWA
SANDUSKY
SENECA
HANCOCK
HURON
ERIE
ALLEN
WYANDOT
MARION
CRAWFORD
ASHLAND
90
80
75
23
475
94
30
250

Exhibit 2(B)

TRACKAGE RIGHTS AGREEMENT
Hagerstown, MD to Philadelphia, PA

This agreement ("Agreement") is entered into as of this _____ day of _____, 202_____, by and between Wheeling & Lake Erie Railway Company, LLC, a Delaware limited liability company, hereinafter referred to as "User," and Union Pacific Railroad Company, a Delaware corporation, hereinafter referred to as "Owner." Hereinafter, User and Owner may be referred to individually as a "Party" and, collectively, as "the Parties."

WITNESSETH:

Whereas, Owner owns and operates a line of railroad between Hagerstown, MD and Philadelphia, PA (the "Subject Line") by which Owner conducts rail freight operations;

Whereas, User has trackage rights on CSX Transportation, Inc. ("CSXT") to reach Hagerstown, MD, thereby connecting to the Subject Line;

Whereas, User seeks trackage rights on Owner via the Subject Linee; and

Whereas, Owner is willing to grant trackage rights to User on the Subject Line pursuant to the terms and conditions herein.

Now, therefore, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein, Owner hereby grants to User the non-exclusive right to operate its trains, locomotives, cars, and equipment with its own crews in overhead service (hereinafter referred to as "Trackage Rights") over trackage owned and operated by Owner on the Subject Line, as described more fully in Section 1.2 below.

1.2 The Subject Line includes but is not necessarily limited to all of Owner's trackage, track connections, facilities, bridges, appurtenances, signals, and switches located between the end points, as such trackage, track connections, facilities, bridges, appurtenances, signals, and switches are from time to time added to, modified, or removed. The Parties understand that the Subject Line includes yard tracks to allow the Parties to effect rail operations. Attached to, incorporated in and made a part of this Agreement at **Exhibit 1** is a map which shows the Subject Line between the points designated as Hagerstown, MD (approximate NS MP HW 73.7 at CP Town) and Philadelphia, PA (approximate Conrail MP 81.8 at Frankford Junction).

1.3 It is expressly agreed that the purpose of the Trackage Rights is to enable User to operate from its rail system to connect with the Conrail Shared Assets Operations ("CSAO") of South Jersey/Philadelphia, forming a continuous route.

1.4 The rights granted hereby to User include the right to conduct overhead service in either direction and to engage in other operating activities (including picking up or setting out of bad

order cars or locomotives) that are related to the transportation of freight on or along the Subject Line.

Section 2. RESTRICTIONS

2.1 User's use of the Subject Line shall be in common with Owner and such other railroad company or companies as Owner may hereafter at any time admit to the joint use of any and all of the Subject Line. For purposes of this Agreement, trains and equipment of such other railroad company or companies admitted by Owner to the use of the Subject Line shall be considered trains and equipment of Owner.

2.2 User may not admit any third party to the use of the Subject Line, provided, however, that User may transport rail cars moving in the account of User or any affiliate railroad of User; and provided further that User may operate locomotives of another railroad as its own pursuant to a run-through agreement with such other railroad.

2.3 It is understood and agreed that User shall not have the right to (1) serve locations or transload freight at intermediate points on the Subject Line, (2) interchange with any railroad at any intermediate point on the Subject Line, (3) provide any passenger service or operate passenger trains on the Subject Line, (4) build-in to or build-out from any point on the Subject Line, or (5) enter or exit the Subject Line at points other than the end points. Nothing contained herein will preclude, upon prior approval of Owner, the emergency use by User of such other tracks or entry/exit points as may be designated by Owner for such purposes.

Section 3. CONNECTIONS AND FACILITIES

3.1 Existing connections or facilities which are jointly used by the Parties hereto under existing agreements 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.

Section 4. MAINTENANCE OF SUBJECT LINE

4.1 Owner, at its expense, shall maintain, repair, and renew the Subject Line with its own supervision and labor forces. Owner shall keep and maintain the Subject Line in reasonably good condition for the use herein contemplated, but Owner does not guarantee the conditions of the Subject Line or that operations thereover will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

4.2 Except as may be otherwise provided in Section 13 (Liability), User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Line, have or make any claim or demand against Owner or its parent corporation, or their respective directors, officers, agents, or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by User resulting from such failure or neglect.

4.3 In the event that, for operating convenience, necessity, or emergency, Owner permits or directs User to use adjacent tracks or track connections between or beyond the termini of the

Subject Line, such trackage, track connections, and appurtenances shall be governed by all provisions of this Agreement while such use continues.

Section 5. ADDITIONS, BETTERMENTS, AND ALTERATIONS

5.1 Owner may, from time to time and in its sole cost and expense, make changes in, additions and betterments to, or retirements from the Subject Line 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 part of the Subject Line and such retirements shall be excluded from the Subject Line.

5.2 If User requests Owner to make changes in or additions and betterments to the Subject Line, including changes in the communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operations, Owner may construct the additional or altered facilities and, in such event, User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

5.3 Responsibility for the expense of capacity related betterments in and/or additions to the Subject Line other than those covered by Sections 5.1 and 5.2 above shall be shared by Owner and User on the basis that the Parties' respective car miles operated over the Subject Line bear to total car miles operated over the Subject Line for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of the Subject Line by any third party shall be attributed to Owner for purposes of computing respective car miles for purposes of this Section 5.3. Owner shall advise User in advance of any betterments and/or additions contemplated under this Section 5.3. Owner's failure to advise User of any betterments and/or additions shall not relieve User from assuming its share of expense under this Section 5.3.

Section 6. OPERATION AND MANAGEMENT OF SUBJECT LINE

6.1 The management and operation of the Subject Line shall be under the exclusive direction and control of Owner, and Owner shall have the unrestricted right to change the management and the operations on and over the Subject Line as it, in its sole judgment, may deem necessary, expedient, or proper for the operation of the Subject Line. All trains of Owner and User shall be treated equally and operated and dispatched on a first-come, first-served basis without prejudice or partiality, except for passenger trains, to which Owner may give priority.

6.2 Before its locomotives enter onto the Subject Line, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. User shall ascertain that said Subject Line is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Line. Upon completing its operations and clearing the Subject Line, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Line.

6.3 User shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local 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 Line. Notwithstanding any other provisions herein, User shall indemnify, protect, defend, and hold harmless Owner and its subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its subsidiaries or affiliates, or their respective directors, officers, agents, and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of User to comply with its obligations in this regard.

6.4 When operating over the Subject Line, User's locomotives and crews shall be equipped to communicate with the Owner on radio frequencies normally used by Owner in directing train movements on the Subject Line. User's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by Owner's operating rules and equipped with such cab signals and other safety equipment that is required by law or Owner's operating rules for the operation over any or all of the Subject Line.

6.5 The operation of User over the Subject Line shall at all times be in accordance with the rules, instructions, and restrictions of Owner, provided, however, that such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Subject Line and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders, and authoritative directions of train dispatchers and operating officers. Other than those restrictions expressly provided for herein, Owner will not make any rule or restriction applying to User's trains that does not apply with equal force to Owner's trains.

6.6 User's trains while operating over the Subject Line shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Line 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 maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.

