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

FEE RECEIVED

JUL 16 2004 July 12, 2004

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



211600

Re: Finance Docket No. 34527-1
Petition of Maumee & Western Railroad Company and RMW Ventures, LLC
for Declaration or Revocation of CSX Transportation, Inc.'s Crossing Rights
at Defiance, Ohio

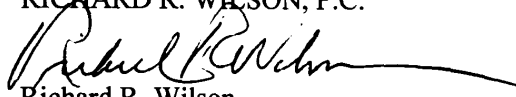
Dear Sir:

Enclosed for filing please find the original and ten copies of the above-captioned Petition seeking a declaration or revocation of crossing rights pursuant to 49 U.S.C. §10901(d). Also enclosed is a check in the amount of \$1,400 in payment of the Board's filing fee in connection with this proceeding.

Please date stamp and return a copy of this cover letter in the enclosed self-addressed, stamped envelope provided for that purpose. Copies of this pleading have been filed on the Respondent, CSX Transportation, Inc.

Very truly yours,

RICHARD R. WILSON, P.C.


Richard R. Wilson
Attorney for Maumee & Western
Railroad Company and RMW Ventures

ENTERED
Office of Proceedings
JUL 19 2004
Part of
Public Record

sb/32903

Enclosures

cc: Mr. Melvin Clements, Director
STB Office of Enforcement
Spencer N. Wendelin

FILED

JUL 16 2004

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No.

34527



PETITION OF MAUMEE & WESTERN RAILROAD COMPANY AND RMW
VENTURES, LLC. FOR DECLARATION OR REVOCATION OF CSX
TRANSPORTATION, INC. CROSSING RIGHTS AT DEFIANCE, OHIO

FEE RECEIVED

JUL 16 2004

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings

JUL 16 2004

Part of
Public Record

Filed by:

Richard R. Wilson, Esq.

Attorney for Maumee & Western Railroad Company

Richard R. Wilson, P.C.

Richard R. Wilson, Esq.

127 Lexington Avenue

Altoona, PA 16601

(814) 944-5302

Dated: July 12, 2004

FILED

JUL 16 2004

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No.

34527



PETITION OF MAUMEE & WESTERN RAILROAD COMPANY AND RMW
VENTURES, LLC FOR DECLARATION OR REVOCATION OF CSX
TRANSPORTATION, INC. CROSSING RIGHTS AT DEFIANCE, OHIO

I. RELIEF REQUESTED AND REASON FOR EXPEDITION

Maumee & Western Railroad Company ("M&W") and RMW Ventures, LLC ("RMW") (referred to as Petitioners) hereby request, pursuant to 49 U.S.C. §10901(a) and (d) that the Board issue an order subjecting to regulation, the CSX Transportation, Inc. (CSXT) crossing over the tracks of M&W at Defiance, Ohio and declaring

- (1) that the construction and operation of CSXT'S double track mainline where it crossed the mainline of M&W in Defiance, Ohio unreasonably interferes with the common carrier rail service operations of M&W in violation of 49 U.S.C. §10901(d);
- (2) that the subsequent removal of the double diamond crossing at this location by CSXT without the consent of M&W and the severing of M&W's mainline track constitutes an impermissible interference with M&W's common carrier rail operations in violation of §10901(d) and its statutory rights and obligations to provide said service under its certificate of public convenience and necessity issued by the Board pursuant to 49 U.S.C. §10901(a);
- (3) that CSXT within 30 days immediately replace and restore the double diamond crossing and reconnect the mainline track of M&W thereto and thereafter maintain said crossing at CSXT's sole cost and expense in a safe and proper manner;

- (4) that CSXT immediately enter into a crossing and interlocking agreement with M&W to assure the proper, safe and continued operation of said crossing; and
- (5) that CSXT provide reasonable compensation to M&W for the crossing rights ordered herein.

Finally, M&W requests that the STB condition CSXT's authority to cross M&W's track and right-of-way in Defiance, Ohio on its immediate compliance with the Board's order and authorize M&W to remove CSXT track and rail facilities from M&W's right-of-way in the event CSXT fails to reinstate M&W's crossing within thirty (30) days.

Since 2002, M&W has tried to resolve CSXT's unauthorized removal of its Defiance crossing. CSXT's inaction has frustrated the location of potential shippers who have sought to obtain M&W common carrier rail service west of the Defiance crossing. CSXT has delayed and refused to promptly reinstall the crossing as a means of discouraging shippers from locating on M&W's line. Despite repeated efforts by M&W to bring this matter to the attention of the highest CSXT officials, CSXT has failed and/or refused to reconstruct the M&W double diamond crossing in order to prevent M&W access to the Defiance Industrial Park even though CSXT has acknowledged to the Board its legal obligation to do so.

II. BACKGROUND

M&W is a short line railroad located in western Ohio and eastern Indiana which began operations in 1998 on a 51 mile line formally owned by Norfolk and Western Railway Company and operated by Indiana Hi-Rail. Maumee & Western, LLC – Acquisition and Operation Exemption – Norfolk and Western Railway Company, STB Finance Docket 33478 (October 31, 1997), Maumee & Western Railroad Corporation – Operation Exemption – Maumee & Western, LLC, STB Finance Docket 33535 (January 16, 1998). The railroad right of way operated by M&W

is owned by RMW. RMW Ventures, LLC Corporate Family Transaction, STB Finance Docket 33541 (March 10, 1998). A map depicting the RMW and M&W line is appended at Exhibit A.

The rail line and right-of-way operated by M&W was initially acquired on August 24, 1853 by the Toledo and Illinois Railroad Company from William Taylor and Catherine Taylor by deed dated August 24, 1853. The rail line and right-of-way operated by CSXT which abuts M&W's right-of-way was not acquired by CSXT's predecessor in title until the 1870's. M&W is therefore the crossed line and CSXT is the crossing carrier. After M&W obtained operating authority for this rail line, Norfolk Southern provided M&W with a copy of the an October 22, 1979 interlocking agreement between Baltimore and Ohio Railroad Company and Norfolk and Western Railway Company (Exhibit B). This agreement was cancelled by CSXT's unauthorized removal of the diamond in November 2002 and by M&W's notice provided to CSXT's Mr. Ward on December 5, 2002. The cancellation of the interlocking agreement became effective on December 5, 2003 pursuant to the provisions of Paragraph 18 thereof.

The present dispute began in 1995 when, without the consent of M&W, CSXT constructed a second mainline track and diamond at the Defiance crossing as part of its Conrail acquisition plans. The eastern track carries eastbound traffic and the western track carries westbound traffic. The line in question is CSXT's mainline track between Chicago and Pittsburgh. It is used by over 100 trains a day and is rated for FRA Class V operations. After constructing the second diamond and adjusting its train operations, CSXT began to experience track creep caused by the repetitive directional high speed movement of traffic on its eastbound and westbound mainlines through the crossing. This track creek caused the M&W track to shift out of alignment and out of gauge. (Exhibits C1-C5)

On June 6, 2002, CSXT unilaterally made the decision to remove the CSXT/M&W crossing diamonds in Defiance, Ohio contending that the M&W line west of the diamond was out of service and required repair. (Exhibit D) On June 10, 2002, M&W responded to the CSXT letter objecting to the removal of the crossing diamonds and proposing terms for coordinated operations at the crossing and new interchange arrangements in the CSXT Defiance yard and on June 18, 2002, CSXT insisted on removing the diamond. (Exhibit E)

However, on July 2, 2002 CSXT disconnected M&W track segments at the crossing and on July 15, 2002 M&W requested the assistance of the STB's Office of Compliance and Enforcement in obtaining CSXT's cooperation in repairing and reconnecting the tracks.(Exhibit F). By letter from CSXT counsel dated July 19, 2002, CSXT represented to the STB and to M&W that it "has now decided to begin to repair the diamonds." (Exhibit G) However, CSXT failed to follow up on this commitment and on November 19, 2002, CSXT completely removed both diamonds, serving M&W's mainline. (Exhibit H1-H4)

By letter dated December 5, 2002, M&W wrote directly to the Chairman and President of CSXT, Mr. Michael J. Ward, seeking his personal intervention and assistance in the resolution of this crossing matter. (Exhibit I) In response to this letter, M&W received a reply from CSXT's Vice-President of Engineering who once again indicated no intent on the part of CSXT to replace the Defiance diamonds until and unless M&W had a need to utilize tracks west of the diamonds for common carrier rail service. (Exhibit J) M&W's letter of December 26, 2002 responded to Mr. Schmidt and demanded that CSXT immediately reinstall the Defiance crossings. (Exhibit K)

With the decision by the prospective shipper not to locate on M&W's line west of the crossing, this matter remained unresolved until December, 2003 at which time M&W representatives met with Mr. Schmidt on December 10, 2003 in Jacksonville, FL to discuss

alternatives for restoring service west of the diamonds. Mr. Schmidt agreed to expeditiously develop plans for restoration of service and assigned an individual to do so. (Exhibit L) However, CSXT failed to respond as promised (Exhibit M) and on June 23, 2004 M&W again requested the assistance of Mr. Ward to address this matter (Exhibit N) and indicated that if CSXT would not respond to this matter in a timely fashion, it would seek relief before the Surface Transportation Board in a formal proceeding.

Finally on June 30, 2004, M&W learned that CSXT and the City of Defiance had arranged for CSXT to provide rail access into the Defiance Industrial Park because the City's preferred access from the M&W line was prevented by CSXT's removal of the diamond. M&W again urged CSXT to restore the crossing diamonds but, to date, CSXT has taken no action. (Exhibit O)

III. DISCUSSION

Under 49 U.S.C. §10901(d), a rail carrier may not block any construction or extension authorized by an STB certificate by refusing to permit the carrier to cross its properties if (A) the construction does not unreasonably interfere with the operation of the crossed line; (B) the operation does not materially interfere with the operation of the crossed line; and (C) the owner of the crossing line compensates the owner of the crossed line. Under the 1979 interlocking agreement, CSXT was authorized a single track crossing of the M&W line. When CSXT constructed a second mainline track and doubled the diamond on the Maumee line, CSXT created a situation where its westbound traffic utilized one line while its eastbound traffic utilized the other line. As a consequence, both CSXT tracks were subject to track creep, one in an eastbound direction and the other in a westbound direction which caused the M&W mainline to quickly move out of alignment and out of gauge. Thus, CSXT's construction of its second rail line and its utilization of these lines in repetitive single directional operations caused substantial interference with M&W's rail line.

Rather than correct this situation through the installation of stable crossing diamonds and alternating directional operations, CSXT took the expedient and less costly course of action. CSXT, over M&W's objections, removed the M&W diamonds and straight lined its tracks thereby severing M&W main line and cutting off approximately 3 miles of common carrier railroad track west of the Defiance diamond. (Exhibit L) This action was taken by CSXT despite the objections of M&W representatives and in direct contravention of representations made to the Surface Transportation Board's Office of Compliance that CSXT would repair the Defiance diamonds. CSXT's removal of Defiance diamonds and strait lining its track does not merely interfere with the operations of the M&W, it physically precludes the ability of M&W to provide rail service west of the Defiance diamonds. Finally, CSXT has made no effort to promptly resolve this problem with M&W. Instead it has temporized and asserted it would only restore the crossing if needed by M&W to provide rail service, while actively discouraging shipper use of plant sites served by M&W west of the diamonds. Now when M&W can provide preferred rail access to the Defiance Industrial Park, CSXT has used its crossing removal to preclude competitive M&W rail service to the Defiance Industrial Park. Thus, it is readily apparent that CSXT is in flagrant violation of 49 U.S.C. §10901(d) and past representations by CSXT to the Board.

The Board determined in Burlington Northern & Santa Fe Railway Company – Petition for Declaration or Prescription of Crossing, Trackage or Joint Use Rights, STB Finance Docket No. 33740, Finance Docket No. 33740 (Sub No.1), that in these circumstances it has jurisdiction to issue a §10901 line construction license in order to enforce the provisions of 49 U.S.C. §10901(d). See Burlington Northern & Santa Fe Railway Company – Petition for Declaration or Prescription of Crossing, Trackage or Joint Use Rights, STB Finance Docket No. 33740, decided May 9, 2003. In contrast to the BNSF case, where BN sought rights to cross another rail line, in this proceeding

M&W seeks an order from the Board directing CSXT to reinstall the Defiance crossings so that M&W can resume common carrier rail service on its own rail line which CSXT has illegally severed.

