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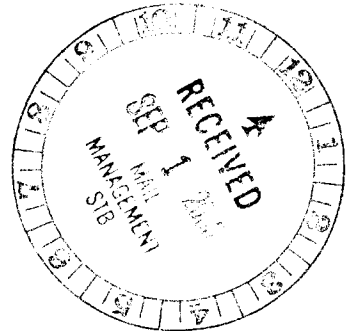
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August 31, 2000

199638

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Reply Comments of Indiana Harbor Belt Railroad Company**, dated August 31, 2000. A 3.5-inch computer diskette, containing the text of the Reply Comments in WordPerfect 5.1 format, also is enclosed.

One extra copy of this transmittal letter and of the Reply Comments are included as well. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William C. Sippel".

William C. Sippel
Attorney for Indiana Harbor Belt
Railroad Company

WCS:tjl

Enclosures

cc: Parties on Certificate of Service

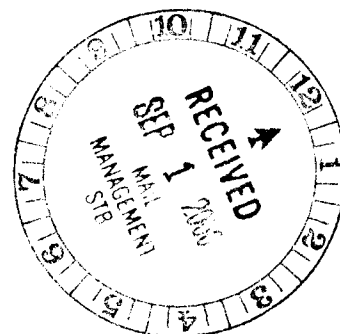
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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42052

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



REPLY COMMENTS OF
INDIANA HARBOR BELT RAILROAD COMPANY

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**ATTORNEYS FOR INDIANA HARBOR BELT
RAILROAD COMPANY**

Dated: August 31, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42052

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

**REPLY COMMENTS OF
INDIANA HARBOR BELT RAILROAD COMPANY**

Indiana Harbor Belt Railroad Company ("IHB") hereby files these reply comments in support of its long-standing tariff item addressing the refusal of connecting rail carriers to accept traffic when tendered in interchange. The opening comments filed by a large range and number of parties are significant both for what they say and for what they don't say. Of the eleven parties commenting,¹ none opposes the IHB tariff at issue. Only one even argues that such intercarrier tariff items cannot and should not be issued unilaterally. On the other hand, the pleadings collectively and clearly demonstrate the serious operational and congestion problems that are involved, and the legal, reasonable and necessary nature of IHB's tariff item as a solution to those problems. The Board should uphold IHB's tariff.

Initially, we note that the opening comments taken as a whole close the lid on the "Pandora's box" arguments that UP made in its earlier declaratory order petition. According to UP, if tariffs like IHB's are allowed to stand, "there is no principled limit to the types of charges that may be imposed," "the potential menu of charges is limited only by the imagination of railroad personnel," and the "net effect of such [charges] would be a severe deterioration in

¹ Excluding Union Pacific Railroad Company ("UP"), which provided no new evidence or argument and simply incorporated its February 11, 2000 Petition for Declaratory Order.

interchange services between connecting railroads and increased costs to shippers" UP Petition at 12-14. Ultimately, UP assured the Board, failure to take action against these tariffs "could lead to a breakdown of interchange arrangements across the rail network." UP Petition at 2. Of course, if any of this was even remotely true, the Board could have expected a cacophony of protest from all segments of the transportation community, pleading with the Board to save the integrity of the American rail system. Instead, with respect to this subject, what the Board heard was silence. No party echoed UP's dire predictions, and even those parties withholding substantive comment until they have reviewed the opening pleadings (The Burlington Northern and Santa Fe Railway Company, U.S. Department of Transportation) obviously see no looming disaster warranting urgent discussion.² The Board can decide this matter on its own merits, without fear of drastic, negative consequences across the industry.

IHB explained at length in its opening comments 1) how the practice of connecting line-haul carriers of refusing cars offered in interchange by IHB and "parking" those cars on the IHB creates serious operational and congestion problems in the Chicago switching district, and 2) how IHB's tariff, and the essentially identical tariff of The Belt Railway Company of Chicago ("BRC"), provide effective, efficient and fair incentives to address that problem and ensure the fluidity of the Chicago terminal. The opening round of comments by other parties is striking for its range of normally disparate interests who endorse these propositions, either generally or specifically: shippers (Ispat Inland Inc., Corn Products International, Cerestar USA); short-line railroads (Wabash Central Railroad, et al., The American Short Line and Regional Railroad Association); regional railroads (Wisconsin Central Ltd., Iowa Interstate

² Given the nature of the issue and the fact that UP presented the argument in depth in its February pleading, there is no reason why any party inclined to agree with UP and seriously concerned about the issue would wait until the reply stage to voice those concerns.