6.7 In the event that a train of User shall be forced to stop on the Subject Line due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Line, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Line, 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 Line, and User shall reimburse Owner for the actual cost of rendering any such assistance.

6.8 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 Line, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

6.9 All employees of User engaged in the operation of User trains over the Subject Line shall be required to qualify for entry onto the Subject Line by passing periodic examinations regarding

the operating and safety rules of Owner related to the Subject Line, and User shall make such arrangements with Owner as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Line are qualified for operation thereover. Upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers shall thereafter examine all employees of User engaged in or connected with User's operations on or along the Subject Line. Pending qualification or requalification of subject employees, Owner shall furnish a pilot or pilots, at the expense of User, to allow operation as contemplated in this Agreement.

6.10 If any employee of User neglects, refuses, or fails to abide by Owner's rules, safety rules, instructions, or restrictions governing the operation over the Subject Line, Owner shall in writing notify User, and, furthermore, Owner may require User to promptly withhold such User employee from service over the Subject Line pending the result of formal investigation of the alleged neglect, refusal, or failure. Either Party may request in writing a formal investigation to establish such neglect, refusal, or failure on the part of User's employee, and, in such case, Owner and User shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to User's employees shall be given by User's officers. The investigation shall be conducted in accordance with the terms and conditions of the agreements between User and its employees. If the result of such investigation warrants, any subject User employee so investigated shall upon written request by Owner be withdrawn by User from service on the Subject Line, and User shall release and indemnify Owner from and against any and all claims and expenses related to such withdrawal, except as otherwise provided below.

6.11 If the result of the joint investigation is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such Board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Subject Line.

6.12 Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge or appeal being made by the employee or his representative as to the discipline requested by Owner and assessed by User.

Section 7. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Line shall be assumed by User and reported and paid by User.

Section 8. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of User are bad ordered while en route on the Subject Line and it is necessary that they be set out, those cars, cabooses, or locomotives shall, after being promptly repaired, be promptly picked up by User. Owner may, upon request of User and at User's expense, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement. Billing for any such light repair work by Owner shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads. Owner shall prepare and submit

billing directly to and collect from the car owner for car-owner responsibility items as determined under the Interchange Rules. Should the car owner refuse or otherwise fail to make payment therefor, Owner shall submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under the Interchange Rules.

Section 9. BILLING AND PAYMENT OF CHARGES

9.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of an invoice. Invoices shall contain a statement of the amount due on account of the expenses incurred, any calculation supporting the expense, and a description of any services rendered during the relevant invoice period. User shall pay to Owner at such location as Owner may specify from time to time.

9.2 For a period of three (3) years from the invoice date, the records of each Party shall be open to inspection, at reasonable times and upon reasonable advance notice, to the extent related to the invoiced amounts.

9.3 All monthly bills rendered pursuant to the provisions of this Agreement shall include invoiced expense plus direct labor and material costs, together with the customary surcharges, overhead percentages, and equipment rentals as specified at the time any work is performed.

9.4 With the exception of any claims arising out of or related to any indemnification obligation herein, no invoice shall be rendered, honored, recognized, or considered if issued more than three (3) years after the last day of the calendar month in which the expense covered thereby is incurred. No exception to any invoice shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the invoice was rendered.

9.5 Should any amount become payable by Owner to User under this Agreement, the provisions of this Section 9 shall apply with User as the billing party and Owner as the paying party.

Section 10. COMPENSATION

10.1 In addition to any other payments to be made under this Agreement, User shall remit to Owner for its use of the Subject Line, on a monthly basis, _____ cents per car mile for each loaded or empty car, locomotive, or caboose moved by User (the "Base Charge"). The Base Charge shall be deemed to include compensation to Owner for maintenance, operating expenses, interest rental, depreciation, and taxes.

10.2 For the purpose of computing the Base Charge under this Section, the Parties hereby mutually agree that the track mileage between the termini of the Subject Line is One Hundred and Eighty-Nine (189) miles (the "Mileage Factor"). In the event that for whatever reason physical changes are made to the Subject Line that result in a change in the track mileage provided in the prior sentence, then the Mileage Factor will be adjusted up or down to reflect such new mileage, and such adjusted Mileage Factor will be used to calculate the monthly Base Charge effective with the commencement of train operations over the new track.

10.3 The Base Charge shall be adjusted annually during the term of this Agreement beginning on the _____ day of _____, 20_____, to reflect 100 percent of increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977 = 100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the AAR. In making such determination, the final "Material prices, wage rates, and supplements combined (excluding fuel)" index for the East District shall be used. The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

10.4 As an example, the Base Charge for a particular year would be determined by the following formula:

New Base Charge = (Prior Base Charge)*(A/B)

where A = the Material prices, wage rates, and supplements (excluding fuel) for the most recent calendar year
and B = the Material prices, wage rates, and supplements (excluding fuel) for the calendar year prior to the most recent calendar year

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, an appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties.

Section 11. CLAIMS AND SETTLEMENTS

11.1 Except as provided in Section 11.2, 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 therefore under the provisions of this Agreement.

11.2 Each Party will investigate, adjust, and defend all cargo related liability claims filed with it in accordance with 49 USC § 11706 or 49 CFR § 1005, or in accordance with any applicable transportation contract pursuant to 49 USC § 10709.

11.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party'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.

11.4 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 herein, except that salaries or wages of full-time claim agents, full-time

attorneys, and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party.

11.5 Excluding cargo related liability claims filed in accordance with 49 USC § 11706 or 49 CFR § 1005, or in accordance with any applicable transportation contract pursuant to 49 USC § 10709, 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).

11.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 13 (Liability).

11.7 Each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents, and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or predicated on a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of labor claims and grievances filed by its own employees arising under employee protective conditions or its collective bargaining agreements with its employees. Each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees, and litigation expenses, arising out of claims, lawsuits, and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

Section 12. CLEARING OF WRECKS

12.1 Whenever equipment of User shall become derailed, wrecked, or otherwise disabled while on the Subject Line, it shall be re-railed or cleared by Owner, *provided, however*, that User may re-rail User's derailed equipment whenever use of motorized on or off track equipment is not required and User has obtained permission to perform such re-railing from Owner, which shall not be unreasonably denied, conditioned, or delayed.

12.2 The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and 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, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 (Liability). All locomotives, cars, equipment, and salvage that 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, unless the Parties otherwise agree.

Section 13. LIABILITY

13.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife, and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses, and attorney's fees resulting from the use of the Subject Line by the Parties or otherwise under this Agreement, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the Subject Line involving the trains, cars, and locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the other Party.

(b) If a Loss occurs on the Subject Line involving the trains, cars, and locomotives of both Parties, then (i) each Party is solely responsible for any Loss to its own employees, locomotives, and equipment and in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the Subject Line and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

(c) For purposes of assigning responsibility of a Loss under this Section, any trains, cars, and locomotives operated by or in the account of a third party user shall be considered the trains, cars, and locomotives of Owner.

(d) Whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and its parent corporation, subsidiaries, and affiliates, and all of its respective 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.

(e) In every case of death or injury suffered by an employee of a Party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability, or other law, and one of the 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) For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such pilots are on duty as pilots for User.

