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RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

1126 Eighth Avenue, Suite 403

Altoona, PA 16602

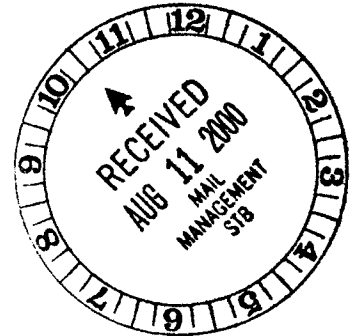
(814) 944-5302
888-454-3817 (Toll Free)
(814) 944-6978 FAX
rrwilson@mail.csrlink.net

Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

August 10, 2000

VIA FEDERAL EXPRESS

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re: Docket No: 42052; Union Pacific Railroad Company - Petition for
Declaratory Order - Unilaterally Imposed Interchange Charges

Dear Mr. Williams:

Enclosed for filing please find the original and ten copies of the Comments of Wabash Central Railroad, C&NC Railroad Corporation and Maumee & Western Railroad Company in connection with the above captioned matter. Also enclosed are the original and ten copies of the Verified Statement of Spencer N. Wendelin. Both of these documents are provided on the enclosed disk in Microsoft Word 7.0.

Thank you for your attention to this matter.

Very truly yours,

RICHARD R. WILSON, P.C.


Richard R. Wilson

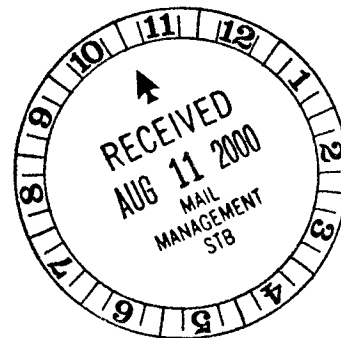
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Enclosures

xc: All Parties of Record
Spencer N. Wendelin

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Before the
SURFACE TRANSPORTATION BOARD



Docket No: 42052

UNION PACIFIC RAILROAD COMPANY
- PETITION FOR DECLARATORY ORDER -
UNILATERALLY IMPOSED INTERCHANGE CHARGES

**COMMENTS OF WABASH CENTRAL RAILROAD COMPANY,
C&NC RAILROAD CORPORATION AND MAUMEE & WESTERN
RAILROAD COMPANY**

Filed on Behalf of Wabash Central Railroad
Company, C&NC Railroad Corporation and
Maumee & Western Railroad Company by:

RICHARD R. WILSON, P.C.
Richard R. Wilson, Esq.
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

Dated: August 10, 2000

Before the
SURFACE TRANSPORTATION BOARD



Docket No: 42052

UNION PACIFIC RAILROAD COMPANY
- PETITION FOR DECLARATORY ORDER -
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**COMMENTS OF WABASH CENTRAL RAILROAD COMPANY,
C&NC RAILROAD CORPORATION AND MAUMEE & WESTERN
RAILROAD COMPANY**

By Order served June 13, 2000 the Surface Transportation Board ("STB") instituted a proceeding under 5 U.S.C. §554(e) to resolve questions concerning the right of a rail carrier to impose charges unilaterally against other rail carriers for events that may occur when cars are interchanged and requested comments from interested parties. This proceeding arose out of the February 14, 2000 Petition for Declaratory Order filed by Union Pacific Railroad Company seeking a determination that under 49 U.S.C. §11121 a rail carrier may not unilaterally impose charges on another rail carrier for interchange of cars, either by "tariff" or otherwise and that interchange - related charges imposed by one carrier on another must be either permitted by agreement of the carriers involved or specifically authorized by the STB.

This controversy arose as a consequence of "tariff" provisions issued by Respondents Indiana Harbor Belt Railroad Company ("Indiana Harbor"), Iowa Interstate

Railroad, Ltd. ("Iowa Interstate") and the City of Tacoma d/b/a Tacoma Rail and Tacoma Beltline Railroad ("Tacoma Beltline"). Respondents' charges apply when cars are not pulled from interchange tracks within specified times by their connecting carrier, the Union Pacific Railroad Company.