Moreover in this proceeding, CSXT's conduct has obvious anticompetitive implications. CSXT removed the MW& line and has failed to promptly reinstall the crossing in order for M&W to serve the Defiance Industrial Park, while arranging for its own access to the Park citing M&W inability to serve the Park because of the crossing CSXT removed!! Cf. U.S. v. Terminal Railway Assn. 224 U.S. 383, 32 S. Ct. 509 (1912); D&H v. Conrail 654 F. Supp. 1195 (N.D.N.Y. 1987); Transkentucky RR v. L.&N.Railroad Co., 581 F. Supp. 759 (E.D. Ky 1983). CSXT's conduct is also inconsistent with virtually every provision of the national rail transportation policy. 49 U.S.C. §10101 (1), (3), (4), (5), (6), (8), (9) and (12).

IV. CONCLUSION

Accordingly, M&W requests that the Board issue a crossing construction order and a declaration of crossing rights *nunc pro tunc* directing that CSXT may cross M&W's track if and only if it immediately restores the Defiance crossing diamonds and eliminates the track creep problem which materially interferes with M&W's operation of its mainline through the double diamond crossing. Since CSXT is the crossing carrier, M&W also requests that the STB, as a condition of CSXT's crossing authorization, require CSXT to prepare and maintain at its sole cost and expense the Defiance double diamond crossing and promptly compensate M&W for its use and occupancy of the M&W right-of-way for crossing purposes. As a further condition of CSXT's continued use of at grade crossing rights, M&W requests that the STB order CSXT to provide an independent professional engineering report evaluating the long term feasibility of reinstalling and maintaining the current double diamond at grade crossing in light of the high volume, directional

nature of CSXT operations or whether these conditions require a grade separated crossing to safely accommodate the traffic volumes and directional operations utilized by CSXT on its mainline tracks through this crossing. Finally, in the absence of prompt CSXT compliance with the Board's order by at date certain, M&W respectfully requests that the Board terminate CSXT's crossing rights and authorize M&W, after appropriate notice to CSXT, to remove CSXT's track and rail facilities from the M&W right-of-way in Defiance, Ohio.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By: 

Richard R. Wilson, Esq.

Attorney for Maumee & Western Railroad Company

RICHARD R. WILSON, P.C.
127 Lexington Avenue
Altoona, PA 16601
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EXHIBIT A

Railroad Lines in Ohio

Public Utilities Commission of Ohio

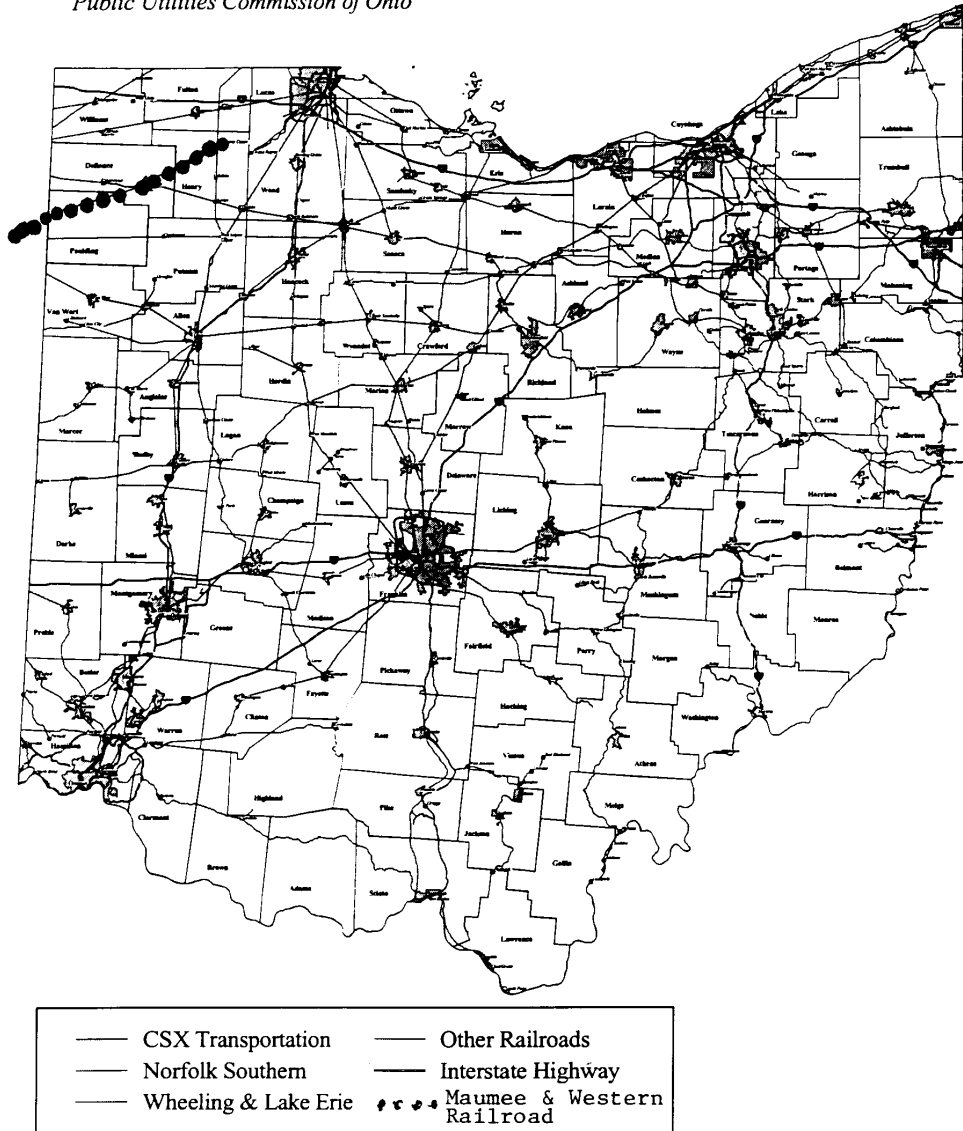


EXHIBIT B

Maumee & Western Railroad

4301 N. Western Ave.
Connersville, IN 47331

(765) 825-0349

(765) 825-0453 FAX

December 7, 2000



To: G. Pete Bell
From: Dave Wellman
Subject: Defiance, Ohio – Interlocking Agreement (**DF – 96080**) between
B&O and N&W (their successors and assigns)
covering interlocking near Deatrick Street

Attached is subject agreement covering interlocking in Defiance near Deatrick Street. I just wanted to make sure you had a copy of this.

C – Jim Sellers: Copy of agreement enclosed for your files.

DEFIANCE

AGREEMENT

J89004

NW - 4789

THIS AGREEMENT, made and entered into this 22nd day of

OCTOBER, 1979, by and between THE BALTIMORE
AND OHIO RAILROAD COMPANY, hereinafter designated as "Baltimore", and the NORFOLK
AND WESTERN RAILWAY COMPANY, hereinafter designated as "Norfolk":

WITNESSETH:

WHEREAS, the parties hereto, or their respective predecessor companies entered into an agreement dated October 1, 1929, providing among other things for the operation, renewal, and maintenance of certain crossing protection facilities at the intersection of the tracks of the parties hereto at grade near Deatrick Street at Defiance, Ohio, commonly called "FC" Interlocking; and

WHEREAS, the parties hereto, or their respective predecessor companies entered into an agreement dated August 10, 1936, terminating the aforesaid agreement dated October 1, 1929, and providing for the installation, operation and maintenance of a locally controlled interlocking plant; and

WHEREAS, said interlocking plant was demolished by a derailment on September 2, 1975, and the parties hereto desire to proceed with the replacement of the destroyed interlocking plant with a remote controlled interlocking to be placed under the control of Baltimore's dispatchers at Akron, Ohio, or any other point that may be designated by Baltimore; and

WHEREAS, the parties hereto desire to enter into an agreement defining herein their respective rights, duties and obligations respecting ownership, construction, maintenance, and operation of said remote controlled interlocking, and to cancel, terminate and supersede said agreement dated August 10, 1936.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter set forth, it is agreed between the parties as follows:

1. (a) Whenever the words "Remote Controlled Interlocking" are hereinafter used, they shall be held to include all field coding equipment, signals, housings, appliances and appurtenances, including insulated rail joints between and including the home signals on the tracks of the parties hereto, necessary for the operation of the interlocking and flashing light signals, half roadway gates and bells at Deatrick Street, substantially as shown on Baltimore's plan, Drawing Number P-3572, dated April 3, 1978, attached hereto, marked Exhibit "A" and made a part hereof.

(b) The term "A.A.R. Units", used herein, refers to the units stated in the Table of Signal and Interlocking Units of the Signal Section, Association of American Railroads, as issued from time to time. At the time of this agreement, said table dated 1974 shall apply, copy attached hereto, marked Exhibit "B" and made a part hereof.

2. Baltimore, at its sole cost and expense, shall dismantle and remove the appurtenances to the destroyed interlocking that will not be required for the remote controlled interlocking.

3. (a) Baltimore shall, subject to the approval of the proper public authorities and pursuant to plans which shall have been approved by the respective signal officers of the parties hereto, rearrange and convert the destroyed interlocking to a remote controlled interlocking.

(b) The cost and expense of said interlocking rearrangement and conversion shall be borne 100% by Baltimore. After completion of said rearrangement and conversion Norfolk, as its portion of said cost and expense, shall pay to Baltimore the sum of \$43,320.

(c) Each of the parties hereto shall, at its sole cost and expense, construct or modify all signaling facilities and appurtenances in and along its own tracks outside the limits of said interlocking as may be necessary to accommodate said remote controlled interlocking.

4. Each party hereto shall, at its sole cost and expense, perform any and all track work on its own line, and make such changes in its tracks, install, maintain and renew insulated joints and other appurtenances located in its respective tracks as may be required for said remote controlled interlocking. Each party will keep the portion of said interlocking on or along its tracks free from interference and obstructions which may in any way affect the proper functioning of said remote controlled interlocking.

5. Baltimore shall maintain, repair and renew the existing crossing frog at the intersection of its single track with the single track of Norfolk, and the cost thereof shall be borne 100% by Baltimore.

6. Each party shall, at its sole cost and expense, make such changes in and adjustments to its own communication facilities as may be required for its operations and to accommodate said remote controlled interlocking and hereafter maintain said facilities at its sole expense.

7. After said remote controlled interlocking is placed in service, maintenance, repair, renewal and operation of said remote controlled interlocking shall be under the sole charge and control of Baltimore, and it shall employ competent persons for such purpose.

8. (a) The expense of maintaining, repairing, renewing and operating said remote controlled interlocking, including the cost of electric current, shall be borne by each party in the ratio by which the total number of A.A.R. Units located in and along its track for its operation bears to the total number of A.A.R. Units maintained in the entire remote controlled interlocking as indicated on Baltimore's Signal and Interlocking Unit Distribution dated April 4, 1978, marked Exhibit "C", attached hereto and made a part hereof and identified by the signatures of the respective signal officers of the parties hereto. Exhibit "C" shall become effective upon the date said remote controlled interlocking is placed in service.

(b) In the event future changes are made in said remote controlled interlocking, Exhibit "C" shall be revised following each such change in accordance with the principles set forth herein. After approval by the respective signal officers of the parties hereto, said revised Exhibit "C" shall be substituted for the then existing Exhibit "C" and shall be applicable from the effective date shown thereon.

9. Each of the parties hereto shall have the right to require changes in said remote controlled interlocking that do not impair its efficiency provided that such changes shall be made in accordance with plans which shall have been approved by the respective signal officers of the parties hereto. Such changes arising from changes made in any existing track, or made to cover any future track or tracks either party may have the right to construct, or which may be required by reason of any changes made in the standard appliances or practices of either party, or which may be ordered by a lawfully constituted public authority shall be made by Baltimore. The cost of such changes shall be borne by the party hereto requesting such changes, or for whose benefit said changes are made. The word "benefit" as herein used shall include changes made to meet the requirements of any legally constituted public authority having jurisdiction over said interlocking.

10. (a) Each party hereto shall have the right to retire and eliminate the existing crossing of its track with the track of the other party or crossings of any future track or tracks either party may have the right to construct within the limits of said interlocking, and the cost and expense to eliminate such crossing shall be divided as set forth herewith:

(b) Costs and expenses to effect a partial withdrawal shall be apportioned as provided in Section 9 herein.

(c) All costs, relating to removal of track, track appurtenances, signals and related facilities necessary to effect abandonment or complete withdrawal of either party hereto from further use of this joint facility, shall be at the sole expense of the sponsoring party, and salvage derived therefrom

shall, on site, be given to each party in proportion to its ownership, to be disposed of by such party at its sole expense without accounting to the other party therefore.

(d) Costs and expenses necessary to rearrange the remaining facilities and provide necessary additional facilities for the continued operation of the remaining party shall be at the sole expense of the sponsoring party.