Railroad Ltd.); and Class I railroads (Norfolk Southern Railway Company). All of these parties experience -- and are impacted by -- service difficulties when the interchange of rail traffic is not handled in a reasonable and timely manner and the resulting congestion cascades back through the rail system. All of these parties confirm the need to address the situation quickly and effectively, particularly given the severe strain under which the nation's rail system has been operated for the past several years. And all of these parties endorse tariffs such as IHB's as not only a viable but a preferred solution to the problem.³

IHB takes particular note of the emphasis by several parties⁴ on the value of interchange delay tariffs as a market-based solution to operational and congestion problems -- a perspective on which IHB did not focus in its opening comments. As the experience of the last twenty years shows, deregulation, pricing freedom and the ability of railroads to respond creatively and flexibly to market situations were the key tools in addressing the serious structural problems that the railroad industry faced in the 1960s and 1970s. IHB agrees with these other parties that market-sensitive arrangements are similarly appropriate and well-suited to address the interchange delay problems of 2000. As Iowa Interstate points out, interchange delay tariffs are "an excellent example of the marketplace at work," and UP should not be allowed to avoid those marketplace forces just because they do not suit UP in this case. IAIS Comments at 7. The alternative, of course, is regulatory intervention -- not what IHB wants, presumably not what UP and other parties want, and not likely to be as effective as a market solution in any event.

³ This is true even though several of these parties themselves face the possibility of owing charges under tariffs such as IHB's. WCL indicates that it has incurred such charges in the past, and IHB billed NS a significant amount of such charges in 1999. As has been IHB's consistent experience, those tariff charges accomplished their goal: NS improved its interchange performance with IHB, and has been "clean" throughout 2000.

⁴ Ispat Inland, Wabash Central et al., Iowa Interstate.

It remains clear, however, that one of these approaches must be pursued, and that UP's apparent desire to void IHB's tariff (and other similar tariffs) without putting anything in its place is not a viable option. The Board's Chairman was recently quoted as saying that "[w]hat I want the industry focused on during this period is service, service, service." Railway Age, August 2000, at 4. At the same time, the Congressional delegation representing northwest Indiana -- where many of IHB's operations are conducted and where congestion on the IHB often plays out -- was writing the Board in the Conrail oversight proceeding regarding the continued, serious operational and congestion problems that affect that area. See Exhibit A hereto. The Northwest Indiana Forum, comprised of over 150 members including many of the largest rail-served industries in northwest Indiana, similarly stresses the adverse effects that congestion in the Chicago terminal has on its members and the need to take whatever steps necessary to keep the terminal fluid. See Exhibit B hereto. This is not a problem that is going to go away. Failing to deal with the issue wisely and effectively here will simply postpone the day of reckoning. The interchange delay tariffs of IHB and BRC are a proven, reasonable and legal method to address one of the underlying causes of congestion in the Chicago switching district, and the Board should allow those tariffs to stand.⁵

For the reasons stated in IHB's opening comments, IHB disagrees with NS's contention that a carrier cannot unilaterally publish tariffs for transportation-related services provided to another carrier. NS Comments at 2-6. Like UP, NS argues that the AAR Code of Car Service Rules provides the only remedies for interchange-related problems and precludes

⁵ As IHB discussed in its opening comments, while the IHB and BRC tariffs are essentially identically, UP has challenged only IHB's tariff in this proceeding. UP has a significant ownership interest in BRC, and no ownership interest in IHB. Nonetheless, granting UP's requested declaratory order would plainly void all interchange delay tariffs, including BRC's.

carriers from separately imposing charges for interchange delay costs. Interestingly, Iowa Interstate includes with its filing a copy of NS's own tariff covering interchange error movements,⁶ which provides that:

