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# Ohio Rail Development Commission

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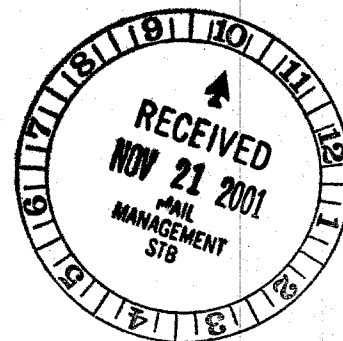
November 20, 2001

Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 "K" Street, N.W.  
Washington, D.C. 20423-001

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Office of the Secretary

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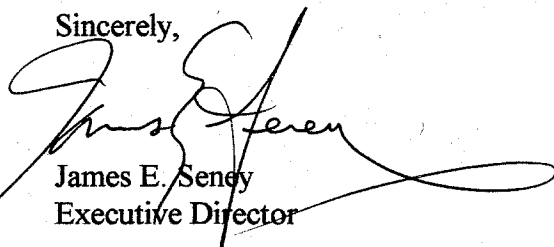


**RE: Comments, Ex Parte 586,  
Arbitration**

Dear Secretary Williams:

Enclosed are ten copies of the comments of the Ohio Rail Development Commission for the Ex Parte 586 proceedings. Thank you for considering our views in this matter.

Sincerely,



James E. Senev  
Executive Director

Enclosures (10)

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**COMMENTS OF**

**JAMES E. SENEY, EXECUTIVE DIRECTOR**

**OHIO RAIL DEVELOPMENT COMMISSION**

**to the**

**SURFACE TRANSPORTATION BOARD**

**EX PARTE 586 PROCEEDINGS**

**November 20, 2001**

**Comments of James E. Seney, Executive Director  
Ohio Rail Development Commission**

**Ex Parte 586**

The Ohio Rail Development Commission (ORDC) is the State of Ohio agency responsible for addressing rail freight and passenger issues in Ohio. As such, ORDC spearheaded Ohio's efforts in the recent Conrail Sale transaction, as well as Ohio's participation, in other Surface Transportation Board (STB) proceedings such as Ex Parte 575, Review of Rail Access and Competitive Issues, and Ex Parte 628, Expedited Relief for Service Inadequacies, and Ex Parte 582, Merger Rules.

**ORDC Backs Principles of Arbitration AND Mediation**

ORDC applauds the STB for taking the initiative in Ex Parte 586 to revisit the issue of arbitration. ORDC believes that no matter what the final resolution of the Ex Parte 586 proceedings, the focus which the STB will have brought to the arbitration option will have a positive influence on the rail industry.

**List of Arbitrators:** In ORDC's Ex Parte 582 comments of May 12, 2000, we urged the STB to follow through on its Ex Parte 560 proceedings and publish a list of approved arbitrators. ORDC applauds your current efforts to identify qualified arbitrators throughout the nation.

**Legislatively Mandated Arbitration:** Apparently, the existing arbitration mechanisms under 49 CFR Parts 1108 and 1109 have not been extensively used. We have documented our belief in arbitration and mediation in our Ex Parte 582 filings, and we fully support the increased usage of the STB's existing arbitration procedures.

Further, ORDC supports STB's investigation into legislation which would prescribe arbitration for certain issues, including rate issues. From our experience with shipper issues before the STB, ORDC believes that requiring arbitration in certain circumstances would be beneficial to both shippers and railroads and should reduce the STB's docket of cases.

**Arbitration Check Off:** ORDC fully supports the STB suggestion that parties seeking STB adjudication of an issue should be required to consider arbitration before the STB will hear the pleadings.

**Mediation:** In the 582 process, ORDC also addressed Mediation and other Alternative Dispute Resolution (ADR) techniques. We stated in our May 12 comments:

*The presence of an unbiased mediator would tend to keep order, dispel uninformed beliefs about what relief may be available through the STB, and encourage both sides to take reasonable positions in the hope of reaching a solution without costly litigation.*

ORDC again urges the STB to consider mediation as a less formal ADR technique than either voluntary or mandatory arbitration. ORDC has been an informal mediator in several railroad - shipper disputes. Our experience has been that when we bring shippers and railroads together for frank discussions, hard positions tend to soften, and disputes sometimes evaporate. ORDC can and will continue to informally mediate when possible, but ORDC staff lacks the background and experience to handle rate disputes. ORDC suggests that mediators with skills and knowledge similar to those that exist at the STB's Office of Public Services would go a long way toward resolving many rate issues without the need for arbitration, or for any formal STB action.

### **SPECIFIC STB CONCERNS**

**Definition of Small Disputes:** ORDC agrees with the STB suggestion that carloading numbers would provide an effective benchmark to differentiate between small and large rate disputes. ORDC agrees with the STB suggestion that the definition of a small dispute might involve a shipper using between 200 and 500 rail cars a year for most commodities other than those in the agriculture industry. However, ORDC believes that coal and aggregates deserve the same exception as agricultural products. ORDC urges the STB to consider establishing special, customized criterion for the agriculture, coal, and aggregate industries.

In Ohio, we have grain elevators which handle from 500 to 3,500 carloads of corn, soybeans, and wheat a year which certainly do not have the market power to force the serving railroad's hand, or to launch a major rate case. Some are cooperatives, or family owned, with only one or a few facilities in total. To preclude such elevators from the definition of small shipper would be a great disservice to Ohio's agricultural industry. ORDC suggests that for grain elevators, a determination of whether inclusion as a small shipper is warranted should be based on total carloads which the grain company ships each year on a particular railroad from all of its facilities. Further, we suggest that any grain elevator system which ships under 3,500 carloads total, should qualify as a small rail user for purposes of rate cases.

Similarly, Ohio has a diverse coal industry. There is still such a thing as a family owned coal mining operation. The same holds true for Ohio's aggregate industry. These coal and aggregate companies may only employ 50 or 100 people but may generate as many as 10,000 carloads of coal or stone a year. While these companies are sophisticated operations, they can be captive to a railroad, and can lack effective truck competition. For example, some Ohio stone shippers in western Ohio serve an eastern Ohio market via rail which cannot be adequately or economically served by trucks. ORDC suggests that the STB make appropriate carload rules to take into account the peculiarities of the aggregate, coal industries, and agriculture industries.

***Variable Cost Threshold:*** ORDC agrees that using 180% of variable costs is generally an effective threshold to use to judge whether a rate is by definition reasonable. However, we believe the STB should not consider it a hard and fast rule for all situations. If effective arbitration and mediation requirements and processes are in place, there is less need for a hard and fast rule.

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ORDC commends the STB for undertaking the Ex Parte 586 proceedings. We thank you for soliciting Ohio's opinions.

lj23/ExParte586