11. The cost and expense of dispatchers located at Akron, Ohio, or any other point that may be designated by Baltimore, who may control the facilities at said remote controlled interlocking, shall be assumed and paid wholly by Baltimore.

12. In the event it shall become necessary to assign forces at said crossing herein referred to for the protection of train movements while said remote controlled interlocking may be temporarily out of service, Baltimore shall do so, and the cost and expense of said forces and of supplies furnished to them shall be apportioned equally among the parties hereto; however, in case it is necessary to provide manual protection as a result of damage caused by either party hereto or at the request of either party hereto for its sole benefit, such party shall exclusively bear the entire cost of the manual protection.

13. (a) Each party hereto shall participate in the ownership of said remote controlled interlocking in the ratio which the payments made by it for the construction of said interlocking, including changes chargeable to capital account, bear to the total cost of construction thereof.

(b) Each party hereto shall report its ownership in said interlocking as may be required for taxation purposes and shall bear and pay all taxes and assessments thereon.

(c) Each party hereto may, at its option, carry insurance on its ownership in said remote controlled interlocking and shall solely assume and pay the cost of said insurance.

14. The term "loss or damage" as used in this section relates to loss or damage not herein otherwise expressly provided for arising upon or adjacent to the said remote controlled interlocking and embraces all losses and damages growing out of the death of or injury to persons and all losses and damages growing out of loss of or damage to property, including property belonging to either or both of the parties hereto, and also embraces all costs and expenses incident to any such losses or damages. In respect to questions of liability, the remote controlled interlocking shall not be deemed the exclusive property of any party.

The term "joint employe" as used in this section includes all officers and all other employes while actually engaged in the management, maintenance or operation of any part of the said interlocking, but it shall not include any such officer or employe during such time as he is performing any service for or on behalf of or in respect to the use of said interlocking solely for one of the parties; when so employed such officer or employe shall be deemed for the time being the sole employe of the party for whom or in whose behalf or in respect to whose use of said interlocking such service is being performed.

Loss or damage due:

- (a) to the negligence or wrongful act or omission of the sole employe or employes of one of the parties, or
- (b) to the concurring negligence or wrongful act or omission of a joint employe and of the sole employe or employes of one of the parties, or
- (c) to the failure or defect of the exclusive equipment or appliances of one of the parties,

shall be borne by the party whose employes or whose exclusive equipment or appliances so caused such loss or damage.

Loss or damage due:

- (d) to the concurring negligence or wrongful acts or omissions of the sole employe or employes of one party and of the sole

employee or employees of the other party hereto; or

- (e) to the concurring negligence or wrongful acts or omissions of a joint employee and of the sole employee or employees of one party and of the sole employee or employees of the other party hereto:

shall be borne equally by the parties whose employees were at fault, except that each party shall bear all such loss or damage in respect to its own exclusive property or in its custody or upon its cars, and as to its sole employees, passengers or persons upon its locomotives, cars or trains.

Loss or damage due:

- (f) to the negligence or wrongful act or omission of a joint employee, or
- (g) to the failure or defect of any part of the said remote controlled interlocking, or
- (h) to unknown causes, or
- (i) to the acts of third persons not in the employ or under the control of either party hereto,

shall be borne by each party as to its own exclusive property or property in its custody or upon its cars, and as to its sole employees, passengers or persons upon its locomotives, cars or trains, while as to other persons and their property and as to joint employees and the said remote controlled interlocking such loss or damage shall be deemed as expense of operation and maintenance and shall be divided between the parties on an "AAR" Unit basis as heretofore provided.

Anything hereinabove to the contrary notwithstanding neither of the parties shall have any claim against the other for loss or damage of any kind caused by or resulting from interruption or delay to its business.

Each party who may be liable for or be required hereunder to bear any loss or damage shall and will indemnify and save harmless the other party hereto from such loss or damage and against the payment of and liability for such loss or damage.

If any suit shall be brought against either party and any judgment shall be recovered which such party shall be compelled to pay and the other party shall, under the provisions of this agreement, be solely liable therefor, then such other party shall, on demand, promptly repay to the party paying the same, any moneys which it (the party paying the same) may have paid or been required to pay, whether in the way of damages, costs, fees or other expenses; and if the liability in any such case or cases is joint as between the parties, the party defendant therein shall be reimbursed to the extent and in the proportion that the other party hereto may be required to bear or participate in such liability as hereinabove provided.

Neither party shall be bound by any judgment at law or in equity against the other party, unless it has had reasonable notice from such other party requiring it to appear in an action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by either party to the other and the party receiving the same shall have failed to appear and make defense, it shall be bound by the judgment or decree in said suit.

15. The cost and expense of operating said remote controlled interlocking shall be held to include all charges growing out of the operation thereof not hereinabove provided for, which Baltimore shall have paid or become liable for, and all incidental expenses connected therewith.

(a) All payments hereunder shall be made within 30 days after rendition of proper billing.

(b) Baltimore shall render bills covering the cost of constructing said remote controlled interlocking, such expense to be billed in one statement, unless otherwise agreed upon between the parties involved.

(c) Itemized bills covering the cost of operation, maintenance, repair, and renewal of said remote controlled interlocking shall be rendered monthly by Baltimore.

(d) All billing rendered under the provisions of this Section 15 shall be in accordance with the Rules of the General Manager's Association of Chicago, Illinois, that may be in effect during the period of time covered by such billings.

(e) Should dispute arise as to the correctness of any items included in bills rendered under this agreement, the party against which such bills are rendered shall pay all items included in the bills, and the correctness of disputed items shall be determined and proper adjustments allowed in future bills.

16. This agreement shall become effective upon its execution by the parties hereto; however, it is understood that certain of its provisions become operative only when work has progressed to a stage of completion permitting the remote controlled interlocking to be placed in service.

17. It is mutually understood and agreed that this agreement shall supersede and cancel the aforementioned agreement between the parties hereto, dated August 10, 1936, and any and all agreements, understandings or arrangements, written or unwritten, between the parties hereto or their respective predecessors in interest, covering or relating to the matters covered herein, without however, releasing either party hereto from any obligation or liability incurred thereunder prior to such termination.

18. This agreement shall inure to the benefit of and be binding upon the parties hereto, their respective lessees, successors, and assigns, and upon all persons, corporate or otherwise, in any manner operating or in the possession or use of the railroad tracks of either of the parties hereto, and shall remain in full force and effect until terminated by one (1) year's notice, in writing, from either party to the other party of an intention to terminate same, unless sooner terminated by mutual consent.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their respective officers thereunto duly authorized, as of the day and year first above written.

WITNESS:

Anna Mae Campbell

WITNESS:

LM Liko

THE BALTIMORE AND OHIO RAILROAD COMPANY

By: ZC Morris
Vice President-Engineering and Maintenance

NORFOLK AND WESTERN RAILWAY COMPANY

By: RH Dunlap
Its SENIOR VICE PRESIDENT - OPERATIONS

APPROVED AS TO FORM
JUN 10 1960
FEDERAL BUREAU OF INVESTIGATION

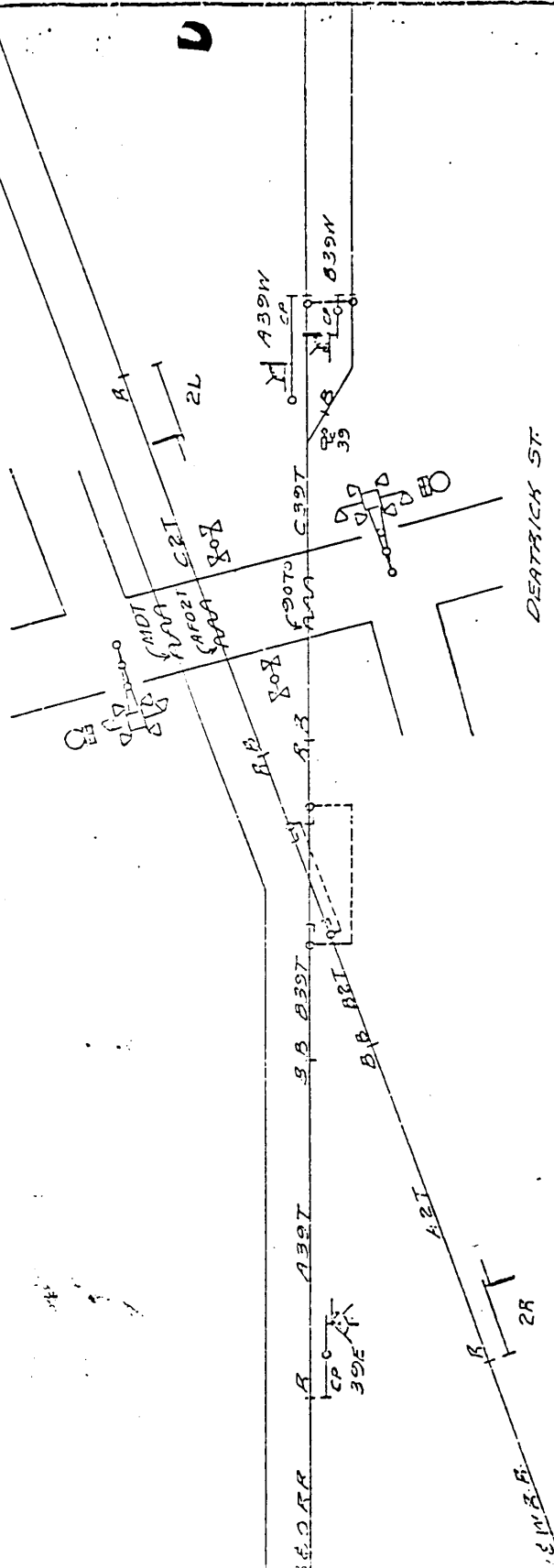


EXHIBIT "A"

Chesio System SIGNAL AND COMMUNICATION DEPARTMENT	
DEFIANCE, OHIO REMOTE CONTROL INTERLOCKING	
DATE 4-9-78 DRAWN J.S.C. TRACED J.B.C.	SHEET NO. 23572 DRAWING NO.

EXHIBIT "B"

1
Association of American Railroads
Signal Manual

Part
203

TABLE OF SIGNAL AND INTERLOCKING UNITS AND INTERPRETATIONS

1974

Item No.	Description	Relative Unit Value
1	Signal arm, or light, inoperative.....	1
2	Signal, complete with mast, blade or light, inoperative.....	2
3(a)	*Signal, three aspects, semaphore or light.....	6
(b)	*Signal, two aspects, semaphore or light.....	4
(c)	*Signal, one aspect, semaphore or light.....	2
(d)	*Signal, each additional aspect.....	2
(e)	*Signal, mechanically operated, manual block, train order or railroad grade crossing signal, two or three aspects.....	4
(f)	*Smashboard, mechanical or power.....	4
4	*Marker light, operated.....	2
5	*Grade signal, semaphore or light, operative.....	2
6	Switch (2 points) or derail	
(a)	Mechanical.....	4
(b)	Power.....	8
7	Slip switch (2 points)	
(a)	Mechanical.....	4
(b)	Power.....	8
8	Slip switch (4 points)	
(a)	Mechanical.....	8
(b)	Power.....	12
9	Movable point frog (4 points)	
(a)	Mechanical.....	8
(b)	Power.....	12
10	Derail, pipe connected to switch and operated thereby.....	1
12(a)	Facing point lock, movable bridge lock or rail lock	
1.	Mechanical.....	2
2.	Power.....	6
(b)	Facing point lock, movable bridge lock or rail lock operated with another unit.....	1
13	Spring switch.	
(a)	Buffer.....	1
(b)	Mechanical facing point lock.....	4
14	Switch-and-lock movement, mechanical.....	1
15(a)	Movable bridge circuit controller or pipe coupler	
1.	Mechanical.....	4
2.	Power.....	8
(b)	Movable bridge circuit controller or pipe coupler operated with another unit.....	2
(c)	Auxiliary circuit controller on movable bridge wedge, latch, lift rail, etc.....	1

*Each semaphore arm, light signal or marker to be counted separately and not in combination.

1974

Printed in U.S.A.