In response to this request for comments, Maumee & Western Railroad Company, ("Maumee & Western") C&NC Railroad Corporation ("C&NC") and Wabash Central Railroad Company ("Wabash Central") submit for consideration the attached Verified Statement of Spencer N. Wendelin who is the manager of each of these railroads. Maumee & Western is a Class III shortline railroad which extends from Liberty Center, OH to Woodburn, IN, a distance of approximately 51 route miles. Maumee & Western interchanges with CSXT at Defiance, OH and with Norfolk Southern at Woodburn, IN. Wabash Central is a Class III shortline which operates a line of railroad from Craigville, IN to VanBuren, IN consisting of approximately 27 route miles which interchanges with Norfolk Southern at Bluffton, IN. C&NC operates approximately 28 route miles between New Castle and Connersville, IN and interchanges with Norfolk Southern at New Castle and with CSXT at Connersville. These lines were acquired by the current owners in 1997 as part of the sale of assets by Indiana Hi Rail Corporation under order of the U.S. Bankruptcy Court. Since that time, the current managers of these three rail lines have worked diligently to obtain public and private financing to improve track conditions, restore shipper confidence in rail service and rebuild traffic levels. From 1997 to June 1, 1999 aggregate traffic on all three lines has increased by more than 30%.

Unfortunately, over the last year with the acquisition and division of Conrail by NS and CSXT, these three rail lines have experienced significant traffic reductions due to

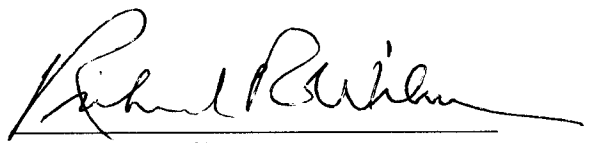
congestion, delays, misroutings, equipment shortages, and the lack of adequate power and crews on the part of CSXT and NS. While these service problems have shown marginal improvement in recent weeks, CSXT and NS service levels have yet to be restored to pre-acquisition levels of efficiency and timeliness.

It is evident that interchange service with certain railroads will continue to be a persistent problem until those carriers make adequate capital investments in system capacity to deal with increased traffic levels and restructured traffic corridors. It is also evident that regional and Class III carriers require new, market driven freedoms to create economic incentives for their connections to address service deficiencies caused by inadequate system capacity for existing traffic levels.

The enclosed Verified Statement of Spencer N. Wendelin sets forth the difficulties experienced by Maumee & Western, Wabash Central and C&NC and the need for appropriate market driven economic tools to address system capacity limitations and service deficiencies on connecting railroads.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 
Richard R. Wilson
Attorney for Wabash Central Railroad
Company, C&NC Railroad Corporation and
Maumee & Western Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2000, a copy of the foregoing
Comments are hereby served by first class U.S. mail addressed as follows:

Robert T. Opal, Esq.
General Commerce Counsel
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, NE 68179

Edward J. Krug, Esq.
Krug & Beckelman, P.L.C.
330 Hach Building, 401 First Street S.E.
P.O. Box 186
Cedar Rapids, IA 52406-0186

Paul Brachvogel, Esq.
Assistant City Attorney
City of Tacoma
3628 South 35th Street, P.O. Box 11007
Tacoma, WA 98411

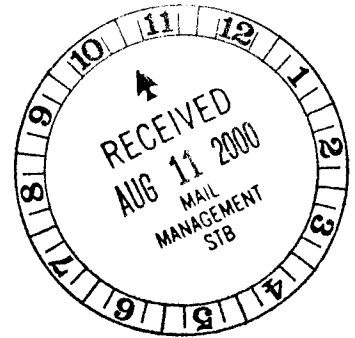
William Sippel, Esq.
Oppenheimer, Wolff & Donnelly
Two Prudential Plaza
45th Floor, 180 North Stetson Avenue
Chicago, IL 60601

A handwritten signature in black ink, appearing to read "Richard R. Wilson", with a long horizontal line extending to the right.

Richard R. Wilson, Esq.

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Before the
SURFACE TRANSPORTATION BOARD



Docket No: 42052

UNION PACIFIC RAILROAD COMPANY
- PETITION FOR DECLARATORY ORDER -
UNILATERALLY IMPOSED INTERCHANGE CHARGES

VERIFIED STATEMENT OF SPENCER N. WENDELIN

Filed on Behalf of Wabash Central Railroad
Company, C&NC Railroad Corporation and
Maumee & Western Railroad Company by:

RICHARD R. WILSON, P.C.
Richard R. Wilson, Esq.
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

Dated: August 10, 2000

Before the
SURFACE TRANSPORTATION BOARD

Docket No: 42052

UNION PACIFIC RAILROAD COMPANY
- PETITION FOR DECLARATORY ORDER -
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VERIFIED STATEMENT OF SPENCER N. WENDELIN

My name is Spencer N. Wendelin. I am President of Wabash Central Railroad Corporation ("Wabash Central"), CBC of the Maumee & Western Railroad Company ("Maumee & Western"), and C&NC Railroad Corporation ("C&NC"). I have held these positions for over two years. Among my previous experience are a multi-year stint as Vice-President of Marketing and Real Estate with the Class II carrier - Wheeling & Lake Erie, service as Assistant Vice-President for six years with the Class I carrier Pittsburgh and Lake Erie, Manager of Marketing for the TTI Transportation Railroad and several years in various positions with the Southern Pacific Railroad. In addition, I have assisted others on a consulting basis to start smaller railroads in eighteen states and three foreign countries. I am an MBA graduate of Indiana University and also hold a post-graduate certification in industrial development from Oklahoma University.

