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LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net



December 18, 2003

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

DEC 18 2003

Part of
Public Record

Dear Secretary Williams:

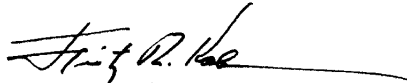
Enclosed for filing in STB Finance Docket No. 34415, Ohio Department of Transportation-Petition for Declaratory Order-Status of Track at Findlay, Hancock County, OH, are the original and ten copies of the Reply of the Ohio Department of Transportation.

Additional copies of this letter and of the Reply are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

Service of the Reply upon Norfolk Southern Railway Company has been effected by facsimile transmitting copies to its counsel.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Roger L. Miller, Esq.
James R. Paschall, Esq.
Michael L. Stokes, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL



STB Finance Docket No. 34415

OHIO DEPARTMENT OF TRANSPORTATION
- PETITION FOR DECLARATORY ORDER -
STATUS OF TRACK AT FINDLAY, HANCOCK COUNTY, OH

REPLY
OF
OHIO DEPARTMENT OF TRANSPORTATION

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Michael L. Stokes
Senior Assistant Attorney General
Office of the Attorney General
One SeaGate (#2150)
Toledo, OH 43604-1551
Tel.: (419) 245-2550

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Special Counsel to the
Attorney General of Ohio

Attorneys for

OHIO DEPARTMENT OF TRANSPORTATION

Dated: December 18, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



STB Finance Docket No. 34415

OHIO DEPARTMENT OF TRANSPORTATION
– PETITION FOR DECLARATORY ORDER –
STATUS OF TRACK AT FINDLAY, HANCOCK COUNTY, OH

REPLY
OF
OHIO DEPARTMENT OF TRANSPORTATION

Petitioner, Ohio Department of Transportation ("ODOT"), pursuant to 49 C.F.R.

1104.13. replies to the Norfolk Southern Railway Company's Motion, filed December 12, 2003, to Reject or to Strike Reply Filed by the Ohio Department of Transportation to NSR's Reply to Petition for Declaratory Order, as follows:

1. Although not styled as such, NS' pleading in essence is nothing more than a Reply to ODOT's Petition to file a Reply to NS' Reply, coupled with its rebuttal arguments.
2. The Board has received rebuttal arguments in instances in which it has allowed a party to file a reply to a reply. See, STB Finance Docket No. 34425, City of Lincoln–Petition for Declaratory Order, served December 8, 2003; STB Finance Docket No. 33950, Jefferson Terminal Railroad Company–Acquisition and Operation Exemption–Crown Enterprises, Inc., served March 19, 2001; STB Finance Docket No. 33824, Great Salt Lake and Southern Railroad,

L.L.C.–Construction and Operation–In Tooele County, UT, served December 15, 2000; STB Docket No. 42030, B. Franklin Unger, Trustee of the Indiana Hi-Rail Corporation, Debtor–Petition for Declaratory Order–Assessment and Collection of Demurrage and Switching Charges, served June 14, 2000.

3. ODOT offers no objection to the Board's receipt of NS' rebuttal arguments. We believe they more convincingly than anything we might offer demonstrate NS's arrogance in asserting that it alone can decide whether the Findlay spur has been abandoned by it. Notwithstanding that 49 U.S.C. 10501(b)(2) vests the Board with jurisdiction over spur tracks, NS persists in its view that the Board is unable to determine whether NS in fact has abandoned the Findlay spur or, alternatively, to allow the Hancock County Court of Common Pleas to make such a determination.¹

WHEREFORE, the Ohio Department of Transportation asks the Board to render a declaratory order finding that the disposition of the track which would be affected by the proposed lowering of the U.S. Highway 68/State Route 15 Findlay by-pass bridge is not within the agency's jurisdiction and that the case before the Court of Common Pleas of Hancock County is not preempted by 49 U.S.C. 10501(b). A copy of the agency's decision should be sent to Judge Joseph H. Niemeyer.

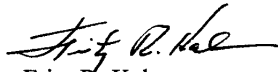
¹ The two Ohio cases which NS claims are controlling, Railroad Ventures, Inc.v. Surface Transportation Board, 299 F.3d 523 (6th Cir. 2002), and Columbiana county Port Authority v. Boardman Township Park District, 154 F. Supp. 2d 1165 (N.D. Ohio 2001), dealt with track which the Board had found to be railroad lines or tracks appurtenant thereto.

Respectfully submitted,

OHIO DEPARTMENT OF TRANSPORTATION

By its attorneys,

Michael L. Stokes
Senior Assistant Attorney General
Office of the Attorney General
One SeaGate (#2150)
Toledo, OH 43604-1551
Tel.: (419) 245-2550



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Fritz R. Kahn, P.C.
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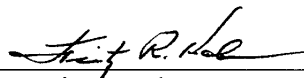
Special Counsel to the
Attorney General of Ohio

Dated: December 18, 2003

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Reply upon Norfolk Southern Railway Company by facsimile transmitting copies thereof to its counsel, Roger L. Miller, Esq., and James R. Paschall, Esq.

Dated at Washington, DC, this 18th day of December 2003.


Fritz R. Kahn