16(a)Non-coded track circuit.....	2
(b)Superimposed circuit on track circuit.....	2
(c)Coded track circuit.....	4
(d)Auxiliary track instrument for train detection.....	2
(e)Track circuit type motion sensitive device to continuously detect rate and direction of motion.....	8
(f)Track circuit type motion sensitive device to continuously detect direction of motion.....	6
(g)Presence detector.....	2
17(a)Electric lever lock applied to a mechanical lever.....	1
(b)Electric lock on hand-operated switch or railroad grade crossing gate.....	2
(c)Electric lock applied to units 12-a, 12-b and 14.....	1
(d)Mechanical time lock applied to a mechanical lever, hand-operated switch and to units 12-a, 12-b and 14.....	1
19 Car retarder including operating mechanism per rail foot of braking length per rail..	1
20(a)Highway grade crossing signal, bell-type, with or without reflectorized signs, per mast.....	1
(b)Highway grade crossing signal, wig-wag or flashing light type (one pair of flashing lights), with or without bell or reflectorized signs, per mast.....	2
(c)Additional pair of flashing lights, illuminated "STOP" sign, auxiliary illuminated sign or rotating "STOP" disc.....	1
(d)Each gate mechanism, automatic.....	4
21 Highway grade crossing gate, manual, per post	
(a) Mechanical.....	1
(b) Power.....	2
22 Train control inductor or loop circuit.....	1
23 Switch circuit controller, signal or highway crossing protection.....	1
24 Indicator	
(a) Wayside track occupancy or switch.....	2
(b) Yard track.....	4
(c) Third rail clearance, per instrument..	2
(d) Switch or derail, target or light.....	1
25 Railroad grade crossing gate, per gate	
(a) Mechanical.....	2
(b) Power.....	4
26(a)Approach locking, per track per direction...	2
(b)Time locking, per track per direction.....	1
27(a)Traffic lever (including circuit within the interlocking or block station).....	1
(b)Traffic lever (including circuit within and without the interlocking or block station.	2
28 Detector devices	
(a) Slide or rock fall, per 100 ft. of detection.....	2
(b) High water or fire, per installation..	1
(c) Dragging equipment, per detector.....	2
(d) Clearance detectors, per sensor.....	1

- 29 Switch heaters, controlled or automatic,
per pair of switch points..... 2

INTERPRETATIONS

Item No.

- 1 Signal arm, or light, inoperative.
This covers an inoperative arm, light or marker on a mast on which there are operative arms and for which no separate control is required.
- 2 Signal, complete with mast, blade or light, inoperative.
This covers a signal mast on which there are no operative arms and all arms, lights or markers being in a fixed position.
- 3(a) Signal, three aspects, semaphore or light.
This covers a three-position signal, such as a signal displaying red, yellow or green aspect; each aspect has a value of 2 units.
- 3(b) Signal, two aspects, semaphore or light.
This covers a two-position signal, such as a signal displaying red or green aspect; each aspect has a value of 2 units.
- 3(c) Signal, one aspect, semaphore or light.
This covers a one-position operative signal.
- 3(d) Signal, each additional aspect.
This covers a case where you may have a four-position signal, that is, one displaying red, yellow, green or lunar white, or one displaying red, yellow, flashing yellow or green, or one displaying four rows of lights. Such a signal should be counted as 1 unit No. 3-a plus 1 unit No. 3-d. No aspect should be counted twice unless it is displayed both steady burning and flashing.
- 4 Marker light, operated.
This covers the condition where it takes a separate control for the marker light to be displayed.
- 10 Derail, pipe connected to switch and operated thereby.
This covers derail and pipe connections only. Does not include the switch machine. No value should be assigned to additional derrails of a tandem derail arrangement operated by one pipe line.
- 14 Switch-and-lock movement, mechanical.
This covers a switch operating mechanism usually applied to hand-operated switch or derail.
- 16(a) Non-coded track circuit.
This also applies to an electronic overlay track circuit.
- (b) Superimposed circuit on track circuit.
This covers additional form of energy superimposed on a track circuit such as for cab signal axle circuit.

- 16(c) Coded track circuit.
This would cover a coded track circuit, ac or dc, regardless of the number of codes. Reversal of coded track for movement in opposite direction where same equipment is used does not change unit value. Where duplicate equipment is used in reversing track circuits, then each direction will count separately. Where coded ac also provides cab signal current, it is considered part of coded track circuit if the frequency is the same.
- 20(b) Highway grade crossing signal, wig-wag or flashing light type (one pair of flashing lights), with or without bell or reflectorized signs, per mast.
This covers a mast with two flashing light units only in the direction of traffic, with or without inoperative auxiliary signs, and takes into consideration control circuits.
- 20(c) Additional pair of flashing lights, illuminated STOP sign, auxiliary illuminated sign or rotating STOP disc.
This covers pair of backlights, extra cross-arm with one pair of lights or illuminated NO TURN sign.
- 20(d) Each gate mechanism, automatic.
This includes gate arm with light or lights attached.
- 23 Switch circuit controller, signal or highway crossing protection.
This pertains to an individual switch circuit controller.
- 27(a) Traffic lever (including circuit within the interlocking or block station).
This covers the traffic lever that checks the movement of the train through the interlocking at the time it is being made. Not tied in with adjacent interlockings. Sometimes referred to as a check lever.
- 27(b) Traffic lever (including circuit within and without the interlocking or block station).
This covers the traffic lever or traffic circuits that check the block and opposing signals at the next block station and the circuits are such that traffic is held in one direction until the train for which it has been set up is clear of blocks between interlocking and block stations.

• C&O FORM H-23B
Made in U. S. A.

SHEET 1 OF 1 SHEETS

Remote Control Interlocking

EXHIBIT "C" DISTRIBUTION OF UNITS AS OF 4-4 19 78 FOR Remote Control
Defiance, Ohio

EFFECTIVE _____ 19__

REFERENCE
EXHIBIT "A"

PLAN No. P-3572

DATED 4-3, 1978

ISSUE No. _____

DATE _____ 19____

EXHIBIT "B"

A. A. R. SIGNAL SECTION TABLE OF SIGNAL AND INTERLOCKING UNITS

DATE 12-74

AGREEMENT

AUDIT No. _____

DATE _____ 19____

APPROVED J. W. Doney 10/12/79
Director S&C Design B&O

TITLE	R. R.
1. TITLE	R. R.

Yalta 7/5 1975

APPROVED _____

Regional Engineer S&C N&W

APPROVED _____ 19__

TITLE	R. R.
-------	-------

APPROVED _____ 12

APPROVED _____

VIVA R. R.

NOTES:

EXHIBITS C1 – C5

Mid September, 2002



Defiance, Ohio

Defiance, OH

Mid September, 2002



Shows crossing frog wear on CSX crossing of MAW at Defiance, OH

Defiance, OH

Mid September, 2002



Shows crossing frog wear on CSX crossing of MAW at Defiance, OH

Defiance, OH

Mid September, 2002



Shows CSX Crossing of MAW put out of service and disconnected by CSX due to CSX cause track creep.

Defiance, OH

Mid September, 2002



. Shows CSX Crossing of MAW put out of service and disconnected by CSX due to CSX cause track creep.

EXHIBIT D



John N. Booth, III
Director-Joint Facility Contracts

MAW - CSX crossing
file

500 Water Street, J801
Jacksonville, FL 32202
(904) 359-3486
FAX 359-7665

June 6, 2002

File: MAW200

VIA FACSIMILE (812/738-7384) & U.S. MAIL

Mr. Spence Wendelin
President
Maumee & Western Railroad
205 N. Capitol Avenue
Corydon, IN 47112

Dear Mr. Wendelin:

In the interest of safety and efficiency, CSXT has made the decision to temporarily remove the CSXT/MAW crossing diamonds at Defiance, OH. It is my understanding that due to embargoed track, MAW has not utilized the crossing in approximately one and one-half years. Additionally, the MAW tracks on either side of the diamonds are now out of gauge and would be unsafe for the MAW without repairs prior to any movement.

The diamonds will be remain in the area and can be re-installed with a thirty (30) day notice to our Engineering Department (address below), copy to the undersigned. The interchange tracks at Defiance will not be affected by this removal.

As you know, CSXT has gone the extra mile in assisting MAW for over a year through reroutes using a very reasonable rate of \$1.00 per car mile. It now appears that a time frame for repair of your tracks is unknown. Therefore, CSXT can no longer handle your cars using terms of a Standard Form for Detour at the above rate. All traffic will now be handled in regular interline service.

Even though the September 14, 1999, Standard Form for Detour cited in the various reroutes during 2001 and 2002 provided for only one movement, the Agreement also included a cancellation clause with 90-days notice. Although CSXT considers the 1999 Standard Form for Detour Agreement to have expired under its own terms, so as to avoid any confusion, this letter will also serve as CSXT's notice to formally cancel that Agreement effective September 2, 2002.

CSXT wants relationships with its connecting carriers to run smoothly and has utilized the detour arrangement as a means of keeping cars between our companies moving. However, the time has come to look at the realities of our main line system, and this crossing and the rates

Mr. Spence Wendelin
June 6, 2002
Page 2

afforded through the detour arrangement can no longer be supported. Please contact either Pat Collier at 904-359-7456 of this office or me for any additional information regarding these issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Barth", followed by a horizontal line.

Copies:

Mr. Phil Randall, MAW – via Fax 419/885-4821

Mr. Tom Thoburn, Regional Engineer Track, CSXT, 14955 Sprague Road, Strongsville, OH 44136
(Phone: 440/239-3608)

Mr. Mark Demaline, Shortline & Regional Railroad Director, CSXT, 14955 Sprague Road,
Strongsville, OH 44136

EXHIBIT E

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230

(812) 738-7384 FAX

**Certified Mail
Initially Via FAX**

Mr. John N. Booth, III
Director - Joint Facilities Contracts
CSX Transportation
500 Water Street, J801
Jacksonville, FL 32202

June 10, 2002

Dear John:

It's certainly been a while since you and I last spoke. I hope you are in good health. Upon my return today, I received a FAX copy of your letter dated June 6, 2002, your file MAW200, and was quite surprised by its contents.

While it is true that a portion MAW's railroad west of the point of crossing by CSX over our mainline in Defiance, Ohio has been embargoed for track conditions, it certainly has not be for anything like a year and a half. In fact, we expect to begin using the crossing again shortly, to reach at least three customers we are developing at points near Defiance, but on the non-embargoed portion of our line west of the crossing in question. In addition, we have an agreement with the City of Defiance to maintain service to several industrial sites, including a large industrial park west of the crossing point. Unfortunately, your proposal to temporarily remove your crossing of our mainline would result in an unauthorized de facto abandonment of that portion of our rail line. That would be an unacceptable situation.

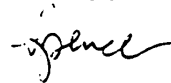
We have certainly appreciated your cooperation in other matters, including our past need to re-route certain of our traffic, and are therefore willing to try to accommodate CSX's desire to temporarily remove the crossings of our mainline at Defiance, Ohio. However, in order to accommodate CSX's desire, we must maintain the capability to still reach our tracks west of the crossing. This can be accomplished by CSX allowing MAW running rights between the current MAW/CSX interchange track (located in the northwest quadrant of the current crossing) to and in CSX's Defiance yard and by the building of a connection from CSX's southmost main to our main track in the southwest corner of the current crossing quadrant. It would be our suggestion that the MAW/CSX interchange be concurrently moved to CSX's Defiance yard (not incidentally saving CSX a crew run to make interchange with MAW).

Additional keys to concluding such an arrangement would need to include the following:

- 1) Execution of a crossing agreement covering CSX's double track crossing of MAW's main line and right-of-way at Defiance - some agreement points would include: a) an agreement that removal of the crossings is temporary and that CSX will re-install the crossings and re-activate interlocking upon MAW sole request, subject to a thirty days prior written notice from MAW or its successor; b) a reasonable but dedicated operating window for MAW's use of CSX mains in order to affect access to CSX's yard for interchange and for access to MAW lines west of the existing crossing, via a new southwest quadrant track; c) all track work necessary to implement temporary removal and later re-installation of the crossings and interlocking (including all maintenance) will be borne solely by CSX as the crossing road, and; d) maintenance of re-installed interlocking, when re-installed, to be on the basis of ratio of each carrier's use (in AAR units) of the crossing.
- 2) Agreement to move MAW/CSX interchange to CSX Defiance yard. CSX to grant running rights to/from and in that yard to MAW, including use of crossovers at and between the yard and a point on both CSX mains at least 35 car lengths north of the point of switch of the north switch of the existing CSX/MAW interchange track located in the northwest quadrant of the existing crossing;
- 3) CSX to build and maintain new quadrant connecting track in the southwest quadrant of the current crossing, connecting CSX's southmost main with MAW's main to the west of the existing crossing.

We will be glad to supply such an agreement for your review and to work in other ways to accommodate CSX's desire in this matter. Of course, we would not expect CSX to take any action regarding its desired temporary removal of the crossings until such an agreement is executed.