Over the last year since the division and acquisition of Conrail by CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NS"), these short line railroads have experienced substantial reductions in traffic, serious service

disruptions and increased costs related to attempts to ameliorate these service disruptions. Throughout this period, each of these shortlines has worked closely with NS and CSXT to address these service problems to the extent that they were able to do so and have tried to cooperate and coordinate their operations with those of our Class I connections. While traffic levels and service deficiencies have improved marginally over the last several weeks, overall reliability and timeliness of interchange service remains uncertain and on any given day our crews can outlaw when trains of our connections block access to interchange tracks or fail to make timely set off of inbound traffic and equipment. In addition, on the Wabash Central, when the interchange tracks are not cleared, it prevents receipt of additional shipments to our customers and physically blocks us from serving over 20% of our rail line at all.

Over the last several months, we have compiled the following data which illustrates the type of interchange service problems which we have encountered as a result of congestion, misroutings, and lack of adequate of crews and equipment on the part of our Class I connections. Using the Wabash Central as the prime example, since June, 1999, this railroad has averaged three plus interchanges per week with its major connecting carrier. Of those interchanges, over 60% have been delayed twelve or more hours by this major connection, which is NS. In addition, since this interchange occurs in the middle of our railroad, more than 40% of the time, these delays physically blocked Wabash Central from access to the eastern 20% of its railroad, preventing even switching service being provided to one third of our customers and severely limiting our ability to perform maintenance on that portion of our rail line. Part of this problem is caused by capacity problems at the interchange itself. NS has more than two-thirds of the

designated interchange tracks in Bluffton but has made no provision for required repairs to these tracks. Also, at least 65% of the time since June, 1999, this Class I carrier misses its stated interchange time by three or more hours. This results in three or more hours of Wabash Central crew time waiting at interchange, often for critical carloads needed to keep the plants and facilities of our customers functioning. Wabash Central also has unit grain train customers. Wabash Central has received designated unit trains for these customers in several pieces at interchanges from the NS more than 30% of the time since June, 1999.

Our other shortlines, Maumee & Western and C&NC have experienced similar service problems with both their interchanges with NS and CSX. Maumee & Western has received designated unit trains in several pieces from these connecting carriers on multiple occasions since June, 1999. It has experienced significant and continuing delays in interchanges from the target or stated times agreed between this shortline and its two Class I connections. Delayed interchanges have resulted in significant and continued bunching of cars for delivery to our customers, which cause then substantial disruptions and cost increases. The C&NC has also experienced numerous interchange delays and service disabilities. For example, on numerous occasions, both NS and CSX have been unable to meet their targeted interchange times for service to a major automotive customer located on C&NC. These delays have caused C&NC substantial crew costs waiting at interchanges for hot cars for this customer, only to have no interchange made, or having to run extra crews to make sure the interchange is moved to the customer when the Class I's finally get around to making such interchange. In the case of the CSX, on numerous occasions, cars have been "interchanged" to C&NC only to be discovered in

the middle of a train on a track in Connersville which C&NC has no right to use and which even if it did use would have to undertake significant switching costs to move non-interchanged cars to reach those supposedly interchanged to us. This is again a local CSX yard capacity problem which is significantly exacerbated by the CSX's capacity constraints and resulting delays through its Queensgate Yard in Cincinnati, Ohio.

While we would like to hope that NS, CSXT and other Class I carriers would be able to shortly return their systems to the level of service which existed before recent rail acquisition proceedings, we are frankly not optimistic that this will occur in any timely manner, if at all. For many years, Class I carriers such as Conrail systematically eliminated capacity from their operating systems to handle existing traffic levels more efficiently. Similar efforts were undertaken by NS and CSXT and other Class I carriers, in order to reduce costs and respond to competitive market conditions. However, it is now clear that with the division of the Conrail system between NS and CSXT, both acquiring railroads failed to anticipate the inelasticity of existing railroad capacity to handle traffic rerouted from a divided Conrail system onto NS and CSXT systems which were clearly not designed or configured to handle these additional traffic volumes.