(g) If a claim or suit shall be commenced against one of the Parties hereto for Loss for which the other Party hereto is ultimately liable, the Party sued or against whom the claim

is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages, and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

(h) In the event of a Loss involving lading, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads as to the handling of any claims for the loss or damage to lading, except to the extent expressly provided otherwise herein.

(i) Notwithstanding any provision to the contrary herein, the obligation of a Party to indemnify the other Party under this Section shall not include any obligation to indemnify the other Party for punitive or exemplary damages to the extent arising from the conduct of the indemnified Party.

(j) Notwithstanding any provision to the contrary herein, each Party shall assume and bear all responsibility for any Loss that is directly or proximately caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.

Section 14. DEFAULT AND TERMINATION

In the event User substantially defaults in performance of any of its material obligations under this Agreement, and fails to cure 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, to terminate this Agreement.

Section 15. REGULATORY APPROVAL

Should this Agreement require the prior approval of, or exemption by, the Surface Transportation Board ("STB"), User at its own cost and expense will initiate and thereafter diligently pursue an appropriate application, petition, or notice to secure such approval.

Section 16. ABANDONMENT AND DISCONTINUANCE OF SUBJECT LINE

16.1 User shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Subject Line or any portion thereof. Owner shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Subject Line or any portion thereof, *provided, however*, that Owner shall give six (6) months' advance written notice to User before requesting regulatory authorization for abandonment so that User may determine whether it desires to purchase the Subject Line or any portion thereof.

16.2 If User desires to purchase the Subject Line or any portion thereof, it shall submit an Offer of Financial Assistance pursuant to 49 USC § 10904. In the event Owner receives more than one such offer, Owner will exercise its statutory right to negotiate with User rather than with the other offeror(s).

16.3 In the event Owner notifies User of a plan to request regulatory authorization for abandonment of the Subject Line (or any portion thereof) and User does not submit an Offer of Financial Assistance in response to such request or, having submitted such an offer, does not eventually purchase the Subject Line (or portion thereof), and Owner eventually secures the right to abandon the Subject Line (or any portion thereof), User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Line or relevant portion.

Section 17. TERM

17.1 This Agreement shall be effective the day and the year first written above or, in the event STB approval is required, on the effective date such is secured and shall remain in full force and effect until mutually terminated by the Parties in a signed and notarized written document, *provided*, *however*, that User shall have the right to terminate this Agreement upon giving ninety (90) days' advance written notice to Owner.

17.2 In the event this Agreement is terminated, Owner shall not oppose any discontinuance request filed by User at the STB.

17.3 Termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

Section 18. ARBITRATION

Any irreconcilable dispute arising between the Parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties hereto. Each Party to the arbitration shall pay the compensations, costs, fees, and expenses of its own witnesses, experts, and counsel.

The compensation, cost, and expense of the arbitrator, if any, shall be borne equally by the Parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

Section 19. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties under this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders, Federal Railroad Administration orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures including providing routing over

alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Line at locations other than the end points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

Section 20. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Neither User nor Owner may 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 other Party, which shall not be unreasonably withheld, conditioned, or delayed, *provided, however*, that either Party may assign this Agreement without the prior consent of the other Party to an affiliate, subsidiary, or in connection with a corporate merger or acquisition, asset sale, or assignment, mortgage, or lease of substantially all of such Party's railroad lines and business. In the event of any sale, lease, or transfer by Owner of all or a portion of the Subject Line, Owner shall require the purchaser, lessee, or transferee of such portion (or all) of the Subject Line to accept assignment in writing of this Agreement, and to perform all of Owner's obligations under this Agreement with respect to the Subject Line (or portion thereof).

Section 21. NOTICES

21.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the Parties, any and all notices or other communications hereunder shall be: (a) in writing; (b) deemed given (i) when delivered personally, (ii) one (1) business day after being sent by nationally recognized overnight private carrier (postage prepaid), or (iii) upon delivery via electronic mail, so long as either automated or manual receipt of such email is requested and received); and (c) addressed to the persons at the following addresses:

If to User:
Matthew J. Fearing
SVP and CLO
Wheeling & Lake Erie Railway Company, LLC
100 1st Street, SE
Brewster, OH 44613
legalnotices@wlerail.com

If to Owner:
[name]
[title]
Union Pacific Railroad Company
[street address]
[city, state, and zip code]
[email]

21.2 Either Party may provide changes to its address or addressees by furnishing a notice of such change to the other Party in the same manner as provided above for all other written notices.

Section 22. GOVERNING LAW

This Agreement and any claims, disputes, or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of _____, without giving effect to any choice or conflict of laws provision or rule (whether of the state of _____ or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of _____.

Section 23. MISCELLANEOUS

23.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Subject Line or any part thereof, *provided, however*, that the operations of such other companies shall not unduly interfere with or delay the operations of User on and along the Subject Line.

23.2 If any covenant or provision of the Agreement not material to the right of User to use the Subject Line shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the Parties will make other arrangements or execute an amendment to effect the original purpose and intent of the Agreement.

23.3 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

23.4 No provision of the Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both Parties.

23.5 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the Party.

23.6 Except as required by applicable law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over or the subject matter of this Agreement or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either Owner or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees, and attorneys, without the prior written approval of the other Party.

23.7 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, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by the Party and includes such

trains, locomotives, cars, and 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 and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars, and equipment are located.

23.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

23.9 This Agreement contains the entire understanding and agreement of the Parties regarding the subject matter hereof.

Section 24. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY	**WHEELING & LAKE ERIE RAILWAY COMPANY, LLC**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit 1 - Map