Sincerely yours,



Spencer Wendelin, CEC

JUN 18 '02 17:19 FR INTERCARRIER AGREEMENTS 904 359 7665 TO 818127387384

P.81/02



John N. Booth, III
Director-Jobel Facility Contracts

500 Water Street, 2801
Jacksonville, FL 32202
(904) 369-9486
FAX 369-7665

June 18, 2002

File: MAW200

VIA FACSIMILE (812/738-7384) & U.S. MAIL

Mr. Spence Wendelin
President
Maumee & Western Railroad
205 N. Capitol Avenue
Corydon, IN 47112

Dear Mr. Wendelin:

Thank you participating in discussion yesterday with Ms. Collier of this office and Regional Engineer Thoburn concerning the condition of the diamonds in the CSXT - MAW crossing at Defiance, OH. As discussed, this letter will serve as CSXT's response to your correspondence of June 10 in reaction to CSXT's notice of intent to temporarily remove the subject diamonds.

CSXT will remove the subject diamonds. However, we acknowledge that MAW has a potential to serve several shippers located on its line south of CSXT's main at Defiance. When those shippers advise a firm date of readiness to ship or receive by rail, kindly notify Mr. Thoburn's office, with copy to the undersigned. Mr. Thoburn will then arrange for replacement of the diamonds within two weeks of receipt of the notice. At that time, this office will prepare a covering letter agreement to be entered into between our companies. If necessary, CSXT will also contact each of the subject customers to assure them that the diamonds will be replaced upon their readiness to activate rail service, or should it occur sooner, upon elimination of the embargo on MAW track.

Also discussed yesterday, and cited in your June 10 letter, is an alternative to replacement of the diamonds; namely, the installation of a new connection in the southwest quadrant at Defiance, and daily operation of MAW trains to and from CSXT's Defiance yard for purposes of interchange. District Superintendent Stawicki advises that a 2 to 2.5 hour window is open each afternoon for such movement by MAW. Under this scenario, the administration of car hire would be more efficient since liability will shift daily. The primary concern with this arrangement, however, is construction cost. Modification of track and interlocking apparatus is estimated to cost \$ 400,000 to \$ 450,000, which cost MAW would be expected to share in equitably.

CSXT values all customers, whether served direct or by connecting carriers. It is our intent to arrive at a mutually satisfactory operating plan for Defiance that will enable our companies

Mr. Spence Wendelin
June 18, 2002
Page 2

collectively to sustain and build upon the traffic base in the area. We await your advice as to the preferred course of action, at which time engineering plans and estimates will be finalized and the appropriate documentation prepared.

Sincerely,



Copies:

Mr. Phil Randall, MAW - via Fax 419/885-4821

Mr. Tom Thoburn, Regional Engineer Track, CSXT, 14955 Sprague Road, Strongsville, OH 44136
(Phone: 440/239-3608)

Mr. Mark Demaline, Shortline & Regional Railroad Director, CSXT, 14955 Sprague Road,
Strongsville, OH 44136

Mr. Steve Stawicki, District Superintendent, CSXT, 135 South Front Street, Willard, OH 44890

EXHIBIT F

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230
(812) 738-7384 FAX

INITIALLY VIA FAX

Mr. John Booth, III
Director - Joint Facility Contracts
CSX Transportation
500 Water Street, J801
Jacksonville, FL 32202

7/2/02

Dear John:

We are in receipt of yours of 6-18, which was a follow-up to various prior correspondence and telephone discussions with members of your staff and Regional Engineer Thoburn, regarding the crossing of our mainline by CSX, at Defiance, Ohio. Let me emphasize that we remain ready to cooperate in any reasonable manner to pursue a mutually satisfactory solution to CSX's desire to temporarily remove your crossing of our line at Defiance. However, we must state again that such removal can not occur, unless MAW is assured of continuous and uninterrupted access to that portion of our railroad which lies west of those diamonds. It is of utmost importance that you and your staff clearly understand that any attempt by CSX to remove the diamonds at Defiance without the prior agreement of MAW will force us to notify the Surface Transportation Board Office of Enforcement, for such an action on CSX's part would constitute a forced and unauthorized de facto abandonment of that portion of our line.

Also, as information, we are attaching a copy of a letter to engineer Thoburn requesting that he make prompt efforts to immediately correct the engineering problems in respect to those crossings at Defiance, so that the MAW may service that portion of its rail line west of the diamonds. We would expect a prompt response to this request.

We offer for your further consideration our original proposal to move the interchange at Defiance to CSX's Defiance yard, accompanied by the building of the southwestern quadrant track, at the Defiance crossing, to connect MAW to its

line west of the crossing, via CSX's mainline. These two actions together, would allow CSX to temporarily remove the diamonds at Defiance. This is the only solution which has, as yet, been offered, which would satisfy both CSX's desire to temporarily remove these diamonds, and which would also meet the requisite continuous access to MAW's line west of those crossings. Since we are attempting to satisfy CSX's desires in this matter, we would, of course, expect that CSX would bear the financial burden of all such construction.

Again, we remain ready to cooperate in this or any other reasonable solution, which fully meets the requirements we have re-emphasized in this letter. If some other solution occurs to you, your staff or CSX's engineers, we would be pleased to discuss that concept with you to see if it is workable. However, in the absence of such an alternative, or the pursuit of the solution we have again outlined above, there seem to be no effective means to respond to CSX's desire regarding the crossings at Defiance. In that event, MAW will have to deny CSX's request for the temporary removal of the Defiance diamonds.

Sincerely yours,

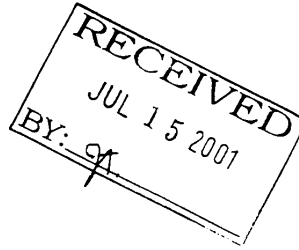
A handwritten signature in cursive script, appearing to read "Spencer Wendelin".

Spencer Wendelin, CEC

cc: R.R. Wilson, esq.



John N. Booth, III
Director- Joint Facility Contracts



500 Water Street, J801
Jacksonville, FL 32202
(904) 359-3486
FAX 359-7665

July 12 2002

File: MAW200

VIA FACSIMILE (812/738-7384) & U.S. MAIL

Mr. Spence Wendelin
President
Maumee & Western Railroad
205 N. Capitol Avenue
Corydon, IN 47112

Dear Mr. Wendelin:

This letter is sent to you in response to your letter to me dated July 2, 2002. Although your letter refers to cooperation between CSXT and MAW regarding the temporary removal of the crossing diamonds at Defiance, OH, the "bottom line" is that MAW has refused to agree to the temporary removal.

The real reason for MAW's inability to serve your customers west of the diamonds is that you have embargoed your own railroad that serves those customers and not because of any action taken by CSXT.

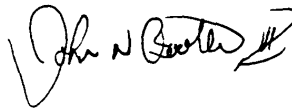
CSXT will proceed to temporarily remove the diamonds. We do this to improve the safety and efficiency of CSXT operations through Defiance while MAW's embargo of its line west of Defiance remains in effect. CSXT has no desire to impede MAW's operations once your embargo is lifted and MAW shippers west of the diamond are ready to begin tendering or receiving traffic. CSXT will reinstall the diamonds within two weeks once CSXT has received the following information from MAW: (i) the date that the MAW trackage west of the diamonds has been repaired and the embargo will be lifted and (ii) a list with addresses of the MAW shippers located west of the diamonds who desire to tender or receive rail shipments on the day that the embargo is lifted. The July 2, 2002, letter from G. Pete Bell of MAW to A. L. Maust of CSXT does not comply with either of these requirements. As requested previously, any notice from MAW in this regard should be sent to Mr. Tom Thoburn at the address shown below with copy to me.

CSXT has reviewed the MAW proposal of constructing a connection track and allowing for a CSXT/MAW interchange at CSXT's Defiance Yard. This option would be quite expensive and would require a significant financial contribution by MAW. In the absence of that contribution, which you have rejected, this option does not appear to be feasible.

• Mr. Spence Wendelin
June 12, 2002
Page 2

Finally, you have made it clear that MAW will file a complaint against CSXT with the Surface Transportation Board if CSXT proceeds to temporarily remove the diamonds. While you are certainly free to file a complaint if you desire to do so, CSXT respectfully thinks that such a complaint would be groundless in view of the temporary nature of the removal and the minimum conditions for reinstallation. If MAW does file a complaint, you can expect CSXT to strongly defend our position. I hope that MAW will reconsider its position in this regard.

Sincerely,



Copies:

Mr. Phil Randall, MAW – via Fax 419/885-4821

Mr. Mark Demaline, Shortline & Regional Railroad Director, CSXT, 14955 Sprague Road,
Strongsville, OH 44136

Mr. John Humes, Senior Counsel, CSXT, 500 Water Street, J150, Jacksonville, FL 32202

Mr. Tom Thoburn, Regional Engineer Track, CSXT, 14955 Sprague Road, Strongsville, OH 44136
(Phone: 440/239-3608)

Richard R. Wilson, P.C.
Attorney at Law
A Professional Corporation
127 Lexington Avenue, Suite 100
Altoona, PA 16601

(814) 944-5302
888-454-3817 (Toll Free)
(814) 944-6978 (FAX)
rrwilson@charterpa.com

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

July 15, 2002

Re: Maumee & Western Railroad Company --
Crossing Diamonds at Defiance, OH --
CSX Transportation, Inc.

Mr. Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street N.W.
Washington, DC 20423-0001

BY FACSIMILE
202-565-9011

Dear Mr. Clemens:

The purpose of this letter is to request the assistance of your office in connection with the threatened removal of crossing diamonds at Defiance, OH by CSX Transportation ("CSXT") which would sever the common carrier rail line operated by Maumee & Western Railroad ("MAW"). CSXT has informed MAW that it intends to proceed with the temporary removal of the diamond and intends to leave the diamond in a severed status until notified by MAW that it is ready to begin tendering or receiving traffic from shippers west of the diamond. Attached for your review is a letter from CSXT dated July 12, 2002, which responds to efforts on the part of MAW to propose alternative measures which would enable CSXT to proceed with the removal of the diamond but permit MAW to serve shippers west of that location.

At the present time, a portion of the MAW line west of the diamond has been embargoed due to bad track conditions. However, from the diamond west approximately 2-3 miles the line is not embargoed and MAW has been requested to assist a shipper on the south side of this line to construct an industrial side track connecting the MAW line to the shipper's plant. City of Defiance authorities have also advised MAW that they are planning the location of an additional shipper in a major industrial park to be served by both MAW and CSXT northwest of the diamond. Finally, MAW has an immediate need to use portions of this track which are not embargoed west of the above locations for car storage purposes and for access to repair the embargoed section of the line. It is also important to note that the shippers which have requested assistance from MAW in connection with the installation of industrial sidetracks are also served by CSXT from the track which crosses MAW at the Defiance diamond.

Mr. Melvin F. Clemens
Page Two
July 15, 2002

In the immediate vicinity of the diamond on the MAW line, the track has been taken temporarily out of service because it is out of gauge due to CSXT operations over the diamond. On July 2, 2002, Mr. Peter Bell of MAW requested that CSXT as the crossing railroad, undertake necessary repairs to realign the MAW track at the crossing. To date, CSXT has declined to do so.

Although CSXT has indicated that it would restore the diamond on the date that the MAW trackage west of the diamond has been repaired and the embargo lifted, that representation completely ignores the fact that there are currently shippers east of the embargoed section of the track but west of the diamond which are presently working with MAW to establish a competitive connection with the MAW railroad. Furthermore, if the diamond is removed, interest on the part of those shippers in initiating new rail service via MAW will be significantly undermined. As a practical matter, the ability of MAW to offer those customers competitive rail service will be held hostage to CSXT's willingness to honor its commitments to restore this crossing.

MAW believes that there is no statutory authority which will permit CSXT to sever MAW common carrier rail service through the Defiance crossing and there is no justification for CSXT removing this diamond and leaving the MAW line in a severed status which precludes its ability to provide common carrier rail service to shippers west of the diamond. C.f. The Burlington Northern and Santa Fe Railway Co.-Petition for Declaration or Prescription of Crossing, Trackage or Joint Use Rights, STB Docket No. FD 33740, page 5-6, Service Date June 22, 2001. The appropriate course of action is for CSXT to make the necessary repairs needed at the diamond, including realignment of MAW track, and to immediately reconnect the MAW line through the diamond so that MAW can continue to provide common carrier rail service west of that location.