1. Cars received by NS, in error or without necessary forwarding directions, will be handled in accordance with AAR Car Service Rule 7.
2. If cars are returned to the delivering carrier, forwarded to the proper carrier, or require holding, NS will assess the delivering carrier a charge of

Tariff NS 8002-A, Item 6070, attached to IAIS Comments, Miller V.S., Exhibit 3. NS's tariff would seem to be an express acknowledgement that the AAR Car Service Rules and a separate carrier-imposed tariff charge can both apply to the mishandling of cars in interchange. In the same way, IHB's interchange delay tariff is neither precluded by nor inconsistent with the AAR Code of Car Service Rules.

While NS and IHB may differ on the legal questions involved, IHB agrees with and endorses the remainder of NS's filing -- particularly NS's cogent argument that the AAR Car Service Rules do not provide sufficient incentive for carriers to promptly accept cars in interchange, and NS's position on the reasonableness of IHB's tariff. NS Comments at 6-8.⁷ If the Board were to find (as NS argues) that interchange delay tariffs such as IHB's require specific Board authority, then the Board should grant NS's request and approve IHB's tariff.

⁶ NS claims that Cincinnati, N.O. & T.P. Ry. Co. v. Chesapeake & O. Ry. Co., 441 F.2d 483 (4th Cir. 1971) upheld an interchange error tariff charge only because that particular charge had been considered and "approved" by the Interstate Commerce Commission. If that is the case -- and IHB does not believe it is -- it is unclear what authority NS believes it has to impose its interchange error movement tariff on other carriers.

⁷ IHB does not take a position on NS's request for a rulemaking to establish procedures for interchange delay charges, other than to note that 1) it highlights the need for, and viability of, such charges, and 2) it demonstrates again that such charges are plainly no threat to the American rail interchange system.

There is thus no party that has participated in this proceeding to date -- outside of UP -- which believes that IHB's tariff should be invalidated. A broad cross-section of interests supports the tariff as a reasonable and necessary response to one of the more intractable problems that affects the nation's rail terminals. At a time when traffic congestion, operating delays and poor service occupy the news more than any of us would like, this is a solution. It has worked well for six years, and should not be discarded now.

WHEREFORE, IHB respectfully requests that the Board accept these reply comments and find IHB's interchange delay tariff to be legal, reasonable and enforceable.

Respectfully submitted,

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**ATTORNEYS FOR INDIANA HARBOT BELT
RAILROAD COMPANY**

Dated: August 31, 2000

Congress of the United States

Washington, DC 20515

July 12, 2000

Ms. Linda Morgan
Chairwoman
Surface Transportation Board
1925 K Street Northwest
Washington, D.C. 20423

Dear Chairwoman Morgan:

We are writing to share with you our interest and concern over the growing railroad traffic congestion problems being experienced in Northwest Indiana since the approval of the acquisition of the assets of Conrail by CSX Transportation (CSX) and Norfolk Southern Railroad (NS).

We are aware that as part of the STB's oversight of the Conrail acquisition transaction, on June 1, 2000, CSX and NS filed status reports on the implementation of the transaction. We further understand that neither CSX nor NS referenced in their filings any problems with respect to their operations in Northwest Indiana, other than an indication by CSX that the results of its promised improvements in the region may not be experienced until "late 2000."

The Cities of East Chicago, Hammond, Gary, and Whiting, collectively participated in the Conrail proceeding as the Four City Consortium. The Consortium has informed us that they will be responding to the railroads' June 1, 2000 status reports, and will be arguing that, despite CSX and NS's assurances that post-transaction congestion problems would improve, the situation has worsened over certain critical area line segments. These problems appear largely to be the result of the railroads' incremental increases in traffic levels beyond those first projected, their constant blockages of at-grade highway crossings, and their refusal to reroute traffic off critical congested rail line segments. We are also aware that NS is challenging in federal court the right of the Four Cities to ticket trains for illegal road blockages, arguing that they have a right to operate and stop their trains in any manner they see fit.