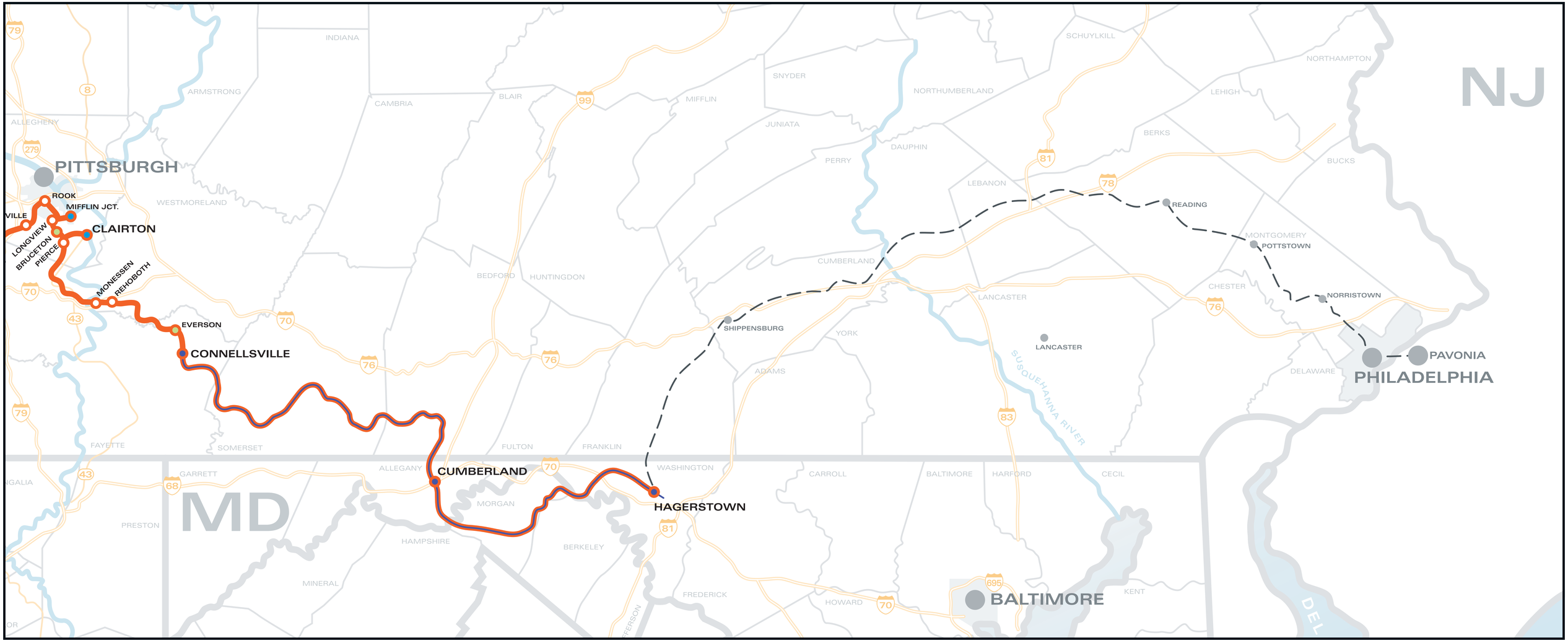

PITTSBURGH
ROOK
MIFFLIN JCT.
CLAIRTON
LONGVIEW
BRUCETON
PIERCE
MONESSEN
REHOBOTH
EVERSON
CONNELLSVILLE
CUMBERLAND
HAGERSTOWN
SHIPPENSBURG
READING
POTTSTOWN
NORRISTOWN
PAVONIA
PHILADELPHIA
LANCASTER
BALTIMORE
MD
NJ
SUSQUEHANNA RIVER
INDIANA
ARMSTRONG
CAMBRIA
BLAIR
SNYDER
MIFFLIN
JUNIATA
NORTHUMBERLAND
SCHUYLKILL
NORTHAMPTON
LEHIGH
BERKS
BUCKS
DAUPHIN
PERRY
LEBANON
CUMBERLAND
YORK
ADAMS
LANCASTER
CHESTER
MONTGOMERY
DELAWARE
ALLEGHENY
WESTMORELAND
BEDFORD
HUNTINGDON
FAYETTE
SOMERSET
FULTON
FRANKLIN
ALLEGANY
WASHINGTON
GARRETT
PRESTON
MORGAN
HAMPSHIRE
BERKELEY
MINERAL
FREDERICK
HOWARD
CARROLL
BALTIMORE
HARFORD
CECIL
KENT
79
8
279
99
81
78
70
43
68
76
83
695

Exhibit 2(C)

TRACKAGE RIGHTS AGREEMENT
Oak Harbor, OH to Ecorse and River Rouge, MI

This agreement ("Agreement") is entered into as of this _____ day of _____, 202_____, by and between Wheeling & Lake Erie Railway Company, LLC, a Delaware limited liability company, hereinafter referred to as "User," and Union Pacific Railroad Company, a Delaware corporation, hereinafter referred to as "Owner." Hereinafter, User and Owner may be referred to individually as a "Party" and, collectively, as "the Parties."

WITNESSETH:

Whereas, Owner owns and operates a line of railroad between Oak Harbor, OH and Ecorse and River Rouge, MI (the "Subject Line") by which Owner conducts rail freight operations;

Whereas, User has trackage rights on Owner to reach Oak Harbor, OH, thereby connecting to the Subject Line;

Whereas, User seeks trackage rights on Owner via the Subject Linee; and

Whereas, Owner is willing to grant trackage rights to User on the Subject Line pursuant to the terms and conditions herein.

Now, therefore, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein, Owner hereby grants to User the non-exclusive right to operate its trains, locomotives, cars, and equipment with its own crews in overhead service (hereinafter referred to as "Trackage Rights") over trackage owned and operated by Owner on the Subject Line, as described more fully in Section 1.2 below.

1.2 The Subject Line includes but is not necessarily limited to all of Owner's trackage, track connections, facilities, bridges, appurtenances, signals, and switches located between the end points, as such trackage, track connections, facilities, bridges, appurtenances, signals, and switches are from time to time added to, modified, or removed. The Parties understand that the Subject Line includes yard tracks to allow the Parties to effect rail operations. Attached to, incorporated in and made a part of this Agreement at **Exhibit 1** is a map which shows the Subject Line between the points designated as Oak Harbor, OH (approximate NS MP CD 267.1 at CP 267, including the connection track from the existing trackage rights on the NS Toledo District at MP T 24.6) and River Rouge Yard in Ecorse and River Rouge, MI (approximate MP DR 7.0), via the NS Chicago Line and Detroit Line to Gibraltar, MI (approximate MP DR 20.0), where Owner's trackage meets the Detroit Line of the Conrail Shared Assets Operations ("CSAO"), and continuing over that line to River Rouge Yard.

1.3 It is expressly agreed that the purpose of the Trackage Rights is to enable User to operate from its rail system to connect with the CSAO of Detroit, forming a continuous route.

1.4 The rights granted hereby to User include the right to conduct overhead service in either direction and to engage in other operating activities (including picking up or setting out of bad order cars or locomotives) that are related to the transportation of freight on or along the Subject Line.

Section 2. RESTRICTIONS

2.1 User's use of the Subject Line shall be in common with Owner and such other railroad company or companies as Owner may hereafter at any time admit to the joint use of any and all of the Subject Line. For purposes of this Agreement, trains and equipment of such other railroad company or companies admitted by Owner to the use of the Subject Line shall be considered trains and equipment of Owner.

2.2 User may not admit any third party to the use of the Subject Line, provided, however, that User may transport rail cars moving in the account of User or any affiliate railroad of User; and provided further that User may operate locomotives of another railroad as its own pursuant to a run-through agreement with such other railroad.

2.3 It is understood and agreed that User shall not have the right to (1) serve locations or transload freight at intermediate points on the Subject Line, (2) interchange with any railroad at any intermediate point on the Subject Line, (3) provide any passenger service or operate passenger trains on the Subject Line, (4) build-in to or build-out from any point on the Subject Line, or (5) enter or exit the Subject Line at points other than the end points. Nothing contained herein will preclude, upon prior approval of Owner, the emergency use by User of such other tracks or entry/exit points as may be designated by Owner for such purposes.

Section 3. CONNECTIONS AND FACILITIES

3.1 Existing connections or facilities which are jointly used by the Parties hereto under existing agreements 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.

Section 4. MAINTENANCE OF SUBJECT LINE

4.1 Owner, at its expense, shall maintain, repair, and renew the Subject Line with its own supervision and labor forces. Owner shall keep and maintain the Subject Line in reasonably good condition for the use herein contemplated, but Owner does not guarantee the conditions of the Subject Line or that operations thereover will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions.

4.2 Except as may be otherwise provided in Section 13 (Liability), User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Line, have or make any claim or demand against Owner or its parent corporation, or their respective directors, officers, agents, or employees for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for any nature suffered by User resulting from such failure or neglect.

4.3 In the event that, for operating convenience, necessity, or emergency, Owner permits or directs User to use adjacent tracks or track connections between or beyond the termini of the Subject Line, such trackage, track connections, and appurtenances shall be governed by all provisions of this Agreement while such use continues.