MAW would appreciate your inquiries and investigation regarding this situation and any assistance in which your office might provide the parties in order to avoid a disruption in MAW rail service. Please contact Mr. Spencer Wendelin at 812-738-4230 for further information regarding this matter

Very truly yours,

Richard R. Wilson
Attorney for
Maumee & Western Railroad Company

ms/21922

cc: Maumee & Western Railroad Company
CSX Transportation

EXHIBIT G



JOHN W. HUMES, JR.
Senior Counsel

Admitted in Georgia and Florida

Law Department
500 Water Street
Speed Code J-150
Jacksonville, FL 32202
Telephone (904) 359-3100
Fax (904) 366-2902

Writer's direct telephone line:
(904) 359-1309

July 19, 2002

Via Telefax and
1st Class U.S. Mail

Mr. Melvin Clemens
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-001

RE: Maumee & Western Railroad

Dear Mr. Clemens:

This letter is written in response to the letter to you dated July 15, 2002 from Mr. Richard Wilson, counsel for the Maumee & Western Railroad Company ("MAW") and our subsequent telephone conversation regarding the crossing diamonds at Defiance, OH. The diamonds have not been removed, but are currently out of service.

I understand that Mr. Wilson has provided you with a copy of the July 12, 2002 letter from John Booth, Director-Joint Facility Contracts of CSXT to Mr. Spence Wendelin of MAW regarding the CSXT position on this matter. Simply restated, the crossing diamonds at Defiance are in need of repair. CSXT and MAW have been in negotiations for some time regarding the diamonds but were unable to reach any agreement. CSXT needs to schedule and budget our track maintenance/repair program in an efficient manner. As the MAW track west of the diamonds is embargoed, it seemed to CSXT that the diamonds could be temporarily removed by CSXT and replaced once the MAW embargo was lifted and CSXT could confirm that MAW shippers were ready to tender or receive shipments by rail.

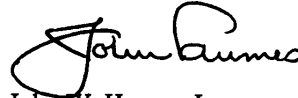
While CSXT feels that our position was reasonable, particularly in light of the numerous detours that CSXT had allowed MAW to use over CSXT between Defiance and Toledo or Willard, OH we note from Mr. Wilson's letter that MAW must move its equipment across the diamonds in order to repair the embargoed track west of the diamonds.

Mr. Melvin Clemens
July 19, 2002
Page 2

While it would be more efficient to use CSXT forces and equipment as originally stated, CSXT has now decided to begin to repair the diamonds. By copy of this letter, I ask Mr. Wendelin or his designee to contact Mr. Tom Thoburn of CSXT to agree upon a schedule and time frame for repairs. MAW is, however, also responsible for any maintenance or repair for its own track that connects with the diamonds.

I anticipate that this issue has now been resolved, but should you have any questions or concerns, please contact me.

Sincerely,



John W. Humes, Jr.

JWH/sgh

Cc:
Via Telefax and 1st Class U.S. Mail

Mr. Richard Wilson
Mr. Spence Wendelin

Mr. Emory Hill
Mr. Tom Thoburn – Telephone No. 440-239-3608
Mr. John Booth
Mr. Mark Demaline



Surface Transportation Board
Washington, D.C. 20423-0001

JUL 30 2002

July 26, 2002

Office of Compliance and Enforcement
1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Richard R. Wilson, P.C.
127 Lexington Avenue, Suite 100
Altoona, Pennsylvania 16601

Dear Mr. Wilson:

Re: Maumee & Western Railroad Company/CSX Transportation, Inc.
Crossing at Defiance, Ohio

This responds to your letter to me of July 15th, in which you complained about actions to repair track by CSX Transportation, Inc. (CSXT) at Defiance, Ohio, which affect your client, the Maumee & Western Railroad Company (M&W).

Based on my contact with CSXT regarding this subject, and their response to me of July 19th, which was copied to you, it appears that repairs to the crossing diamonds are underway and that the matter of M&W's ability to continue to cross the CSXT line at Defiance has been essentially resolved. I suggest that, as requested by CSXT, Mr. Wendelin or another M&W official should be in contact with CSXT representatives in an effort to coordinate their respective activities and requirements during the repair process.

Please tell Mr. Wendelin to feel free to contact me if there are other matters with which we can be of assistance.

Sincerely,

Melvin F. Clemens, Jr.
Director

EXHIBITS H1 – H4

Maumee & Western Railroad



4301 N. Western Ave.
Connersville, IN 47331

(765) 825-0349
(765) 825-0453 FAX

November 19, 2002

Subject: Defiance, Ohio – Removal of Diamonds at Defiance, Ohio by CSXT

Mr. Tom Thoburn
Regional Engineer Track
CSXT
14955 Sprague Road
Strongsville, OH 44136

Dear Mr. Thoburn:

It has come to our attention that the diamonds at Defiance, Ohio are being removed by CSXT. In my July 2, 2002 letter to Mr. A.L. Maust, Assistant Engineer Track, I requested that the diamond be returned to serviceable condition. The July 19, 2002 letter from Mr. John Humes, Senior Counsel CSXT, outlining the plan for repair of the diamonds indicated that a joint meeting was to be conducted prior to any action being taken. That meeting, of course, has not happened.

It is our assumption that your actions are consistent with the terms as outlined in the aforementioned correspondence and that the diamonds will be replaced upon completion of the necessary repairs.

If for some reason our understanding of your intentions is not correct, we would appreciate clarification at once. We would further appreciate clarification as to the status of repairs to our track that was misaligned by movement of the CSXT diamonds.

As we are in the process of scheduling track work east of the diamonds, your return to service schedule would assist us in developing our maintenance plan. Additionally we must keep Mr. Melvin Clemens of the Office of Compliance and Enforcement, Surface Transportation Board advised of our attempts at resolving this issue. Attached you will find copies of correspondence related to this issue. If further clarification is needed, please feel free to contact me. Thank you.

Sincerely,

G. Pete Bell

Vice President Operations

Enc.

Cc: Richard R. Wilson
John W. Humes, Jr.

Defiance, Ohio



Unauthorized
occupancy of MAW
property by CSX
after unauthorized
removal of CSX
crossing over MAW

MAW Main after having been cut by CSX 11/18/02
(Looking East)

Defiance, Ohio



CSX
Eastbound
Main crossing
removed by
CSX 11/18/02

MAW Main (Looking West)

Defiance, Ohio

MAW Main
Westbound, cut after
CSX removed its
crossing 11/18/02

CSX Westbound
Main Crossing
MAW property

CSX/MAW
I/C Track

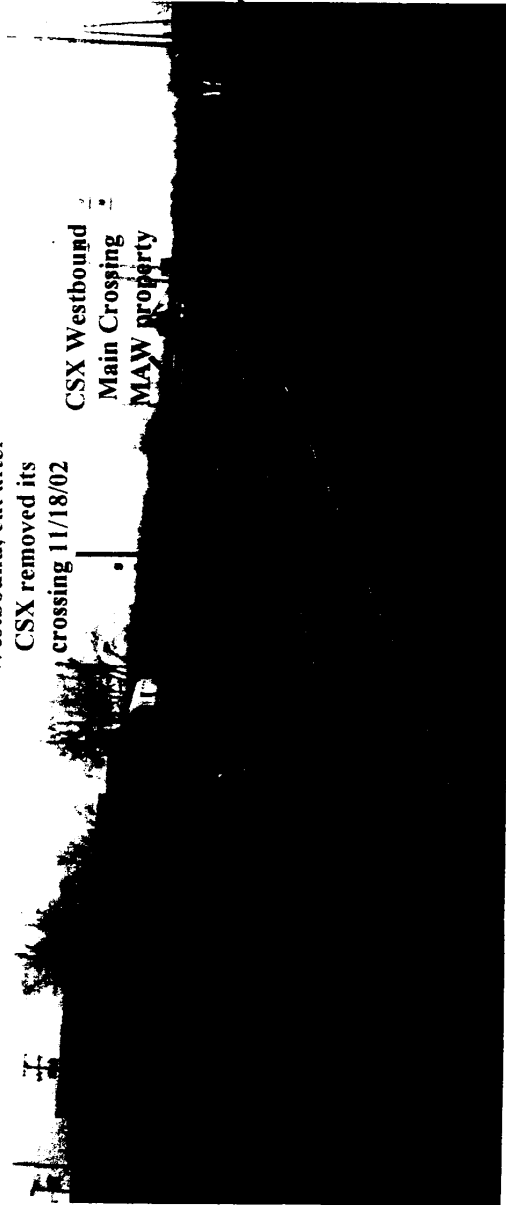


EXHIBIT I

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230
(812) 738-7384 FAX

Via Certified Mail

12-05-02

Mr. Mike J. Ward
President
CSX Transportation Corp.
500 Water Street
Jacksonville, FL 32202

Dear Mr. Ward:

It is unfortunate that I must introduce myself to you in this manner. However, the precipitous and unwarranted actions of certain of your employees has left no choice but to write this blunt letter to you in the hope that you will immediately correct the actions of these personnel.

Briefly, your Philadelphia and Buffalo to Chicago main lines (via Willard) traverse our property and until Nov. 19 of this year, crossed our main line at Defiance, Ohio. On November 19th, against the explicit disagreement of our company and in clear violation of a letter from Mr. Hume of your law department to Mr. Clemens of the STB Office of Compliance, your personnel removed the physical crossing of your track over ours, thereby severing our main line in the process. This was replaced with CSX trackage. This process was not legal. Furthermore, your personnel trespassed on our property and on our "live" tracks well beyond the limited area of the crossing itself during their actions. All this was undertaken without permission or even notice to our local operating personnel (see the attached pictures). These actions are either uninformed or over-zealous or both. Subsequent attempts to gain clarification for these actions from your personnel have been ignored (see the attached copies of correspondence). To say that we are very upset at these actions and the underlying attitudes displayed by your personnel would be putting it very mildly.

This letter is a last attempt to achieve amicable resolution of this situation. We request your immediate attention to this matter and except the following actions:

- Immediate re-installation of our main line to through service at the point where CSX crosses our main line in Defiance, Ohio;
- Negotiation of an agreement to cover your continued use of our

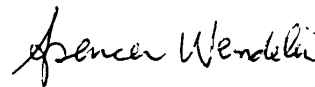
property and crossing(s) of our main line at Defiance, Ohio, based on the principles listed in the attached sheet;

- Financial restitution from CSX for the expenses of having to deal with this issue, including but not limited to associated legal costs, and;
- Some form of appropriate discipline for the officers in your organization who are responsible for these actions.

This will also serve as official written notice that, due of the unwarranted and material breach on the part of CSX, and the continuance of that breach for more than twenty-four months, going back to the construction over our main line and occupation of our property by a second unauthorized crossing, as well as, the more recent actions noted above, the agreement executed, by our predecessor companies on October 22, 1979, is hereby immediately canceled and termination in its entirety. We now consider CSX as an unauthorized user of our property.

After having achieved a several fold increase in our joint business in the last two year, these actions certainly do not uphold a positive working relationship to jointly grow business between our companies. Your imminent response to this matter is most urgently requested. I feel sure that you will be interested in and able to effect rapid and reasonable resolution of this situation. We can not wait long before being forced into more vigorous actions. For example, if we chose to take reciprocal action to that of your personnel, which we would be far more within our rights to do so, since it is CSX which is an unauthorized user of our property. Again, it is unfortunate that this matter could not have been handled more professionally, but the actions and attitude of certain of CSX personnel has left us not choice.

Sincerely yours,



Spencer Wendelin, CEC

attachments

cc: G. Pete Bell

R.R. Wilson, esq.

EXHIBIT J

Dec 23 02 03:33p
DEC -23 02(MON) 14 33

TEL: 9042451020

P. 2
P. 002



TRANSPORTATION
Thomas P. Schmidt
Vice President - Engineering

Liberty Business Park
4901 Belfort Road
Suite 130 (S/C I-350)
Jacksonville, FL 32256
(904) 245-1150
Fax: (904) 245-1030
E-Mail: Tom_Schmidt@csx.com

December 23, 2002

VIA FACSIMILE AND U.S. MAIL

Mr. Spencer Wendelin
Senior Executive Consultant
Maumee & Western Railroad
205 North Capitol Avenue - Suite A
Corydon, IN 47112

Dear Mr. Wendelin:

Michael Ward has asked that I reply to your letter to him dated December 5, 2002. I am sure that you are familiar with the expression that there are two sides to every story, and I certainly think that it applies to the situation regarding the crossing diamonds at Defiance, OH.

First of all, I wish to emphasize that CSXT has no intent or desire to harm M&W's operations in any manner. It is a fact, however, that M&W has not used the crossing at Defiance for a considerable period of time while CSXT operates more than 100 trains per day over the crossing and that the condition of the diamonds required their removal.

You referred to the letter dated July 19, 2002 from CSX Transportation ("CSXT") Senior Counsel, John Humes to Mr. Melvin Clemens of the Surface Transportation Board ("STB") regarding the diamonds. Mr. Humes' letter confirmed that CSXT would repair the diamonds and requested that you or your designee contact Mr. Tom Thoburn of CSXT to agree upon a schedule and timeframe for repairs. I also note that you were requested to contact CSXT by Mr. Melvin Clemens of the STB, in his letter dated July 26, 2002 to your counsel, Mr. Richard Wilson and that Mr. Wilson recommended that you contact CSXT in his letter to Mr. Clemens dated August 5, 2002. For whatever reason, no contact was made.