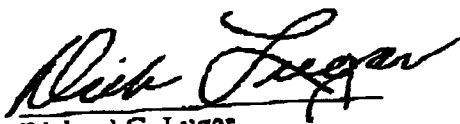
The adverse safety, environmental, and quality of life impacts resulting from the constant flow of rail traffic through Northwest Indiana is of great concern to us and our constituents. Most through rail traffic between Chicago and the East Coast moves through the region by CSX and NS. These operations impact over 200,000 residents of the Four Cities who must traverse the hundreds of at-grade highway/rail crossings in the area on a daily basis. Unfortunately, because of the high levels of at-grade crossings, rail accidents have become all too common an occurrence. In addition, the blocked crossings adversely impact the fire, police, and emergency services, cause environmental pollution, traffic delays, and growing frustration among residents.

It is extremely troubling to hear that rail congestion problems in the Four Cities have intensified since the Conrail break-up. We have, and will continue, to pursue the allocation of public resources to assist the Four Cities in implementing infrastructure and other safety improvements to mitigate the serious problems associated with the high intensity of railroad lines and operations. However, such efforts cannot be successful without the willingness of the railroads to meaningfully cooperate with the Consortium to minimize community impacts.

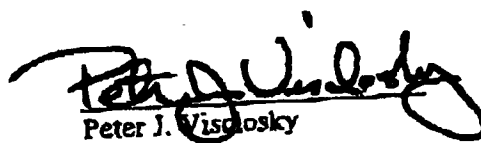
We are aware that CSX and NS have discussed with the Four Cities the possibility of taking additional steps to mitigate train impacts. However, to the extent that a mutually agreeable solution cannot be made, we believe the STB has the authority and responsibility to step-in and take appropriate actions. We urge the STB to closely review the Four Cities reply comments, and to take the appropriate steps necessary to ensure that the railroads are held accountable to improve the regional congestion problems.

We appreciate your assistance with this important matter.

Sincerely,


Richard G. Lugar
United States Senator


Evan Bayh
United States Senator


Peter J. Visclosky
Member of Congress



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August 25, 2000

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

Re: Docket No. 45052, Union Pacific Railroad Company -
Petition for Declaratory Order -- Unilaterally Imposed
Interchange Charges

Dear Secretary Williams:

My Name is Thomas McDermott. I am President and CEO of the Northwest Indiana Forum, Inc. ("NWIF"), a member-owned, not-for-profit regional economic development organization working in partnership with area communities in Lake, Porter, LaPorte, Newton, Jasper, Pulaski and Starke Counties in Northwest Indiana.

NWIF has over 152 members including industrial companies, carriers, financial institutions, communities and public agencies. Our members include some of the largest rail served industries in Northwest Indiana. A list of NWIF's members is attached. Our mission is to create and retain jobs while improving the business climate and quality of life in Northwest Indiana.

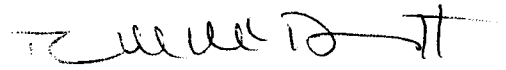
Consistent and reliable rail service to and through Northwest Indiana is critical to the economic development of this area. As the Board knows, Northwest Indiana is a heavily-industrial area, heavily dependent on rail service. Much of the traffic from this area moves to or through the Chicago terminal. When rail traffic has trouble getting to or through Chicago, it quickly affects Northwest Indiana.

We understand that the Union Pacific has asked the Board to invalidate an IHB charge which applies when a railroad such as UP refuses for more than nine hours to accept cars for interchange to it requiring IHB to store the cars somewhere on its lines or in its yards until the railroad decides to accept them.

We strongly support retention of this charge and any other reasonable incentive that works to discourage railroads from allowing cars to sit on the IHB or on any railroad in the Chicago Terminal. We believe that the existence of such charges is vital to keeping the Chicago Terminal fluid. A fluid Chicago Terminal is vital to the interests of Northwest Indiana.

NWIF strongly urges the Board to uphold IHB's charge.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "TMM", followed by a horizontal line and a vertical stroke.

Thomas M. McDermott
President and CEO

TMM/ss
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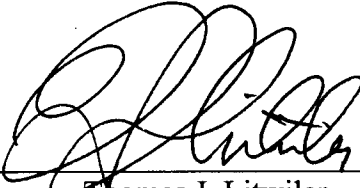
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