Section 5. ADDITIONS, BETTERMENTS, AND ALTERATIONS

5.1 Owner may, from time to time and in its sole cost and expense, make changes in, additions and betterments to, or retirements from the Subject Line 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 part of the Subject Line and such retirements shall be excluded from the Subject Line.

5.2 If User requests Owner to make changes in or additions and betterments to the Subject Line, including changes in the communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operations, Owner may construct the additional or altered facilities and, in such event, User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities.

5.3 Responsibility for the expense of capacity related betterments in and/or additions to the Subject Line other than those covered by Sections 5.1 and 5.2 above shall be shared by Owner and User on the basis that the Parties' respective car miles operated over the Subject Line bear to total car miles operated over the Subject Line for the twelve (12) month period immediately prior to the month work on the project is commenced. The use of the Subject Line by any third party shall be attributed to Owner for purposes of computing respective car miles for purposes of this Section 5.3. Owner shall advise User in advance of any betterments and/or additions contemplated under this Section 5.3. Owner's failure to advise User of any betterments and/or additions shall not relieve User from assuming its share of expense under this Section 5.3.

Section 6. OPERATION AND MANAGEMENT OF SUBJECT LINE

6.1 The management and operation of the Subject Line shall be under the exclusive direction and control of Owner, and Owner shall have the unrestricted right to change the management and the operations on and over the Subject Line as it, in its sole judgment, may deem necessary, expedient, or proper for the operation of the Subject Line. All trains of Owner and User shall be treated equally and operated and dispatched on a first-come, first-served basis without prejudice or partiality, except for passenger trains, to which Owner may give priority.

6.2 Before its locomotives enter onto the Subject Line, User shall request permission from Owner's dispatcher or other designated representative at Owner's rail traffic control center or such other location as Owner may designate. User shall ascertain that said Subject Line is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Line. Upon completing its operations and clearing the Subject Line, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Line.

6.3 User shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local 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 Line. Notwithstanding any other provisions herein, User shall indemnify, protect, defend, and hold harmless Owner and its subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its subsidiaries or affiliates, or their respective directors, officers, agents, and employees under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of User to comply with its obligations in this regard.

6.4 When operating over the Subject Line, User's locomotives and crews shall be equipped to communicate with the Owner on radio frequencies normally used by Owner in directing train movements on the Subject Line. User's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by Owner's operating rules and equipped with such cab signals and other safety equipment that is required by law or Owner's operating rules for the operation over any or all of the Subject Line.

6.5 The operation of User over the Subject Line shall at all times be in accordance with the rules, instructions, and restrictions of Owner, provided, however, that such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Subject Line and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating and safety rules, timetables, special instructions, bulletins, general orders, and authoritative directions of train dispatchers and operating officers. Other than those restrictions expressly provided for herein, Owner will not make any rule or restriction applying to User's trains that does not apply with equal force to Owner's trains.

6.6 User's trains while operating over the Subject Line shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Line 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 maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.

6.7 In the event that a train of User shall be forced to stop on the Subject Line due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Line, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Line, 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 Line, and User shall reimburse Owner for the actual cost of rendering any such assistance.

6.8 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 Line, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

6.9 All employees of User engaged in the operation of User trains over the Subject Line shall be required to qualify for entry onto the Subject Line by passing periodic examinations regarding the operating and safety rules of Owner related to the Subject Line, and User shall make such arrangements with Owner as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Line are qualified for operation thereover. Upon request of User, Owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers shall thereafter examine all employees of User engaged in or connected with User's operations on or along the Subject Line. Pending qualification or requalification of subject employees, Owner shall furnish a pilot or pilots, at the expense of User, to allow operation as contemplated in this Agreement.

6.10 If any employee of User neglects, refuses, or fails to abide by Owner's rules, safety rules, instructions, or restrictions governing the operation over the Subject Line, Owner shall in writing notify User, and, furthermore, Owner may require User to promptly withhold such User employee from service over the Subject Line pending the result of formal investigation of the alleged neglect, refusal, or failure. Either Party may request in writing a formal investigation to establish such neglect, refusal, or failure on the part of User's employee, and, in such case, Owner and User shall promptly hold a joint investigation, in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to User's employees shall be given by User's officers. The investigation shall be conducted in accordance with the terms and conditions of the agreements between User and its employees. If the result of such investigation warrants, any subject User employee so investigated shall upon written request by Owner be withdrawn by User from service on the Subject Line, and User shall release and indemnify Owner from and against any and all claims and expenses related to such withdrawal, except as otherwise provided below.

6.11 If the result of the joint investigation is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such Board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Subject Line.

6.12 Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge or appeal being made by the employee or his representative as to the discipline requested by Owner and assessed by User.

Section 7. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Line shall be assumed by User and reported and paid by User.

Section 8. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of User are bad ordered while en route on the Subject Line and it is necessary that they be set out, those cars, cabooses, or locomotives shall, after being promptly repaired, be promptly picked up by User. Owner may, upon request of User and at User's expense, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement. Billing for any such light repair work by Owner

shall be at rates prescribed in, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads. Owner shall prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under the Interchange Rules. Should the car owner refuse or otherwise fail to make payment therefor, Owner shall submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under the Interchange Rules.

Section 9. BILLING AND PAYMENT OF CHARGES

9.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of an invoice. Invoices shall contain a statement of the amount due on account of the expenses incurred, any calculation supporting the expense, and a description of any services rendered during the relevant invoice period. User shall pay to Owner at such location as Owner may specify from time to time.

9.2 For a period of three (3) years from the invoice date, the records of each Party shall be open to inspection, at reasonable times and upon reasonable advance notice, to the extent related to the invoiced amounts.

9.3 All monthly bills rendered pursuant to the provisions of this Agreement shall include invoiced expense plus direct labor and material costs, together with the customary surcharges, overhead percentages, and equipment rentals as specified at the time any work is performed.

9.4 With the exception of any claims arising out of or related to any indemnification obligation herein, no invoice shall be rendered, honored, recognized, or considered if issued more than three (3) years after the last day of the calendar month in which the expense covered thereby is incurred. No exception to any invoice shall be honored, recognized, or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the invoice was rendered.

9.5 Should any amount become payable by Owner to User under this Agreement, the provisions of this Section 9 shall apply with User as the billing party and Owner as the paying party.

Section 10. COMPENSATION

10.1 In addition to any other payments to be made under this Agreement, User shall remit to Owner for its use of the Subject Line, on a monthly basis, _____ cents per car mile for each loaded or empty car, locomotive, or caboose moved by User (the "Base Charge"). The Base Charge shall be deemed to include compensation to Owner for maintenance, operating expenses, interest rental, depreciation, and taxes.

10.2 For the purpose of computing the Base Charge under this Section, the Parties hereby mutually agree that the track mileage between the termini of the Subject Line is Seventy-Four (74) miles, including the Oak Harbor connection track and the CSAO segment from Gibraltar to River Rouge Yard (the "Mileage Factor"). In the event that for whatever reason physical changes are made to the Subject Line that result in a change in the track mileage provided in the prior sentence, then the Mileage Factor will be adjusted up or down to reflect such new mileage, and such adjusted

Mileage Factor will be used to calculate the monthly Base Charge effective with the commencement of train operations over the new track.