We see no evidence, unfortunately, of any quick fix for these problems, a view which has been confirmed on many occasions in conversations with the operations managers of our connecting Class I carriers. Increasing track and yard capacity to handle these rerouted traffic flows and increased traffic volumes will require capital investments which NS and CSX apparently did not anticipate and which cannot be accomplished overnight in any case. As a consequence, Class III carriers are faced with the prospect of protracted service problems, delays and congestion which flow back from these

connections onto our lines, disrupting our operations, increasing our costs and ultimately causing shippers to divert traffic to competing modes. In the resulting operational triage implemented by Class I railroads over the past year, traffic originated and terminated by Class III carriers simply does not receive the same priority of service or resource allocation that is accorded to the shippers directly served by Class I carriers. Without appropriate market driven protective devices, or, alternatively, regulatory intervention in the marketplace by the STB, Class III railroads, which must maintain threshold traffic levels in order to stay viable, can be irreparably injured and forced out of business with equally tragic consequences for the portion of the shipping public they serve.

Traditionally, railroads have utilized demurrage and other service based charges to recover costs and impose penalties on shippers for undue delay when loading or unloading cars to encourage more efficient utilization of these assets. These charges create economic incentives to keep equipment moving in service and to prevent shippers from using such equipment to warehouse their commodities at the expense of railroads. Conceptually, the interchange delay charges unilaterally published by Respondents seek to accomplish precisely the same objective, albeit directed to equipment delays and service deficiencies originating on or created by their connecting railroads. In the absence of such charges, there is no immediate economic incentive for a connecting railroad to address these service disruptions and capacity limitations, nor do Class III carriers have any means to offset the costs which they incur from these delays and disruptions, nor the revenue losses which they incur from the effects of such connecting carrier caused service disruptions. Indeed, short term economic incentives cause the capacity restricted carrier to foist the cost of its capacity restrictions onto its smaller

connections by using its connection's rail lines and yards for free off line storage of traffic or equipment which cannot be handled in interchange.

It should be noted that the service disruptions and capacity limitations which characterize many of the larger rail carriers today are a direct result of the consolidation which has taken place in the railroad industry. Many Class III carriers are captive to a single interchange with a Class I connection. In almost no case does a Class III carrier have more than two Class I connections since for all intents and purposes, there are only two Class I carriers east of the Mississippi and two Class I carriers west of the Mississippi. Recently, in recognition of this fundamental restructuring of the railroad industry in the United States, the STB suspended its rail merger proceedings and has sought public comment on changes to its regulations governing proposals for major rail consolidations. See Major Rail Consolidation Procedures, STB Ex Parte No: 582 (Sub. No. 1). The STB has specifically sought comment on the "Bill of Rights" advocated by the American Short Line and Regional Railroad Association which includes the right to compensation for connecting Class I service failures, the right to interchange and routing freedoms which would include the right to unilaterally impose penalty or delay charges on a connecting carrier which fails to provide timely and appropriate interchange services.

I have read with interest the Petition for Declaratory Order filed by the Union Pacific Railroad Company and I would agree that based on existing intercarrier arrangements and past custom and usage, there are questions as to the right of one carrier to unilaterally impose charges against its connecting carrier. However, it should be noted that historically, the intercarrier agreements and their pattern now in use were developed

when the national rail system consisted of numerous independent Class I railroads which were dependent upon each other for cooperative and timely interline movements of traffic from origin to destination points throughout the country. In this system alternate, competing routes were available. Unilateral action by any one carrier within the rail network was viewed as threat to overall system effectiveness and a potential suboptimization of the system as a whole. However, that rational has little application to the present rail system because the number of Class I railroads participating in this system is substantially reduced and the system is now characterized by the dominance of two carriers serving the eastern United States and two carriers serving the western United States. These eastern and western rail duopolies gather traffic from regional and short line railroads for delivery by one or two of the other major Class I carriers or their short line connections. Today, national rail system suboptimization derives not so much from the lack of cooperation between numerous partners in the system, but the failure of the major Class I carriers to cooperate with each other and to make the necessary capital investments in mainline track and yard facilities to efficiently handle the traffic volumes flowing over their systems. In this reconfigured industry, it may well be appropriate for all system participants to have the right to unilaterally impose intercarrier charges as economic incentives to force capacity constrained carriers to make the necessary capital investments in infrastructure, equipment and personnel and as a disincentive to use the facilities of their connecting lines for free storage of traffic or equipment which they cannot accommodate, except in the case of true short-term disabilities such as weather or labor related problems.