In November, CSXT determined that the diamonds had to be removed for safety reasons, and this was done. I agree with you that CSXT should have contacted M&W and that we did not do so. This was an oversight on our part, for which I extend an apology. I again point out that CSXT had not heard from M&W and that communication is a two-way street.

DEC. -23' 02 (MON) 14:33

TEL:9042451020

P.003

Mr. Spencer Wendelin

Page 2

December 23, 2002

Clearly, CSXT and M&W need to establish a better means of communicating regarding engineering/maintenance of way issues that involve our respective companies and we are committed to doing so. For that purpose, I am designating Tom Thoburn, CSXT's Regional Engineer-Track at Strongsville, OH (Telephone No. 440-239-3608) as M&W's primary contact at CSXT for local engineering/maintenance of way issues. I would appreciate your advising me if you or another M&W person could be a similar contact for CSXT at your company. I believe this would be a useful step for both parties and would avoid some of the past issues.

I must also reply to your asserted immediate cancellation of the October 22, 1979 agreement between our respective companies. Paragraph 18 of that agreement requires a one (1) year advance notification of termination. You also referred to a "second unauthorized crossing." Paragraph 9 of that agreement clearly contemplated the construction of future tracks. CSXT did construct a second track across the M&W track several years ago in connection with CSXT's acquisition of a portion of Conrail. The construction of the second track was at CSXT's expense and is consistent with the agreement.

I do agree that a new crossing agreement at Defiance would be useful and feel that it should reflect the current usage. By copy of this letter, I am asking that CSXT's Intercarrier Agreements group prepare a draft of a new agreement and to forward it to you. I should point out, however, that CSXT does not agree with many of the "principals" stated in the attachment to your December 5 letter to Mr. Ward, but we will make a good faith effort to prepare an agreement that is acceptable to both companies.

As to the status of the diamonds themselves, both diamonds are currently at the site at Defiance, and they will remain there. One of the diamonds is serviceable now, and the other requires 3 days of repairs once parts are received. The signal circuitry has not been changed. Accordingly, both diamonds can be reinstalled at the appropriate time on a few days' notice. In the meantime, because they introduce an operational risk into the movement of CSXT's many daily trains, they should not be reinstalled until needed. During the interim, we may also be able to find an alternate means of access that is acceptable to both of our companies.

I trust that the foregoing will be the first step in establishing a better working relationship between our companies.

Sincerely,



Thomas P. Schmidt
Vice President, Engineering

Dec 23 02 03:33p

P. 4

DEC. -25' 02 (MON) 14:33

TEL: 9042451020

P. 004

Mr. Spencer Wendelin
Page 3
December 23, 2002

cy:
Mr. Mel Clemens (via facsimile 202-565-9011)
Officer of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-001

Michael Ward
Jim Fallon
Tom Thoburn
Pat Collier
Len Kellerman
Mark Demaline
John Humes
Mike Peterson
Ken Downard
Hugh Hopkins
Dave Pettry

h:\TPS-ltr to Wendelin M&W 12-23-02

EXHIBIT K

Maumee & Western Railroad



Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230

(812) 738-7384 FAX

Initially via FAX

Mr. Thomas P. Schmidt
Vice President - Engineering
Suite 130 (S/C J-350)
4901 Belfort Road
Jacksonville, FL 32256

12-26-02

Dear Mr. Schmidt:

Thank you for having the courtesy of replying to our letter to Mr. Ward regarding the situation surrounding the crossing of our railroad and property by CSX at Defiance, Ohio. Unfortunately, the content of your reply was largely unresponsive to the primary issue of returning our main line to service. All other items of discussion are largely moot until or unless this is accomplished. Perhaps the inadequacy of your response, arises from the fact that you are apparently only recently aware of this situation. It is good to know that one of the two diamonds can be re-installed within three days. We suggest you immediately do so, as an act of good faith. However, this does beg the question of; "If it was not in need of repair, why was it removed in the first place?" Also, based on comments in your letter, we understand that you will, if you have not already done so, order whatever parts that are needed to repair and re-install the second diamond. Which, however, also begs the question of why CSX did not fulfill its responsibilities to maintain the crossing diamond and allowed it to so deteriorate in the first place.

Our patience with CSX regarding both the actions and attitudes demonstrated regarding this issue has expired. We are left with no choice, but to take other steps to assure the return of our main line to service and to ensure the honoring of our underlying property rights. Only the immediate re-installation of the diamonds and the full return of our main line to service, by the end of the first week in January, would forestall such actions. It is truly unfortunate that CSX has been unwilling to recognize the error of its way in this matter and to correct its mistakes. While we bear no ill will toward you or CSX, we must protect our operating rights and responsibility to the public under our Certificate of Public Convenience and Necessity, as well as, our underlying property rights. These rights have been seriously violated by the actions of CSX.

By the way, do not bother to have your joint facilities group draft an agreement covering the crossing at Defiance. First of all, this is not CSX's prerogative. CSX does not own nor control the property, it is and has always been the second, crossing or "tenant" road. Secondly, if our property rights are going to thus be ignored by CSX, then, there may be no reason for such an agreement or a crossing at all. Also, the 1979 agreement did not grant CSX the right to place a second diamond at Defiance. That agreement was not a crossing agreement, it was an interlocking agreement and although alluding to the possible need to signal any new trackage at the crossing, it did not grant CSX the right to cross the MAW right of way and main track at all, with one, let alone two tracks. In fact, there is no agreement granting CSX the right to cross our right of way and main line and if one is to be crafted in the future, MAW will do it.

Sincerely yours,

A handwritten signature in cursive script that reads "Spencer Wendelin".

Spencer Wendelin, CEC

cc: Mr. M. Ward, CSX
G. P. Bell, MAW
R. R. Wilson, esq.
M. Canter, esq.

EXHIBIT L

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230
(812) 738-7384 FAX

December 15, 2003

Mr. Thomas T. Schimdt
Vice-President – Engineering
Suite 130 (S/C J-350)
4901 Belfort Road
Jacksonville, FL 32256

RE: Maumee & Western Railroad Company – CSX Transportation, Inc. –
Defiance, OH Crossing

Dear Mr. Schimdt:

Thank you for the opportunity to meet with you in Jacksonville on December 10, 2003 to discuss the reinstallation of the CSX crossing of our line at Defiance, Ohio. As we advised you, Maumee & Western Railroad Company (“M&W”) has been requested to provide rail service to a shipper which is located west of the presently disconnected crossing. Accordingly, we need to have the crossing re-installed. This business opportunity involves traffic which is now moving by truck that could be diverted to a M&W – CSXT route. In addition, we have already lost several opportunities to develop traffic for companies which were considering locating in the Defiance Industrial Park, but cited the removal of the crossing as one reason for selecting other plant locations. In light of this recent request for common carrier rail service and the opportunities which we have been unable to pursue, the reconditioning and reconnection of the crossing should occur as soon as possible.

We discussed three possible solutions to this matter. The first, involving reinstallation of the existing crossing diamonds, requires repairs to existing crossing components and may not address the problem of track misalignment between the two diamonds caused by the high volume and direction of CSXT trains using the crossing. The second option is to employ new “grade separated” crossover diamonds which have recently been approved by FRA. We understand that in order to utilize this crossing device, cars would have to be moved over both crossings at a very slow rate of speed to avoid derailment. If M&W had a 15 or 20 car train, it would take almost half an hour for our train to clear both crossings. Given the high utilization of the CSXT lines, finding such a window could prove to be quite difficult and troublesome for both our operations.

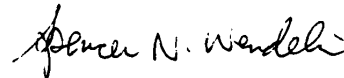
In addition, we see possible problems with this system given the relative elevation of our respective tracks. The third option is to construct a new turnout in the south quadrant of the crossing, together with a set of crossovers on CSX east of the point of crossing, and relocate the M&W – CSXT interchange to CSXT's Defiance yard. This should solve the crossing alignment difficulty, the capacity limitations on the present interchange track and save CSXT interchange crew costs. This option would also appear to be the least expensive in terms of installation and ongoing maintenance costs.

We understand that Mr. Chandler of your staff will be assigned to review these options on a priority basis and will report his assessment to us by the end of January, 2004.

In the meantime, I have asked Mr. Wilson to prepare a crossing agreement for CSXT's use of the M&W right of way. Once we have determined which option to adopt we should also prepare appropriate documents for those arrangements.

Again, I thank you for your assistance in resolving this matter on an expedited basis.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Spencer N. Wendelin". The signature is fluid and cursive, with the first name "Spencer" being more prominent.

Spencer N. Wendelin

Xc: Richard R. Wilson, Esq.

EXHIBIT M

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230
(812) 738-7384 FAX

Via Certified Return Receipt Mail

Mr. W. Michael Cantrell, Sr.
VP- Engineering & Mechanical
CSX Transportation
500 Water Street
Jacksonville, FL 32202

5-21-04

Dear Mr. Cantrell:

We draw your attention to CSX's double track main line which crossed our property and rail line at Defiance, Ohio. On November 18, 2002, without our permission, and in fact, in spite of our vigorous objections, CSX personnel entered upon MAW property, without notice or permission from our local operating officials, and proceeded to illegally remove the crossing diamonds, severing our active mainline. Numerous subsequent attempts to work with various officials of your company to resolve the unauthorized removal have, as yet, not been successful.

Most recently, our legal counsel, Mr. Richard Wilson and I met, personally, in Jacksonville, with Mr. Tom Schmidt, then CSX's vice president of Engineering. At that meeting, alternative means of restoring service to MAW's main line were discussed. Mr. Schmidt agreed (again) to expeditiously develop plans for that restoration of service. Mr. Gray Chandler was to be assigned, by Mr. Schmidt, the responsibility to develop these plans. Mr. Schmidt committed to provide a timely response. To date, no such information has been received. Previously, CSX officials had assured Mr. Mel Clemens of the Surface Transportation Board, that these diamonds would be repaired and re-installed.

There are now new developments which increase that urgency of the situation. MAW recently received a request for service (see attached letter) from the Economic Development of Defiance County to a new customer located west of the Defiance diamonds. That customer, through multiple communication with us, indicated a desire for MAW rail service. The time for further patience on our part and for any further delay and obfuscation on CSX's part has now past.

Therefore, we must insist that these crossing diamonds, at Defiance, be immediately replaced and any repairs needed to accomplish that replacement be forthwith scheduled and completed. Please provide us a written response fixing a schedule for the restoration of service to our mainline and the replacement of these diamonds, by Friday May 28th. That response should be direct to me at the above address. The re-installation of these diamond allowing full restoration of MAW service should be planned to be completed within the next thirty to forty-five days. Any delays outside this schedule will not be acceptable.

As a further item of concern, two representatives of CSX, Mr. Mike Schaefer, Trainmaster and Mr. Steve Davis, Economic Development, met, today, with officials of Defiance County, at their request, to discuss the expeditious re-installation of these crossing diamonds. While, the CSX personnel did acknowledge that CSX must re-install the diamonds, these officials proposed to County officials that CSX, instead, take steps, which can only be characterized at **anti-competitive**. Please be notified that any attempt on the part of CSX to further interfere with the commercial relations between MAW and its customer will be met with the most vigorous possible response. The efforts of these, or any other, CSX officials to further delay the re-installation of the diamond at Defiance, by interfering with that commercial relationship **must** immediate cease.

We look forward to your prompt and kind response to this request. Be assured that time is of the essence. Any delay will be considered as a further attempt to interfere with MAW's commercial relations. There is no reason to make the resolution of this service disruption a cause of animosity and strife between our companies. We can and will both benefit from the business that this new customer will generate. Let's move forward with that goal in sight. However, we will not wait, nor hesitate to take further actions to protect our customers' rights to common carrier service and to protect our responsibility to provide that service. Thank you for your time and quick attention to this matter.

Sincerely yours,



Spencer Wendelin, CEC

cc: G. Chandler, CSX
P. Randall
G. P. Bell
D. Wellman
R.R. Wilson, esq.