10.3 The Base Charge shall be adjusted annually during the term of this Agreement beginning on the _____ day of _____, 20_____, to reflect 100 percent of increase or decrease in the cost of labor and material, excluding fuel, as reflected in Table A, Annual Indices of Charge-Out Prices and Wage Rates (1977 = 100), Series RCR, included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the AAR. In making such determination, the final "Material prices, wage rates, and supplements combined (excluding fuel)" index for the East District shall be used. The Base Charge shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed calendar year as related to the final index of the calendar year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the current Base Charge to be escalated.

10.4 As an example, the Base Charge for a particular year would be determined by the following formula:

New Base Charge = (Prior Base Charge)*(A/B)

where A = the Material prices, wage rates, and supplements (excluding fuel) for the most recent calendar year
and B = the Material prices, wage rates, and supplements (excluding fuel) for the calendar year prior to the most recent calendar year

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, an appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indices of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties.

Section 11. CLAIMS AND SETTLEMENTS

11.1 Except as provided in Section 11.2, 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 therefore under the provisions of this Agreement.

11.2 Each Party will investigate, adjust, and defend all cargo related liability claims filed with it in accordance with 49 USC § 11706 or 49 CFR § 1005, or in accordance with any applicable transportation contract pursuant to 49 USC § 10709.

11.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party'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.

11.4 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 herein, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party.

11.5 Excluding cargo related liability claims filed in accordance with 49 USC § 11706 or 49 CFR § 1005, or in accordance with any applicable transportation contract pursuant to 49 USC § 10709, 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).

11.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 13 (Liability).

11.7 Each Party hereto agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents, and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or predicated on a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of labor claims and grievances filed by its own employees arising under employee protective conditions or its collective bargaining agreements with its employees. Each Party agrees to indemnify and hold harmless the other Party against any and all costs and payments, including judgments, damages, attorneys' fees, and litigation expenses, arising out of claims, lawsuits, and actions brought by or on behalf of its own employees pursuant to any provision of law, including common law, and based on employment arising out of the operations covered by this Agreement, except to extent otherwise specifically provided in this Agreement.

Section 12. CLEARING OF WRECKS

12.1 Whenever equipment of User shall become derailed, wrecked, or otherwise disabled while on the Subject Line, it shall be re-railed or cleared by Owner, *provided, however*, that User may re-rail User's derailed equipment whenever use of motorized on or off track equipment is not required and User has obtained permission to perform such re-railing from Owner, which shall not be unreasonably denied, conditioned, or delayed.

12.2 The cost, liability, and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and 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, resulting therefrom, shall be apportioned in accordance with the provisions of Section 13 (Liability). All locomotives, cars, equipment, and salvage that 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, unless the Parties otherwise agree.

Section 13. LIABILITY

13.1 The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife, and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses, and attorney's fees resulting from the use of the Subject Line by the Parties or otherwise under this Agreement, all of which are collectively referred to as a "Loss", will be divided as follows:

(a) If a Loss occurs on the Subject Line involving the trains, cars, and locomotives of only one of the Parties hereto, then that one Party is solely responsible for the Loss, even if caused partially or completely by the other Party.

(b) If a Loss occurs on the Subject Line involving the trains, cars, and locomotives of both Parties, then (i) each Party is solely responsible for any Loss to its own employees, locomotives, and equipment and in its own revenue account including lading and (ii) the Parties are equally responsible for any Loss to the Subject Line and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

(c) For purposes of assigning responsibility of a Loss under this Section, any trains, cars, and locomotives operated by or in the account of a third party user shall be considered the trains, cars, and locomotives of Owner.

(d) Whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the foregoing or succeeding provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and its parent corporation, subsidiaries, and affiliates, and all of its respective 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.

(e) In every case of death or injury suffered by an employee of a Party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability, or other law, and one of the 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) For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such pilots are on duty as pilots for User.

(g) If a claim or suit shall be commenced against one of the Parties hereto for Loss for which the other Party hereto is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages, and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

(h) In the event of a Loss involving lading, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads as to the handling of any claims for the loss or damage to lading, except to the extent expressly provided otherwise herein.

(i) Notwithstanding any provision to the contrary herein, the obligation of a Party to indemnify the other Party under this Section shall not include any obligation to indemnify the other Party for punitive or exemplary damages to the extent arising from the conduct of the indemnified Party.

(j) Notwithstanding any provision to the contrary herein, each Party shall assume and bear all responsibility for any Loss that is directly or proximately caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.

Section 14. DEFAULT AND TERMINATION

In the event User substantially defaults in performance of any of its material obligations under this Agreement, and fails to cure 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, to terminate this Agreement.

Section 15. REGULATORY APPROVAL

Should this Agreement require the prior approval of, or exemption by, the Surface Transportation Board ("STB"), User at its own cost and expense will initiate and thereafter diligently pursue an appropriate application, petition, or notice to secure such approval.

Section 16. ABANDONMENT AND DISCONTINUANCE OF SUBJECT LINE

16.1 User shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Subject Line or any portion thereof. Owner shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Subject Line or any portion thereof, *provided, however*, that Owner shall give six (6) months' advance written notice to User before requesting regulatory authorization for abandonment so that User may determine whether it desires to purchase the Subject Line or any portion thereof.

16.2 If User desires to purchase the Subject Line or any portion thereof, it shall submit an Offer of Financial Assistance pursuant to 49 USC § 10904. In the event Owner receives more than one

such offer, Owner will exercise its statutory right to negotiate with User rather than with the other offeror(s).

16.3 In the event Owner notifies User of a plan to request regulatory authorization for abandonment of the Subject Line (or any portion thereof) and User does not submit an Offer of Financial Assistance in response to such request or, having submitted such an offer, does not eventually purchase the Subject Line (or portion thereof), and Owner eventually secures the right to abandon the Subject Line (or any portion thereof), User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Line or relevant portion.

Section 17. TERM

17.1 This Agreement shall be effective the day and the year first written above or, in the event STB approval is required, on the effective date such is secured and shall remain in full force and effect until mutually terminated by the Parties in a signed and notarized written document, *provided*, *however*, that User shall have the right to terminate this Agreement upon giving ninety (90) days' advance written notice to Owner.

17.2 In the event this Agreement is terminated, Owner shall not oppose any discontinuance request filed by User at the STB.

17.3 Termination of this Agreement shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.

Section 18. ARBITRATION

Any irreconcilable dispute arising between the Parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties hereto. Each Party to the arbitration shall pay the compensations, costs, fees, and expenses of its own witnesses, experts, and counsel.

The compensation, cost, and expense of the arbitrator, if any, shall be borne equally by the Parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

Section 19. FORCE MAJEURE

The obligations, other than payment obligations, of the Parties under this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders, Federal Railroad Administration orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall

reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures including providing routing over alternate rail lines to the extent practicable (subject to reimbursement for incremental costs), and granting the right to enter and exit the Subject Line at locations other than the end points in the case of a necessary detour, to restore performance of its obligations in a timely manner.