The only logical alternative to unilateral, market driven interchange charges is government regulatory intervention. Regulatory intervention by the STB is by far the least desirable means for addressing these problems. In the first place, the STB does not have adequate resources or staff to regulate and police all the interchange relationships which exist in today's railroad industry. The complaint process is too expensive and time consuming to provide meaningful relief to Class III carriers. Furthermore, regulations are insensitive to and tend to be inflexible to changing market conditions. Administrative delays associated with procedural safeguards required in promulgating and changing such regulations results in an inefficient, expensive and unwieldy regulatory process, poorly equipped to address these types of everyday problems. Finally, it is the Board's exercise of its regulatory jurisdiction over the industry that has permitted the restructuring of the industry, which in turn has produced the problems which these intercarrier charges seek to address. Thus, these circumstances illustrate an important economic consequence: regulation often begets the need for more regulation, and deregulation creates the need for more economic freedoms in the market place.

Should the Board authorize carriers to unilaterally or independently establish charges against connections for interchange delays and other service deficiencies, we believe railroads would quickly respond by establishing industry wide procedures for the administration of these charges while leaving the determination of the nature and amount of such charges to each individual railroad. The depreservation of car hire provides an obvious precedent. If the Board were to authorize such interchange charges, carriers would quickly establish procedures and agreements similar to those which enable individual railroads to establish car hire charges throughout the United States on multiple

railroads. Indeed, the rules and procedures for interchange service charges would be far less complex than that currently utilized for car hire charges.

Finally, interchange charges are the most efficient, market driven device for solving specific service and capacity problems wherever they exist within the rail network. They enable rail managers for both carriers to quickly identify particular circumstances or problem locations and to deal with those site specific situations. Without such charges, constrained capacity carriers will not have adequate financial incentives to respond to local problems and make long term capital investment in specific yards, mainline tracks, and equipment needed to improve transit times and efficiently handle current volumes of traffic. If these improvements are not made, the rail industry will continue to experience deteriorating service and the loss of traffic to more service sensitive modes of transportation and the smaller carriers will continue to be forced to unreasonably bear costs of their larger connections; costs which were not of the small carrier's making. Thus, interchange service charges are in the long term best interest of the railroad industry because they bring market discipline to those carriers which would forego long term capital investment to take advantage of short term cost savings available by using other carrier's facilities as storage yards.

By allowing connecting carriers to impose interchange charges, the incentives for such short term savings are diminished and connecting carriers will have effective economic tools to:

- (1) identify specific interchange and capacity problems;
- (2) create economic incentives for the solution for those problems;

(3) enable carriers to recover the costs they incur as the result of their connection's service or capacity deficiencies; and

(4) promote industry attention to and coordination of its response to the problems of interchange delays and capacity restrictions on a national level.

Accordingly, I urge the Board to authorize all carriers to impose unilateral interchange delay or service disruption charges such as those published by Respondents in this proceeding.

VERIFICATION

I, Spencer N. Wendelin, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 10th, 2000.

Spencer N. Wendelin
Spencer N. Wendelin

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2000, a copy of the foregoing
Verified Statement are hereby served by first class U.S. mail addressed as follows:

Robert T. Opal, Esq.
General Commerce Counsel
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, NE 68179

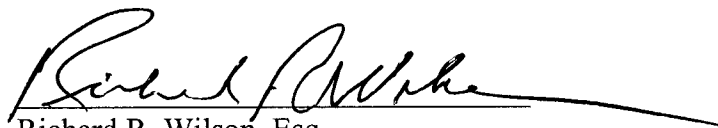
Edward J. Krug, Esq.
Krug & Beckelman, P.L.C.
330 Hach Building, 401 First Street S.E.
P.O. Box 186
Cedar Rapids, IA 52406-0186

Paul Brachvogel, Esq.
Assistant City Attorney
City of Tacoma
3628 South 35th Street, P.O. Box 11007
Tacoma, WA 98411

William Sippel, Esq.
Oppenheimer, Wolff & Donnelly
Two Prudential Plaza
45th Floor, 180 North Stetson Avenue
Chicago, IL 60601

Richard A. Allen, Esq.
Zuckert, Scour & Rasenburger, LLP
888 17th Street, N.W.
Washington, DC 20006-3939

Alice C. Saylor, Esq.
Vice President, General Counsel and Secretary
1120 G Street, NW Suite 520
American Short Line Association
1120 G Street, N.W.
Suite 520
Washington, DC 20005-3899


Richard R. Wilson, Esq.