FAXED

Attachment

EXHIBIT N

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230

(812) 738-7384 FAX

June 23, 2004

Mr. Michael J. Ward, Chairman/President/CEO
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Re: CSX Transportation, Inc. - Maumee & Western Railroad Company Crossing -
Defiance, Ohio

Dear Sir:

The purpose of this letter is to again request your assistance and that of your staff in resolving an on-going problem where CSXT's double track mainline crosses the right-of-way and rail line of Maumee & Western Railroad Company in Defiance, Ohio. I last wrote to you concerning this matter on December 5, 2002. As you may recall, on November 18, 2002, without consent or permission of the Maumee & Western Railroad Company, CSXT personnel entered Maumee & Western property and proceeded to remove the crossing diamond at that location which severed the Maumee & Western Railroad Company main line. Over the last two years, we have repeatedly sought to work with various CSXT officials to resolve this unauthorized removal. However, despite our efforts I must candidly state that we have been largely ignored by CSXT staff.

Most recently, my legal counsel and I met in Jacksonville, FL with Mr. Tom Schmidt, then CSXT's Vice-President of Engineering on December 10, 2003. At that meeting alternative means were explored for restoring service to the Maumee & Western's main line. Mr. Schmidt agreed to expeditiously develop plans for restoration of service and Mr. Greg Chandler was to be assigned to develop those plans. Mr. Schmidt committed to provide a timely response. However, to date, we have received no communication from the CSXT engineering staff. Previously in 2002, CSXT officials had assured Mr. Mel Clemmons at the Surface Transportation Board that these diamonds would be repaired and reinstalled. However, as I have indicated, that has not happened.

There are now new developments which increase the urgency for a solution to this situation. Maumee & Western recently received a request for rail service from the Economic Development Agency of Defiance County on behalf of a new customer to be located west of the Defiance diamonds. In exploring this new customer location, we have learned of others who are interested in obtaining common carrier rail service from Maumee & Western west of the diamonds. Even more discouraging was the fact that two representatives of CSXT, Mr. Mike Schaffer, train master and Mr. Steve Davis of Economic Development met with Defiance County officials and while acknowledging that CSXT must reinstall these diamonds, these CSXT officials proposed that shippers interested in obtaining common carrier rail service instead be served by CSXT or relocate to industrial sites served solely by CSXT. These CSXT officials further indicated that reinstallation of the diamonds by CSXT might entail substantial delay which would prevent Maumee & Western from providing requested common carrier rail service.

Michael J. Ward

Page 2

June 23, 2004

On May 21 of this year, I brought this matter to the attention of Mr. Michael Cantrel, Sr., CSXT VP Engineering and Mechanical and asked him to communicate with me expeditiously regarding a schedule for restoration of service on our main line. I asked him to communicate with us by Friday, May 28 but he did not do so. I subsequently received a call from CSXT's short line representative who said this matter would be addressed at a meeting on June 7, 2004 but I have heard nothing further.

On December 5, 2002 when I last wrote to you concerning this matter I formally advised you that as a result of CSXT's removal of the crossing diamonds, Maumee & Western Railroad Company was terminating the October 22, 1979 interlocking agreement and that CSXT's continued use of the Maumee & Western right-of-way for its crossing was no longer authorized. As you are aware, under 49 U.S.C. §10901(d) no rail carrier may block any construction or extension authorized by an STB certificate by refusing to permit the carrier to cross its properties if (A) the construction does not unreasonably interfere with the operation of the crossed line; (B) the operation does not materially interfere with the operation of the crossed line; and (C) the owner of the crossing line compensates the owner the crossed line. CSXT's crossing over the Maumee & Western Railroad line fails to comply with each of those three conditions.

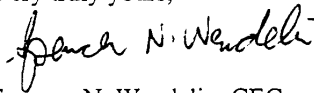
First, the CSXT construction of its second line resulted in a situation where westbound traffic utilizes one line and eastbound traffic utilizes the other line. As a consequence, both CSXT tracks are subject to track creep which, due to the high volume of traffic utilizing these lines causes the Maumee & Western main line to quickly move out of alignment and out of gauge. As a consequence, CSXT removed these diamonds to facilitate its operations across the Maumee main line. In doing so, CSXT has isolated the western end of the Maumee & Western and precluded our ability to provide common carrier rail service in accordance with our STB certificate of public convenience and necessity for that section of the line. As a result of these facts, CSXT's continued operation of its trackage materially interferes with the operation of the Maumee & Western line. Finally CSXT has made no effort to promptly resolve this problem or compensate Maumee & Western Railroad Company for use of its right-of-way. Indeed, given the high volume of freight traffic moving both east and west over the CSXT mainlines, it appears that a grade separated crossing may be necessary to eliminate CSXT's unreasonable interference with Maumee & Western's main line.

In light of CSXT's failure to deal with this situation in a timely and responsive manner and in order for Maumee & Western to respond to requests for common carrier rail service which it is statutorily obligated to provide to customers west of the diamonds, Maumee & Western is hereby advising CSX Transportation, Inc. that unless this matter is satisfactorily resolved within the next 60 days, Maumee & Western Railroad Company will seek a Surface Transportation Board order directing that CSXT's mainline tracks be removed from Maumee & Western Railroad Company's right-of-way for violation of the provisions of §10901(d) cited above.

Michael J. Ward
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June 23, 2004

We deeply regret the necessity of having to go to these extremes in order to address this matter and we are aware of the severe disruption to the CSXT rail system which the removal of your mainline tracks at this location will cause. Unfortunately, in the absence of CSXT cooperation we have no alternative and in fact, this is a problem of CSXT's own making.

Very truly yours,



Spencer N. Wendelin, CEC
Maumee & Western Railroad Company

SNW

cc: Tony L. Ingram, Executive Vice-President/CEO
E.M. Fitzsimmons, Senior Vice-President – Law, General Counsel and Corporate Secretary
Richard R. Wilson, Esq.
Melvin Clemens, STB Office of Enforcement

EXHIBIT O

Maumee & Western Railroad

Suite A
205 N. Capitol Ave.
Corydon, IN 47112

(812) 738-4230

(812) 738-7384 FAX

June 30, 2004

Mr. Michael J. Ward
Chairman/President/CEO CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

RE: CSX Transportation, Inc. – Maumee & Western Railroad Corporation –
Defiance, Ohio Crossing

Dear Mr. Ward:

I am again corresponding with you in follow-up to my letter of June 23, 2004. At that time, I had hoped it would be possible to resolve our differences with respect to the Defiance crossing matter without litigation but events are moving so quickly that this now seems unlikely. Since that date, I have learned that CSXT has entered into an arrangement with the City of Defiance officials to provide for a rail access into the 700+ acre industrial park that is adjacent to both our rail lines in the City of Defiance. As you can see from the enclosed memorandum received from David H. Williams, Law Director for the City of Defiance, the Maumee & Western line provides the best rail access into this industrial park, but because CSXT has removed the Maumee & Western crossing, the City of Defiance in agreeing to go forward with the construction of sidings from the CSXT mainline despite the fact that the city, county, and state officials would prefer to obtain rail access via the M&W lines to avoid the expense of constructing a side track from the CSXT elevated line.

In light of these developments, Maumee & Western can draw only one conclusion: CSXT has removed the M&W crossing diamonds and refused to reinstall the crossing in an anticompetitive effort to prevent Maumee & Western rail service to the industrial park.

Given these events, Maumee & Western urges you in the strongest possible manner to reconsider your company's actions. We can no longer afford the luxury of negotiations with your staff. Accordingly, I must withdraw my offer of a 60 day

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negotiation period contained in the June 23, 2004 letter and advise you that unless we receive written assurance from you by July 8th that the crossing diamonds will be replaced allowing our tracks to open for business by not later than July 30, 2004, we will file a complaint with the Surface Transportation Board protesting CSXT's failure to reconnect our crossing so as to preclude our rail service to the new industrial park.

Very truly yours,

A handwritten signature in black ink, appearing to read "Spencer N. Wendelin". The signature is fluid and cursive, with the first name "Spencer" being more prominent.

Spencer N. Wendelin
CEC Maumee & Western Railroad Corp.

SNW

cc: Tony L. Ingram, Executive Vice-President/CEO
E.M. Fitzsimmons, Senior Vice-President – Law, General Counsel and Secretary
Richard R. Wilson, Esq.
Melvin Clemens, STB Office of Enforcement.



Bob Armstrong
Mayor

Jeffery S. Leonard
City Administrator

Rebecca Snow
Finance Director

David H. Williams
Law Director

Stuart A. Strasfeld
Roth, Blair, Roberts, Strasfeld & Lodge
VIA FACSIMILE 330-744-3184

June 28, 2004

I owe you an apology. Your Fax of 6/19 went to the desk of an employee who was on vacation last week. I just received it.

I'd recommend Mr. Wellman talk to Mr. Hayes about all phases of the development. The City, County and Ohio Department of Development are assisting private investors with the development of a 700+ acre industrial park. Mr. Hayes is coordinating those efforts.

The industrial park is bounded by M&W RR on one side and by CSX RR on the other. Construction of rail spurs into the interior will be far less expensive if the tracks are connected to the M&W because the M&W line is at grade. Lowering spurs from CSX's elevated long haul line will require very expensive construction. The problem is that CSX removed the diamond interchange between the M&W and CSX roads. Cars on the M&W tracks cannot presently be connected to CSX trains. M&W does have a connection to Norfolk & Southern's long haul lines but the M&W track between Defiance and that interchange is not serviceable. Until the M&W road is improved to the west so as to afford access to the N&S or the diamond interchange is restored to the east to afford access to CSX, M&W owns a railroad to nowhere.

The immediate issue is providing service to a prospective tenant of the industrial park that is unwilling to wait for M&W RR and CSX RR to work out their differences over the missing diamond. If that dispute can be quickly resolved, I believe City, County and State officials would prefer to provide rail via M&W to avoid the expense of lowering a spur from the elevated track. The private investors owning land adjacent to the City lots could probably be persuaded to make it available to M&W without the delays inherent in public land acquisition. However, if the dispute cannot be resolved within the very tight time constraints demanded, the powers-that-be will likely absorb the added construction costs and build a connecting spur directly to CSX. Public land acquisition isn't a factor with this alternative.

That said, Mr. Wellman should understand that even if a spur is constructed to CSX to accommodate the immediate need, it doesn't mean that anyone wants to face this issue again. There are 700+ acres to be developed and virtually every one of them can be reached less expensively from the M&W line. The City and County will do anything we can to assist M&W in getting the diamond restored or the missing track replaced and would prefer to see both improvements made as accomplishing both will provide tenants of the park with access to competitive long haul pricing. One thing that would be most helpful in dealing with the PUCO would be to have an established plan for rail development of the industrial park that relies on the M&W road. Mr. Hayes is the man who can develop that plan and sell it to ODOD. Until that is done, Mr. Wellman is expending a lot of effort trying to market an unmarketable service. He needs to focus on restoration of the diamond or missing track, not right-of-way for the spur.

I honestly don't see any purpose to be achieved in securing other parcels for the proposed spur until access to a long haul line is secured and, therefore, recommend against it.



JUN. 23. 2004 12:02PM 419-784-2940

NO. 397 P. 2
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CITY OF DEFIANCE
DEPARTMENT OF PARKS RECREATION AND CEMETERY
631 PERRY STREET, SUITE 103
DEFIANCE, OHIO 43512
(419) 784-2745
FAX (419) 784-2940

SCOTT J. KNEPLEY
PARKS & RECREATION DIRECTOR

FAX TRANSMITTAL FORM

PARKS & RECREATION
FAX (419) 784-2940

DATE: 6-28-04

TO: Roth Blair Roberts Strasfeld
Corporate Name (if applicable)

Stuart K. Strasfeld
Individual's Name

FROM: Dave Williams
Individual's Name

PAGES BEING FAXED: 2
(Include Cover Sheet)

FURTHER INFO: _____

CERTIFICATE OF SERVICE

Richard R. Wilson, Esq. hereby certifies that on this 12th day of July, 2004 he did
serve a true and correct copy of the foregoing Petition of Maumee & Western Railroad Company for
Revocation of CSX Transportation, Inc. Crossing Authority at Defiance, Ohio upon the following
by first class mail, postage prepaid at the addresses set forth below:

David H. Williams, Esq.
Law Director – City of Defiance
631 Perry Street
Defiance, OH 43512

Governor Bob Taft
77 South High Street
30th Floor
Columbus, OH 43215-6117

Chairman Otto Nicely
County of Defiance Board of Commissioners
500 Court Street, Suite A
Defiance, OH 43512

John Humes, Jr., Esq.
Senior Counsel, Law Department
500 Water Street
Speed Code J-150
Jacksonville, FL 32202

Mr. Michael J. Ward
Chairman, President & CEO
CSXT Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Mr. Jerry M. Hayes, Exec. Director
Economic Development of
Defiance County
197-2B-1 Island Park Avenue
Defiance, OH 43512-2551

Mr. Melvin Clemens
Director of Enforcement
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

By 
Richard R. Wilson, Esq.
Attorney for Maumee & Western Railroad Company