Section 20. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Neither User nor Owner may 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 other Party, which shall not be unreasonably withheld, conditioned, or delayed, *provided, however*, that either Party may assign this Agreement without the prior consent of the other Party to an affiliate, subsidiary, or in connection with a corporate merger or acquisition, asset sale, or assignment, mortgage, or lease of substantially all of such Party's railroad lines and business. In the event of any sale, lease, or transfer by Owner of all or a portion of the Subject Line, Owner shall require the purchaser, lessee, or transferee of such portion (or all) of the Subject Line to accept assignment in writing of this Agreement, and to perform all of Owner's obligations under this Agreement with respect to the Subject Line (or portion thereof).

Section 21. NOTICES

21.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the Parties, any and all notices or other communications hereunder shall be: (a) in writing; (b) deemed given (i) when delivered personally, (ii) one (1) business day after being sent by nationally recognized overnight private carrier (postage prepaid), or (iii) upon delivery via electronic mail, so long as either automated or manual receipt of such email is requested and received); and (c) addressed to the persons at the following addresses:

If to User:
Matthew J. Fearing
SVP and CLO
Wheeling & Lake Erie Railway Company, LLC
100 1st Street, SE
Brewster, OH 44613
legalnotices@wlerail.com

If to Owner:
[name]
[title]
Union Pacific Railroad Company
[street address]
[city, state, and zip code]
[email]

21.2 Either Party may provide changes to its address or addressees by furnishing a notice of such change to the other Party in the same manner as provided above for all other written notices.

Section 22. GOVERNING LAW

This Agreement and any claims, disputes, or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of _____, without giving effect to any choice or conflict of laws provision or rule (whether of the state of _____ or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of _____.

Section 23. MISCELLANEOUS

23.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Subject Line or any part thereof, *provided, however*, that the operations of such other companies shall not unduly interfere with or delay the operations of User on and along the Subject Line.

23.2 If any covenant or provision of the Agreement not material to the right of User to use the Subject Line shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the Parties will make other arrangements or execute an amendment to effect the original purpose and intent of the Agreement.

23.3 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

23.4 No provision of the Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both Parties.

23.5 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the Party.

23.6 Except as required by applicable law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over or the subject matter of this Agreement or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either Owner or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees, and attorneys, without the prior written approval of the other Party.

23.7 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, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by the Party and includes such trains, locomotives, cars, and 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 and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars, and equipment are located.

23.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

23.9 This Agreement contains the entire understanding and agreement of the Parties regarding the subject matter hereof.

Section 24. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY	**WHEELING & LAKE ERIE RAILWAY COMPANY, LLC**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit 1 - Map


MI
ONTARIO
LAKE ERIE
DETROIT
TOLEDO
LANG
AIRLINE JUNCTION
OAK HARBOR
CLEVELAND
CAMPBELL RD. YARD
BEREA
SOLON
FALLS JCT.
STREETSBORO
KENT
AKRON
MOGADORE
HARTVILLE
NORTH CANTON
MIDDLEBRANCH
EAST END YARD
CANTON
MINERVA
EAST SPARTA
SANDYVILLE
BREWSTER
NAVARRE
HARMON
BOLIVAR
ORRVILLE
SMITHVILLE
CRESTON
LODI
SPENCER
MEDINA
COPLEY
WELLINGTON
NORWALK
HARTLAND YARD
CLARKSFIELD
MONROEVILLE
PARKERTOWN
BELLEVUE
WILLARD
NEW LONDON
GREENWICH
SYCAMORE
CAREY
CHATFIELD
NEW WASHINGTON
GARDNER
PLYMOUTH
UPPER SANDUSKY
CRESTLINE
LIMA
FORT WAYNE
BUTLER
INGHAM
CALHOUN
JACKSON
WASHTENAW
WAYNE
BRANCH
HILLSDALE
LENAWEE
MONROE
STEUBEN
WILLIAMS
LUCAS
OTTAWA
NOBLE
FULTON
HENRY
DEFIANCE
WOOD
ERIE
SANDUSKY
SENECA
DEKALB
ALLEN
PAULDING
PUTNAM
HANCOCK
HURON
VAN WERT
WELLS
MERCER
AUGLAIZE
ADAMS
WYANDOT
CRAWFORD
MARION
ASHLAND
WAYNE
HOLMES
LORAIN
MEDINA
SUMMIT
PORTAGE
CUYAHOGA
LAKE
GEAUGA
ASHTABULA
TRUMBULL
ERIE
LAWRENCE
MERCER
MAHONING
STARK
COLUMBIANA
BEAVER
ALLEGHENY

Exhibit 3

Opinion of Counsel

EXHIBIT 3

Opinion of Counsel
for Wheeling & Lake Erie Railway Company, LLC
pursuant to 49 CFR § 1180.6(a)(4)

I, Matthew J. Fearing, am the Senior Vice President, Chief Legal Officer, & Corporate Secretary of Wheeling & Lake Erie Railway Company, LLC ("WLE") and am generally familiar with the transactions proposed in the Responsive Application of WLE (the "Transactions"). It is my opinion that the Transactions: meet the requirements of law; are within the corporate powers of WLE; will be legally authorized and valid if approved by the Surface Transportation Board; and will not result in any breach, violation, or default of any provision in WLE's Certificate of Formation or Limited Liability Company Agreement.



Matthew J. Fearing
Senior Vice President, Chief Legal Officer, &
Corporate Secretary
Wheeling & Lake Erie Railway Company, LLC

date November 17, 2026

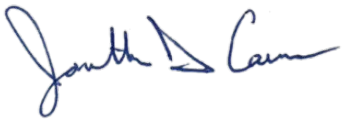
Exhibit 4

Signature of Executive

EXHIBIT 4

Signature of Chief Executive Officer Jonathan Carnes
of the Wheeling & Lake Erie Railway Company, LLC
pursuant to 49 CFR § 1180.4(c)(2)(i)

My name is Jonathan Carnes. I am Chief Executive Officer of the Wheeling & Lake Erie Railway Company, LLC ("WLE"), and I am authorized to sign, verify, and file this Responsive Application on behalf of WLE. I have knowledge of the matters contained in this Responsive Application of WLE. The statements made in this Responsive Application are true and correct to the best of my knowledge and belief.



Jonathan Carnes
Chief Executive Officer
Wheeling & Lake Erie Railway Company, LLC

date November 17, 2026

Exhibit 5

Signature of Corporate Secretary

EXHIBIT 5

Signature of Secretary Matthew Fearing
of the Wheeling & Lake Erie Railway Company, LLC
pursuant to 49 CFR § 1180.4(c)(2)(i)

My name is Matthew Fearing. I am Senior Vice President, Chief Legal Officer, and Corporate Secretary of the Wheeling & Lake Erie Railway Company, LLC ("WLE"). I hereby certify that Jonathan Carnes is the Chief Executive Officer of WLE and is duly authorized to sign, verify, and file this Responsive Application on behalf of WLE.



Matthew Fearing
Senior Vice President, Chief Legal Officer, and
Corporate Secretary
Wheeling & Lake Erie Railway Company, LLC

date November 17, 2026

Exhibit 6

Support Letters

November 4, 2026

The Honorable Patrick J. Fuchs
Chairman
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Responsive Application of Wheeling & Lake Erie Railway Company, LLC

Dear Chairman Fuchs:

American Refining Group, Inc. hereby expresses its strong support for Wheeling & Lake Erie Railway Company, LLC ("**WLE**")'s requests for trackage rights outlined in WLE's Description of Anticipated Responsive Application filed at Filing ID 312260 in Finance Docket No. 36873 regarding the proposed acquisition of Norfolk Southern Railway Company by Union Pacific Railroad Company.

We believe WLE's requested trackage rights would ensure competitive rail service along the relevant rail corridors and result in significant positive impacts for rail customers, communities, manufacturers, and the American economy as a whole. Rail service is a critical component of supply chains throughout the country, and these supply chains work most efficiently when options exist. Competition not only ensures that customers have choices in selecting a rail service provider, but also greatly benefits the overall reliability and resilience of the national rail network. When one railroad controls a vast portion of that network, as would be the result of Union Pacific Railroad Company's acquisition of Norfolk Southern Railway Company, the impacts of a service disruption are more pronounced, severe, and long-lasting. We urge the STB to provide trackage rights for WLE in any authorization decision.

Thank you for your consideration of this letter of support for WLE's requests for trackage rights.

Sincerely,

Ryan Krogmeier
President, Chief Operating Officer
American Refining Group, Inc.
77 North Kendall Avenue
Bradford, PA 16701

OSBORNE
CONCRETE & STONE CO.
P.O. Box 249, 1 Williams St.
Grand River, Ohio 44045
(440) 357-5562

November 4, 2026

The Honorable Patrick J. Fuchs
Chairman
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Responsive Application of Wheeling & Lake Erie Railway Company, LLC

Dear Chairman Fuchs:

We have been in business as a stone supplier for over 50 years. We rely on the WLE for timely and competitive business to ensure the Akron market stays viable and competitive.

I am writing to express my strong support for Wheeling & Lake Erie Railway Company, LLC **WLE**'s requests for trackage rights outlined in WLE's Description of Anticipated Responsive Application filed at Filing ID 312260 in Finance Docket No. 36873 regarding the proposed acquisition of Norfolk Southern Railway Company by Union Pacific Railroad Company.

The management at Osborne Concrete & Stone believes WLE's requested trackage rights would ensure competitive rail service along the relevant rail corridors and result in significant positive impacts for rail customers, communities, manufacturers, and the American economy as a whole. Rail service is a critical component of supply chains throughout the country, and these supply chains work most efficiently when options exist. Competition not only ensures that customers have choices in selecting a rail service provider, but also greatly benefits the overall reliability and resilience of the national rail network. When one railroad controls a vast portion of that network, as would be the result of Union Pacific Railroad Company's acquisition of Norfolk Southern Railway Company, the impacts of a service disruption are more pronounced, severe, and long-lasting. We urge the STB to provide trackage rights for WLE in any authorization decision.

Thank you for your consideration of this letter of support for WLE's requests for trackage rights.

Very truly yours,

Dave Baczek
President

RESERVE IRON OHIO

November 13, 2026

The Honorable Patrick J. Fuchs
Chairman
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Responsive Application of Wheeling & Lake Erie Railway Company, LLC

Dear Chairman Fuchs:

Reserve Iron Ohio hereby expresses its strong support for Wheeling & Lake Erie Railway Company, LLC ("**WLE**")'s requests for trackage rights outlined in WLE's Description of Anticipated Responsive Application filed at Filing ID 312260 in Finance Docket No. 36873 regarding the proposed acquisition of Norfolk Southern Railway Company by Union Pacific Railroad Company.

As shippers on the WLE, we believe WLE's requested trackage rights would ensure competitive rail service along the relevant rail corridors and result in significant positive impacts for rail customers, communities, manufacturers, and the American economy as a whole. Rail service is a critical component of supply chains throughout the country, and these supply chains work most efficiently when options exist. Competition not only ensures that customers have choices in selecting a rail service provider, but also greatly benefits the overall reliability and resilience of the national rail network. When one railroad controls a vast portion of that network, as would be the result of Union Pacific Railroad Company's acquisition of Norfolk Southern Railway Company, the impacts of a service disruption are more pronounced, severe, and long-lasting. We urge the STB to provide trackage rights for WLE in any authorization decision.

Thank you for your consideration of this letter of support for WLE's requests for trackage rights.

Sincerely,



Steve Joseph
CEO
Reserve Management Group
4550 Darrow Road
Stow, Ohio 44224

November 13, 2026

The Honorable Patrick J. Fuchs
Chairman
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Responsive Application of Wheeling & Lake Erie Railway Company, LLC

Dear Chairman Fuchs:

TMS International hereby expresses its strong support for Wheeling & Lake Erie Railway Company, LLC ("**WLE**")'s requests for trackage rights outlined in WLE's Description of Anticipated Responsive Application filed at Filing ID 312260 in Finance Docket No. 36873 regarding the proposed acquisition of Norfolk Southern Railway Company by Union Pacific Railroad Company.

We believe WLE's requested trackage rights would ensure competitive rail service along the relevant rail corridors and result in significant positive impacts for rail customers, communities, manufacturers, and the American economy as a whole. Rail service is a critical component of supply chains throughout the country, and these supply chains work most efficiently when options exist. Competition not only ensures that customers have choices in selecting a rail service provider, but also greatly benefits the overall reliability and resilience of the national rail network. When one railroad controls a vast portion of that network, as would be the result of Union Pacific Railroad Company's acquisition of Norfolk Southern Railway Company, the impacts of a service disruption are more pronounced, severe, and long-lasting. We urge the STB to provide trackage rights for WLE in any authorization decision. The trackage rights request, as proposed by WLE, would provide rail shippers on the WLE and its connecting lines with improved service and more competitive rates, helping to support local jobs and the communities that depend on them.

Thank you for your consideration of this letter of support for WLE's requests for trackage rights.

Sincerely,



William F. Bojalad
Sr. Director of Logistics
TMS International
Southside Works
Building One, Third Floor
2835 East Carson Street
Pittsburgh, PA 15203
www.tmsinternational.com

PRODUCTS CORPORATION
Home Office: PO Box 737, Norristown, PA 19404
Phone 800 543-7710 FAX: 610 277-4390 www.sprayproducts.com

November 6th , 2026

The Honorable Patrick J. Fuchs
Chairman
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Responsive Application of Wheeling & Lake Erie Railway Company, LLC

Dear Chairman Fuchs:

Spray Products Corporation hereby expresses its strong support for Wheeling & Lake Erie Railway Company, LLC ("**WLE**")'s requests for trackage rights outlined in WLE's Description of Anticipated Responsive Application filed at Filing ID 312260 in Finance Docket No. 36873 regarding the proposed acquisition of Norfolk Southern Railway Company by Union Pacific Railroad Company.

We believe WLE's requested trackage rights would ensure competitive rail service along the relevant rail corridors and result in significant positive impacts for rail customers, communities, manufacturers, and the American economy as a whole. Rail service is a critical component of supply chains throughout the country, and these supply chains work most efficiently when options exist. Competition not only ensures that customers have choices in selecting a rail service provider, but also greatly benefits the overall reliability and resilience of the national rail network. When one railroad controls a vast portion of that network, as would be the result of Union Pacific Railroad Company's acquisition of Norfolk Southern Railway Company, the impacts of a service disruption are more pronounced, severe, and long-lasting. We urge the STB to provide trackage rights for WLE in any authorization decision.

Thank you for your consideration of this letter of support for WLE's requests for trackage rights.

Sincerely,

Andrew Wills

Andrew Wills
SVP, Commercial
Spray Products Corporation
1000 Lake Rd.
Medina, OH 44256